
THE GEORGE WASHINGTON UNIVERSITY

GOVERNMENT PROCUREMENT LAW PROGRAM



**PROCUREMENT WITHOUT BORDERS:
EXCHANGING CONTRACTOR QUALIFICATION
INFORMATION INTERNATIONALLY**

MARCH 3, 2023

9:00 EASTERN US - 14:00 UK - 15:00 CET

Welcome

Professor Christopher Yukins
GW Law School

- Recording and materials at www.publicprocurementinternational.com
- Questions & Answers (Q&A)
- All speakers' statements are in their personal capacities
- Qualification information reduces corruption and performance risks
- Globally, we are at first stages of sharing that information across borders



Moderators

MODERATORS



BBG BUNDES
BESCHAFFUNG
AUSTRIA



Uwe Flach, BBG



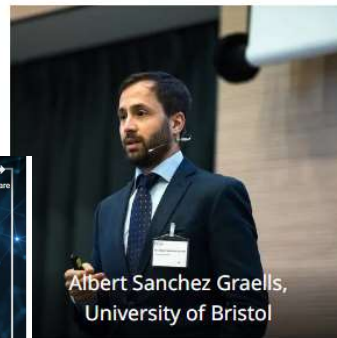
Dana Mitea, BBG



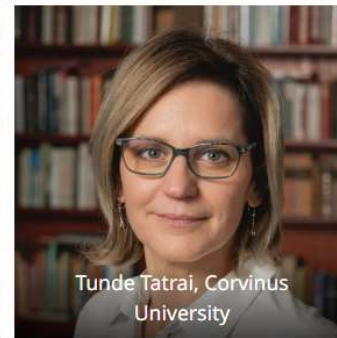
Gabriella Racca, U. Turin



GW Law / University of Bristol Webinar



Albert Sanchez Graells,
University of Bristol



Tunde Tatrai, Corvinus
University



Christopher Yukins, GW Law

Panelists





Gian Luigi Albano, a head of division at Italy's centralized purchasing agency (Consip), will discuss practical hurdles, grounded in organizational theory, to exchanging contractor information between governments.



Lucian Cernat and Zornitsa Kutlina-Dimitrova, senior economists at the European Commission, will discuss efforts by the Commission to ease exchanges of contractor information to reduce barriers to trade in procurement, and to improve trade analysis.



Mihály (Misi) Fazekas, assistant professor at the Central European University (Vienna) and scientific director of a think tank, the Government Transparency Institute, will discuss an innovative tool, TenderX, which assembles qualification information from multiple government sources around the world.



Lindle Hatton, Chief Executive Officer of the National Association of State Procurement Officials (NASPO), will discuss coordination among U.S. states through NASPO ValuePoint contracts.



Kathrin Frauscher of the Open Contracting Partnership will explain how procurement data can be made open, accessible and readable for use across multiple procurement systems.



Maria Swaby, Procurement Ombudsman and former Suspension & Debarment Official for the U.S. General Services Administration, who lectures on debarment and contractor qualifications at the GW Law School, will discuss how the US. Government makes contractor qualification information available through the System for Award Management (sam.gov) and related online platforms,

Panelist Presentations



consip



To tell or not to tell, that's the question!
Sharing of qualification information in cross-border public procurement

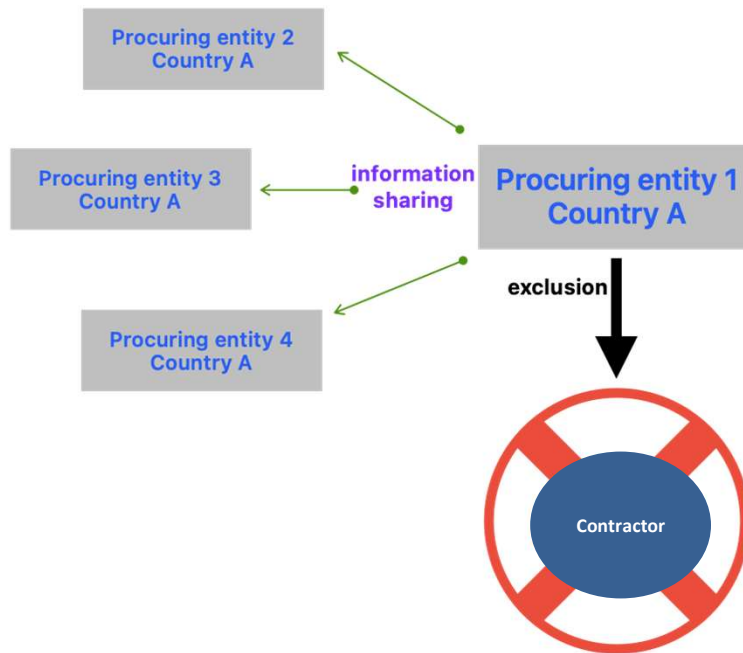
Gian Luigi Albano, Ph.D.

