

Enhancing fairness, transparency and accountability during tendering under Ghana's procurement system: a systematic review

Samuel Owusu Asare

*University of Ghana School of Law, Accra, Ghana and
Department of Building Technology, Faculty of Built and Natural Environment,
Kumasi Technical University, Kumasi, Ghana*

Godfred Fobiri

*Department of Building Technology, Faculty of Built and Natural Environment,
Kumasi Technical University, Kumasi, Ghana, and*

Francis Kwesi Bondinuba

*Department of Building Technology, Faculty of Built and Natural Environment,
Kumasi Technical University, Kumasi, Ghana and
School of Energy, Geoscience, Infrastructure and Society, The Urban Institute,
Heriot-Watt University, Edinburgh, UK*

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Abstract

Purpose – Ghana's legal framework for procurement has undergone substantial reform to increase its efficacy. However, disregard for legal obligations set forth has resulted in issues of fraud, corruption and poor oversight. This study seeks to synthesize literature on the recognition of legal obligations arising from tendering procedures and measures to promote fairness, transparency and accountability under Ghana's procurement framework.

Design/methodology/approach – Legal frameworks and publications from diverse countries have been synthesized using a systematic literature review across three databases (Scopus, JSTOR and HeinOnline) to illuminate key concepts, issues and best practices relevant to the study. Data obtained from included publications was synthesized using Sandelowski and Barroso's two-step approach by using a qualitative meta-summary and thematic synthesis.

Findings – The study reveals that issues of conflict of interest, corruption, lack of capacity, inadequate oversight and insufficient legal follow-through hinder the effectiveness of procurement regulations. The findings highlight the need for targeted improvements in resource allocation for consistent application of transparency measures, regular publication of notices and robust enforcement of accountability mechanisms. The report proposes the creation of a common data environment for networking and information dissemination, implementing feedback systems and trust rating schemes.

Practical implications – The study contributes to the body of knowledge on procurement regulation by providing a thorough analysis of Ghana's procurement framework. The findings will help policymakers close the observed implementation gaps by guiding the revision of current legislation and the introduction of new regulations. Research findings can be used to guide the creation of focused training courses.

Originality/value – This study, one of the first of its kind in Ghana, examines the current procurement framework, including legal obligations and implementation challenges. It contributes to the body of knowledge on the subject by providing a current and fact-based analysis as well as relevant recommendations for strengthening the framework.

Keywords Legal framework, Legal obligations tendering processes, Procurement, Fairness

Paper type Literature review



1. Introduction

There have been several attempts to regulate procurement processes to ensure the standardization and effectiveness of the various processes. The primary law governing Ghana's entire procurement and tendering processes is the Public Procurement Act, 2003 (Act 663), as amended with the Public Procurement Act 2016 (Act 914) and procurement guidelines developed by the Public Procurement Authority. The Act establishes the formation of the oversight authority, whose function is to regulate the entire procurement process and ensure due diligence and compliance with the provisions of the Act. The Public Procurement Act, as amended, contains provisions to govern the obtaining of goods, works, services, disposal of items, and procurements financed by public funds. The Act prescribes the planning of procurement, source selection, contract management, and the conclusion of the ultimate contract. Procurement entities may select contractors or suppliers through competitive bidding or direct negotiation (Polat *et al.*, 2020). With competitive tendering as the principal means of executing procurement needs, the Act provides for establishing tender committees, which will be responsible for evaluating and approving the tender documents and the actual tendering process. Under Section 2 of Ghana's Public Procurement Act as amended the object of the Procurement Authority is to ensure that public procurement is carried out in a manner characterized by fairness, equity, transparency, competition, integrity, and cost-effectiveness. Fairness, accountability, and transparency ensure that all bids receive equal treatment, encourage healthy competition, prevent corruption and biases, and promote the development of trust among contractors and between procurement entities.

Ma (2014) asserts that procuring bodies view tender solicitations as merely an invitation to treat, not an offer to enter a contract with any respondent. This traditional view remains prevalent in industry practice, with procuring bodies using an arbitrary method to approve or reject tenders and with an understanding of no existing legal relation between tender participants during the pre-award phase as evidenced in cases such as *DADYCO Construction Works Limited v. University of Education and the Registrar, University of Education*, and *National Communications Authority v. Trans-Africa Telecom Ltd.* This position has restricted the general obligation to treat all tenderers equally and fairly in the selection process and to maintain the highest level of good faith. Recognizing the legal relations and obligations that arise during tendering makes it easier to regulate and run procurement processes. It also deprives those who have suffered injustice of avenues to seek justice. Despite the traditional view of the process as an invitation to treat, tendering processes are coupled with the exchange of promises and agreements that are actionable upon breach.

Ghana's procurement structure has significantly been reformed to increase accountability, fairness, and transparency. Adinyira *et al.* (2022) indicate the relevance of procurement regulations in mitigating procurement risk and the renewed interest in reforms which can be attributed to (a) failure to deliver expected social and economic objectives; and (b) demand for transparency and accountability. Notwithstanding these initiatives, there is a general disregard for legal obligations set forth by the law, resulting in fraud, corruption, and poor oversight. In light of contemporary trends and information advancements, the study provides a thorough assessment of the influence of current procurement policies and legislative frameworks on tendering processes in Ghana, an aspect not thoroughly examined by previous studies on Ghana's procurement architecture. To demonstrate issues and pertinent legal principles, it synthesizes scholarly materials, legislation, and case law. It then discusses the various legal obligations of parties towards guaranteeing fair and transparent tendering processes, accountability, and additional recommendations steps for improvement.

