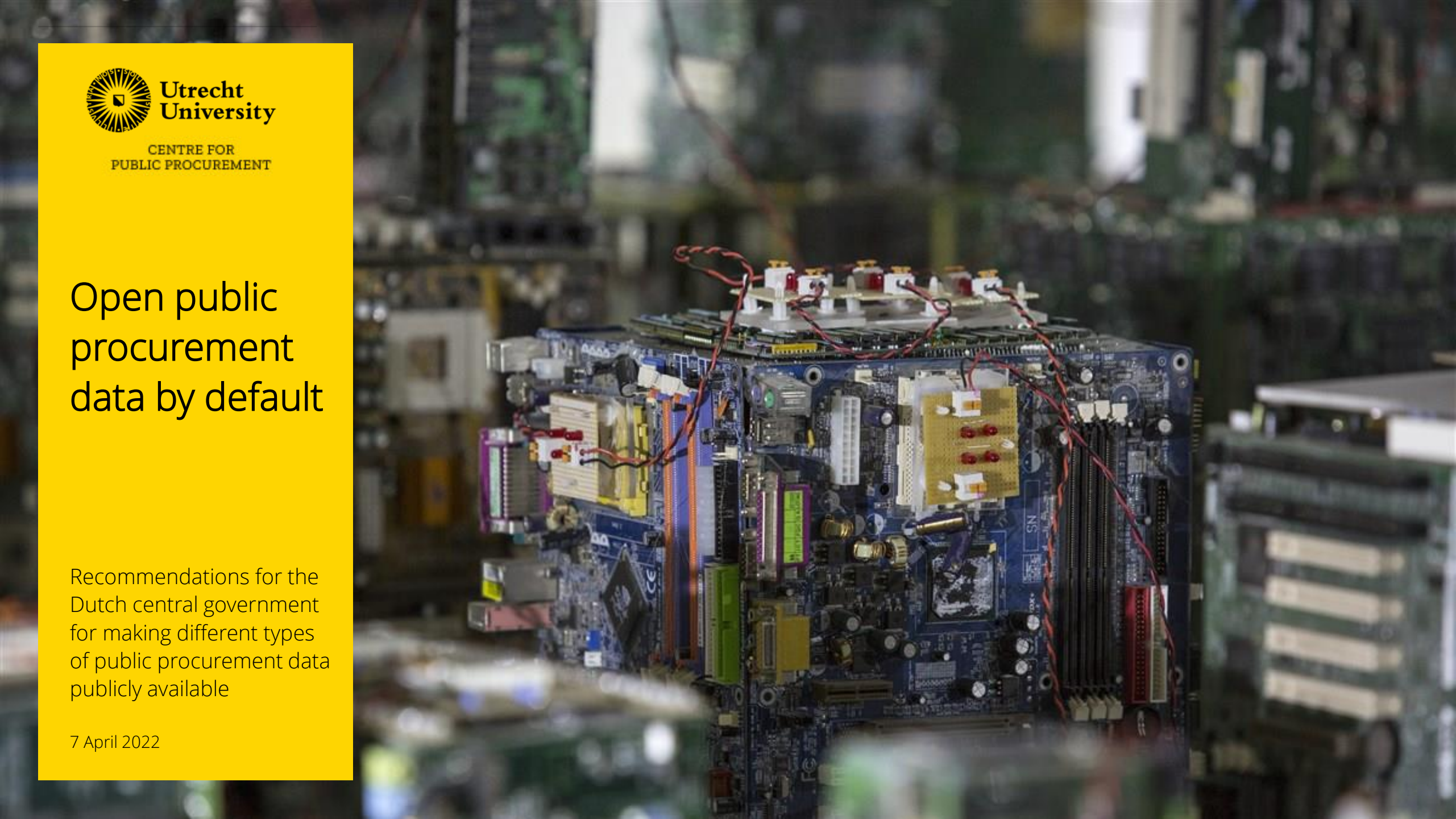


Utrecht University

CENTRE FOR PUBLIC PROCUREMENT

Open public procurement data by default

Recommendations for the Dutch central government for making different types of public procurement data publicly available

7 April 2022

Colofon

Utrecht University
School of Economics
Utrecht University Centre for Public Procurement
Prof. dr. Fredo Schotanus
Professor of Public Procurement

P.O. box 80125
3508 TC Utrecht
The Netherlands

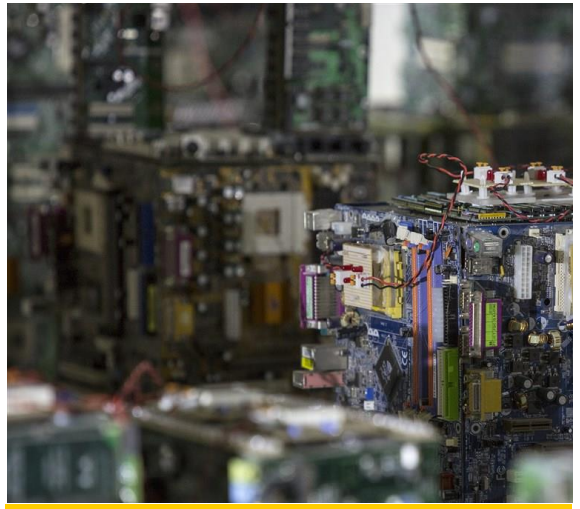
Cover photo:
Ed van Rijswijk (photographer)
Artwork of artist Stanza (UK, London)

Table of contents

Open public procurement data is an important topic for today's democratic societies. The Dutch central government aims to improve its position regarding disclosing public procurement information and requested for a study to investigate opportunities for more open public procurement data.

We composed a list with public procurement data field types and analyzed benefits and risk factors for making this data publicly available. In addition, we analyzed the quality of Dutch procurement data which is already publicly available by comparing this with other member states of the European Union.

We first provide indications of currently available open tender data *quality*. The Netherlands can be seen as a mid-table performer on a limited set of data fields. Most problematic are missing contract values and missing descriptions for, for example, award criteria. Next, benefits and risks of different open data field types are presented. For each data type, it is recommended to what extent the data could be made available publicly.