- Head of Division, Consip - Email: gianluigi.albano@consip.it
- Adjunct Professor of Economics, University LUISS "G. Carli" – Email: galbano@luiss.it

www.gianluigialbano.com

GW Colloquium - 3 March 2023

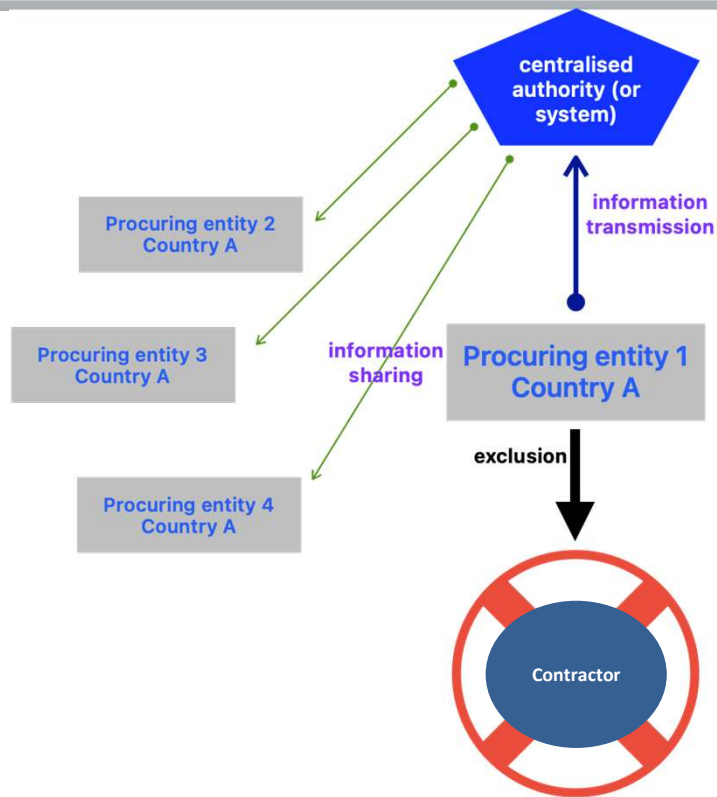
Individual procuring entity's incentive to information sharing



This situation is akin to a textbook-case of **private contribution to a public good** (in this case, knowledge about a contractor's unlawful behaviour)

Contribution to a public good tends to trigger free riding so underprovision of the public good (too little knowledge). Since providing incentives for the private provision might be costly, sometimes **information sharing is mandatory by law** (assuming enforcement is credible)

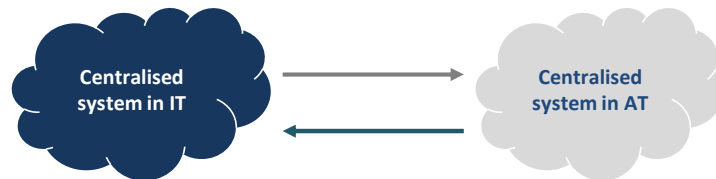
The (almost obvious) benefits of a centralised system



The potential benefit of information sharing is maximised when **information is centralized** and **handled by a third party**. In Italy, the oversight authority for public procurement markets - **ANAC** - is the body in charge of gathering and using information centrally (e.g., excluding a vendor)

This is the (very likely) reason why the *Past Performance Retrieval System* (PPRS) (now at CPARS.gov) was created in the US

The trouble(s) with the cross-border case



The same line of reasoning about the free-riding problem applies. What is the incentive for a centralised authority in Country A (e.g., Italy) to share information with a similar one in Country B (e.g., Austria)?