This study aims to illustrate the importance of recognizing the legal relations and obligations that arise from tendering procedures and measures to ensure fairness, transparency, and accountability in Ghana. The study adopts specific objectives to achieve its aim, which include (1) identifying the existing legal framework for contractual relations

and obligations in tendering procedures and (2) determining best practices to achieve fairness, transparency, and accountability. This study draws on legal sources and examines relevant legal materials, such as case law and legislation. It further adopts publications to understand and establish facts on tendering procedures in Ghana to achieve the study's objectives.

2. Legal framework for tendering processes

Procurement processes are governed by a hybrid of legal tenets, with no separate legislation developed for private sector procurement, as opposed to public procurement. International and national legal regulations prescribe an effective and efficient procurement mechanism. The UNCITRAL Model Law on Public Procurement, OECD Principles for Integrity in Public Procurement, and the World Bank's New Procurement Regulation are notable in the international divide. If comprehensively implemented, the Public Procurement Act in Ghana can enhance value for money, transparency, and accountability in local procurement management (Ibrahim *et al.*, 2017; Larbi *et al.*, 2019). National regulatory frameworks governing procurement must be well-suited to international guidelines and best practices (Bera-Goksu, 2018). With public procurement contracts, the tendering practice and entire procurement activities must strictly conform to the prescribed provisions of the public procurement regulations and accompanying guidelines (Bera-Goksu, 2018; Gorski, 2017). In other cases, mostly autonomous institutions and private entities, the tendering practice may be regulated by legislation, recognized industry standard contracts, and/or international financial market contracts. The common law principles recognized by the Courts and their interpretations supplement existing legislation and express agreements. The Electronic Communication Act covers laws governing electronic communications between parties during the tender process, providing a clear definition of when such electronic communications are binding.

At common law, the legal principle that underpins tendering acknowledges it as an invitation to treat. This principle stipulates that the procuring organization adopts the tendering process to solicit offers from tenderers for the award of a prospective contract. In this context, tendering is employed as an invitation by a procuring entity to solicit bids from qualified bidders without the commitment to a legally binding agreement but only sets the framework for subsequent negotiations and awarding contracts. In *Spencer v. Harding*, the defendant solicited offers for the sale of shares in a particular company. In response to the tender advertisement, the claimant made an offer that met all the specified requirements and submitted the highest tender. The plaintiff instituted a court action upon the defendant's refusal to accept the tender. The court, holding in favour of the defendants, established that the advertisement inviting tenders was a mere invitation to treat, and the acceptance of submitted tenders was not legally binding. It will only be an offer if it expressly or implicitly infers an agreement to accept the highest tender. Not all tendering practices have the same legal impact. The case of *the Canadian Dyers Association Limited v. Burton Sons and Willoughby Ltd.* established an objective test for determining whether the words and actions of the parties involved constitute an offer or an invitation to treat.

In the case of *City Polytechnic of Hong Kong v. Blue Cross (Asia-Pacific) Insurance Ltd.*, the court upheld common law principles in deciding whether Blue Cross could lawfully withdraw its tender, which contained errors noticed after submission. It was held that the contemporary law of contract takes into consideration the possibility that, in tendering situations, an implied contract could come into existence binding the tenderer to keep his tender open for the designated period. *Hughes Aircraft Systems International v. Air Service Australia* established a process contract during the tendering procedure, mandating adherence to fairness and compliance with the agreed assessment criteria. The case further affirms that process contracts may arise by implication. In *IPEX ITG Pty Ltd (in liq) v. State of Victoria*, the court found that details contained in the tender documents will determine if

parties intend to be bound by a process contract, and each tender must be considered based on the relevant associated facts. The court established that when the tender documents set out a timeline, detailed process, and evaluation criteria, it is necessary to follow these promissory obligations. Therefore, if an undertaking indicates a promise to accept a specific tender, a legally binding process contract is created, which imposes an obligation on the procuring organization to honour it. However, if the tender documents include clauses reserving the procuring entity's rights to accept or reject tenders at will, the process may be construed as an "invitation to treat."

The rights and obligations of procuring entities and bidders in the bidding process were refined by jurisprudence in the landmark case of *Ron Engineering*, which established the formation of Contract A, which represents the terms and conditions under which the tender was made, and Contract B, which is the prospective contract itself. Before awarding the advertised contract, the procuring entity may include legally binding undertakings or promises in the tender advertisement, resulting in enforceable rights and obligations termed as a process contract. A process contract includes the culmination of representations made by the procuring organization to adhere to a structured bid acceptance process, tender evaluation, and negotiations and award of the main contract, serving as the framework within which the tendering process operates and ensuring that the selection is based on existing legal regulations and consistent with the stipulated selection criteria as illustrated in *Hughes Aircraft Systems International v. Air Service Australia*.