When the Dutch central government starts publishing more public procurement data, overestimation of confidentiality issues and potential underestimation of the relevance of open data are important topics to address. If this is done properly, an inspiring example can be set for other Dutch and European governments, making a substantial impact on transparency, lawfulness and public trust in public procurement

Introduction

Introduction

Open public procurement data is an important topic for today's democratic societies. It improves transparency about public spending, increases trust and interest in the conduct of governments, is likely to reduce collusion and corruption, improves competition and price-quality ratios, and creates more opportunities for research and sharing best practices. On the other hand, and especially when not organized efficiently, it also creates administrative costs and raises confidentially issues in some cases (CBA, 2021).

Earlier research shows that countries that disclose little public procurement information are countries in Western Europe and in large Commonwealth countries (OCP, 2018). Countries that share most public procurement data are in Eastern Europe (Georgia, Slovakia and Ukraine) and in Latin America (Chile and Colombia). In those countries, the general rule seems to be that contracting information is public information by default, although exemptions on grounds of commercial sensitivity, privacy and security apply (OCP, 2018).
Several reasons for non-disclosure presented in earlier studies (e.g., Janssen et al., 2012, OCP, 2018) also seem to apply to the Dutch context. Examples are administrative costs, a lack of confidence in how to address the issue of commercially sensitive information, and to some extent a lack of awareness of the importance of open public procurement data.

The Dutch central government's aim is to improve its open data practice and to make all its purchasing information public wherever possible, in order to realize the benefits mentioned at the beginning of this introduction. To this end, the Open State Foundation has written a report with seven recommendations to meet information needs of external stakeholders (OSF, 2021). One of these recommendations is to make specific data from government contracts public, such as prices, contract milestones and delivery agreements. In December 2021, the Secretary of State of Interior and Kingdom Relations adopted most of the OSF recommendations in a policy response to the OSF report (CPO, 2021). This year, the central government plans to build a platform with public information about central government procurement.

Research objective and scope

Earlier related research provides insights in what public procurement data can be made open (e.g., OSF, 2021) and what data is not commercially sensitive (e.g., OCP, 2018). However, specific analyses of making different types of procurement data publicly available in the context of the Dutch central government are missing. Therefore, the Dutch central government requested for a study that analyzes benefits and risks and provides recommendations for disclosing different public procurement data fields about tenders and contracts. Although this study has been conducted for the Dutch central government, the results are likely to apply for a large extent to different types of governments in different member states.

Out of scope for this research are organizational, policy and preparation processes related data (e.g., procurement policy, category plans, annual reports, evaluation reports, research reports, market research, et cetera). It is already the intention of the central government to make such data publicly available (CPO, 2021). The same applies to data which is already open, such as publicly available reports or data about appeals. Finally, specific IT challenges (e.g., how to automate certain open data related processes), specific legal restrictions (e.g., what are competition or privacy related regulations), and behavioral aspects (e.g., why is certain data not published while there is a legal obligation) are also out of scope.

Method

For answering the research question, we employed the following steps, divided in two parts. The first part focuses on open tender data quality. The second part focuses on open public procurement data quantity.

Part I. The relative position of the Netherlands within an EU perspective regarding current open tender data *quality*

Dutch governments publish several public tender data fields. For some data fields, there are indications of quality problems. As open data is most useful when it is correct and complete, we first compared the quality of Dutch open tender data with the quality and completeness of open tender data from other EU member states, using opentender.eu, single-market-scoreboard.ec.europa.eu and ted.europa.eu.

Part II. Benefits, risks and recommendations for making more public procurement data fields publicly available to increase open data *quantity*

For investigating which public procurement information can be made public, we make a distinction in our research between two different types of open data.

The first type of data is data for which, in principle, we expect to find only benefits and no risks related to open publication. This is data which is (1) already open, but not easily accessible (e.g., suppliers that have connections with tax havens) or (2) data which is not open, but similar to data which is open (e.g., if contract value is open data, then changes in the value of a contract during the contract period can also be open data). To this end, we compared open central government procurement data which is already easily accessible (e.g., data.overheid.nl and TenderNed) with open public procurement data which is less easily accessible (e.g., tenderhaven.eu and specific parts of opentender.eu) in order to find relevant differences.

The second type of data is data for which publication risks could apply. This is data which is currently closed or partly closed. To find this type of data, we compared open central government procurement data with – where available – open public procurement data from other EU member states, open data recommendations in earlier reports (CPO, 2021; OCP, 2018; OSF, 2021), and open data used in other research conducted by Utrecht University.

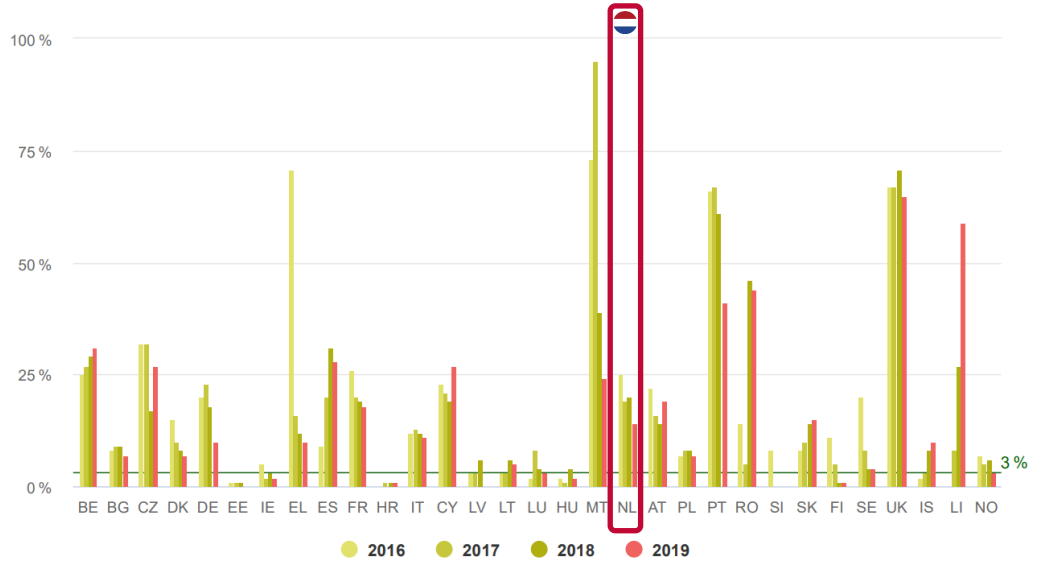
For all data fields, we developed an overview with benefits and risks related to making this data publicly available. Where available and relevant, we referred to earlier literature or examples from other member states. While taking these benefits and risks into account, we recommended for each data type to what extent this data could be made publicly available. We tested the outcomes of our analysis in a focus group meeting with the Utrecht University center for Public Procurement (UUCePP), a focus group meeting with category managers and department managers, and interviews with OSF and OCP.