A more urgent problem arises, though. **Information sharing is useful when and if vendors are active in both IT and AT.** The excluded vendor in IT is often (in fact, almost always) not the same legal entity which is active in AT.



If the **two entities are distinct** and not subject to common management, it would seem unreasonable (perhaps illegal and unfeasible) to punish the "AT twin sister" because the "IT twin sister" has been excluded (BTW, this argument stretches well beyond the exclusion criteria dimension, as it bears a mountain of antitrust considerations...)

Lucian Cernat & Zornitsa Kutlina-Dimitrova – European Commission Efforts to Reduce Barriers to Trade

- [Access2Procurement](#) tool [LC] - lets vendors know if they're qualified to compete without discrimination under trade agreements; in essence, the trade agreements "qualify" contractors in countries (such as the US) which may bar vendors from non-signatory nations.
- [Public Procurement – How Open is the EU?](#) [ZKD] – the study focused on vendors' procurement trade penetration in the EU, and pointed up the need for uniform identifiers to track contractors across borders.



Access2Markets



Home > Procurement

PROCUREMENT

Want to bid for a government contract? This tool helps you find out if you are entitled to participate in a given government procurement tender outside the EU. You will need to provide information that is usually contained in the tender notice: the procuring entity, the subject matter and the estimated value of the procurement. Enter this information in the relevant fields and answer the follow-up questions.




Please indicate the country where the procurement is taking place

Country

A dropdown menu with a white background and a dark border. The text "Select a country" is displayed in a light gray font. A small dark gray arrow pointing downwards is located on the right side of the input field.

Next >




 European Commission


DG Trade


Access2Markets

PROCUREMENT





Summary of the information provided


 **Country:** Canada

 **Please indicate the procuring entity**

To search for an entity, you can enter the entity name or browse through the list of entities for a selected jurisdiction and / or sector.

Entity	Jurisdiction	Sector	
<input type="text"/>	-- Any -- 	-- Any -- 	<input type="button" value="Search >"/>






 European Commission

DG Trade

Access2Markets

PROCUREMENT

Summary of the information provided

 Country: Canada	<input type="button" value="Edit"/>
 Entity: Board of Negotiations (Environmental Protection Act)	<input type="button" value="Edit"/>
 Estimated value of the tender: 560283.73 SDR	<input type="button" value="Edit"/>
Jurisdiction: Ontario	<input type="button" value="Edit"/>
Sector: Agency	
Subject matter: goods	

✓ Assessment

Disclaimer: This page was generated from <https://webgate.ec.europa.eu/procurement>. The European Commission does not assume any legal responsibility for any assessment made by this tool. Note that this assessment has a preliminary character and that it does not bind the procuring entity. For a binding assessment you must revert to the procuring entity itself, or, if you want to lodge an appeal against that entity's decision, to the competent judicial or administrative authorities in the country where the entity is seated.

On the basis of the information you have provided, it appears that EU companies are eligible to bid for this tender on an equal footing with domestic suppliers.

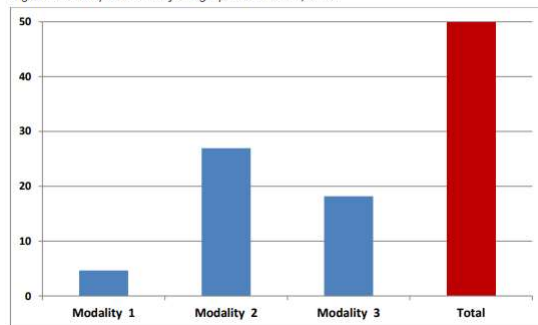
Please verify the Legal texts and guidance documents indicated below to ensure that all particularities of your tender have been duly considered.