3. Research methodology

Recognizing legal relations within tendering processes is a critical aspect of commercial transactions, especially in procurement. A comprehensive assessment of relevant literature was done by adopting a systematic literature review in conjunction with the review of relevant legal frameworks. A systematic review gathers all empirical evidence meeting specific criteria to address a research question, using explicit methods to minimize bias for reliable conclusions (Higgins and Green (2011)). The adoption of a systematic review provided an appropriate and structured methodology for evaluating the legal architecture of Ghana's procurement system by systematically identifying, appraising, and synthesizing relevant studies and documents, minimizing bias, and ensuring a comprehensive and objective analysis of the procurement framework. Eligible interventions were implementing mechanisms and guidelines to ensure the recognition of legal relations and obligations in tendering procedures. The study includes evaluating the current state of procurement practices without strict adherence to legal relations and obligations versus the potential benefits and improvements that could arise from implementing recognition of these aspects. To ensure a manageable but thorough review of pertinent materials and multidisciplinary coverage of public procurement research, the literature evaluation was limited to HeinOnline, JSTOR, and Scopus databases. The combination of these databases offers a strong basis for an extensive and comprehensive systematic review that covers the field's legal, theoretical, and empirical facets. Public Contracts and Procurement Law Journal are examples of specialist collections available on HeinOnline that are pertinent to public procurement. The JSTOR database provides an extensive archive of academically rigorous journals with high-impact factors, providing access to foundational and contemporary research. Limiting the number of databases streamlined the search and retrieval process, making the review more efficient by reducing redundancy and overlap, allowing for a more focused and in-depth analysis of the selected literature. Limitations due to their specific focus areas, language and publication biases, and potential exclusion of grey literature are acknowledged. To minimize the effect of these limitations, some manual searches were undertaken to ensure a comprehensive and balanced review.

The search adopted the following combined keywords; (“Legal”) and (“Contract” or “Relations” or “Obligations”) and (“Tendering” or “Bidding”) and (“Processes” or “Procedures”) and (“Procurement”). Publications available in the English language within the period of 2016–2024 were searched. The period from 2016 to 2024 was selected to reflect the most recent developments in scholarship and procurement systems, including trends, policies, and research findings following the promulgation of Ghana’s amended procurement legislation, Public Procurement Act 2016 (Act 914). Only full-text publications on subjects relating to (1) Procurement, (2) Government contracts, (3) Construction Industry, and (4) Engineering were considered. Studies covering procurement systems, legal regulations, obligations, tendering procedures, and their impact on fairness, transparency, and accountability were eligible for extraction and review. Studies not meeting the eligibility criteria and duplicate records were excluded. Titles and abstracts were screened to ensure their relevance to the study. The full texts were further reviewed against the study’s objectives.

A narrative synthesis approach was employed to analyse and integrate findings from included studies systematically. Data was synthesized to identify common themes and patterns related to legal frameworks and obligations in procurement. Data synthesis was conducted using Sandelowski and Barroso’s two-step approach. Data synthesis was conducted using a qualitative meta-summary and thematic synthesis to combine tabulated relevant statement findings extracted from the included studies under appropriate descriptive themes and analysis presentation. Synthesized findings were organized and presented coherently, highlighting key insights and areas for improvement. The study adhered to the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) guidelines for transparent reporting. The PRISMA guidelines are an established set of guidelines for the clear and thorough reporting of systematic reviews and meta-analyses (Page *et al.*, 2021). They aim to increase the reliability and quality of systematic review reports by offering a checklist of crucial components that must be covered in the review. The PRISMA flowchart is presented in the figure below: (see [Figure 1](#)).

3.1 Results

The initial search using Scopus, JSTOR, and HeinOnline provided 968 records, with 918 publications marked ineligible by automation tools. Six publications from Ghana not found by the databases were taken into account. Out of 56 screened publications, 24 were excluded as irrelevant to the study objectives. Four duplicate records were excluded, resulting in 28 eligible publications for full-text review and reporting. The eligible publications were from major journals such as the International Journal of Procurement Management, the International Journal of Public Sector Management, the Journal of Financial Management of Property and Construction, and the Journal of Engineering, Design, and Technology. Further details of the publications meeting each criteria qualification are presented in the summary [Table 1](#) below. The twenty-eight (28) publications that met the eligibility requirements offered pertinent information that tackled major issues that arise from tendering processes in developing countries including Ghana. The adequacy and suitability of 28 publications for the systematic literature review are justified by their comprehensive coverage, relevance, diverse perspectives, and thematic saturation ensuring a robust, credible, and manageable review, providing valuable insights into the effectiveness and challenges of procurement practices. The trend of the publications on an annual basis has been provided in [Table 1](#). The year 2017 recorded 9 publications being the modal frequency and was succeeded by 2018.

3.1.1 Implementation of procurement mechanisms in Ghana. Procurement processes typically unfold in several stages, beginning with needs assessment and succeeded by the issuance of an invitation to tender or request for proposal by the procuring organization, establishment and publication of conditions for participation, use of objective and

