



Towards future-proof selection procedures in Urban Area Development

Improving decision making regarding selection processes for municipal land sale procedures to decrease transaction costs.

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Abstract

Over the last few years several documents have been published about the need for more efficient and cheaper selection processes in municipal land sale procedures. The current costs of selection are often considered too high. New, *light* selection methods—in which a partner is chosen based on a vision instead of a design—are suggested as a solution. However little research has been conducted about how to choose a fitting process to sell municipal land. Therefore the research question of this thesis is: *'How can decision making regarding selection processes for municipal land sale procedures be improved to decrease transaction costs for public and private parties involved.'* A basic framework for the research was set up by performing a literature study. Subsequently, a document review was conducted and interviews were held to study two specific cases. Additionally, several general examples of processes in competitive land sale procedures that raised transaction costs were explored. The literature review and the empirical review have led to a synthesis that has set the foundation for a framework for municipalities to make improve decision making for the design of competitive land sale procedures. This has led to the conclusion that there is not a single optimal solution. Multiple factors have to be considered in light of the specific case when choosing a fitting process for a competitive land sale procedure. From this research it is deducted that it is advisable to select one process as a starting point based on a balance between goals and transaction costs for the specific plot. From this starting point municipalities can use transaction cost theory to improve cost efficiency of the preferred procedure to come to an optimal selection design for a successful competitive land sale procedure.



EXECUTIVE SUMMARY

Executive summary

This summary is written as an executive summary for practical use. For the complete argumentation and references behind the text the reader is advised to consult the thesis text.

Over the last few years discussion has risen about the cost efficiency of selection processes for municipal land sale procedures. Municipalities that want a plot of land to be developed, often do not want to bare the risks of development itself. At the same time they do not want to choose for a flat sale procedure to sell the land to the highest bidder because in that case they will have limited influence over the development. Municipalities therefore often use plan based market selection procedures in which the plot is sold to the party that offers the best combination of price and quality. This process is however argued to be costly. Additionally, the plans of parties that do not win the procedure are in most cases almost entirely wasted. Light market selection methods are opted as a possible solution, but little research has been conducted on these procedures.

Both practitioners and scientific authors stress that the high cost of tendering might result in a decrease of potential bidders. Additionally the social costs of the procedure are argued to be too high. In a recent report it was argued that selection processes should be made easier, faster and cheaper to lower the procedural, financial and contextual burden for the stakeholders.

Considering the recent criticism on high transaction costs in selection strategies for municipal land sales, solutions should be found to improve decision making regarding these selection procedures to minimize transaction costs. Therefore a research has been conducted on this topic.

To scope the research, the research has been demarcated on four points:

- It focusses on large and complicated development projects (> 10.000 GFA);
- It focusses on municipal land sale processes;
- It focusses on the transaction costs that are made during the process of tendering, before contracting;
- It focuses on the Dutch development market;

‘How can decision making regarding selection processes for municipal land sale procedures be improved to decrease transaction costs for public and private parties involved.’

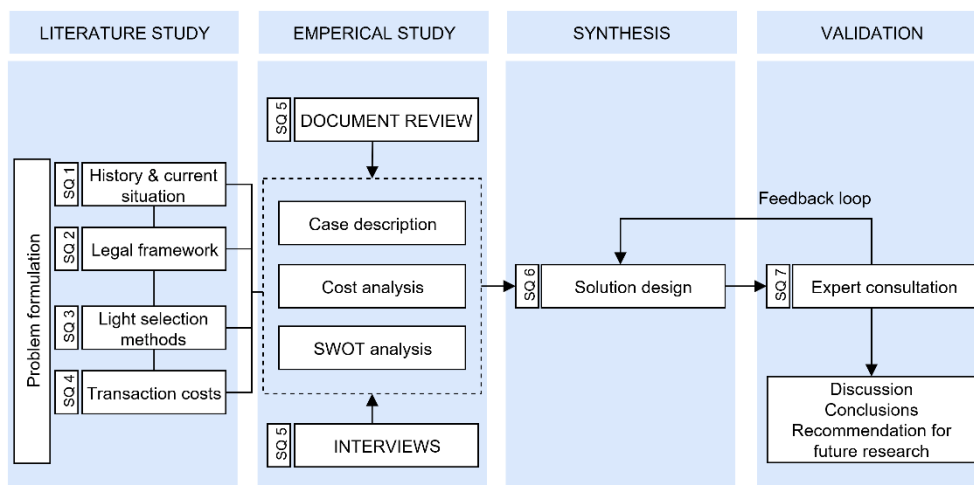


Figure 1: Research framework (own illustration inspired by (Stoel, 2017)).

RESEARCH APPROACH

This research consists of four stages: literature study, empirical study, synthesis and validation (Figure 1). In the first phase a literature study was conducted on four pre-defined topics, namely: public and private collaboration in Urban Area Development, the legal framework of selection procedures, light market selection procedures and transaction cost theory. In the second phase interviews and document reviews were conducted to get a better understanding of two specific cases (District E in Eindhoven and Coulissen West in Breda) and several additional examples of positive and negative aspects in current selection procedures. In the synthesis phase the current demands of public and private parties in municipal land sale procedures were compared and a list of possible mismatches was formed. Subsequently, future needs were analysed which resulted in the design of a decision tree for optimizing decision making concerning competitive land sale procedures in terms of transaction costs. In the fourth phase the findings from the first three phases were discussed with a panel of experts to test the validity of the argumentation. This has led to some small adaptations and subsequently the conclusion and discussion of this thesis.

LITERATURE REVIEW

Public and private collaboration in Urban Area Development

Over the last few years municipalities have followed the trends of liberalization and privatization and taken a more facilitating role in development procedures. At the same time complexity of development processes has risen due to new urgent tasks such as the energy transition and an increasing number of parties involved in the process. Municipalities are facing the dilemma of keeping their facilitating role or taking a more active and controlling role in decision making. This also influences their decision of which kind of selection processes they want to use for municipal land sale procedures.

Light market selection

Light market selection procedures are put forwards as a more cost efficient alternative to traditional market selection procedures. Light market selection focusses on selecting a partner based on their vision for the project and project area or selecting a partner based on the partner type. An important issue with these light market selections is the question how objective criteria for selection can be formulated. The structure of application procedures for job interviews is suggested as a good source of inspiration for selecting a partner. Additionally defined competences can be used as an objective basis for selection.

The legal framework

The framework of public law, especially related to procurement and state aid, contains important rules and considerations that have to be taken into account when designing a competitive land sale procedure. In the judgement about the Müller case (Paragraph 2.2.3), the European Court of Justice stated that the sale of a property or plot by a government authority is in principle not subject to procurement law. However, when the three cumulative criteria, as listed in the Müller-case, are met, the sale procedure is no longer perceived as a sale procedure but as a contract of works. In that case, the procurement law will be applicable making it more difficult to freely design a sale procedure for land. For the purpose of this thesis it is assumed that municipalities thoroughly checked if any steps in the sale procedure of the municipal land would lead to the enactment of the procurement law. It is assumed that the procurement law is not applicable.

The second point of attention are the rules and regulation concerning unlawful state aid (Dutch: verboden staatssteun). The rules and regulations to prevent unlawful state aid have to be followed in competitive land sale procedures.

Transaction cost theory

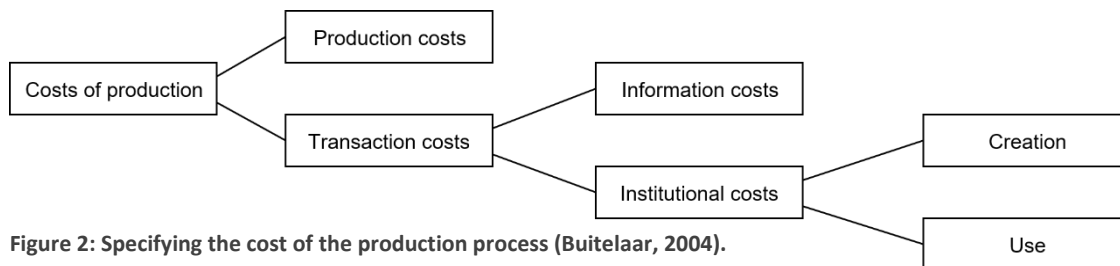


Figure 2: Specifying the cost of the production process (Buitelaar, 2004).

The purpose of this research is to investigate the possibilities of decreasing transaction costs in selection procedures while keeping quality at the desired level. Transaction costs can be defined as all the costs that are not related to the physical production. In the case of land development it therefore concerns all the costs that are not directly related to the design and construction of the building or site. Transaction costs in this case include costs of gathering information and the costs of using institutions such as selection procedures (Figure 2). Transaction costs will always exist. However, high transaction costs can decrease efficiency of a process. Therefore they should be kept to as low as possible. There are five main ways to lower transaction costs (Figure 3):

- Decreasing uncertainty;
- Decreasing the asset specificity of the demands;
- Increasing the frequency to increase the learning curve;
- Decreasing the number of parties involved;
- Keeping good track of the usefulness of intermediaries.

Several scientific authors have developed frameworks to identify transaction cost. In this research a framework was used in which transaction costs have been grouped into several categories to simplify the identification process of transaction costs.

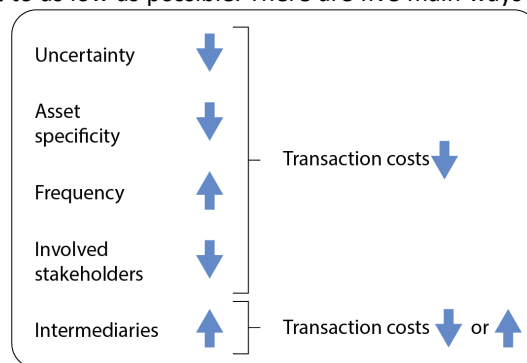


Figure 3: Characteristics of transactions and how they affect transaction costs (own illustration based by Shahab et al. (2018)).

Conclusion from Literature research

From the literature study it is concluded that, to answer the main research question two separate questions should be answered:

1. Which selection procedure for municipal land sale should be used to reach the objective of decreasing transaction costs?
2. How can the chosen procedure be improved compared to current practice?

It has become clear that light market selection procedures might not always be better than traditional market selection procedures or other sale procedures. This underlines the importance of answering the first question mentioned above before being able to draw any conclusion on improving a selection procedure.

EMPIRICAL RESEARCH

From the case studies, interviews and document reviews several suggestions for improvements for the current selection methods that municipalities use were opted (Table 1):

1. Demarcating demands.	In both studied cases and also in other examples given by interviewees competing parties did more than what was expected of them to win the selection procedure. This led to unnecessary costs and more work for municipalities who have to look through all the proposals that are handed in. By setting restrictions on the amount of work competing parties can hand in they are forced to be to the point and don't do too much.
2. Understanding why something is asked and what the implications are.	Several interviewed developers complained about demands (e.g. the creation of floorplans) that were according to them unnecessary in the awarding process since the requirement do not lead to added plan quality. The requirement did however lead to extra work and thus costs.
3. Consider the timeframe and intensity of the designed process.	Next to the cost investment developing parties also mentioned the time investment as a critical factor in selection procedures. Internal labour hours also yield costs. Interestingly enough both municipalities and private parties do often not keep track of their internal labour costs connected to the process.
4. Define the goal of the dialogue rounds.	Different opinions were voiced about the use of dialogue rounds. When used to provide the developing parties with information on their demand the rounds were viewed on positively. However the deadlines connected to the dialogue rounds were considered as a negative element.
5. Manage information and communicate timely.	Parties often come across problems that are related to information management. Uncertainty arises when information is incomplete or communicated too late. According to interviewees, this can increase the costs made in a selection procedure.
6. Take into account the reality of set requirements.	Developers thoroughly look at the requirements set by municipalities and are reluctant to take part in selection processes with demands that seem unreasonable or unreachable.
7. Take into account the winning chances.	Winning chances are an important aspect in the calculation developers make when they are making the choice to compete or not.