Results

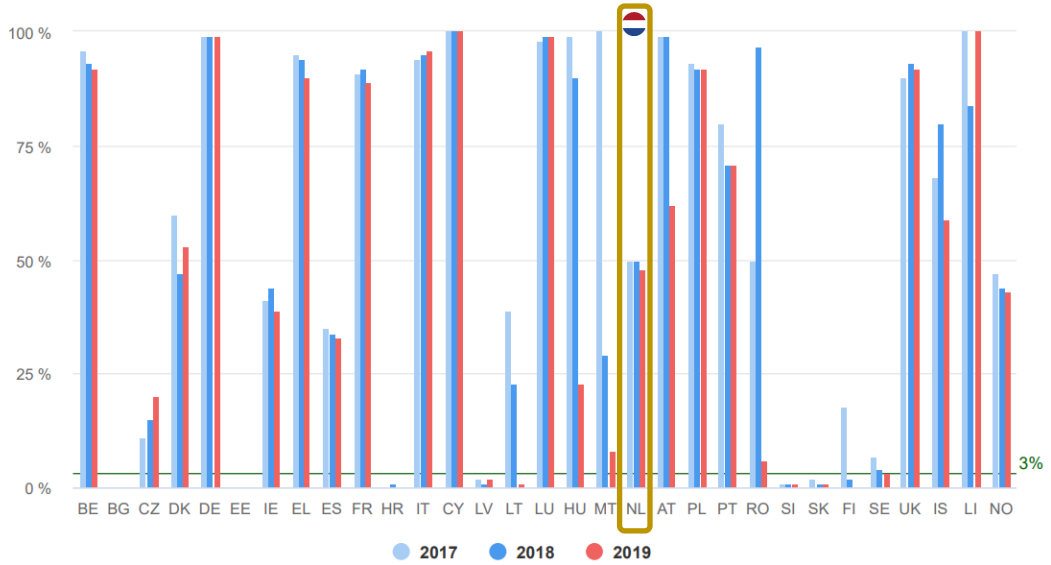
Part I. The relative position of the Netherlands within an EU perspective regarding current open tender data *quality*

The first part of this research focuses on data *quality* of current open tender data. A few open platforms compare the quality of a limited set of open tender data of EU member states. This page and the next two pages show the relative position of all Dutch governments combined within an EU perspective regarding the quality of this data.

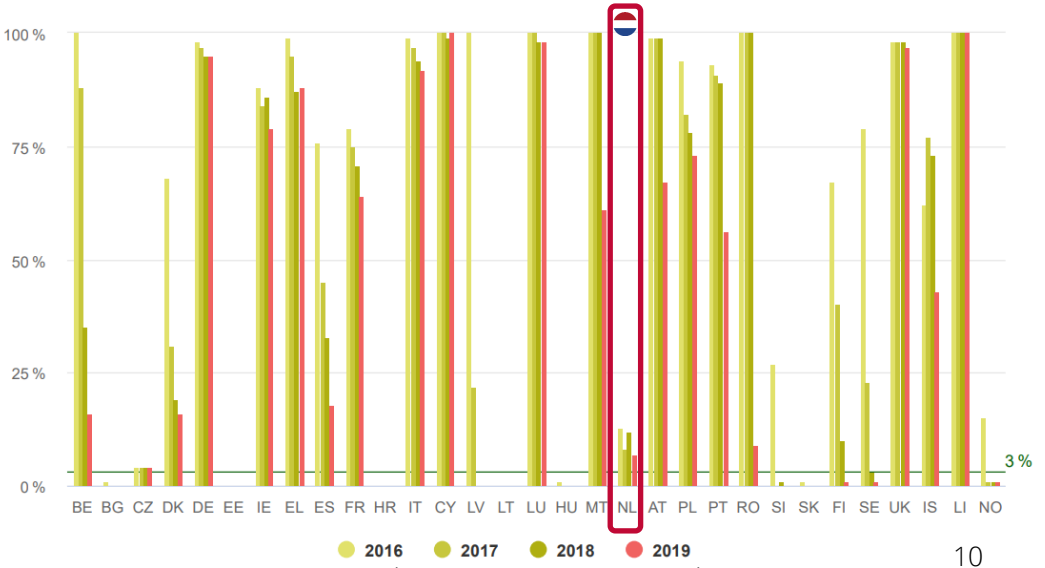
The figures on this page are published on the EU single market scoreboard and indicate administrative accuracy for EU tenders. For each member state, it is measured how often calls for bids and registration numbers are missing. A 0% score means there are no missing values for a member state. A 100% score means that for all tenders, the value is missing. For each figure in 2019, there are about ten member states which have no or hardly any missing values. The Netherlands can be seen as a mid-table performer.