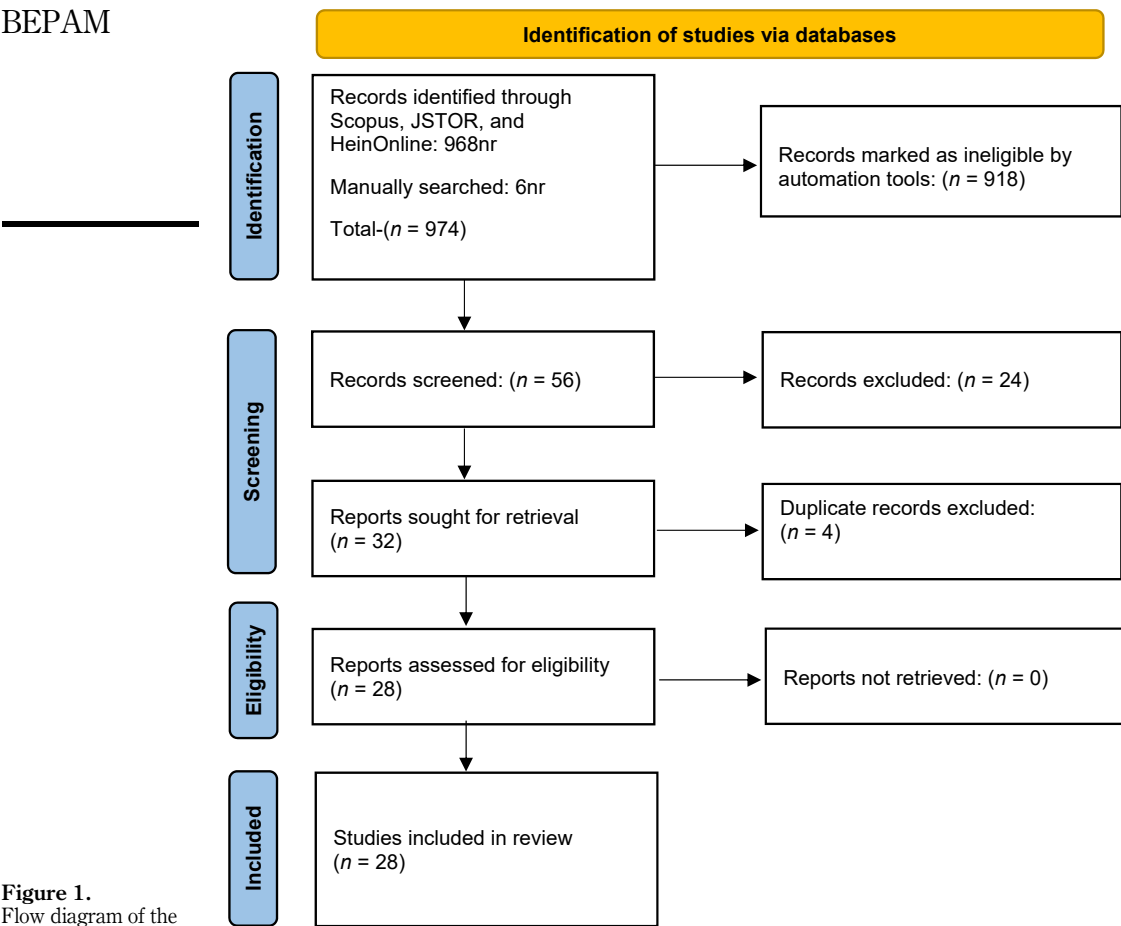


Figure 1.
Flow diagram of the
selection process

Source(s): Authors' construct (2024)

predetermined criteria for public procurement decisions, an effective system of domestic review (Toeba, 2018); bidder selection, award, and then contract performance (Barnard, 2017). The procuring entity's chosen procurement method or procedure is typically determined by the type and extent of the procurement, the value of the procurement, the availability of the goods and services locally, the cost of the goods and services, and the urgency with which the goods and services must be obtained (Nwokike, 2021). The Public Procurement Act, 2003 (Act 663), as amended with the Public Procurement Act 2016 (Act 914) recognizes five competitive tendering methods: (1) national competitive tendering, (2) international competitive tendering, (3) two-stage tendering, (4) restricted tendering, (5) request for quotations/proposals, and single source procurement under Section 34 A. The findings of Tweneboah and Ndebugri (2017) show that procurement legislation helps improve transparency and accountability in the procurement process in various public institutions and minimizes corruption in the procurement process to ensure value for money. This is consistent with the studies of Essel (2021), indicating that enforcement of the legal

Database	Initial search	2016– 2024	Full text	Subject criteria	Selected articles	Unrelated articles	Final articles
Scopus	47	28	28	11	11	8	3
JSTOR	69	15	15	15	15	10	5
HeinOnline	852	85	73	24	24	6	18
Manual Search	6	6	6	6	6		6
Total (Duplication)	974				56	24	32 –4 28
<i>Total eligible publications</i>							28

Year of publication	2016	2017	2018	2019	2020	2021	2022	2023	2024
<i>No. of publications</i>	1	9	5	3	4	4	1	0	1
Source(s): Authors' construct (2024)									

Table 1.
Record of search
results from various
databases

framework on procurement plays a pivotal role in promoting transparency, fairness, and efficiency in public transactions, setting out rules, regulations, and procedures that both procuring entities and the bidders must follow. Table 2 provides a comparative overview of the procurement processes for each type of tendering method, highlighting key differences in procedures adopted under the various methods.

3.1.2 Obligations arising from tendering processes. Where a valid submitted tender is duly accepted, and the winning bidder subsequently withdraws from entering the main contract, the procuring entity may seek a suitable remedy against that defaulting bidder, as illustrated in the case of *Ron Engineering*. The remedies in question may take the form of a claim on the tender security, if any, and a claim for damages. Hence, where a bidder believes that the procuring organization has failed to award a contract under the terms and conditions on which the tender was invited, aggrieved bidders can challenge the process and potentially seek a declaration of the ineffectiveness of the process. The award of an injunction and damages are some other judicial remedies that the Court may consider. If it can be shown that a remedy would most effectively protect the commercial interest of the aggrieved party, then the Court may well grant an appropriate order to that effect. Contract law should govern procurement disputes as against the use of administrative law to review tendering disputes except in very particular and limited circumstances (Greene, 2017; Lambert, 2019).

In *National Communications Authority v. Trans-Africa Telecom Ltd*, the Ghanaian Court affirmed that a bid becomes irrevocable if it is filed per the terms and conditions of the call for tender, and the procuring entity is not given the ability to ignore the procedures it has unilaterally established to govern the tendering process at any time. Based on the provisions of sections 23, 24, 29, and 65 of the Procurement Act 2003, which have since been amended, the Appellant institution's failure to provide notice and grounds for rejection as required by the statute indicates a lack of transparency in the tendering process, entitling the respondent company to a remedy for the breach.