Table 1: Seven points of consideration for the design of selection process for municipal land sale procedures.

Conclusion from empirical research

Two important conclusions can be drawn from empirical research. First, there is no perfect solution for land sale procedures with which both public and private parties are completely satisfied. The procedure that is chosen for the sale of land often depends on the plot, its location and other circumstances. Therefore different procedures can be optimal in different situations. Second, it is still possible to improve the current procedure as can be derived from the seven aspects in Table 1. These improvements are often related to the five elements that can decrease transaction costs: uncertainty, asset specificity, frequency, the number of competing parties and the involvement of intermediaries.

SYNTHESIS

Wishes and requirements

Using the findings from the literature review and from the empirical review an analysis of the requirements and wishes of municipalities and developers was made. Most municipalities take into account both the offered price and the qualitative plan for the area in a competitive selection procedure for the sale of municipal land (Figure 4). Developers weigh five main elements when they want to decide whether to compete in a selection procedure or not (Figure 5).

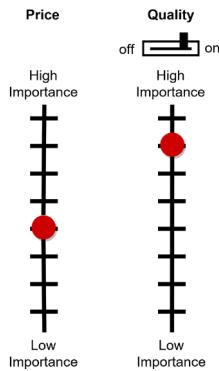


Figure 4: Municipal criteria for design of land sale procedures (own illustration)*

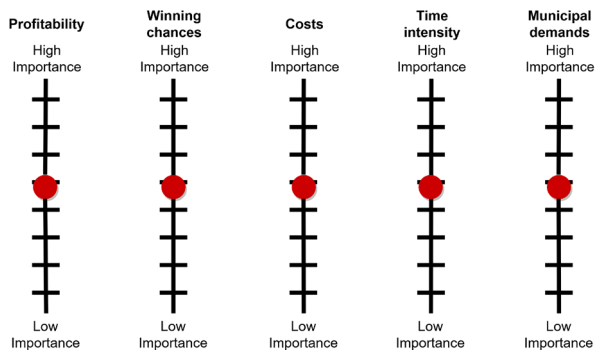


Figure 5: Private party criteria to participate in selection procedure or not (own illustration)*

* Please note that the position of the red dots is dependent on the specific choices of public (Figure 4) and private (Figure 5) parties. The dots in the figures are merely displayed as example to show that the importance of different choice elements can vary within bandwidths

Analysis of mismatches

Additional to the analysis of the wishes of public and private parties, several mismatches in the current selection procedures have been identified (Figure 6).

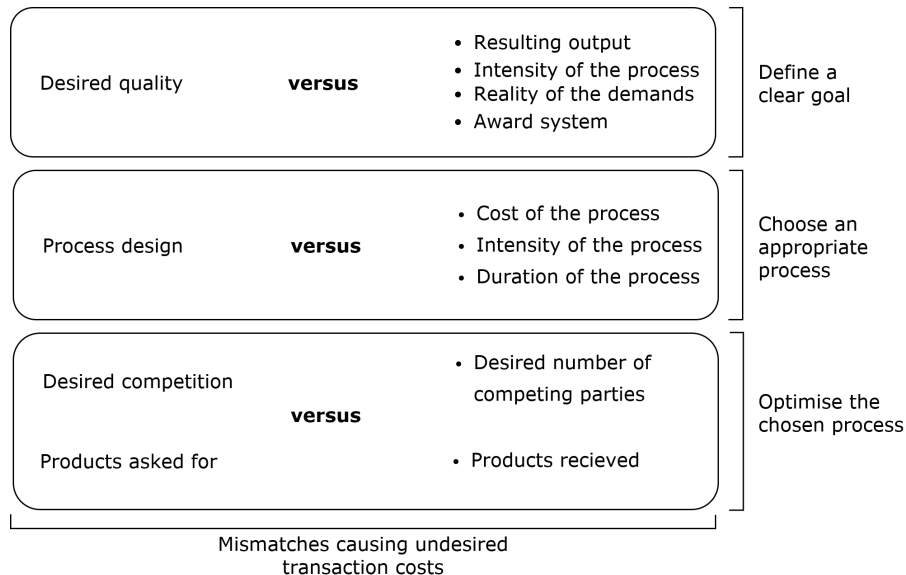


Figure 6: Potential mismatches in selection procedures (own illustration).

The *desired quality* as formulated by the municipality is not always in line with the resulting outcome, meaning that sometime goals are unclear. This can leads to different design interpretations of the assignment by developers. The desired quality is also not always in line with the desired intensity of the process for developers. Developers voiced several concerns that municipalities are not aware of the implication of their demands for developers. This argumentation also applies on the potential mismatch

between desired quality and the reality of the demands that municipalities set. Lastly, the desired quality is not always reflected correctly in the awarding system. Although most municipalities want to focus on quality, the awarding systems sometimes suggests otherwise. To prevent these mismatches and save the accompanied unnecessary transaction costs clear goals have to be formulated by the municipality.

The *process design* that is used by the municipality often results in costs that are considered too high by developing parties. Additionally, the process is considered too demanding in terms of time and duration. To prevent these mismatches municipalities should choose take more time to evaluate the implications of their process, not only in terms of desired output but also in terms of costs and time.

Lastly, there can be a mismatch between the *competition desired* by the municipality and the optimal number of competing parties according to developers. Furthermore, the requirements for *products that developers have to hand in* do not always collide with the products that are handed in. Developers often do too much work because they want to win the selection procedure. This can result in unnecessary transaction costs. When a procedure is chosen it is therefore important to take a second look at how the procedure can be used in the most optimal way.

When looking at all the elements that municipalities have to take into account in the design of a selection processes for a municipal land sale procedure it becomes clear that the design question is a wicked problem for which no clear and simple solution is present.

Design framework

In this research an attempt was made to develop a framework to guide municipalities through the process of decision making to improve the selection procedures that are currently used while minimizing the transaction costs. This has led to the design of the decision tree in Figure 7. With the help of five critical steps and the guiding principles from the transaction cost theory the user of the framework is guided through the decision making process while keeping track of transaction costs.

The 5 steps are:

Step 1: Define the goal of the municipal land sale

Step 2: Choose between a competitive process or an one-on-one procedure

Step 3: Choose to award solely based on the highest bid or also on qualitative elements.

Step 4: Choose a starting point for the tender design: Partner selection, Vision based selection or Plan based selection.

Step 5: Optimise and finetune the process that was chosen in step 4 with the use of transaction cost theory.

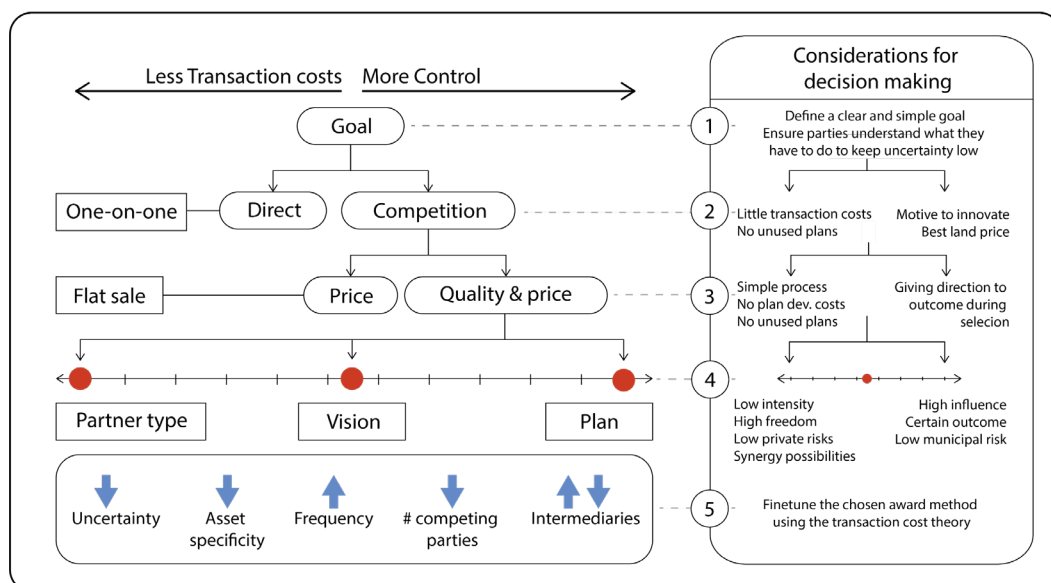


Figure 7: Breaking up the complex decision making problem for municipal land sale procedures (own illustration).

- To improve the chosen procedure, the five elements of the transaction cost theory should be used. Uncertainty should be brought down. This can for example be done by demarcating the demands for the procedure. This way competing parties know what can and have to do and won't do too much. Additionally, dialogue rounds can be of use. In the dialogue rounds competing parties have the chance to ask the municipality about elements that were unclear to them.
- Asset specificity can be lowered by setting demands that are less specific to the plot.
- Frequency can in itself not be increased within a procedure, however by involving experienced people the available knowledge can be increased, resulting in less mistakes. Additionally, the process should be evaluate to ensure a learning curve in future projects.
- The number of competing parties should be kept as low as possible given the chosen selection procedure.
- Intermediaries should only be hired if the costs that are saved by hiring them are higher than the fee that has to be paid.

In paragraph 4.4.4 of the thesis an extensive discussion on possible improvements in selection procedures to save transaction costs can be found.

CONCLUSION

The developed framework (Figure 7) in this research that connects a decision tree to transaction cost theory can support municipalities to get a better understanding of the transaction costs that occur during the selection procedure. The framework has potential to guide municipalities through the process of choosing an appropriate selection procedure.

When a motivated choice is made for one of the selection methods with the help of the decision tree, the five elements of the transaction cost theory can be used to optimise the chosen procedure. This way municipalities have the ability to make well considered choices to keep selection procedures within acceptable cost boundaries and still reach their formulated goals.

DISCUSSION, LIMITATIONS & RECOMMENDATIONS

Several interviewees discussed their hopes of finding a standard procedure that can be used for every selection process in municipal land sale procedures. This standardised framework can however not be developed due the uniqueness of every situation. What has been accomplished in this thesis research is finding a framework that can help to guide municipalities in decreasing transaction cost in the processes for municipal land sale procedures. Although the outcomes have largely been verified by the expert panel the outcome should still be critically reviewed. Many different parties were interviewed, both on the public and on the private side, however it is impossible to get a complete overview of all the opinions with the use of interviews. Therefore there might be cases or exceptions in which this framework does not fit. To get a broader perspective further research can be conducted by for example asking municipalities and private parties about their view on selection procedures through the use of surveys and other quantitative research tools.

Additionally, this thesis focusses on the costs that occur before contracting. After awarding the process is however not completed. Additional costs be present after awarding. Therefore it might be interesting for future research to look at the process and connected costs after awarding.

Lastly, three recommendations are formulated for municipalities.

1. Argue *why* a requirement is set and what the implications are for developers.

When a municipality does not know why a certain procedure is used or what their goal in the procedure is, this will be even harder for developers to comprehend. This can lead to miscommunication and therefore increase transaction costs.