Box 1. International procurement modalities

Procurement mode 1 – direct cross-border international procurement: a foreign company submitting and winning a public contract 'from abroad'.
 Procurement mode 2 – commercial presence procurement: a domestic subsidiary of a foreign company wins 'locally' a public contract.
 Procurement mode 3 – Value-added indirect international procurement: a foreign company participates indirectly in a bid by providing intermediate goods and services.

Source: Based on Cernat and Kutlina-Dimitrova, (2015).

Figure 1. EU openness in foreign procurement, € bn



Public Procurement

How open is the European Union to US firms and beyond?



BY:

Lucian Cernat
Zornitsa Kutlina-Dimitrova



POLICY
CONTRIBUTION

Conclusions:

- Comparable contract award data is crucial to be able to assess international public procurement
- Using a harmonized (at best following the procurement life cycle) data would ensure sound assessment of the vendor and international procurement flows
- A valuable step in this respect would be a common unique firm identifier in cross-border procurement



Mihály (Misi) Fazekas

Central European University

- [TenderX](#) integrity risk reports -- case study in using cross-border tool to gather contractor qualification data from different governments
- Researchers at the University of Cambridge and University College London launched Tender-X in 2019 to provide actionable analysis of public procurement data for organisations such as banks, development finance institutions and businesses that frequently participate in public tenders.
- Data on public tenders globally is more widely available than ever but is fragmented and unprocessed, while the risk of corruption in government procurement remains high. Tender-X helps clients make well-informed investment, tendering and lending decisions, by assessing integrity risks in public tenders, based on state-of-the-art academic and data science innovations. The analysis is presented in brief and easy-to-read reports including data visualisations.
- Tender-X connects the latest academic research on transparency, integrity and data science from top universities with a commercial focus on client needs and actionable market intelligence. The unique and comprehensive approach complements and expands on traditional investigative methods of integrity due diligence and compliance used by global risk consultancies and financial institutions.
- The award-winning methodology of Tender-X is based on objective, verifiable administrative data of government tenders, companies and collected from official government websites and data warehouses. The proprietary contract and organisational level dataset contains tens of millions of public contracts, companies, and public sector entities.

Sample Tender-X Report

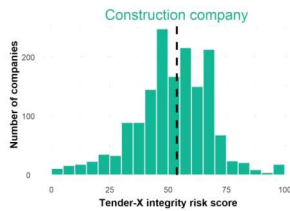
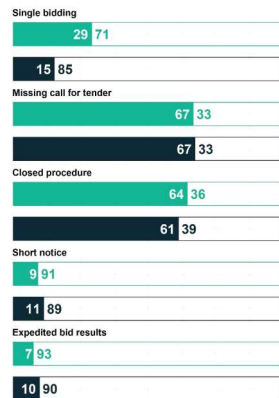


Figure 1: Construction company's Tender-X integrity risk score compared to benchmark companies (0: low risk, 100: high risk)



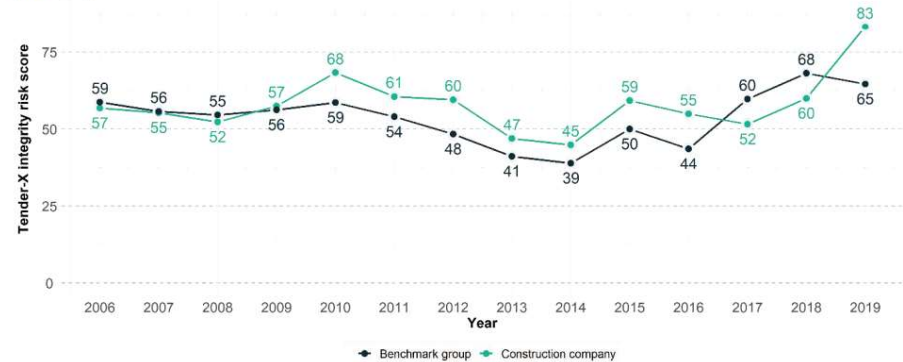
TENDER-X INTEGRITY RISK REPORT



2. Integrity risk profile

Tender-X integrity risk score over time

Construction company's Tender-X integrity risk score was higher compared to the benchmark group in 2009-2016 and 2019, suggesting integrity risks became relatively lower in recent years (Figure 3). Construction company has only 3 contracts for 2019, while it won 60-140 contracts per year before. Overall, Construction company had an average Tender-X integrity risk score of 55 which means that more than half of the elementary risk indicators flagged some contract level risks on average between 2006 and 2019.