The procuring party must act fairly, consider each submitted tender, and provide adequate reasons for refusal. In the case of *Hughes Aircraft Systems International v. Air Service Australia*, it was established that the obligations of the contracting party include the examination of the tenders carefully and exercising their judgement honestly and fairly in the common interests of the parties concerned, with a view to the acceptance of the most advantageous offer. The Court will ensure that the decision made by the contracting party is reasonable and in good faith.

BEPAM

Item	Open tendering National competitive tendering	International competitive tendering	Restricted tendering	Two-stage tendering	Request for quotations
Procurement planning	Focuses on local market dynamics and requirements under national procurement rules	Requires consideration of global market dynamics, international regulations, and national procurement rules	Focus is limited to pre-selected bidders and requirements under national procurement rules	Focuses on either local or global market dynamics and is governed by national procurement rules	Focuses on specific needs (standardized items) and is regulated by national procurement rules
Advertisement	Advertised in local newspapers, government portals, and relevant digital platforms	This may involve publication in international journals, newspapers, procurement portals, and relevant digital platforms	Typically not advertised widely but communicated directly to pre- qualified bidders	Advertised in local or international media outlets, procurement portals, and government portals	It may be advertised through public notices and direct communication with potential bidders
Pre- qualification	Not compulsory if the contract amount does not exceed the mandated threshold	Required	Required	Required for the initial stage	Not required
Nature of selection process	Open to locally registered bidders	Open to both locally and foreign registered bidders	Limited to pre- qualified or selected bidders	The initial stage is open to all potential bidders for pre- qualification	Open to all potential bidders
Tender evaluation	Involves a detailed evaluation of technical capabilities, past performance, financial stability, and a multi-criterion weighting	Involves extensive evaluation of technical, financial, and operational capabilities and a multi- criterion weighting	Involves a more detailed evaluation of pre- qualification criteria, financial stability, and use of multi- criterion weighting	Technical evaluation in the first stage, followed by a detailed evaluation of technical and financial proposals	Simplified evaluation of responsiveness and price based on the provided specifications

Table 2.
Comparative overview
of the procurement
processes in Ghana

(continued)

						Built Environment Project and Asset Management
Item	Open tendering National competitive tendering	International competitive tendering	Restricted tendering	Two-stage tendering	Request for quotations	
Process monitoring	Monitoring involves adherence to local regulations throughout the bidding process	Requires further coordination across borders and compliance with international regulations, standards, and practices	Monitoring focuses on ensuring compliance with pre- qualification criteria and fairness in bidding processes	Monitoring covers both process stages: pre- qualification and detailed bidding to ensure transparency and fairness	Monitoring may be minimal and focuses on compliance with required procurement procedures	
Award	The award process follows national procurement regulations and evaluation criteria set by the procuring entity	Award may involve consideration of international trade agreements and adherence to national procurement regulations	Awarded based on pre- qualification criteria and competitive bidding process as required by national procurement regulations	Awarded to successful bidders based on evaluation criteria in the RFP and adherence to national procurement regulations	Award based on supplier's compliance with RFQ terms and adherence to national procurement regulations	

Source(s): Authors' construct (2024)

Table 2.

The procuring entity is responsible for compiling the tender structure and requirements reflecting their proposed project approach and providing sufficient information relevant to the tendering process. The tenderer must adhere to the terms in the invitation to tender document and ensure that the tender is submitted on time.

There is an implied obligation that the procuring entity will accept only compliant bids and avoid conflict of interest. Both parties must act in good faith and avoid fraudulent misrepresentations. The performance and enforcement of obligations in tendering contracts are closely connected to the existence of good faith. Each party must observe good faith concerning the contract's performance, enforcement, and termination.

Upon tender award, the successful tenderer is expected to enter into a formal contract with the client. However, at this stage, there is no "contract" in the contractual sense, merely the letter of intent expressing the procuring authority's desire to enter the formal contract based on the successful tender. However, the contracting party is legally obliged to contract with the procuring entity on the terms identified in the tender, and the tender documents often infer those terms. In practice, the tender submission amounts to an offer that the client may accept. Once accepted, this forms a binding contract in which each party's obligations are not only mutual but are enforced by law. It is important to recognize that there is no general requirement in law that a procuring entity must accept the lowest tender. However, if a tendering process has an express or implied obligation to consider each tender on its merits, then the procuring entity conducting the tender and tenderers would be obliged to ensure that the tendering process complies with the tender advertisement and is fair and transparent.

[Outhwaite and Martin-Ortega \(2016\)](#) proposed the potential for states to use public procurement to promote human rights protection and ensure that human rights are respected

throughout the whole supply chain of the procured product. In addition to economic considerations, [Mélou \(2020\)](#) suggests including an obligation for environmental and social considerations in procurement processes in the legal framework to catalyse market transformation by creating demand for environmentally friendly and socially responsible outcomes and sustainability.

3.1.3 Ensuring fairness in tendering procedures. Parties use incomplete contracts and undetailed planning and avoid legal remedies because of their flexibility ([Jobidon et al., 2019](#)). By ambiguously writing the tender requirements, a procurement officer may influence the process and raise doubts about how the rules will be applied. This would, therefore, enable the officer in question to add to or change the terms of the proposals or tenders after they have been received, later on during the evaluation process. An officer may also advance information to a bidder to enable an advantage over the others ([Toebe, 2018](#)). Other challenges resulting in unfairness in procurement activities include conflict of interests in the evaluation of bids, collusive bidding, unclear selection or evaluation criteria and discretionary application of those criteria, unfair advantage, abuse of negotiated procedures, abuse of emergency grounds to justify the use of non-competitive or fast-track procedures and as well amendments of the contract terms after the conclusion of the contract ([Dragoş and Horváthová, 2017](#)). The lack of appropriate legal principles on conflict of interest in procurement law persists in most legal frameworks ([Soloveičik and Šimanskis, 2017](#)). [Muratbekova-Touron and Umbetaljeva \(2019\)](#) also identified intimidation of participants by the procurement entity as an issue encountered during tendering. [Dragoş and Horváthová \(2017\)](#) identified disclosure provisions and restrictions forbidding procurement officials from holding certain positions in public or private organizations as a measure to curb the potential of these issues. Determination of potential conflict of interest and provision of ample remedies is an obligation to be undertaken by procurement entities. Clauses expressly prohibiting bid rigging and kickbacks which continuously plague procurement contracts may curb these improprieties ([Anderson et al., 2019](#)).