Missing calls for bids



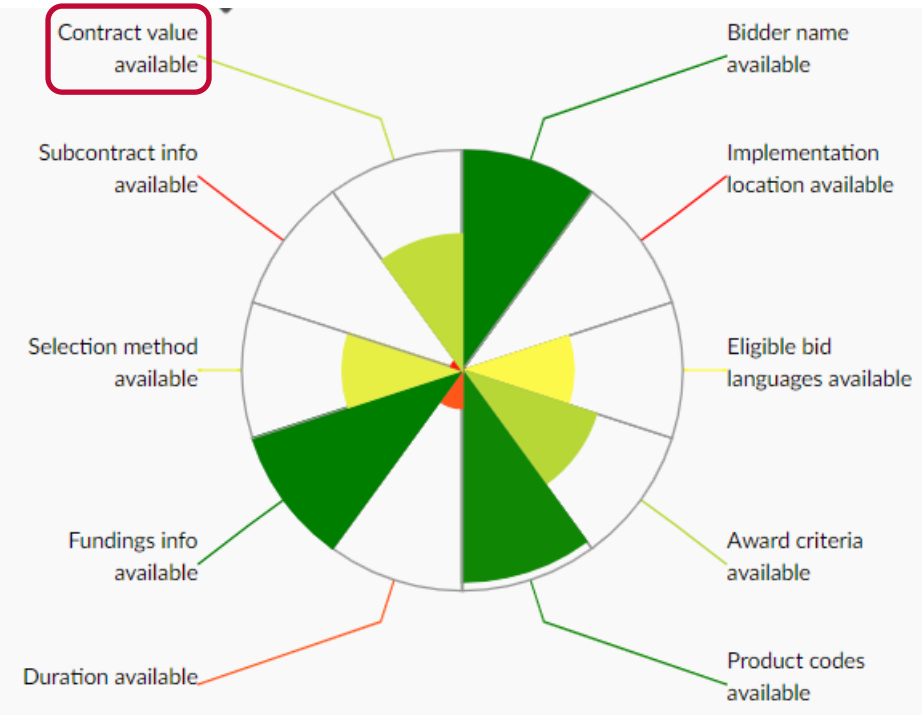
Missing seller registration numbers



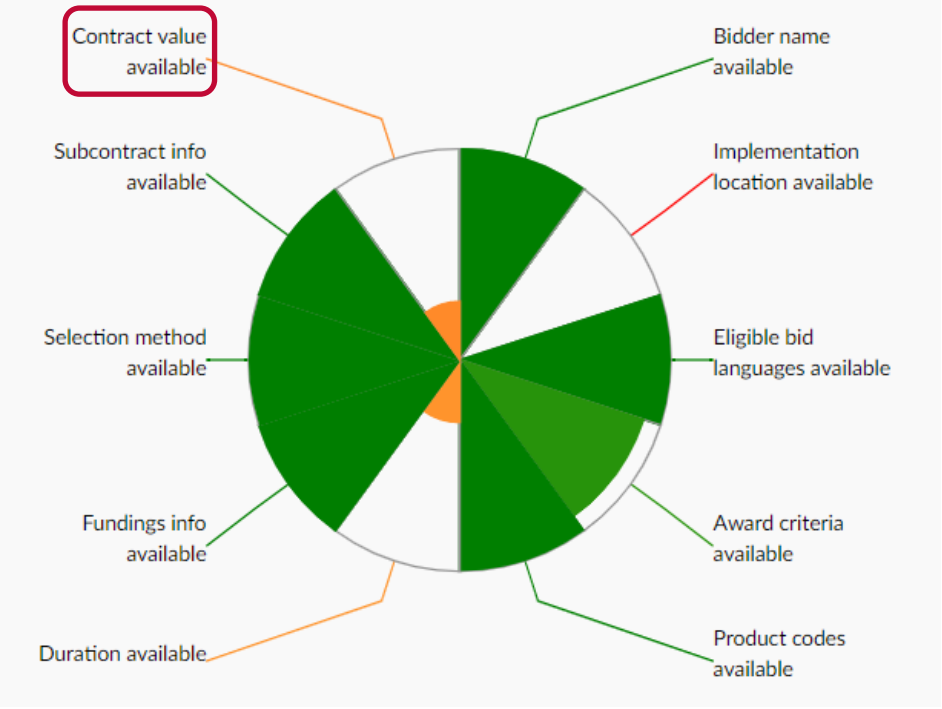
Missing buyer registration numbers

The figures on this page show the performance of the Netherlands compared to other EU member states regarding the transparency indicators published on opentender.eu. Compared to other member states, the Netherlands scores well on most of these indicators, except for contract value available.

Average score of opentender.eu transparency indicators for all EU tenders of EU member states (2020)



Average score of opentender.eu transparency indicators for all Dutch EU tenders (2020)

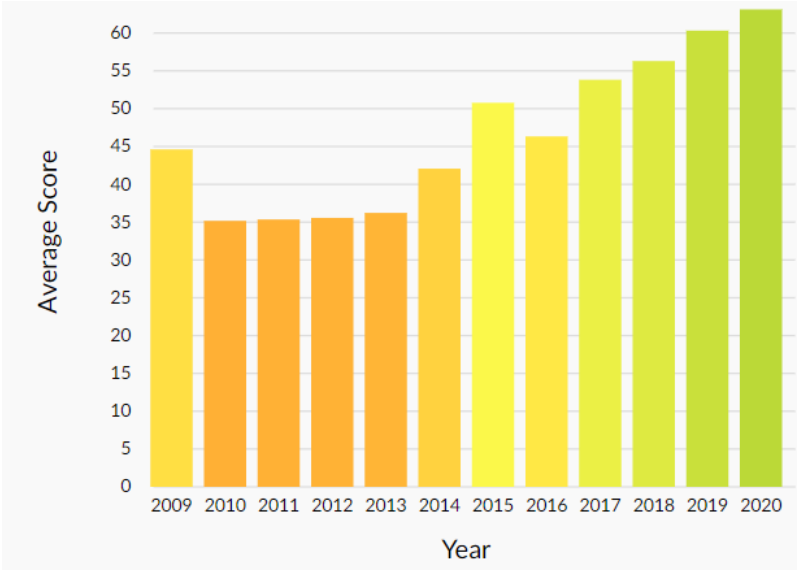


The figures on this page show the performance of all EU member states and the Netherlands regarding the publication of contract values over time. Compared to other member states, the Dutch scores are low and are decreasing instead of increasing, despite that only for a small minority of contracts, it is expected that there are legitimate commercial, national-security or privacy concerns (CfGD, 2014, PIANOo, n.d.).