2. Select three parties for the competition.

Although in this research no prove has been found that three is the ideal number of competing parties both public and private interviewees were positive about this number of competitors. This number can be taken as a point of departure from which deviations should be possible if good argumentation is present. When a pre-selection is held to select those three competitors, this selection procedure should be both fast and easy and involve very limited requirements and costs.

3. Competitive market selection procedures are not always the optimal choice.

There are several reasons why a municipality might choose for a flat land sale procedure or a one-on-one procedure since both are often more cost efficient than competitive market selection procedures. The best procedure is dependent on the situation. It is therefore important that an open view is kept and no possibilities for land sale are excluded in advance.

From this research the conclusion was drawn that there is no perfect solution. Therefore it is important that when a choice is made for a certain selection procedure it is clear why and how this choice was made. Additionally, when the choice is made the five elements to decrease transaction costs should be taken into account throughout the process. Summarizing, this means:

- Know why the choice is made for a specific procedure.
- Know why a specific number of competitors is invited to take part in the procedure.
- Know why specific demands are set in a procedure.

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List of abbreviations

ARW	Aanbestedingsreglement werken (Dutch procurement regulation for works)
Aw	Aanbestedingswet (Dutch Public Procurement Act)
Awb	Algemene wet bestuursrecht (Dutch Administrative Law Act)
BVP	Best Value Procurement
BW	Burgelijk wetboek (Dutch Civil Code)
ECJ	European Court of Justice
EIB	Economisch instituut voor de bouw (Dutch Economical Institution of Construction)
EMVI	Economisch meest voordelige inschrijving (Most economically advantageous tender, MEAT)
NIE	New Institutional Economics
Ow	Omgevingswet (Environment and Planning Act)
PPP	Public Private Partnership
TCE	Transaction Cost Economics
TFEU	Treaty on the Functioning of the European Union (Also: Treaty of Rome)
UAD	Urban Area Development
Ww	Woningwet (Housinglaw act)



1. INTRODUCTION

1. Introduction

1.1. Research introduction

When a municipality wants a plot of land, of which they are the owner, to be developed, they can either develop this land themselves or they can sell the land to a private party developer. In the first case the municipality will be actively involved in the development process and can influence the outcome of the project. However, developing land also involves certain risks. These risks will be diverted when the land is sold and developed by a private party. In the latter case however, the direct influence over the development will be lost.

Historically, municipalities followed a very active policy in which they often were an active partner in development and at least partly responsible for the development. This was for example the case in Public Private Partnerships (PPP). However, due to the most recent economic crisis and due to changing perspectives on liberalisation and decentralisations these models have lost in popularity (Franzen, ten Have, Uitzetter, & de Zeeuw, 2017; Hofmeijer, 2017; Kievits, 2018; Stoel, 2017; ten Have (ed.), 2017; van Schaijk & Helmand, 2018).

The alternative; selling the land to the highest bidder for development (also: flat land sale), is also not always viewed as a favourable option by municipalities, since it will result in a decrease of control over the outcome (Bayer, 2017; Fakton, 2017). Additionally, without any negotiation, bidding parties will discount the perceived risk in the price they are willing to pay, leading to sub-optimal land prices.

Therefore a third option has emerged in which qualitative demands are added to the requirements in land sale procedures (Figure 8). The winning party in these so called '*market selection procedures*' is chosen based on the combination of best price and best quality of the design for the plot. The winning party in these kind of selection procedures¹ will be allowed to purchase the land and develop it in accordance with their vision and design (Kersten, Wolting, ter Bekke, & Bregman, 2011; Neprom & Akro Consult, 2011). This way the municipality has influence over the future design while at the same they are able to divert the risks of developments.

However, over the last few years the number of complaints about these selection procedures have increased. The costs involved are argued to be too high. Therefore this thesis research focusses on improving market selection procedures by minimizing the transaction costs.

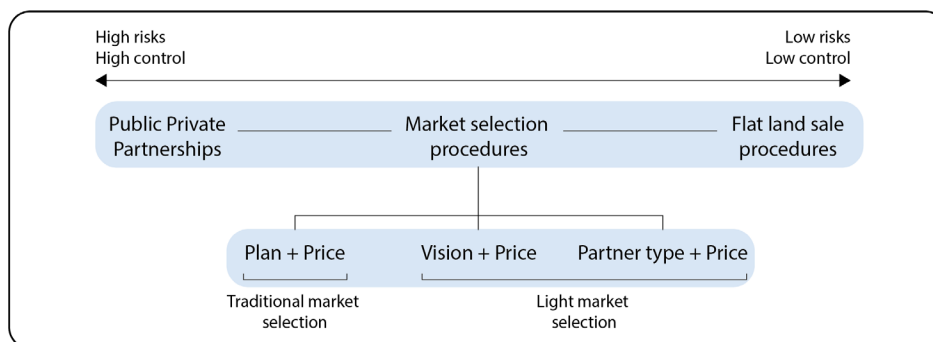


Figure 8: Choices for different options to develop municipal land (own illustration).

¹ *Tender* usually refers to the process whereby governments (and financial institutions) invite bids for large projects that must be submitted within a finite deadline. A tender procedure can refer to a procurement procedure in which a party is selected for an assignment. However, as is the case in this research, a tender procedure can also refer to the selection of party that can buy a piece of land that is sold by a public entity such as a municipality.

1.2. Research motives

High costs of selection

The main motive for this research is the number of complaints about the costs of market selection in municipal competitive sale procedures. Practitioners call for more cost efficient selection processes. It is argued that currently the transaction costs of tendering are too high, leading to unnecessary cost to developers and society as a whole. In many cases several parties are asked to make a completely worked out plan for the plot they want to purchase. After selection however, only one plan will be used. The work put into the other plans will have been mostly wasted.

According to Daan Sperling, Board chairman of TBI, the high costs of tendering do not only affect the profitability of the development sector, they can also lead to a decrease of competitors in tender procedures, reducing competition (Clahsen, 2017). The fear that the amount of bidders in tender procedures might decrease, is also shared by several scientific authors such as De Schepper, Haezendonk & Doods (2015). They state that the high cost of tendering can undermine competition in the tender phase since it creates a hurdle for potential bidders. It is stressed that competition in this phase is important because it often is the only time competition takes place within the development and construction process. Competition challenges developers to be innovative, ensures diversity and a good value for money (Porter, 2008).

In the most recent report on tender costs, it is stated that the tender costs in the Netherlands have risen to 2 – 3 percent of the total building production costs and to 4 – 6 percent of the contracted tender amount (ten Have (ed.), 2017). This does not only affect developing parties competing in the procedures, but also the municipalities that initiate them (Trappenburg, 2018).

Changing needs and wishes

As discussed in the introduction to this chapter, active involvement of municipalities through Public, Private Partnerships has lost popularity due to the high risks of development processes. On the other side municipalities often are reluctant to sell the land to a private party for development since it will decrease their ability to control the outcome. There is therefore a need for different procedures with limited risks and sufficient control tools. Although the competitive sale procedures with a selection based on plan and price have gained popularity over the last few years, improvements can still be made. Several ideas for new processes have been opted to improve the current competitive sale procedures. Most important of which is: 'market selection light'. With these light processes practitioners call for new procedures that are less time and cost intensive by selecting parties based on their vision or based on the type of party they are, instead of based on the plan they make (Figure 8). However little research has been done on these type of procedures.

Financial domain of selection procedures

One of the latest reports that was written by NEPROM (Dutch association for project development) in collaboration with the Dutch Ministry of Infrastructure and Environment states that the main challenges of partnerships between municipalities and developers can be found in three different domains: the procedural domain, the financial domain and the content related domain. When designing a market-selection procedure these elements should be taken into account. Tender procedures should be made easier, faster and cheaper to lower the procedural, financial and contextual burden for the stakeholders (ten Have (ed.), 2017).

The financial domain is often neglected or ignored. In many cases municipalities seem unaware of the costs they are making in these selection processes and have even less knowledge and insight in the costs that competing parties incur. The choice for one specific type of procedure seems to come from procedural and the content related considerations. Financial considerations should be better considered in these choices.

1.3. Scientific relevance

Last year a publication by Delft University of Technology in collaboration with Deloitte and BDP emphasized that the private sector-led urban developments in combination with anterior agreements with municipalities, are on the rise (Franzen et al., 2017). Market selection processes can lead to these kind of developments. Additionally, the publication stated that based on the lessons learned from the economic crisis of 2008, flexibility in selection procedures has become a more important factor. Therefore it is important to get a better understanding of market selection processes and their efficiency in terms of quality and costs. From a scientific perspective, research on the selection processes can strengthen and complement the information provided by the Reiswijzer Gebiedsontwikkeling (Travelguide Urban Area Development 2011)(Kersten et al., 2011) which has been quoted and used in multiple scientific sources such as the *Juridisch Handboek Gebiedsontwikkeling* (eng: Legal manual for Urban Area Development) (Bregman, Koning, & de Win, 2017).

By combining the research on selection processes with the topic of transaction costs a gap in current research can be filled and a contribution can be made to the existing scientific knowledge.

According to McCann (2013) transaction costs are of key importance to any policy design. Especially when considering a wicked problem, as present in selection procedures, transaction costs are likely to be high. The height of the costs is affected by physical factors of the policy design as well as by institutional factors. McCann (2013) therefore suggests that creating general policies and procedures, adaptable to heterogeneous and changing environments, is useful. Research on decision making regarding selection procedures to minimize transaction costs can therefore be seen as useful.

Additionally, Shahab et al. (2018) listed several reasons to take transaction costs into account when designing policy:

1. Research on transaction costs can cause a reduction of policy cost and thus increase efficiency in the selection procedure. Additionally, costs might be attributed to different parties in a more equal way.
2. Taking transaction costs into account reduces the level of subjectivity of project evaluations since success in terms of transaction costs is a measurable amount.
3. Looking at transaction costs can result in the simplification of procedures: making policy more practical and easy to understand for the parties involved.
4. Research on transaction costs might expose issues of conflict or discussion and -after implementation- unintended consequences that lead to path dependence or a lock-in effect might come to light.

Through combining the research on decision making in selection procedures with the theory of transaction costs, selection processes can be improved. As mentioned earlier an improved understanding and consideration of transaction costs in tender procedures is important from both a scientific perspective and in practice.

1.4. Problem statement and research objectives

From the first sub-chapters the following problems can be derived:

- Municipalities that want a plot of land to be developed do not want to bare the risks of developing themselves, but at the same time do not want to choose for a flat sale procedure because it will yield to little control over the development. This leads to a third alternative: plan based market selection;
- Complaints about market selection procedures have risen due to the high transaction costs of the procedures and the plans that are mostly wasted;
- New light market selection processes are opted as a possible solution, but little research has been conducted on those procedures.

From these problems several research objective have been formulated:

- Look into the transaction costs of market selection processes in sale procedures;
- Look into the light market selection processes and their assumed benefits;
- Improve decision making regarding the market selection processes used for municipal land sale.

1.5. Research scope and boundaries

Large scale developments (>10.000 GFA)

Due to the increasing need for acceleration of the development process on the housing market, environment challenges and mobility questions, large development processes have many dimensions and are often complicated as a result. The complexity of these development challenges has increased even further due to European regulation and social pressure. Due to the complexity of these large scale developments, it is often also difficult to estimate a good price and create a plan that is flexible enough to allow for future changes. Costs of the selection process are often high due to the complexity of the assignment. For smaller, less complicated projects, that lack the many different dimensions, it is often easier to set a price for sale of the land and develop a plan at lower costs. This thesis therefore focusses on selection procedures for the sale of large scale projects.