The Ghanaian case of *DADYCO Construction Works Limited v. University of Education and the Registrar, University of Education*, established that under the provisions of sections 17 and 29 of Ghana's Procurement Act 2003, the Entity Tender Committee has been assigned the power to declare bids within their approval threshold as successful or reject unsuccessful bids based on the grounds of rejection stipulated for the tender. It was determined that the illegally created and falsified Report, which changed the details of the successful tenderer, was void and constituted an offence under Section 92 of the Procurement Act. As a result, the plaintiff corporation could not benefit from or rely on it to assert any rights. The established function of a Tender Evaluation Panel was affirmed to be limited to the provision of assistance to the Entity Tender Committee in its work. Also, when a Tender Review Board's concurrent approval is necessary, responses must be communicated to the Entity Tender Committee rather than bidders or applicants.

To ensure the observance of the duty of fairness and utmost good faith, the Public Procurement Act establishes procurement structures with the Public Procurement Authority as the regulatory and oversight body. The Public Procurement Authority under [Section 2](#) of the Public Procurement Act, 2003 (Act 663), as amended with the Public Procurement Act 2016 (Act 914), seeks to harmonize the processes of public procurement in the public service to secure a judicious, economic, and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent, non-discriminatory, environmentally and socially responsible manner. To achieve the established object, the Act provides for the administration and institutional arrangement for procurement entities in respect of the Head of Entity, Tender Committees, Tender Evaluating Panels, and Tender Review Boards with designated functions to ensure the smooth flow of the procurement processes.

Section 22 of the Public Procurement Act, as amended, provides the primary qualifications required for participation in public procurements, which applies equally to all tenderers and must be published in the pre-qualification/pre-selection documents. During the prequalification proceedings, Section 23 of the Act provides that responses to requests for additional information and clarifications that might reasonably be expected to be of interest to other participants must be communicated to all tenderers without identifying the source of the request and qualification decisions shall be made based only on the criteria set out in the prequalification documents. The Public Procurement Authority, as part of its mandates, develops standard tender documents and evaluation formats to minimize the incidence of biases. Section 32 of the Public Procurement Act provides for the rejection of submissions of participants who engage in actions purposed as an inducement to influence anything connected with a procurement entity and procurement proceedings. The Public Procurement Act, as amended, thus allows for a margin of preference under Section 60 and assigns the Minister in charge of the public procurement sector (Minister of Finance) with the mandate of developing relevant regulations to help ensure effective implementation and curb arbitrariness. Local content policies contribute to fairness by providing equal opportunities for local businesses to compete for government contracts.

3.1.4 Ensuring transparency in tendering procedures. Transparency is crucial in public procurement processes, as it reduces corruption risks and allows the public to access information about procurement activities. The Public Procurement Authority of Ghana is established on transparency as one of its five basic pillars. Publicity is essential to prevent arbitrariness and personal ties in procurement advertisements and selection. Invitations to tender or prequalification must be published in the Procurement Bulletin and Authority website, and advertisements for competitive tendering must be published in at least one daily newspaper of national circulation, as established under section 47 of the Public Procurement Act, 2003 (Act 663) as amended with the Public Procurement Act 2016 (Act 914). The Procurement Act 2023 (c.54) of the United Kingdom requires strict publication of notices throughout the procurement cycle to enhance public insight, monitoring, and effective competition. Sections 15 and 44 regulate the publishing of transparency notices, while Sections 50 and 55 require the publication of contract award notices and assessment summaries. Other notices are captured under various provisions.

Procurement entities must maintain procurement records and document retention policies by the Public Records and Archives Administration Act 1997 (Act 535). The Act balances transparency and confidentiality during procurement based on security measures and public interest. The evaluation and award decision-making process must be given the necessary degree of confidentiality, following Sections 63 and 77 of the Act. Balancing transparency with protecting commercial confidentiality in tendering processes is a complex task that requires careful consideration. Commercial-in-confidence protection may result in limited oversight in tender processes, potentially favouring influential private and public actors. The Public Procurement Act sets out circumstances requiring confidentiality and non-disclosure of information and requires approvals where necessary. Courts have jurisdiction to help police the need for procurement confidentiality in consonance with public interest. The obligation to disclose relationships between procuring officials and tenderers should be a mandatory requirement in the legal framework.

E-procurement platforms can improve administrative efficiency, transparency, and competition and reduce direct interaction to prevent collusion (Anderson *et al.*, 2019; De Cazalet and Zapatrina, 2021). Automating tender document treatment and tendering processes is increasingly essential due to its legal complexity and technical intricacies (Fantoni *et al.*, 2020). An automated tender document treatment will provide a comprehensive audit trail of all activities, including document revisions, approvals, and communications.