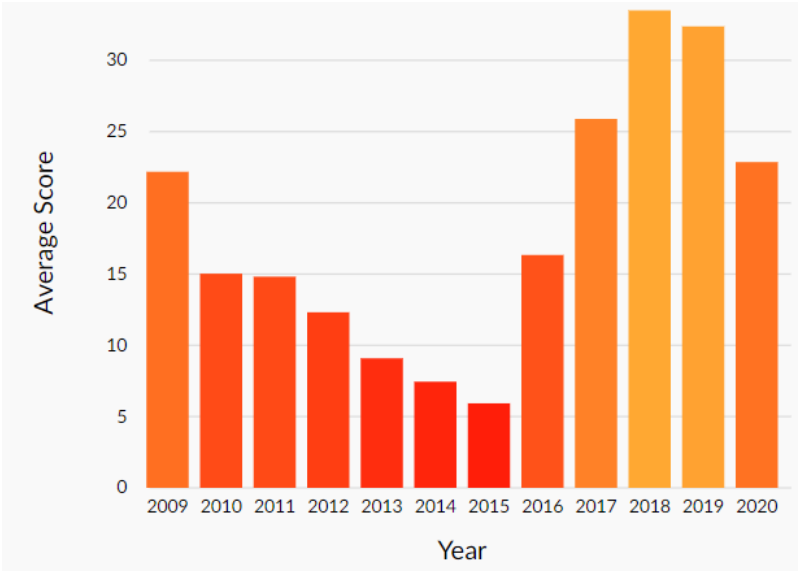
A related transparency indicator published on opentender.eu is the availability of award criteria. Although the scores are positive on opentender.eu (shown on the previous page), the actual words used by tenderers are in many case not useful. In Dutch tender announcements in 2021, a general reference to the procurement documents was used in thousands of tenders instead of a specific description. In addition, when referring to award criteria, tenderers often use general words such as “quality” instead of advertising the tender with actual names of criteria. Especially with the increased use of social and environmental criteria, the actual descriptions of tenders and names of award criteria could be useful information for social and sustainable suppliers.

Summarizing, for a limited set of open tender data fields, international comparisons are available regarding data quality. The Netherlands can be seen as a mid-table performer on this limited set of indicators. Most problematic is contract value completeness and questions can be raised about the quality of the availability of award criteria. In addition, some quality problems exist regarding administrative accuracy for calls for bids and registration numbers.

Average score of opentender.eu contract value available indicator over time for all EU tenders of EU member states



Average score of opentender.eu contract value available indicator over time for Dutch EU tenders



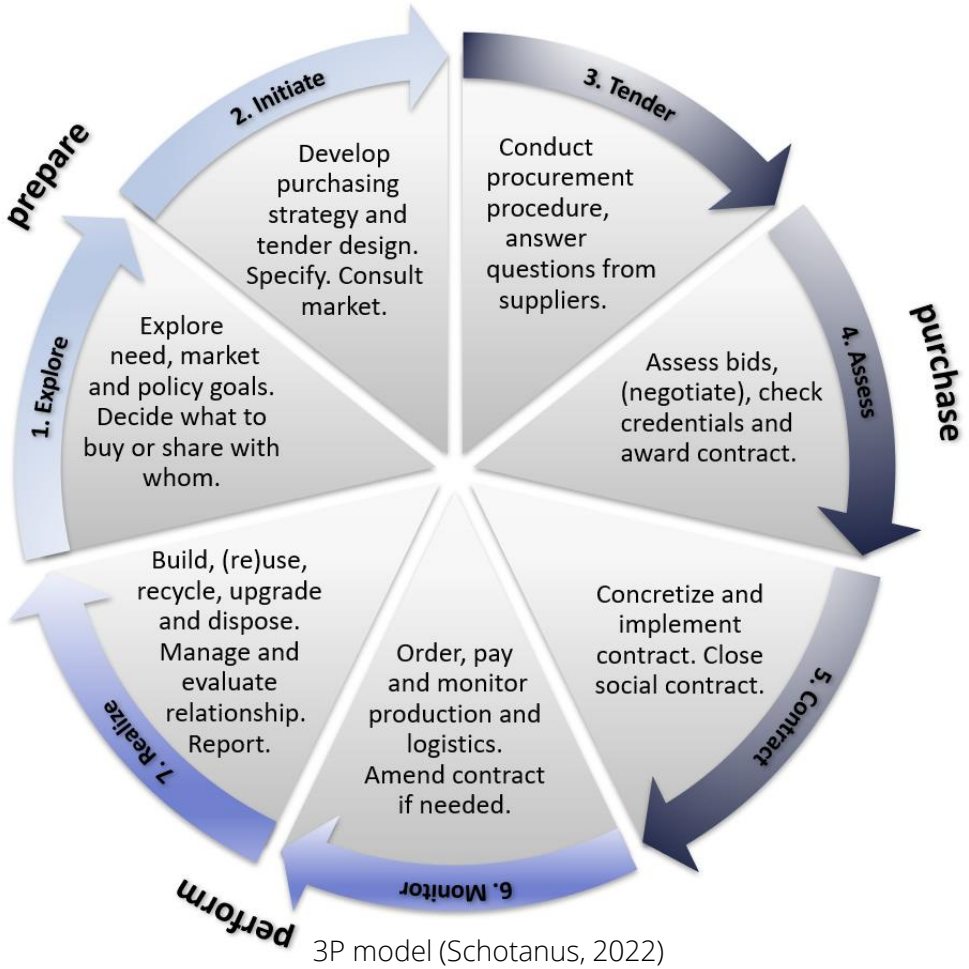
Part II. Benefits, risks and recommendations for making more public procurement data fields publicly available to increase open data *quantity*

Part II of our research presents data fields and benefits, risk factors, and recommendations related to making these data fields publicly available. The data fields on the next pages are sorted using different phases of the public procurement cycle (see the figure). The first exploration phase – including make or buy decisions and tender exemptions – is out of scope of this research.

The data fields are categorized in such a way that the same benefits, risk factors, and recommendations apply. This means that for some data fields, we have included a specific analysis (e.g., for a data field related to the relative advantages of the winning bid). For other data fields, we have included a more general analysis (e.g., for all data fields related to tender announcements), as the benefits, risk factors, and recommendations apply to all data fields in this category. For a detailed overview of all possible data fields, we refer to the OCP report (2018) and the OSF report (2021). We did not find risk factors that differ substantially per market what would lead to recommendations that differ per market (e.g., different recommendations for markets with a limited number of suppliers or many suppliers).

In most cases, administrative costs are likely to be relatively small compared to all other transaction costs for preparing and conducting a tender and managing a contract. Only when administrative costs are expected to be significant, this is indicated in the tables on the next pages.

Finally, in the tables on the next pages, we recommend to make data *open by default* (except for exceptional confidential situations) when there are benefits and when no significant risk factors apply or when risk factors can be mitigated. In all other cases, we recommend *closed data by default*.