Municipal land sale procedures

Land sale procedures can take many forms and many stakeholders are involved. This thesis focusses on land sale procedures initiated by municipalities. The dynamics within the municipality make decision making more complex and difficult. Additionally, municipalities have to serve the public interest adding to the complicated spectrum to which effective solutions have to be found.

Transaction costs

To ensure the feasibility and the availability of useful case studies this research is limited to transaction costs that occur during the tender phase of urban area developments. These costs are called *ex-ante transaction costs*: The cost that are incurred before the contract is signed. These are the costs of establishing a partnership and reaching an agreement on a contract (Thomassen, Vassbø, Solheim-Kile, & Lohne, 2016). Ex-post transaction costs (concerning the costs of evaluation and control) are not be taken into account. While this choice will not allow for an overview of the total transaction costs of the development, it will allow for addressing one of the main concerns of practitioners and academics: the diminishing competition within tender procedures due to high transaction costs. Insights in ex-ante transaction costs might lead to the reduction of these costs and thus lower the boundaries for potential bidders to participate in a tender. More information about the transaction costs can be found in paragraph 4.4.

Geographic scope

Another boundary that is set for this research concerns the geographic scope. According to Dudkin and Väililä (2005, in De Schepper et al., 2015) transaction costs vary largely between countries. Thus cross country research on this topic will be hard and lack validity. To get valid results cases should be focused on the situation in one specific country. The Dutch case is chosen mostly because of practical reasons concerning the availability of data.

1.6. Research questions

From the problem description and the formulated boundaries the following research question has been formulated:

'How can decision making regarding selection processes for municipal land sales be improved to decrease transaction costs for public and private parties involved?.'

Selection procedures refer to the traditional and light market selection procedures that are used to select a party for the sale of land through plan selection, vision selection or partner type selection.

The objective is to research the possible *improvements* in the field of transaction costs compared to the current procedures.

Minimizing transaction costs does not refer to the elimination of transaction costs since there will always be costs involved in transaction. The goal is to decrease the transaction costs while still being able to reach the set municipal goals for land sale and development.

To answer the main research question several sub questions have been formulated.

From the historic background of public-private collaboration and the division of responsibilities a better understanding of the present-day dynamics in the relationship between parties is obtained. Additionally, understanding is gained of how both parties operate in the sphere of public land sales. Therefore the first sub-question is as follows:

1. *Looking at the historic context of the Netherlands, how can the collaboration and division of responsibilities between public and private parties in public land sales procedures be characterized?*

The solution space in this thesis is highly influenced by the legal conditions that are set by both Dutch and European law. Whilst in many cases it is possible to sell a plot of land, there might be cases in which the selection procedures should be considered a procurement procedure. When this is the case European and national procurement rules will have to be followed. These rules might prevent a light selection procedure from taking place. Therefore it is important to investigate when it is possible to sell a plot of land and in which cases this sale should be considered a procurement. Additionally, it is also important to consider the rules and restrictions of unlawful state aid (Dutch: *verboden staatssteun*). By answering the second research question the legal restrictions of market selection procedures are researched:

2. *Which legal conditions are important to take into account in municipal land sale procedures?*

As mentioned in the introduction of this thesis there are currently new light tender forms introduced in the market. However it is not yet fully clear what these light selection processes are. This has led to the formulation of the third research question:

3. *How can light selection procedures be defined and how do they relate to the selection methods that are currently used?*

Transaction costs have a central role in this research. The term *transaction costs* has to be defined and research has to be conducted as to how these costs are related to the used selection process and award criteria. The first part of the fourth sub-question therefore focuses on how transaction costs should be defined. The second part of the question considers how transaction costs can be identified in municipal land sale processes. Answering this question helps to get a better understanding of where possible obstacles and pitfalls in selection procedures are.

4. *How can transaction costs for both public and private parties be defined and how can they be identified in the used processes for municipal land sale procedures?*

The fifth sub-question focusses on practice and is used to get a better understanding of the current use of competitive land sale procedures:

5. *What can be learned from empirical research about the current problems public and private parties face in selection procedures?*

In the sixth sub-question the knowledge that is retrieved by answering the first five research question is bundled to design a decision trees that can help municipalities to make more efficient procedures in terms of transaction costs.

6. *Which decisions can municipalities take to improve for municipal land sale procedures in terms of transaction costs?*

The last sub-question is added to validate the findings obtained from answering the first six research questions.

7. *How do practitioners reflect on these steps?*

Through answering these seven sub-questions, an answer can be found to the main research question.

1.7. Research framework

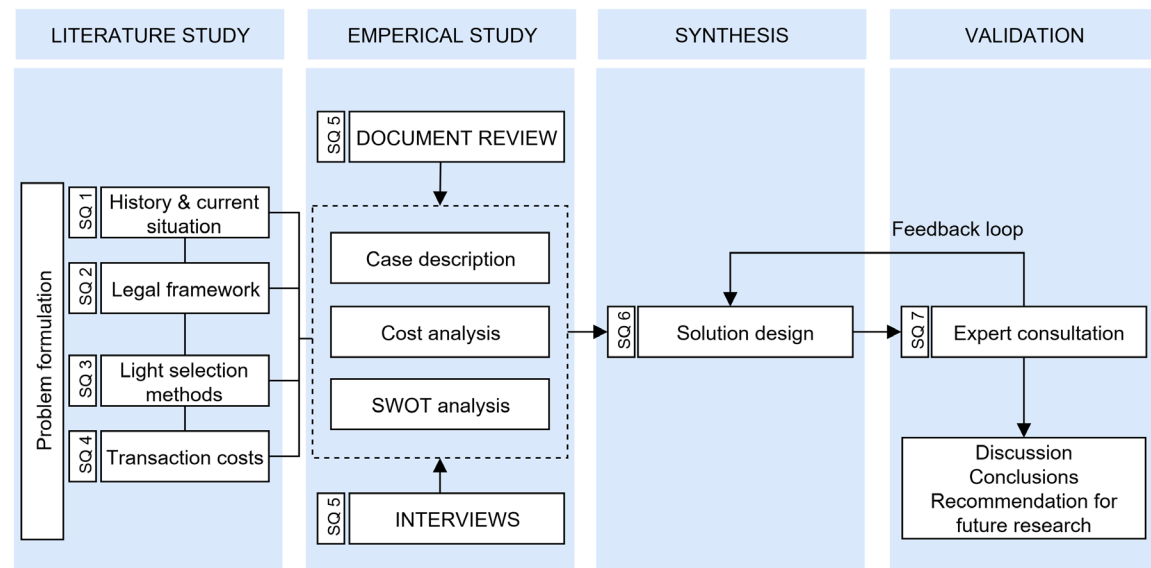


Figure 9: Research framework (own illustration inspired by (Stoel, 2017)).

The research questions that have been formulated in sub-chapter 1.6 are part of four different phases in this research: literature review, Empirical study, synthesis and validation (Figure 9). The four phases have multiple goals. Firstly, they create a better overview and understanding of the steps that have to be taken throughout the process. By creating this overview, better track can be kept on the question if any steps are forgotten or left out. Secondly, the phased process can help to find new connections between literature and practice during the research and lastly, it helps the reader to get a better understanding of the structure of the paper.

1.7.1. Phase 1 – Literature review

To answer the sub-questions in phase one a literature study was conducted in which scientific sources were searched with the help of two search engines: scopus.com and library.tudelft.nl. Two main research directions were formulated: *transaction costs* and *municipal sale procedures*. Since the review of literature was mainly used to generate understanding and was subject to an uncertain process of discovery it was difficult to produce a systematic review. Therefore a narrative review was conducted.

While effective to find a large amount of useful information in a short time, narrative review methods also have limitations. There is no certainty that all articles and opinions turn up. The main flaw of the research method used in this research is that it may have been influenced by the file drawer problem (Bryman, 2016, p. 110). Additionally, narrative reviews tend to be less focused and more wide-ranging in scope than systematic reviews (Bryman, 2016, p. 110).

However as discussed, narrative literature review is useful when the outcome of the research is uncertain as was the case with this thesis. Narrative review is often used when theory is the outcome rather than the input of the studied topic. It provides greater flexibility than systematic research to modify boundaries and therefore may be more suitable for qualitative research, such as conducted in this thesis, than systematic review (Bryman, 2016, p. 111).

To add some systematic structure to the narrative review method, the collected scientific articles found through narrative literature review were added to the referencing program *Mendeley*, and rated on quality and relevance for this research topic by dividing them into four different categories: Highly relevant, relevant, partly relevant, not relevant. Articles were divided based on the information from the abstract. Additionally, the literature lists of the highly relevant and relevant papers were reviewed in full to see if any

additional papers on the topic should be added to the literature list for this thesis. This turned out to be a very useful process, since many of the published articles relevant to the topic in this thesis were published in Dutch. Many of those articles did not turn up with the help of the search-categories as mentioned above.

Relevant knowledge and explanations for answering the first four research questions was incorporated in chapter 2 (Table 2).

Phase	Ch.	SQ	Type of study	Method	Data collection (input)
Phase 1 – Literature study	2.1.	1	Qualitative	Literature study	Literature
	2.2.	2			
	2.3.	3			
	2.4.	4			
Phase 2 – Practice review	3.1.	5	Qualitative	Empirical study	Document review / Interviews
	3.2.				
	3.3.				
Phase 3 – Synthesis	4.	6	Qualitative	Decision tree making	Answers to sub-question 1 to 5.
Phase 4 – Evaluation	5	7	Qualitative	Expert panel	Expert interviews

Table 2: Research type, research methods and data collection method (own table).

1.7.2. Phase 2 – Empirical study

Additional to the literature review, some practical cases are studied through the use of case studies. A case study is an effective method when, according to Yin (Pacione, 2014, p. 32; Yin, 1994, p. 7), “a ‘how’ or ‘why’ question is being asked about a contemporary set of events, over which the investigator has little or no control”. The selection procedure used for municipal land sale can be seen as such a set of events. Examination of case studies can yield a better understanding of how decision making regarding selection processes work and what the strong and weak elements of those procedures are.

Case study selection

There are several methods for case study selection (Patton, 1990; Shakir, 2002; Yin, 1994). It should be recognized that there is no perfect design, however “the sampling strategy should fit the purpose of the study, the resources available, the questions being asked and the constraints faces” (Patton, 1990, pp. 181–183). To select fitting cases for this research a long list of cases was made based on a list of criteria (criterion sampling). Most cases were found by asking experts in the field about cases that could be interesting for research (snowball or chain sampling) (Patton, 1990, pp. 182–183).

The criteria for case studies that would fit this research should correspond to the scope and boundaries of this research as discussed in paragraph 1.5.

- *Developments should have a program over 10.000 GFA.* As mentioned in paragraph 1.5 this thesis focusses on complicated and large projects. The minimum size of 10.000 GFA is amongst others mentioned by the municipality of Breda (Gemeente Breda, 2015).
- *Municipal land sale procedures:* the studied selection procedure should concern a municipal land sale procedure.
- *Access to transaction costs.* There should be possibilities to access the transaction costs parties made during the land sale procedure.
- *Dutch cases.* The procedures should be subject to the Dutch law and take place within the Netherlands.
- *The tenders should be on empty plots.* Development projects and redevelopment project vary widely when looking at the needed interventions. Although they might be the same size, the accompanied costs and struggles might differ too much to draw any meaningful conclusions.

From the long list of cases three cases were selected that were both typical and information rich for in depth studying (typical sampling and purposeful sampling). During the field work and information cases one of the

cases unfortunately had to be eliminated due to troubles with obtaining data from the municipality involved. Therefore two cases were studied in-depth:

- Coulissen West, Breda.
- District E, Eindhoven.