This audit trail enhances transparency and accountability by enabling stakeholders to track the procurement process, verify compliance with legal and procedural requirements, and further enhance data security and confidentiality protocols. The Ghana Electronic Procurement System (GHANEPS) is a web-based, collaborative system developed in compliance with public procurement legislation to facilitate Ghana's public procurement processes which need to be publicized, promoted, and equipped to adopt modern technological trends. [Addy *et al.* \(2024\)](#) presented some factors that can propel the adoption of e-procurement including hedonic motivation, performance expectancy, social influence, and facilitating conditions, and proposed policymakers ought to give priority to stable power supplies and regulations, as well as social issues like redundancy and the adoption of efficient change management practices.

The Public Procurement Act acknowledges adopting e-procurement practices, but capacity building is crucial for successful implementation and personnel competence. Socioeconomic variables like education can significantly impact local governments' digital transparency and fairness initiatives. The Act must establish measures for training and retraining procurement officials to enhance the successful implementation of established protocols. Focusing on economic sustainability in tender practices can address socioeconomic disparities and promote fairer outcomes. Training programs foster a culture of continuous learning and improvement among procurement professionals, contributing to improvements in process oversight, ethical conduct, internal control mechanisms, audit procedures, and reporting requirements. This promotes accountability at all levels of the organization and prevents fraud, waste, and abuse. Equipping procurement officials with the necessary knowledge, skills, and values can uphold the integrity of their procurement activities and achieve better outcomes for all stakeholders.

[Aspey and Craven \(2018\)](#), in discouraging non-competitive selection processes, further suggested that the legal rules and procedural framework must be clarified through interpretation and provision of the policy rationale to ensure informed decision-making. Adequate clarity will help ensure effective monitoring of the procurement process.

3.1.5 Ensuring accountability in tendering procedures. The duty of accountability during tendering processes and procurement proceedings requires that officials are sufficiently competent and held responsible for their actions, subjecting them to review and sanctions, when appropriate, for neglecting or bending those rules. Accountability promotes individual and institutional probity. It is a key deterrent to corruption and a prerequisite for procurement credibility. Compliance with the regulatory framework for procurement activities may take a deterrence or cooperation approach. [Telles and Ølykke \(2017\)](#) identified monitoring and sanctions as replies to non-compliance under the rational choice theory, while capacity building, transparency, and interpretation of rules are associated with behavioural economics. Organization controls and regulatory improvements, such as centralized supervision, state auditing, and tighter supplier selection requirements, are required to limit dishonest parties' access to tenders ([Perevezentceva *et al.*, 2021](#)). Improprieties in procurement can also be battled through a human rights-based approach, which empowers people to demand transparency, accountability, and responsibility from procurement officials ([Mubangizi and Sewpersadh, 2017](#)). As a force for change and innovation, public administration possesses sufficient capacity to streamline and impact market dynamics and optimize productivity in the procurement sector ([Forsyth, 2018; Padros, 2018](#)). Incentive schemes rewarding adherence to legal and ethical standards should be promoted.

Under the Public Procurement Act, during the opening of tenderers, all participants are permitted to be present to observe the proceedings. The statute recognizes the availability of review proceedings (Review by Procurement Entity and Administrative Review) to aggrieved parties under the provisions of Sections 78–82 of the Act. Procuring entities may

be required to obtain approvals from the Central Tender Review Committee or Regional Tender Review Committee by the established thresholds. This allows for further scrutiny of the procurement proceedings before award. In *The Republic v. Bank of Ghana Ex Parte Vasintel Limited and Two Others*, the Court established that the Procurement Act's provision for applying to the Board for administrative review is permissive rather than required. A dissatisfied party retains the legal right to seek judicial review, which must be done timeously.

Individuals officiating procurement activities shall not put themselves in a position where their personal interest conflicts or is likely to conflict with the performance of the functions of their office as established under Article 284 of the Constitution of Ghana (1992). Under Section 91 of the Public Procurement Act, the Auditor General shall conduct annual and specific audits of entities' procurement activities to examine compliance and prepare accompanying reports. Sections 89(4), 92, and 93 identify procurement offences recognized by the Public Procurement Act. Section 92 of the Public Procurement Act as amended provides that "A person who contravenes a provision of this Act commits an offence and where a penalty is not provided for the offence, that person is liable on summary conviction to a fine not exceeding one thousand penalty units or a term of imprisonment not exceeding five years or to both the fine and the imprisonment."

Procurement processes can be highly complex, involving numerous stakeholders, intricate regulations, and substantial financial implications. When disputes arise, navigating through these complexities can be challenging. A right of review and offence sanctions may not adequately address issues of aggrieved parties. The Procurement Act 2023 (c.54) of the United Kingdom expressly recognizes the right to seek judicial redress upon breach of the statutory duties prescribed by law. Section 102 under the Act provides for interim remedies; Section 103 establishes the pre-contractual remedies while Section 104 determines the post-contractual remedies. The Act also reserves the Court's authority to award remedies in addition to those specified by statute. The prescription of adequate legal remedies and the promotion of alternative dispute resolution mechanisms are essential components necessary for ensuring effective procurement management.