3P model (Schotanus, 2022)

Phase 2. Initiation data

No.	Data field	Data source	Benefits	Risks	Recommendation
2.1	• Overview of planned tenders	Buying organization	• Increases transparency about public tenders and could increase competition.	• -	We recommend **open data by default**. To prevent level playing field issues, EU and other international tenders need to be announced at TED with a prior information notice as well.
2.2	• Market consultation documentation and report of the main outcomes	Buying organization	• Increases transparency about market developments and specific issues for tenders. • Reduces administrative efforts, as other buyers do not need to ask similar general questions.	• -	We recommend **open data by default**. The market consultation documentation can also include a summary of the sourcing strategy (see 2.3) to consult suppliers about the main choices made.
2.3	• Complete sourcing strategy for a specific tender (also known as purchasing strategy)	Buying organization	• Increases transparency about strategic procurement decisions.	• Can increase administrative costs significantly if sourcing strategies are made public by default, as buyers are likely to be more careful in how and what they include in the documents.	We recommend **closed data by default**, as there is an important risk factor and the benefits are limited. These are limited as the outcomes of the strategy are also covered in the procurement documents. For sharing abstracts of strategies, we refer to 2.2.

For all tenders and contracts with values below the EU public procurement thresholds (presented on this page and the next pages), a minimum threshold can be introduced in order to prevent relatively high administrative costs for low-value purchases.

Phase 3. Tender data

No.	Data field	Data source	Benefits	Risks	Recommendation
3.1	• All data fields used for announcing tenders by TenderNed, TED, MVIZET (tender phase), and commercial platforms, including contract value and names of award criteria	TenderNed, TED, MVIZET (tender phase), and commercial platforms (for tenders below EU thresholds as well)	• Provides general transparency about tenders. • Advertises tenders, what could increase competition levels. • Helps in fulfilling the obligation to publish all data requested by TED (only in exceptional cases, contract value is confidential (CfGD, 2014, PIANOo, n.d.)). • MVIZET tender phase data clarifies to which extent the Dutch central government procurement policy "procurement with impact" is applied.	• -	We recommend **open data by default.**
3.2	• All tender documents, including requests for proposals (also for procedures that have a prequalification phase), contracts, Q&A documents, et cetera	TenderNed (national and EU tenders), and commercial platforms for tenders below EU thresholds as well. If a buyer uses a commercial platform, all final tender documents for national and EU tenders could be published on TenderNed as well (in one compressed file)	• Provides specific transparency about tenders and agreements made. • Publishing all (final) documents for EU and national tenders on TenderNed or another platform creates one 'single platform of truth' regarding these documents and prevents reduced public procurement transparency enabled by commercial platforms. It can also reduce transaction costs as governments can more easily make use of each other's procurement documents.	• -	We recommend **open data by default**.

For several data fields, timing is important. For private tenders, tender documents can be made publicly available only after the tender is finished. Bid assessment data (see the next page) can be made publicly available after the contract has been signed.

Phase 4. Bid assessment data (1/3)

No.	Data field	Data source	Benefits	Risks	Recommendation
4.1	For all tenderers for each tender: • Supplier name • Contract value (total price) • Quality scores • Applicability of exclusion grounds	Buying organization	• Allows other buyers to estimate costs for new tenders and signals other buyers to be alert for suppliers that do no satisfy exclusion grounds. • Offers additional possibilities – besides the efforts made by the Authority for Consumers & Markets – to detect collusion and corruption. • Allows cartels to monitor whether all members operate according to the cartel's agreements, which can lead to earlier dissolvement of the cartel (Goncharov and Caspar, 2016; Open Contracting Partnership, 2018). • Offers more possibilities for research. Among other things, it allows research to collusion and to the sustainable, social and economical effects of different procurement models. • Provides insight into the price-quality-impact decisions made by governments, as it is currently not known what alternative bids were available. • High quality and high impact suppliers could use the data to show the effects of price focused tenders.	• Especially in markets with a limited number of suppliers, suppliers can use this data to anticipate competitive behavior of other suppliers and bid strategically. • Suppliers that lose many tenders could object against publication.	We recommend **open data by default**, as there are several benefits and the risks can be mitigated to a large extent. The first risk factor can be problematic when buyers use relative scoring methods for price in supplier selection models, but such methods are not recommended in any case. Regarding the second risk factor, it does not seem likely that there are many suppliers who lose many tenders and would object against publication.

Phase 4. Bid assessment data (2/3)

No.	Data field	Data source	Benefits	Risks	Recommendation
4.2	• Relative advantage of the winning supplier	Buying organization	• Provides more information about the winning bid without sharing confidential information. This could be considered as a light alternative for data fields related to the complete bid. • Can build public trust in central government's performance regarding bid assessment quality. Best practices can also have a positive influence on bid assessment quality of other governments.	• -	We recommend **open data by default** but note that it might be difficult to interpret this information for other parties than bidders.

Phase 4. Bid assessment data (3/3)

No.	Data field	Data source	Benefits	Risks	Recommendation
4.3	• Complete bids, including detailed price models • Bid assessment reports of winning suppliers or all tenderers	Buying organization	• Provides maximum transparency about supplier selection decisions and cost elements. • Allows buyers to compare (unit) prices.	• Concerns often commercially sensitive information. • Could lead to more legal conflicts, what could lead to buyers providing less feedback to suppliers. • Is likely to have a negative effect on the willingness of suppliers to participate in public tenders or to share sensitive information in their bids. Similar behavior has been shown in market consultations, in which suppliers do not always display full transparency (e.g., De Koster, 2021). • Could lead to buyers oversimplifying supplier selection models (e.g., by only using checkbox award criteria) in order to reduce the risk of suppliers not participating in tenders. • Is likely to increase administration costs significantly as a result of redaction, coordination with suppliers, et cetera.	We recommend **closed data by default**, as there are important risk factors that will be difficult to mitigate. We also note that the second benefit is limited, as this is also possible to do without making this data publicly available (see for instance Carrera et al. 2021). We finally note that no other member states publish unit prices except Greece to some extent (Open Contracting, 2022).