Sample Tender-X Report

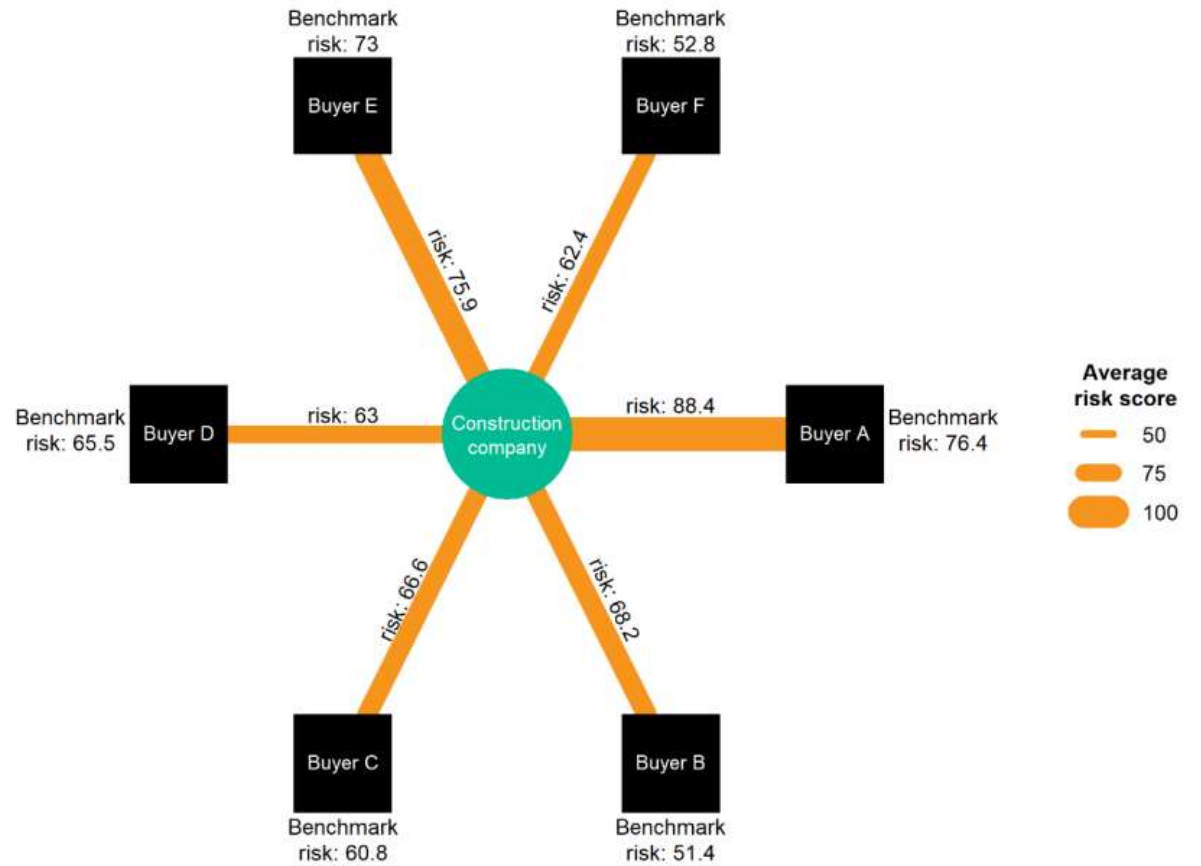


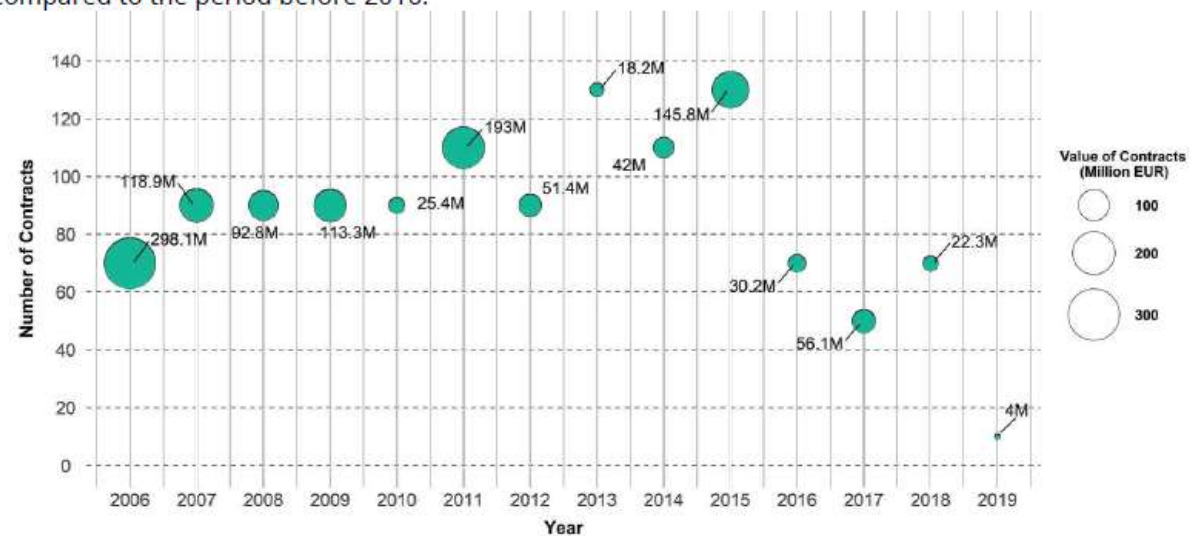
Figure 8: Tender-X integrity risk scores by largest buyers

Sample Tender-X Report

3. Public procurement profile

Contract value

Construction company won 1,226 contracts worth of EUR 1.2 billion in the period from January of 2006 to January of 2019, which makes it one of the biggest players in the market⁵. Its average contract size is EUR 1.7 million which slightly decreased over the last ten years. It won less contracts in the last 3 years compared to the period before 2016.