Additionally, during data gathering, additional information useful to this thesis, was gathered about other cases (opportunistic sampling) (Patton, 1990, pp. 182–183).

Data collection

Beside different sampling strategies there are also different types of data collection (Yazan, 2015). According to Yin (Yazan, 2015, p. 149; Yin, 1994) there are six types of tools available to gather data:

- Documentation;
- Archival Records;
- Interviews;
- Direct observation;
- Participant observation;
- Physical artefacts.

Other authors name similar types of tools (Yazan, 2015). For qualitative data collection in case studies the most mentioned tools are observation, interviews, and document reviews. This research makes use of interviews and document reviews to analyse the cases (Figure 10). Observations are more difficult to use in this specific type of case study, since the projects that are subject to this research have already been finalised.

Document review is conducted with the help of publicly available documentation and process documentation that is provided by the public and private parties involved in the procedure. The document reviews can provide supporting information that forms an addition to the literature study done in chapter 2 to answer the sub-questions. Additionally, it can provide a framework for the questions that have to be asked in the interviews.

Interviews can be used to provide more in-depth information about the cases to support the findings from the document reviews. Since not everything was thoroughly documented, the interviews also provided new, additional information to the document review. The interviews also provide an extra dimension to the research, since they provide information about the opinions and views of interviewees on the case.

For this thesis a semi-structured interview framework is used because this allows for adjustments of the emphases as a result of significant issues that emerge in the course of interviews (Bryman, 2016). Semi-structured interviews are thus flexible enough to be adjusted in cases where unexpected information or discussion topics become apparent during the interview.

To ensure there is enough flexibility, but at the same time sufficient direction in the interviews, an operationalization framework was set up (Appendix 11.1). In this framework four themes were distinguished to get a better overview of the goals of the interview. During the interview these interview topics helped to give direction to the conversation. For every interview topic a few guiding questions were formulated. These questions were meant as a guiding tool for the interviewer but were also sent to the interviewee in advance, in order to prepare himself or herself for the interview (Appendix 11.2).

Interviewees for this thesis were selected based on their connection to the two selected cases. To prevent bias to either public or private interests, at least one of the interviewees for every case was connected to the municipality and at least one of the interviewees was connected to one of the competing development parties in the selection procedure for the land sale (Figure 10).

As mentioned before, next to the two specific cases that were researched, interesting information from other cases was gathered with the help of opportunistic sampling (Figure 10). During the interviews multiple examples of extreme cases and typical cases came up. Additionally, interviewees referred to colleagues, or

other experts in the field that would be able to provide new insights (snowball or chain sampling). The examples given by those interviewees did often not relate to the two selected cases, but did underline typicality's in municipal sale procedures. They formed an important addition and validation of the case findings. Furthermore the general interviews added information and background to selection procedures in general and the experience of practitioners with them.

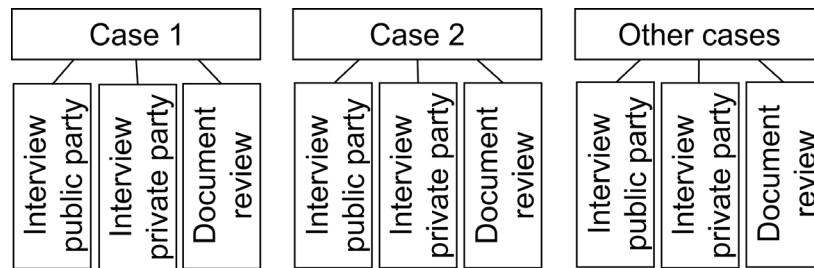


Figure 10: Data collection for case studies (own illustration).

Data analysis

According to Merriam (1998 p.178, as cited in Yazan, 2015) data analysis is “the process of making sense out of the data ... [which] involves consolidating, reducing, and interpreting what people have said and what the research has seen and read – it is the process of making meaning”. Data collection and data analysis often collide and happen simultaneously. In appendices 11.3 and 11.4 an narrative analysis of the two specific cases can be found. These analyses provide in-depth understanding for the cases. To categorize the opinions of interviewees about the cases a SWOT analysis was made. SWOT-analyses are widely used, and for many purposes (Nixon & Helms, 2010). A SWOT-analysis is a useful technique for understanding the strengths and weaknesses of a process as well as for identifying both opportunities and threats. SWOT-analyses however do form a simplification of reality and classification of topics in the matrix is often challenging (Nixon & Helms, 2010). Therefore the SWOT was mainly used to create a first overview of the available information from the cases. From this information in combination with the SWOT-analysis a enumeration of the most important details and conclusions of the cases made in sub-chapters 3.1 and 3.2.

The case studies together with the overall experiences as discussed in paragraph 3.3 will lead to a conclusion on the experience of both public and private parties toward different selection procedures in paragraph 3.5.

One of the main limitations of the use of case studies in this thesis concern the collection of data on transaction costs of municipal sale procedures. To measure the transaction costs in a tender procedure, detailed information is needed from both the client and the bidders (Thomassen et al., 2016). However, acquiring numbers on transaction costs from private parties is difficult due to the fact that financial documentation is in most cases sensitive and thus highly confidential. For this reason, it is not possible to publish exact numbers on costs. In consultation with the parties involved rounded numbers were therefore used.

Data validation

To establish the quality of this research three tests should be conducted.

The *internal validity* is tested with the help of convergent parallel design, also called triangulation. This focus on the use of three different methods in a research to get an overview of the important elements and aspects is part of convergent parallel design. Three different data sources, in this case: document review, semi-structured interviews with private parties and semi-structured interviews with public parties (Figure 10), were used to cross-check the findings and get a more balanced view of the situation. (Bryman, 2016). Additionally the findings and conclusion were discussed and checked by the interviewees for validation.

The *external validity* was checked by discussing the findings and conclusions of the cases with experts in the field (See 1.7.4).

With the help of this chapter and a thorough explanation of what is, and what is not the purpose of this paper, an attempt is made to increase the *reliability* of this research.

1.7.3. Phase 3 – Synthesis

The first two parts of the research could be considered empirical research (Barendse, Binnekamp, De Graaf, Van Gunsteren, & Van Loon, 2012). The questions answered in these stages dealt with knowledge-related problems. The understanding from literature and practical insights from the first two stages of the research will allow for synthesis in phase three. The third phase of the research has an operational character and concerns the design of an optimized decision process for municipal land sale selection procedures. In this phase the outcomes and conclusions of the first and second phase will be analysed to formulate a solution to sub-question six. The solution is likely to depend on numerous factors such as the project type, the capital value, the number of bidders and the size of the plot to be sold (Soliño & Gago de Santos, 2010). Therefore, it is important that in the solution variation is possible depending on the characteristics of the specific project for which the decision tree is used.

To structure the synthesis the current wishes and ambitions of public and private parties in municipal land sale procedures are compared. From this comparison a list of possible mismatches can be derived. Subsequently, future needs are analysed. This results in a design for the future supply and a decision tree for optimizing decision making concerning competitive land sale procedures in terms of transaction costs.

The first tool is used to help municipalities make their choice for a suitable municipal land sale procedure is the Analytical Hierarchy Process (AHP). This tool is used to structure and analyse complex decisions by defining a goal which can be met by considering several criteria leading to different alternatives. An example of an AHP-model can be found in Figure 11. The criteria and alternatives that fill the model are derived from the first two phases of this research. Although there is no guarantee that the model is complete (there might still be unknown alternatives and criteria that were not exerted from the used research methods in the first phases) it does give an overview of the criteria that municipalities use for selected alternatives. Additionally, the filled in framework was discussed with several experts to increase validity.

The AHP model is used as a framework to increase the understanding of municipalities faced with complex decision making problems related to land sale procedures. To guide municipalities through the steps that can be taken in the design process for the land sale procedure, a decision making framework will be developed. This decision framework will be supported by a list of important considerations that municipalities have to take into account.

1.7.4. Phase 4– Validation

The last phase of the research focusses on the validation of the findings from the first phases. In this phase a panel is held with experts from both developing companies, advisory firms and municipalities.

The panel consisted of two parts:

1. Proposition discussion.
2. Thesis synthesis discussion.

Several propositions were discussed to test whether some of the main findings from the first phases of this thesis research concur with the view of experts. Subsequently, the designed synthesis of (phase 3) of this research was discussed to test if the outcomes are consistent with the knowledge gained in practice. To ensure there was no bias in the discussion of the position based on the outcomes of this research the outcomes were discussed after the propositions were discussed.

An expert panel is an effective tool for feedback and validation (Frey & Fontana, 1991). When elements of the designed solution are not complete or correct a renewed look on the case studies and the literature can

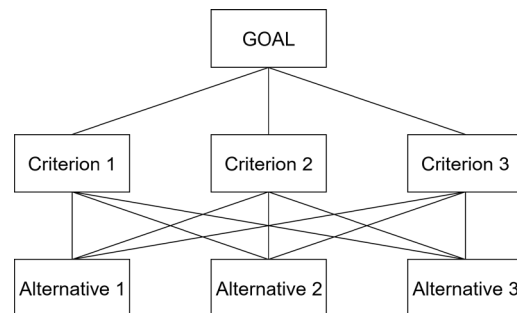


Figure 11: Example of an AHP model (own illustration based on Berrittella, Certa, Enea, & Zito, 2007, p. 11).

be taken and the design can be adjusted with the help of suggestions given by the experts. Additionally, group discussions allow for opinions to bounce back and forth and be modified by the group. This is different from individual interviews which are built on definite statements of single respondents (Frey & Fontana, 1991). Lastly, group interviews can reduce subjectivity, since the influence of the interviewee is diffused due to the group situation instead of a one-on-one situation additionally a broad spectrum of opinions can be reported.

By involving the main stakeholders in selection procedures for municipal land sales: public party, several private parties and advisors, an attempt was made to increase the validity of the results by eliminating biases towards either public or private perspectives. However, since the number of parties that can compete in the panel are limited, the results should be handled with care and be critically reviewed (Frey & Fontana, 1991). As part of the discussion of this paper (Sub-chapter 7.1) the outcomes of the expert panel were therefore reviewed.

1.8. Type of study

The main research question is this thesis an operational research question. It is focussed on a design question to optimize the decision process for a fitting selection procedure in terms of transaction costs for municipal land sale. The goal is to improve the current situation. The question is prescriptive, which can be recognized by the use of the word *how*. It deals with an operation-related problem: the current methods for selection do not always suffice. Thus, the main research question of this thesis belongs to the field of formal sciences (Table 2) (Barendse et al., 2012). To understand the *how*-question asked in this research an empirical basis is needed for a thorough understanding of the problem and solution space. The first two phases focus on addressing the sub questions from an empirical perspective, focussing on producing knowledge to formulate explanations. The third and the fourth phase focus on the operational question to create a change in the current situation (Table 3).

	(Formal) operational research	Empirical research
Type	Operation-related	Knowledge-related
Aim	Creating an artefact Changing situations	Producing knowledge Formulating explanations
Relevance	Operational	Theoretical
Subject	Future	Past
Goal	Improvement	Understanding
Methodology	Prescriptive	Descriptive
Science	Formal sciences	Empirical sciences

Table 3: Distinctions between operations research and empirical research (Barendse et al., 2012).

Due the combination of operational research and empirical research this thesis can be qualified as a hybrid research (Barendse et al., 2012).