Phase 5. General contracted suppliers' data

No.	Data field	Data source	Benefits	Risks	Recommendation
5.1	• Partners of a contracted consortium • Identities of tier 1 and tier 2 sub-contractors of contracted suppliers for supplies and works	Winning bid and the supplier during the contract period for relevant changes	• Increases supply chain transparency and insights into supply chain risks. • Can be used for studying international social conditions.	• Could be competition-sensitive in exceptional situations.	We recommend **open data by default**, as there are several benefits and the risk factor is limited as it seems likely that competitors can gather this information by themselves as well.
5.2	• Beneficial owners of contracted suppliers	Chamber of commerce (UBO register) and company websites	• Improves ownership transparency. • Makes money laundering and funding terrorism more difficult.	• -	We recommend **open data by default**.
5.3	• Owner countries list and SBI codes of contracted suppliers	Chamber of commerce and ORBIS data	• Increases tax haven transparency. • Provides an overview of international procurement and an overview of activities of suppliers.	• -	We recommend **open data by default**.

Phase 6. Specific contract monitoring data (1/2)

No.	Data field	Data source	Benefits	Risks	Recommendation
6.1	• Percentage of contract value invoiced • Contract milestones (e.g., start contract, implementation completed, mid-term review)	Buying organization	• Increases transparency about contract compliance. • Indicates (framework) contract usage. • Improves financial insights compared to the current gradual system. • Increases financial insights in individual contracts for category managers.	• -	We recommend **open data by default**.
6.2	• Contract amendments and short motivations	Buying organization	• Increases transparency about changes in contractual agreements. A few member states already publish this data (Open Contracting, 2022).	• -	We recommend **open data by default**.
6.3	• Contract extensions and short motivations	Buying organization	• Increases transparency about contract length. • Provides useful information for planned tender overviews. • Can be used by suppliers as proof for new bids that they perform well. • Creates possibly an additional incentive for suppliers to perform well.	• -	We recommend **open data by default**.

Contract monitoring and realization data can be made publicly available periodically.

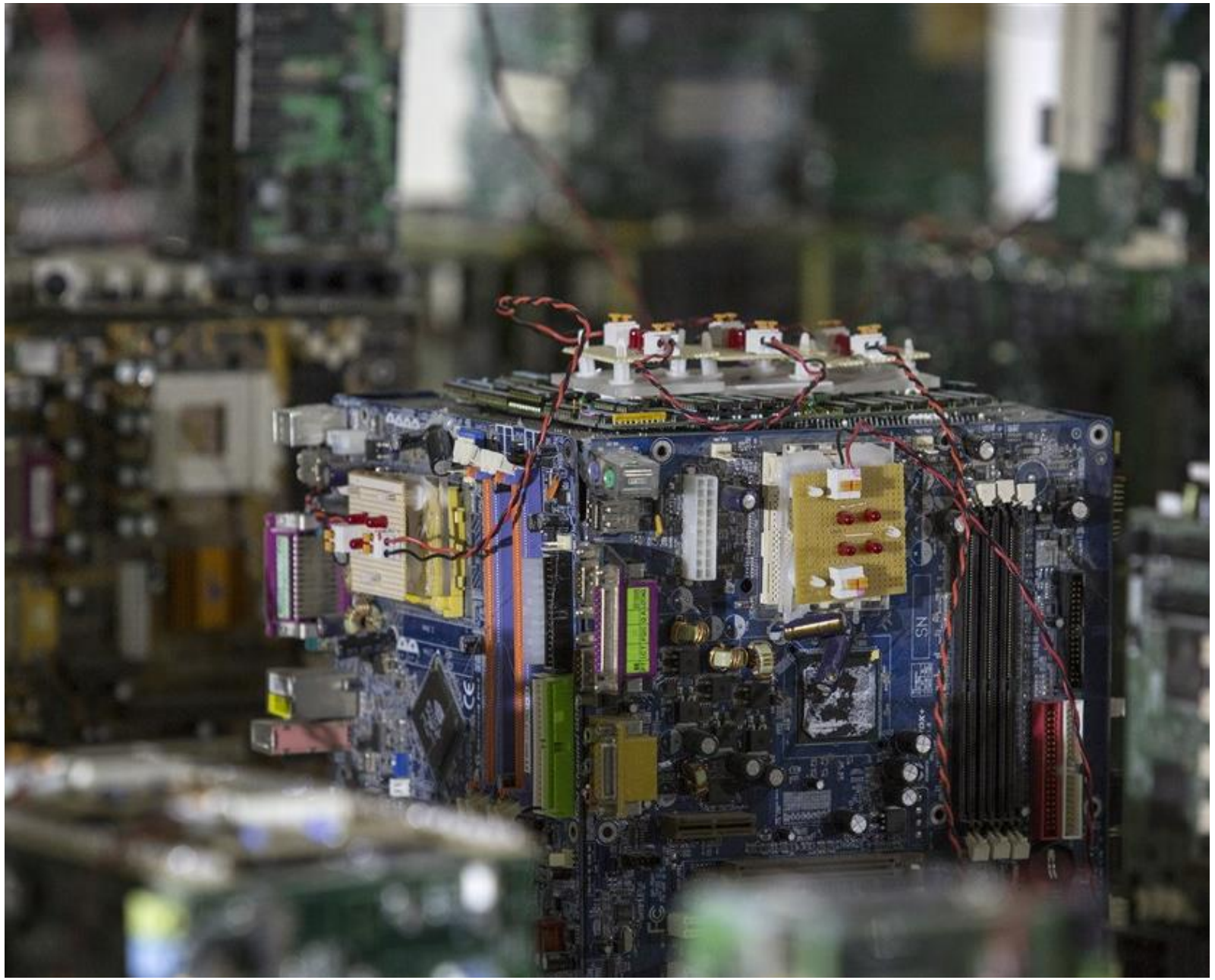
Phase 6. Specific contract monitoring data (2/2)

No.	Data field	Data source	Benefits	Risks	Recommendation
6.4	• Early contract termination because of exclusion grounds or underperformance (to be published for a period of 3 years)	Buying organization	• Indicates which suppliers are underperformers, signaling other buyers to be alert for such suppliers. • Indicates which suppliers do not satisfy exclusion grounds during the contract period, signaling other buyers to be alert for such suppliers. • Could create an additional incentive for suppliers to perform well. • Might prevent low-performing suppliers participating in public tenders.	• Underperformance of a supplier could be the result of under-performance of a buying organization or external risks.	We recommend **open data by default**, as there are several benefits and the risk factor can be mitigated for new tenders. For new tenders, suppliers are allowed to indicate measures that were taken as a response to past performance problems.
6.5	• Call-off contract awards and mini-competition results	Buying organization	• Provides more detail about how framework contracts are used.	• Is likely to create significant administrative costs.	We recommend **closed data by default**, as there is an important risk factor and the benefit is limited as the procedure is already openly published in tender documents. For other types of contracts than framework contracts, we have a similar recommendation (see 7.2).