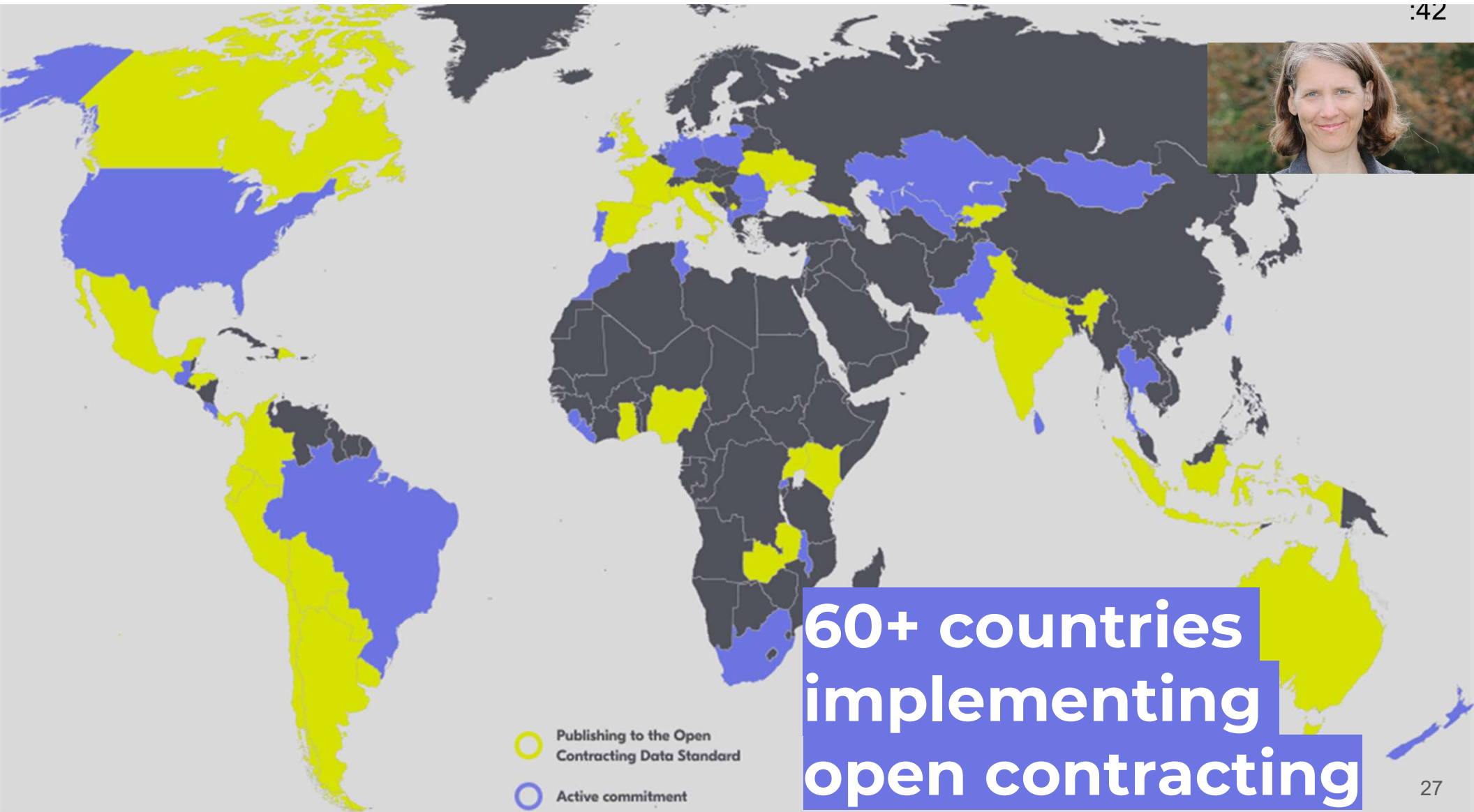


Lindle Hatton

CEO, National Ass'n of State Procurement Officials (NASPO)

- NASPO ValuePoint is the cooperative purchasing arm of the National Association of State Procurement Officials (NASPO)
- NASPO is headed by Chief Procurement Officers from U.S. states
- NASPO ValuePoint is a cooperative purchasing (known as “joint procurement” in the European Union) program facilitating public procurement solicitations and agreements using a lead-state model.
- NASPO ValuePoint is a non-profit organization dedicated to providing State Chief Procurement Officers with the support and procurement resources they need.
- NASPO ValuePoint provides the highest standard of excellence in public cooperative contracting. By leveraging the leadership and expertise of all states and the purchasing power of their public entities, NASPO ValuePoint delivers the highest valued, reliable and competitively sourced contracts - offering public entities outstanding prices and shared efficiencies.