Looking at qualitative and quantitative aspects it should be concluded that this research is mainly qualitative. Qualitative research is necessary because the topic of this thesis has not yet been fully researched and no complete literary overview has yet been made. Quantitative research can support the qualitative theories that have already been developed (Edmondson & McManus, 2007, p. 1170). The study of new selection methods is still in a nascent phase (Figure 12). Scientific research on this topic is slim. Using quantitative research methods would therefore result in a lack of reliability and external validity since without prior knowledge it will be difficult to interpret the true meaning of statistical relationships or measures (Edmondson & McManus, 2007, p. 1170). Therefore the choice was made to focus on qualitative research on this topic in this thesis.

This situation is different when the research topic is approached from the perspective of transaction costs. A number of studies have already been done on this topic (Buitelaar, 2004; Shahab et al., 2018; Soliño & Gago de Santos, 2010; Thomassen et al., 2016). These studies have resulted in methods for recognizing transaction costs. Research on this topic is therefore more matured and now in an intermediate phase (Figure 12).

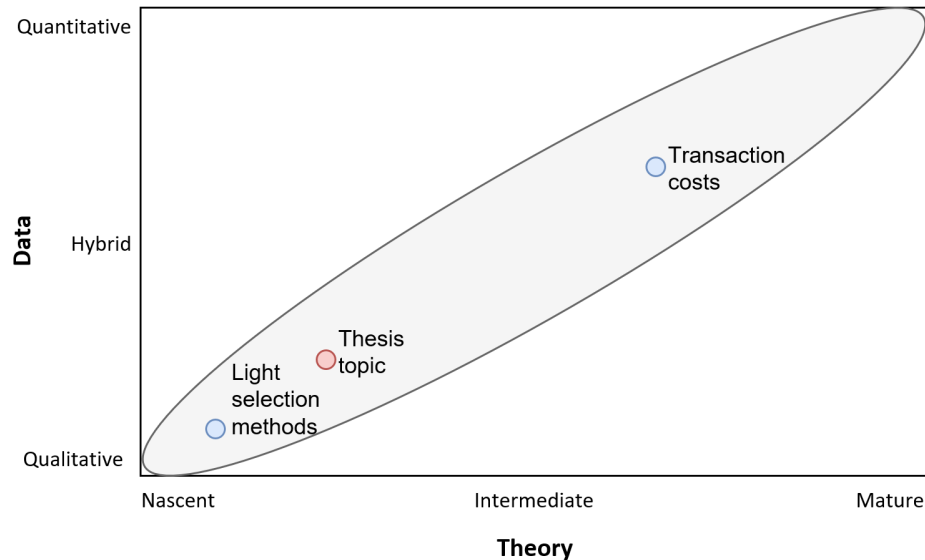


Figure 12: Methodological fit as a mean tendency (own illustration, based on Edmondson & McManus, 2007).

When combining decision making on selection methods with transaction costs research is slim. Therefore this thesis focusses on qualitative research with some quantitative elements such as transaction costs numbers (Figure 12).

1.9. Publication and data protection

The final thesis will be published on the educational repository of the Delft University of Technology. This repository can be found using the following link: <https://repository.tudelft.nl>.

The data used in this thesis will be processed in accordance with the FAIR guiding principles (Wilkinson et al., 2016). Interviews and other data not directly attached to the final thesis as published on the repository can be retrieved by sending an email to the author: dalveenhof@gmail.com. To ensure sensitive (company) information is handled with care company specific information will not be shared, meaning that company names and data that can be directly linked to specific companies will be blurred.

1.10. Ethical considerations

Harm to participants

According to Diener and Crandall (as referenced by Bryman, 2016, p. 135) discussion about ethical principles in social research revolve around four main issues:

1. Whether there is harm to participants;
2. Whether there is a lack of informed consent;
3. Whether there is an invasion of privacy;
4. Whether deception is involved.

To ensure that participants in this research are not harmed by the publication text that concern their statements have been made unidentifiable as discussed in paragraph 3.3. Additionally, the text of the case studies has been sent to interviewees for verification. This was also done to ensure their privacy and validate whether the text is a correct display of the interview and the opinion of the interviewee. To ensure participants are not deceived they have received an interview letter (Appendix 11.2) to explain the goal of the research conducted in this thesis. In this letter interviewees are told that they are in no way obliged to

answer any questions and participate on a voluntary basis. Additionally, the question is asked if the interview can be recorded. This question is repeated at the interview itself.

Quality guarantees

The author of this paper has to the best of her knowledge applied the prescribed the quotation style and the referencing style in accordance with the publication manual of the American Psychological Association (American Psychological Association, 2010). Additionally, the final research underwent a thorough plagiarism check conducted by the Delft University of Technology. The author claims full authorship of this thesis and acknowledges all the sources that have contributed to the development and writing.



2. LITERATURE REVIEW

2. Literature review

2.1. Public and private collaboration Urban Area Development in the Netherlands

2.1.1. Dutch historical context

The Dutch system of urban area development has a long history of public involvement. Dutch municipalities are often involved from an early stage, taking active control (Daamen, 2010; Heurkens & Hobma, 2014). Different from other European countries, Dutch municipalities actively bought land for land development. They prepared the land for building and subdivided it before selling it to project developers or end users. The Dutch practice of active land policy allowed municipalities to realize planning objectives and take control. This has resulted in high quality social housing and diverse living environments (van der Krabben, 2011). Adverse effects that are often associated with the active land policy are the financial risks taken by local governments and the friction between the role of a public party as a market player and their task as a promotor of the public interest. These objections to active public land policy are the main reasons why urban area developments in other European countries are mostly initiated by private parties. Furthermore it is argued that market players can be just as efficient as the government (van der Krabben, 2011).

During the recent financial crisis the risks of active land policy to municipalities became apparent. Effects on land development and municipal finances were evident. Future profits partly evaporated and had to be compensated by taking money from the general reserves (Berns, Celik, Michiels, & Schenk, 2010). This led to ongoing discussions about the role of Dutch municipalities as active participants in urban development (Heurkens & Hobma, 2014).

The role of municipalities had to become more facilitating to urban development. Facilitating in this context can be defined as the exploration of development potential with private parties to support their investment decisions (Heurkens, Daamen, & Pol, 2015). By taking a facilitating role the municipality thus does not develop itself, but it

supports private parties to develop the land. This changes the tools municipalities have to influence development outcome. When pursuing an active development policy, municipalities have a controlling and shaping role. However, when a more facilitating role is taken they lose many of these shaping and controlling instruments because they are longer making the development decisions. Capacity building instruments become useful in this case. Municipalities should take a network approach in which they look for collaboration with public parties (Adams & Tiesdell, 2013, pp. 134–135).

The call for a more facilitating government did not only arise from the most recent financial crisis. According to Heurkens & Hobma (2014), there are various interrelated trends that caused this shift in vision:

- European legislation.

European legislation played a crucial role in the changing preferences of government involvement. “The European Commission increasingly opts for legislation based on Anglo-Saxon law advocating for formal public-private role divisions and tendering principles of competition, transparency equality and public legitimacy ”(Heurkens & Hobma, 2014).

- Mixed experiences with joined ventures.

Heurkens & Hobma (2014) mention that Public Private Partnerships have not always been as successful as advocated. Parties involved often differed in opinion about the financial policy in the project. During the financial crisis healthy companies often wanted more equity in the firm, lowering the amount of debt. However, due to the complex contractual relations and the unanimity with which parties had to agree on, every amendment or modification of the contracts, developments came into a deadlock. This had significant financial implications and led to governance problems (ten Have (ed.), 2017). These financing problems, but also the lack of flexibility, time consuming partnership formations, lack of transparency, compromising decision making processes and the cost of control of the partnerships meant that assumed added values

were not reached. This has contributed to a shift from legal partnership entities to a preference for contractual agreements and a more facilitating role for municipalities (Heurkens & Hobma, 2014; ten Have (ed.), 2017).

- Liberalisation and decentralisation.

Over the last decade relations between the state and the market have changed, due to a wave of liberalisation that came forth from the new neoliberal political-economic principles of deregulation, decentralization and privatization (Alexander, 2001 in Heurkens & Hobma, 2014). The Dutch system historically has had a structure of co-governance in which the central government involved provinces and municipalities both in formation and execution of policies. Due to the above mentioned changes this system of co-governance or 'polderen' changed into a more decentralized structure in which planning powers shifted from the national institutions towards municipalities (Zonneveld & Evers, 2014). The central government actively called for this change stating that spatial planning should be left more up to provinces and municipalities (Coalition Agreement, 2010, p. 38). One of the main reasons for this shift was the argument that national spatial policy was slowing down the production of homes and the procedures for large-scale infrastructure projects (Zonneveld & Evers, 2014, p. 72). Municipalities in their turn have outsourced the risks of development and taken a facilitating role.

2.1.2. Current situation

Due to the changing environment new forms of partnerships and collaboration were introduced over the past decade. There was a shift from active municipal involvement in development towards land sale procedures in which risks are diverted to private parties.

Rising complexity

According to a recent report on Public-Private-Partnership collaboration between market and state, this has not only changed, but this has also become more complex due to urgent and new tasks of urban redevelopment, rising housing shortages and increasing legislation to make the build environment more sustainable (ten Have (ed.), 2017). Moreover, not only the assignment for developers has changed, also the involved parties and stakeholders have changed and their

numbers increased due to the growing importance and different outlook on topics such as mobility, technological innovation and sustainability. This rising complexity in both the assignment and in the number of parties involved in urban area development calls for *faster* (to increase the dwelling production and supply), *better* (with an eye for sustainability and innovation) and *cheaper* (to make developments more affordable and limit overhead and procurement costs) selection methods (ten Have (ed.), 2017).

Costs of tendering

According to recent research, building costs are rising. Ten Have (ed., 2017) states that total tender costs in the Netherlands have risen to 4 to 6 percent of the contracted tender amount and to 2 to 3 percent of the total building production costs. This results in a total sum of between 480 and 720 million euros of tender costs. As addressed in the introduction of this thesis the rising costs of tender procedures are feared to cause a decline of competition since parties are no longer willing to compete in tender procedures. Several parties have already stated that they do no longer want to compete in tender procedures, others have become more critical towards the procedures in which they still want to compete (Clahsen, 2017, 2018).

2.1.3. Future outlook

Looking at the future, the dynamics in urban area development will likely change even more. In the next few years the Dutch system of environmental law will undergo significant and important changes. From 2021 onwards all rules concerning the build environment will be bundled in one law act: the Environment and Planning Act (Dutch: Omgevingswet - OW). The aim of this act is to make it easier to start up new projects (Rijksoverheid, n.d.-b). Municipalities, Provinces and Water Authorities will get more room to align environmental planning policy with their own needs and goals (Rijksoverheid, n.d.-a). The law will introduce default values from which the lower government bodies can deviate to set either heavier requirements, or in some cases, lower requirements within a set bandwidth (Hobma, 2016). In some cases, the lower government bodies will get free control space. In these cases municipalities will be completely free to set their own rules. The freedom that municipalities will

get, can have several implications on area developments. On one side, it can create new possibilities to make selection procedures more flexible and less complex by lowering the demands set for the area to fit specific goals. On the other side, when this freedom is not converted into clear aims and rules it can create confusion and thus frustrate selection procedures of municipal urban land sales.

2.1.4. Involved stakeholders

When a selection process for municipal land sale is designed, both public and private objectives have to be taken into account and their interests have to be weighed in order to get a balanced process in which both parties can reach their goals. When the process does not fit the needs of the public party, it will not put the tender to market and as a consequence the land will not be sold. When the process does not fit the needs of the private parties they will not compete in the tender. This can result in either a limited number of parties that compete, thus limiting competition, or it can result in a situation in which no party wants to compete at all, in which case the land will not be sold either. To ensure these situations do not materialize, a good understanding has to be acquired of what the public and private objectives in a competitive land sale procedures are.