Phase 7. Contract realization data

No.	Data field	Data source	Benefits	Risks	Recommendation
7.1	• All contract management phase data fields used by MVIZET • Related and similar data (where available), such as greenhouse emissions	MVIZET	• Making MVIZET contract management phase data publicly available increases insights into sustainability, circularity and social realization and links directly to the Dutch central government procurement policy "procurement with impact".	• Might lead to data quality issues, as it is not known what the quality and completeness of the current MVIZET data is.	We recommend **open data by default**. Although there is a quality related risk factor, making this data open could improve input for the system.
7.2	Contract realization data such as: • Non-confidential deliverables for internal use by the buying organization • Audit reports • Performance indicator scores • Evaluations	Collaboration between the buying organization and the supplier	• Indicates to what extent the supplier is realizing the original bid.	• Might have a negative effect on willingness of suppliers to participate in tenders and could increase prices (see also data field 4.2). • Can be open to interpretation. • Often needs experts and contextual knowledge to understand. • Can increase administrative costs significantly, especially for small contracts, for instance for redacting, coordination with suppliers, et cetera.	We recommend **closed data by default** as there are important risk factors that are difficult to mitigate.

Conclusion



In this report, we presented a list of public procurement data that can be made publicly available by default, except for exceptional confidential situations. We also presented a limited number of indicators about data quality regarding currently available open tender data, illustrating there are some quality issues with current open tender data. Possible explanations for these quality issues are overestimation of confidentiality issues and underestimation of the relevance of open public procurement data. When the Dutch central government starts publishing more public procurement data, these possible explanations for quality problems are important topics to address. Otherwise, although open data quantity will increase, open data quality may decrease.

For buyers and contract managers, increased public procurement data requirements mean that transparency about public procurement and correct input needs to be perceived as a key task of public government. For suppliers, this means that they have to realize that if they want to participate in public tenders, some data will be published about bids and contracts. If there are serious objections, then these need to be clearly motivated during market consultations or during tenders.

Although some open data fields are likely to decrease administrative costs and software can increasingly be used for redacting documents, we realize that publishing more open data will create more administrative costs overall. It will have effects on, among other things, internal processes, IT, communication with suppliers and other stakeholders, and systems for monitoring data quality and quantity. As buying and contract management capacity is already scarce, additional capacity and supporting IT systems are required. A phased implementation approach could be applied as well. For instance, administratively-heavier information can be kept unpublished in the first phase of the implementation. Finally, clear publication policies about when and what to publish openly could be developed. Such policies are already available in other European countries. Similarly, a standard template text for tender documents could be developed in which it is explained for suppliers which data will be made publicly available.

If the behavioral and capacity related issues are properly addressed, the Dutch central government can set an inspiring example for other Dutch and (western) European governments. This aught to lead to the benefits mentioned in the introduction and to make a substantial positive impact on transparency, lawfulness and public trust in public procurement.

References

Carrera, P., S. Katik, F. Schotanus. 2021. Joint procurement of complex products: actual price savings, perceived nonmonetary advantages, disadvantages and impediments, Journal of Public Procurement 21 (2), https://doi.org/10.1108/JOPP-07-2020-0057.

Commissie Bedrijfsjuridisch Advies (CBA). 2021. Adviesaanvraag inzake openbaar maken van informatie Rijkscontracten

Center for Global Development. 2014. Publishing Government Contracts, Addressing Concerns and Easing Implementation - A Report of the Center for Global Development Working Group on Contract Publication, https://www.cgdev.org/publication/ft/publishing-government-contracts-addressing-concerns-and-easing-implementation.

Chief Procurement Officer Rijksoverheid, 2021. Beleidsreactie op het rapport van de Open State Foundation: "Hoe ontsluiten wij inkoopdata", https://www.rijksoverheid.nl/documenten/publicaties/2021/12/16/beleidsreactie-op-het-rapport-van-de-open-state-foundation-hoe-ontsluiten-wij-inkoopdata.

De Koster, Y., 2021. Achterhoek heeft als eerste onderwijsroute aanbesteed. Binnenlands Bestuur, https://www.binnenlandsbestuur.nl/sociaal/achterhoek-eerste-regio-die-onderwijsroute-heeft-aanbesteed.

Goncharov, I. and P. Caspar. 2016. Does reporting transparency affect industry coordination? Evidence from the duration of international cartels. LUMS Department of Accounting and Finance Working Paper Series AF2014/15WP04, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2530385.

Janssen, M., Charalabidis, Y., & Zuiderwijk, A. 2012. Benefits, adoption barriers and myths of open data and open government. Information systems management, 29(4), 258-268. https://doi.org/10.1080/10580530.2012.716740.

Open Contracting. 2022. EU data publication assessment.

Open Contracting Partnership. 2018. Mythbusting confidentiality in public contracting [Online]. Available at https://www.open-contracting.org/wp-content/uploads/2018/07/OCP18-Mythbusting.pdf.

Open State Foundation. 2021. Hoe ontsluiten we inkoopinformatie? Een inventarisatie van de behoeften van (her)gebruikers Available at https://openstate.eu/wp-content/uploads/sites/14/2021/05/Eindrapport-Hoe-ontsluiten-we-inkoopdata-een-inventarisatie-van-de-behoeften-van-hergebruikers-Open-State-Foundation-mei-2021-1.pdf.

PIANOo, n.d. Publiceren van de waarde van gegunde opdrachten. https://www.pianoo.nl/nl/inkoopproces/fase-2-doorlopen-aanbestedingsprocedure/afronden-aanbestedingsprocedure. Retrieved March 18, 2022.

Schotanus, F. 2022. Inaugural lecture chair of Public procurement, Utrecht University.

Utrecht University

CENTRE FOR
PUBLIC PROCUREMENT

Sharing science,
shaping tomorrow