Use cases



Market opportunities



Value for money



Public integrity

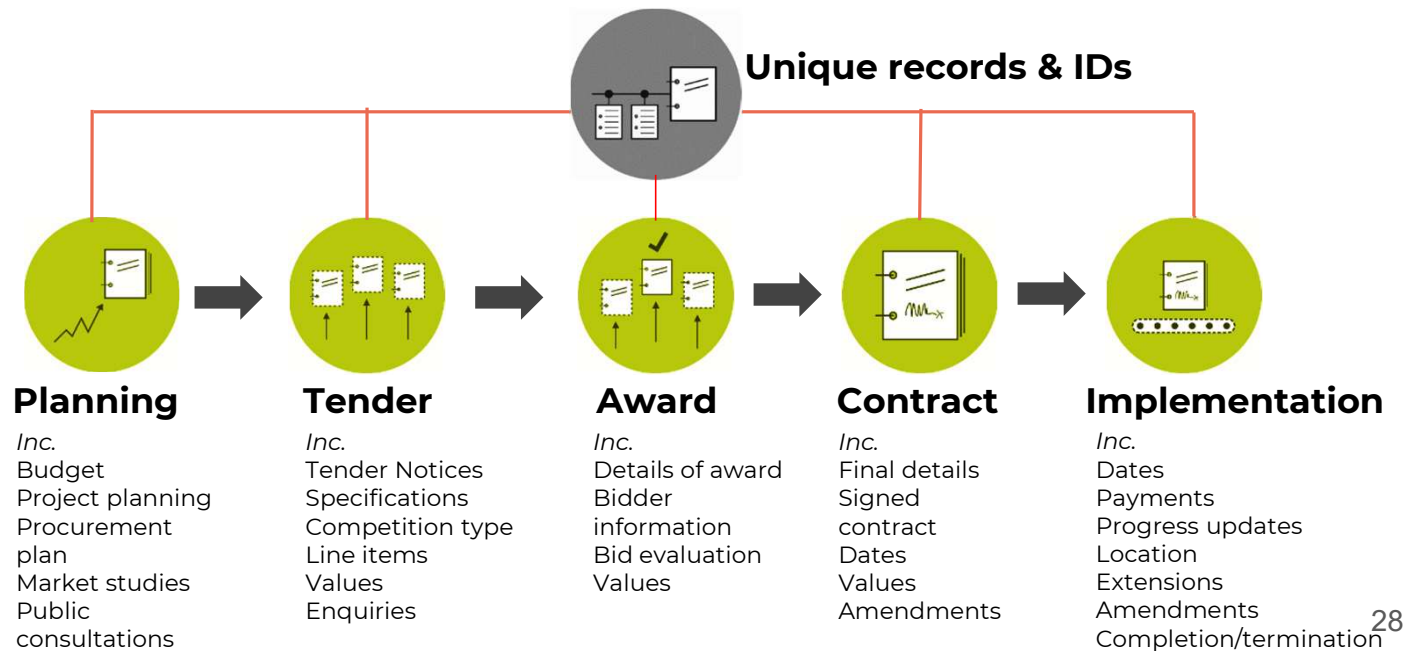


Service delivery



Internal efficiency

POWERED BY
OPEN
CONTRACTING
DATA STANDARD



Enabling crossborder trade through open contracting



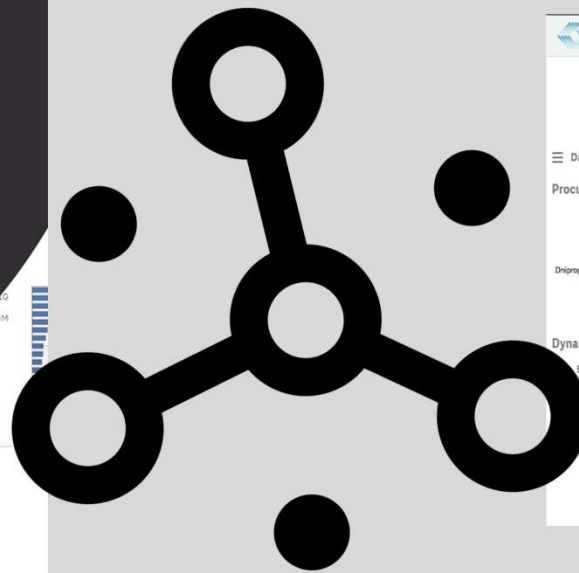
How open data helps WTO GPA objectives
Step-by-step guidance

GPA Procuring entities type - Top 10

Subcentral government entities: 20.9%

Central government entities: 43.8%

Goods: 45.5%



Access it: bit.ly/WTO-GPA-guide

BI Tools & bid aggregators, eg ProZorro, B2Gov, OpenOps,...



Maria Swaby, Procurement Ombudsman U.S. General Services Administration

- U.S. federal contractor qualification information – System for Award Management (sam.gov)
- [Contractor qualification](#) (responsibility) data through SAM.gov
- [Debarment information](#) through SAM.gov
- [Responsibility & Integrity Records](#)
 - Administrative agreements

Discussion Questions

- GR: What lessons can we learn from the EU's uniform contractor qualification initiative (European Single Procurement Document (ESPD))?
- UF/DM: Does making contractor information available to other markets matter – is there sufficient cross-border procurement trade?
- TT: Should European nations distinguish between “qualification” information and “contractor past performance” information, as the U.S. government does?
- ASG: Could trade agreements encourage more uniform systems of qualification?
- Open audience questions

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