Municipalities

As discussed in paragraph 2.1.1. before the financial crisis of 2008 most municipalities pursued an active land development policy. This led to rising deficits during the crisis and in some cases considerable losses. Since the financial crisis governments have become more risk averse towards land development and the risks and uncertainties that accompany it. This creates a dilemma. Historically, most municipalities have been largely dependent on income generated by active land-use policy. Since the economy is currently recovering and stabilizing, municipalities have to choose again to either keep their facilitating role they have adopted over the last few years, or go back to a more active and steering role again in which more risks are taken but also profits can be made (Franzen et al., 2017; Heurkens, 2012, 2018).

Although Dutch municipalities generally have accepted and embraced the shift towards more facilitating governmental organisations,

differences between municipalities are still evident (Figure 13). Franzen et al. (2017, p. 15) state that the municipality of Amsterdam favours a strong market position and thus is prepared to make large up front investments. The municipality leaves relatively little space for interpretation of market parties. The municipality of Rotterdam on the other hand gives a lot of space for initiatives and is prepared to do business on a personal level when development is complicated (Franzen et al., 2017).

The choice for an active or facilitating development policy does not only differ among projects between municipalities but also for projects within them. Franzen et. al. (2017) state that the economic and the social effects of an urban area development often influence the choice of how a municipality wants to be involved. Due to the decentralisation in the social domain priorities of municipalities have shifted (Franzen et al., 2017, p. 36).

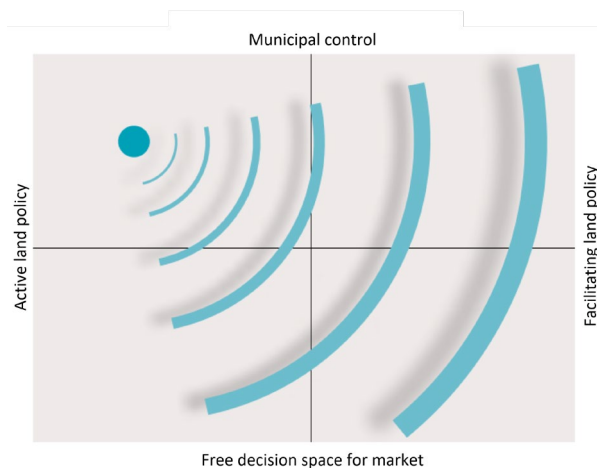


Figure 13: Change of the municipal role in urban area developments over the last decade (translation of Franzen et al., 2017).

Although the new facilitating public role has led to formal disentanglement of public and private parties, informal interaction is still vivid. Public parties can shape their role in four ways by shaping, regulating, activating and stimulating (Adams & Tiesdell, 2010; Heurkens, 2013). According to Heurkens (2013) public parties should get used to the fact that influence is not primarily connected to land positions. Municipalities have to realize they are no longer above the market, but rather part of it. This means that municipalities need to learn new sets of skills such as networking and negotiating.

At the same time municipalities have to remember their primary goals as representative of the people. They have to represent the public interest. The peoples interest can be manifold and refer to economic interest of the city or to the social interest of small groups of people in the area near the development.

Private parties

After the crisis, investment opportunities for private developers decreased. This was largely due to the fact that banks required a lower loan to value rate, meaning that projects could no longer be financed with a large amount of debts. Parties that invested with their own equity were also affected by the crisis. The housing market came to a stop. Subsequently, developers became more selective in which tenders they wanted to participate, selecting only those with certain future profits and procedures that do not take too much capacity from the company (Neprom & Akro Consult, 2011). Due to these developments, development parties evolved and have become smaller and more focussed on either a specific real estate type or a process type. According to Franzen et al. (2017, pp. 37–38) four different types of development companies can now be identified:

- *Property developers* and urban area developers who advise on concept and plan development for the entire area.
- *Fee-concept developers* who advise on concept development and plan development without taking risks.
- *Niche developers* who have a very specific development portfolio.
- *Delegated developers* who develop on behalf of an investor.

Heurkens (2018, p. 112ff.) argues that, when looking at high risk and substantive private sector-led urban development's for which an integrated development strategy is needed, two different types of developments can be identified: developer-led urban development and investor-led urban development (Figure 14).

Developer-led urban development can be described as trader-developers and are mostly traditional real estate agencies who finance the development with a combination of debt and equity and leave after completion of the project. They have limited to none long-term interest

(Heurkens, 2018, pp. 112–113). The first three development company types described above by Franzen et al. (2017, pp. 37–38) can be argued to sit in this category.



Figure 14: Typologies of private sector-led urban development (Heurkens, 2018, p. 113).

Where *Investor-led urban development* differs from developer-led urban development is the focus on the long term involvement. Investor-led urban developers can include institutional investors, investment banks or development investors. Heurkens (2018, p. 113) describes two types of investors:

- *Development investors* are often actively involved in development. They increasingly seem to concentrate on 'community involvement, new development coalitions, corporate social responsible investments, place-making and sustainable urban and real estate development.' Franzen et al. (2017, pp. 37–38) refers to this type of investors as delegated-developers.
- *Institutional investors* and investment bankers are only active in the background but are not or less concerned with development (Heurkens, 2018, p. 113).

The type of private parties acting as development companies in urban are developments are diverse. What (commercial) private parties do have in common is that in order to compete in a selection procedure they have to have a solid business case. When a selection procedure does not lead to a profitable development they will generally choose not to compete.

Third parties

Next to the municipality and the developing companies competing in selection procedures for municipal land sale, other third parties, such as contractors and architects, end-users and financial

investors, can be involved and influence the outcome of a tender.

The position of contractors and architects on the development market is largely dependent on the economic situation (Franzen et al., 2017). When the economy is bullish, this often results in increased scarcity of contractors and architects, resulting in higher prices which in turn can influence the business case of developers.

End users can also influence urban area developments. Over the last years, end-users have become more active in an early stage. Through new forms of development such as co-creation, collective private commissioning and delegated commissioning, they have gained power in development processes (Franzen et al., 2017). Municipalities and developing companies need to collaborate with these users to ensure successful developments.

According to Sturm, Heurkens & Bol (2014) investors can play an important role in the changing market. Investors focus on promising areas. In these areas they can encourage involved organisations, companies and inhabitants to speed up development processes. Private investments can be crucial for successful and sustainable future development (Sturm et al., 2014). This however does ask for a flexible regulatory structure of municipalities and for in-house knowledge and a multi-sectoral approach of investors.

2.1.5. Conclusion on Urban Area Development in the Netherlands

Over the years municipalities have gained a more important position in the policy design for urban area development and thus land sale. To lower municipal risks and follow the trends of liberalisation and privatisation, they have in turn largely outsourced this responsibility, by taking a

facilitating role and leaving the development decisions to the market. This resulted in a shift in preference from partnerships and active development, to land sale procedures in which development risks are transferred to the market.

Complexity of development processes over the years has increased due to new and urgent tasks but also due to the increased number of parties involved in development. Cost of tendering have gone up, resulting in an urgent call from both practitioners and academia for changes to be made. Looking into the future, more changes are expected due to the Environment and Planning Act.

To municipalities the question of control is at the heart of the dilemma in the choice between active and facilitating land policy. Although large differences can be seen between municipalities and development processes, the overall trend is toward a more facilitating municipal policy. Several authors state that this is desirable and argue that municipalities need to find other ways of shaping real estate development.

When looking at the private parties involved in development, it should be concluded that the objectives of these parties are diverse. They will all however consider the demands, vision and ambitions of public parties in land sale procedures in the light of profitability. When public parties set unrealistic ambitions that are not profitable they will not compete in the selection process.

Lastly, third parties can influence the objectives of public and private actors in many ways. When designing a selection procedure for a land sale their wishes, needs and demands should therefore not be forgotten.

2.2. Legal framework

The legal framework of public law, especially related to procurement and state aid, contains important rules and considerations that have to be taken into account when designing a competitive land sale procedure. The legal framework for competitive land sale procedures is a complex system. In the judgement about the Müller case (see sub-paragraph 4.2.3), the European Court of Justice stated that the sale of a property by a government authority is in principle not subject to procurement law. However, when there is a direct economic interest between the contracting authority and the contractor this situation can change (van Romburgh, 2017).

To get a better understanding of the boundaries of procurement law and state aid, and to answer the question to what extent municipalities should consider the procurement law when designing a competitive land sale procedure this chapter will provide a legal framework for this thesis. The first paragraph will provide information about the history and the goals of the Dutch procurement act, after which in paragraph two the legal definition of a procurement will be given. In paragraph three, two court rulings will be discussed that clarify the rules set by National and European procurement law. In the subsequent paragraph the implications of these rules to Dutch procurement law will be discussed. This will lead to paragraph four in which the line between compulsory procurement, voluntary procurement and sales procedures will be discussed. Paragraph five will provide information about unlawful government support, leading to the chapter conclusion in paragraph six.

The threshold value

Every year the new threshold value for European procurement is determined. Only contracts with a value above the threshold value, have to follow the European procurement rules (art 2.1. Aw 2012). If a contract can be seen as a public contract of works, supplies or services in accordance with the Aw 2012 the next step is to estimate the value of the contract and test whether this exceeds the threshold value. The possible unification of the different activities as will be discussed below should be taken into account. When the project is of evidential transnational interest the threshold value can be lifted, meaning that even if the threshold value is not reached the project should follow European procurement rules.

2.2.1. History of the Dutch procurement act

The Dutch procurement act (aanbestedingswet 2012, Aw 2012) came into force on the 1st of April, 2013. The Aw 2012 is for most part an implementation of the European directive. It describes the European procedures and rules for projects above as set threshold values. Additionally, the Dutch legislator also included procedures for procurements below the threshold value. Section 1 Aw 2012 is applicable on both procurements above and below the threshold value. Sections 2, 2a and 3 Aw 2012 only apply to procurements above the threshold value.

The Aw 2012 was written as a more accessible implementation of the European procurement directive (Richtlijn nr. 2004/17/EG) and the legal protection directive (Richtlijn nr. 2007/66/EG) to improve the practicability, maintainability and compliance with procurement law. The goal of the Aw 2012 was to create a transparent and efficient way of acquisition with the best price/quality ratio to create equal and fair chances for contractors (Kamerstukken II 2009-2010, 32 440, nr. 3, p. 3.).

2.2.2. National and European procurement rules

As discussed briefly in the introduction to this legal framework land sale procedures are in principle not subject to procurement laws. In some cases however, a land sale procedure could be considered an acquisition. Therefore it is important to understand when procurement law has to be followed and when not. This paragraph will explain the scope of both national and European procurement.

The definition of 'procurement'.

According to the directive 2014/24/EU *procurement* means the following:

Procurement within the meaning of this Directive is the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose. (art. 1 par 2, directive 2014/24/EU).

Since this thesis focusses on the Dutch market, the Dutch implementation of the European procurement directive the Aw 2012 will be taken as the point of departure to explain procurement regulation. The Aw 2012 does not provide the definition of procurement in one sentence as was done in the directive. Art 1.1 Aw 2012 does include all the elements mentioned in the directive. The Dutch legislator has opted to define the terms public contract of works, public contract of supplies and public contract of services separately (See art. 1.1 Aw 2012: *Overheidsopdracht voor diensten; Overheidsopdracht voor leveringen; Overheidsopdracht voor werken*). Also the term *contracting authorities* is defined in art. 1.1. Aw 2012.