4. Discussion

The synthesis of existing literature highlights the multifaceted nature of obligations and legal relations in tendering processes. Tender participation is subject to strict compliance with specified terms and requirements. If parties participating in tendering activities are treated unfairly during the tendering process, such as being misled or discriminated against, this can lead to a breach of the general procurement principles. Process contracts should be recognized as giving rise to mutual obligations that the tendering process, when treated as a contract, entails. This includes the responsibilities of the procuring entity and the obligations of the tenderers. These mutual obligations of the parties substantiate the framework within which the tendering, acceptance, and award of a tendered offer are governed. Fairness during tendering can be improved by providing regular notices and updates to stakeholders during the tendering procedures and disclosing all relevant information to aid in monitoring and tracking the process. A strict feedback mechanism must also be implemented to allow participants to understand the reasons for the award and rejection of various tenders and solicit suggestions on how the process can be further improved. Adherence to the legal provisions established to ensure fairness should have a mandatory effect in all public procurement activities. It may be enforced in other autonomous or private settings if the parties agree expressly or by necessary implication. Transparency can be ensured by disclosure of relevant information influencing the tendering process and ensuring access to all relevant data for effective monitoring and process audits. Process audits may be both

internal and external. Domestic legislation must include provisions requiring the disclosure of relationships between bid participants and procurement officials/entities. The adoption of E-procurement platforms serves as a vital tool for improving transparency during procurement.

Additional approaches to promote fairness, transparency, and accountability include;

- (1) Limiting the consequences of non-compliance to internal administrative sanctions, as observed from the facts in *DADYCO Construction Works Limited v. University of Education and the Registrar, University of Education*, should be discouraged. To achieve compliance, full effect must be given to the statutory stipulated sanctions.
- (2) Providing adequate legal remedies provides a structured framework for addressing disputes within established laws. Alternative dispute resolution mechanisms, such as mediation or arbitration, offer a faster and less costly means of resolving disputes compared to traditional litigation to the extent that criminal matters will be resolved by the Courts. This promotes timely resolution and minimizes the impact on project schedules. An appropriate framework for addressing disputes fairly and efficiently contributes to the procurement process's transparency, accountability, and integrity.
- (3) The adoption of a Bidders and Procurement Entities Trust Rating Scheme that will fairly advise parties of the degree of adherence to ethical and standard procedures in the industry and act as a means of providing reputational and commercial viability incentives that promote adherence to the standards of practice and ethics.
- (4) The establishment of a common data environment that facilitates the participation of multiple players in procurement processes is also crucial to improving knowledge exchange and peer-to-peer validation, both of which lower the probability of incorrect decisions and outcomes. This platform may also function as an extra information distribution channel, offering updates on procurement news, advertisements, guidelines, and accepted standards of practice.
- (5) Oversight bodies and Professional institutions must be strengthened in terms of their legal standing, capacity building, and resource allocation to improve their efficacy and better serve the interests of their members, stakeholders, and the general public. The role of professional institutions in monitoring procurement practices, establishing ethical standards, providing training, advocating for reform, and promoting best practices contributes significantly to enhancing the integrity and effectiveness of procurement processes.

5. Implications for policy and practice

The study explores the legal framework and provides a scholarship on best practices to enhance fairness, transparency, and accountability which can significantly contribute to enhancing the body of knowledge in tendering practices and procurement systems providing valuable insights for both academia and practice. The study's findings may also serve as a foundation for policy reform in procurement regulation. Policymakers can use the insights gained to draft or amend regulations and laws governing procurement processes to ensure fairness, transparency, and accountability are prioritized to minimize events of corruption and procurement inefficiencies. The study offers recommendations for the development of robust monitoring and evaluation mechanisms to assess compliance with legal requirements and identify areas for improvement in procurement regulation to enhance the country's reputation as a reliable and attractive destination for investment and development assistance.

6. Conclusion

The study illustrates the importance of recognizing the legal relations and obligations that arise from tendering procedures and measures to ensure fairness, transparency, and accountability in Ghana. It highlights the need to observe utmost good faith and best practices which are fundamental to the integrity and effectiveness of procurement practices in both public and private sectors by providing all participants with equal opportunities to compete based on their merits, without any unfair advantage or bias. The study affirms the need for formal disclosure of existing forms of relationships between bid participants and procurement officials/entities is crucial for preventing conflicts of interest, promoting transparency, ensuring fair competition, building public trust and confidence, complying with regulations and standards, and managing risks effectively and enhancement of personnel competence through training and development programs. The study contends a need for strong statutory oversight that clearly defines and interprets the rules, procedures, and standards that govern procurement activities such as bid solicitation, evaluation, and awarding, while also providing adequate mechanisms for reviewing and challenging procurement decisions and establishing sanctions and penalties for violations. Reference should be made to procurement frameworks established by international best practices and effective administration regulatory mechanisms. The adoption of electronic procurement platforms and common data environments enhances fairness, transparency, and accountability during tendering processes by increasing access and participation, standardizing processes, providing real-time transparency, facilitating electronic documentation and audit trails, incorporating automated compliance checks, enabling data analytics and reporting, and ensuring secure and confidential communication. Feedback mechanisms are identified as critical in ensuring fairness, transparency, and accountability during tendering processes by facilitating open communication, resolving issues and concerns, improving processes, encouraging evaluation and learning, and documenting interactions to increase transparency. By actively gathering and responding to stakeholder feedback, procurement organizations may improve the integrity of tendering procedures while also increasing participant trust and confidence. The study suggests that empowering professional institutions to effectively monitor procurement procedures, establish ethical standards, offer guidelines, advocate for reforms based on research, and promote best practices greatly improves the integrity and efficacy of tendering and procurement procedures. Also, schemes for trust ratings, which are founded on precise standards and measurements to assess bidders, function as a commercial viability and reputational incentive in addition to holding different players involved in the tendering process responsible for their actions and performance.

The study recommends the need for further research on specific issues such as the role of digital technologies in ensuring fairness, transparency, and accountability during tendering, the impact of globalization on tendering practices in Ghana, and the intersection of legal and ethical considerations in procurement activities.

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Corresponding author

Samuel Owusu Asare can be contacted at: sammyowusu481@gmail.com

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