Public contract of works, supplies or services

Article 1.1 Aw 2012 describes *works* as the product of a whole of structural or civil engineering works meant to fulfil an economic or technical function. In the Müller-case the Court of Justice has stated that the sale of property by government authorities is in principle not a public contract of works.

Public contracts of supplies refers to the supply of material assets or rights upon them. If a public contract cannot be defined as *works* or *supplies* it fall under the term *public contract of services*. This term therefore functions as a safety net for procurement rules (PIANOo. experticeentrum aanbesteden, n.d.).

The three described public contracts are, according to art. 1.1. Aw 2012, contracts for *pecuniary interest* (Dutch: onder bezwaarde title) concluded in writing (Dutch: schriftelijke

overeenkomst) by one or more *contracting authorities* (Dutch: aanbestedende diensten).

Contracting authorities

According to the Dutch procurement act the following authorities are subject to the term *contracting authorities*: state, the provinces, municipalities, water board districts and public institutions or cooperatives of these governmental organizations or public institutions (Art. 1.1 Aw 2012). The term should be seen in a functional context and explained according to the European directive with the goal to remove all barriers to the freedom of settlement and the freedom to provide services in the area of government commissioning (van Romburgh, 2017).

Phasing within procurement law

Urban Area Development consists of three main activities that are contracted by contracting authorities (Bregman et al., 2017, p. 167; Kersten et al., 2011, p. 66):

- Plan development;
- Land development;
- Real estate development.

Plan development is the first step in the development cycle. During the plan development the design, feasibility studies and calculations are made. *Land development* focusses on making the land habitable and ready for construction and is therefore concerned with the public space and construction of basic facilities such as infrastructure, green and water in the area. *Construction development* is about the construction of the building plots on the area. It is important to define these different activities to get an understanding of procurements from a legal perspective (Bregman et al., 2017, pp. 167–168; Kersten et al., 2011, p. 66).

In principle, if plan development is procured by contracting authorities, it is subject to the legal framework for procurement of services while land development and construction development in principle are subject to the framework for procurement of works. For land development and construction development it is assumed that they are an economic unit and therefore form one public contract of work. This means that the costs of the activities have to be summed up. If the total costs are above the threshold value, the work has to be publicly procured (Bregman et al., 2017, p.

168; Kersten et al., 2011, p. 66). However, in Urban Area Development this economic unit does not always exist. Developments often take place over the course of several years and the commissioning authorities are not always the same (Bregman et al., 2017, p. 168). In most Dutch development assignments the municipality is responsible for land development while private development companies are responsible for construction development. If this is the case, the activities of land development and construction development can be seen as separate works (Kersten et al., 2011, p. 66). Moreover, even if the work concerns a public building and a contracting authority is the client for both the land development and the construction development the activities can be split since in most cases the contractors for both activities differ. Additionally, most of the activities are concerned with different designs that can be constructed separately (Bregman et al., 2017, p. 168).

When a contracting authority wants to know whether the assignment in selection procedures they use is subject to procurement law they should thus check whether the assignment can be defined as either a plan development, a land development or a construction development in the form of a contract of works, a contract of services or a contract of supplies.

2.2.3. Court rulings

Public land sale is not among the three main activities that are contracted by public parties as discussed in the previous paragraph.

However municipalities often implement qualitative requirements for the future development in the sale procedure. In this case they do not only sell the land but in some cases also ask for a development plan or a real estate development. These activities are subject to procurement law. Adding qualitative award criteria in the competitive land sale procedure can therefore in some cases be argued to lead to a contract of works. Regulation did not foresee this and therefore case law has provided additional guidance. The two main judgements by the

European Court of Justice (ECJ) that need to be discussed in this light are: *Jean Auroux vs Roanne* (Case C-220/95) which discusses the applicability of the procurement act in the light of commercial developments and the case *Helmut Müller* (Case C-451/08) which provides cumulative criteria as to give guidance in which cases competitive public lands sale procedures are subject to procurement law.

Jean Auroux vs Roanne (Case C-220/95)

The case *Auroux vs Roanne* is a dispute about a development in the French municipality called Roanne. The municipality wanted to contract a party to develop and construct a recreational park. The park was to include a multiplex-cinema, office space, public parking spaces, access routes and public spaces. Later, extra office space and a hotel were added.

The municipality was not equipped to develop the area, and in accordance with French law they had to contract the city development company called *Société d'équipement du Departement de la Loire (SEDL)* (van Romburgh, 2017, p. 53)². The municipality did not procure the development and construction of the recreational park in accordance with European procurement law³. Both the municipality of Roanne and SEDL were contracting authorities subject to the procurement law (Bregman et al., 2017; Kersten et al., 2011).

The municipality assigned several tasks to SEDL:

- To buy real estate;
- To gather financial means for development;
- To select and organise a selection procedure;
- To commit several studies of the area.

After development and construction, the public functions in the area would be assigned to the municipality. Private and commercial functions would be sold by SEDL during the development and construction phase to third parties. However, if at the moment of completion the buildings had not been sold the municipality would automatically become the owner of those buildings.

² ECJ EG 18 January 2007, Case C-220/05 (*Auroux e.a./Roanne*), r.o. 16

³ Conclusion A-G Kokott, Case C-220/05 (*Auroux e.a./Roanne*), point 14

The inhabitants of Roanne opposed this structure because it would mean that the municipality would take all the risks of the development. They filed a complaint to the French Court. Since the French Court had several questions about the case in relation to European procurement law, they submitted several questions to the ECJ for clarification⁴ (Bregman et al., 2017; Kersten et al., 2011):

- Is an agreement between two public parties (with the characteristics described in the case) a public contract of works? (And consequently subject to procurement law).
- How should the value of the project be determined, keeping in mind the threshold value for European Procurement?
- Is it possible to circumvent European procurement law because the contract made between these parties in accordance with French Law and cannot be made with any other a private party?

On January 18, 2007 the ECJ ruled in the case that was initiated by Jean Auroux. The first question was answered positively, meaning that the contract between Roanne and SEDL fell within the definition of procurement mentioned in the directive 2014/24/EU procurement⁵. The second question was concerned with the uncertainty whether different activities had to be taken together in the calculation of the value of the contract. The ECJ concluded that all the activities had to be taken together⁶, meaning that the threshold value for European Procurement would be met. In principle this means that the contract should have been procured according to European procurement law. The third question of the French court was concerned with the doubt if the specific contract in the Auroux vs Roanne case could form an exception to the rules of European procurement, since the contract could not have been concluded with a random market party. The ECJ however ruled that this argument did not

⁴ ECJ EG 18 January 2007, Case C-220/05 (Auroux e.a./Roanne), r.o. 19 -20.

⁵ ECJ EG 18 January 2007, Case C-220/05 (Auroux e.a./Roanne), r.o. 28 – 47.

⁶ ECJ EG 18 January 2007, Case C-220/05 (Auroux e.a./Roanne), r.o. 53 – 54.

provide an exemption from European procurement law⁷ (Bregman et al., 2017; Kersten et al., 2011).

The main implication of the Auroux vs Roanne case is that when the municipality is financially involved in the development of a plot or area, European Procurement rules have to be followed and consequently the development should be publicly procured, even when the program consists of non-public functions such as commercial real estate and housing (Bregman et al., 2017; Kersten et al., 2011). An important note that is made in “de Reisgids Gebiedsontwikkeling” (Kersten et al., 2011) is that this financial contribution only relates to project specific contributions. Subsidies that are granted by the municipality based on their powers provided by public law should not be considered financial contributions in the sense of the Auroux vs Roanne case.

Helmut Müller (Case C-451/08)

The Helmut Müller case had major implications for procurements of urban area developments. The European Court of Justice further clarified the conditions for public procurements by answering the question whether the allotment of land in combination with urban planning regulations set by the public party will result in a public works contract or a public works concession⁸. This question was not clearly answered in the Auroux/Roanne case. (Bregman, 2010, p. 604; Bregman et al., 2017, p. 181).

The case was about the land sale by the German Municipality *Wildeshausen* to the company *Gut Spascher Sand immobilien GmbH (GGSI)*. Helmut Müller GmbH, who also competed but was bypassed in the land sale, objected to the contract between the municipality and GGSI, claiming that European Procurement rules should have been followed.

The Bundesanstalt (National administration) is owner of the property Wittekind Barracks situated

⁷ ECJ EG 18 January 2007, Case C-220/05 (Auroux e.a./Roanne), r.o. 68.

⁸ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 33.

in the German municipality of Wildeshausen⁹. In 2006 the municipality undertook feasibility studies for an urban planning project on the land of the Wittekind barracks. In October of that year the Bundesanstalt announced that they wanted to sell the barracks¹⁰. Early 2007 they launched a selection procedure to sell the property as quickly as possible¹¹. Helmut Müller submitted an offer of 1 million euros. Gut Spascher Sand Immobilien GmbH (GSSI) made an offer of 2,5 million euro's¹². The value of the land according to an expert report made in 2007 was 2,33 million euros.

The tenderers' plans were discussed with the municipality of Wildeshausen. The Bundesanstalt preferred the plan of GSSI. They argued that their plan would make the municipality of Wildeshausen more attractive. The municipality of Wildeshausen supported this vision¹³. The land was therefore sold to GSSI on the 6th of June 2007. Helmut Müller was notified of the sale on the 7th of June 2007¹⁴.

Helmut Müller claimed that this sales contract was void since "GSSI was to be regarded as about to obtain a works contract in the form of works concession" since the municipality would at some point in the near future exercise its discretion and draw up a building plan contract for the execution of works¹⁵. The Oberlandesgericht Düsseldorf which handled the action of Helmut Müller agreed and stated that "*the transfer of ownership of the lands and the award of a public works contract should be considered (ed.) as forming a whole from the point of view of public procurement law*"¹⁶.

Court law and German national regulation about definitions were however ambiguous. The

Oberlandesgericht Düsseldorf therefore referred nine questions to the European Court of Justice In the light of this paper the first six questions and answers to these questions will be discussed.

The first and second question were interpreted by the Court as the question:

*Whether the concept of 'public works contracts', within the meaning of Article 1(2)(b) of Directive 2004/18, requires that the works which are the subject of the contract be physically carried out for the contracting authority in its immediate economic interest or whether it is sufficient if the works fulfil a public purpose, such as the development of part of a town"*¹⁷.

To answer the question whether the contract between the Municipality of Wildeshausen and GSSI should have been seen as a public works contract, the ECJ starts by stating that – according to Article 1(2)(a) of Directive 2004/18 – "public contracts are contracts for pecuniary interest concluded in writing".¹⁸ They continue by explaining what is meant with pecuniary interest: "the pecuniary nature of the contract means that the contracting authority which has concluded a public works contract receives a service pursuant to that contract in return for consideration"¹⁹ and they give an additional requirement: "such a service (...) must be of direct economic benefit to the contracting authority"²⁰.

⁹ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 8.

¹⁰ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 10.

¹¹ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 13.

¹² ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 15.

¹³ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 21.

¹⁴ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 23.

¹⁵ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 27.

¹⁶ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 28.

¹⁷ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 40.

¹⁸ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 45.

¹⁹ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 48.

²⁰ ECJ EG 25 March 2010, Case C-451/08 (Helmut Müller) r.o. 49.

The ECJ mentions three cases in which a direct economic benefit is present²¹.

1. When the public authority is to become owner of the work(s) which is subject to the contract.
2. When the public authority is to hold a legal right over the use of the work(s) subject to the contract.
3. When the public authority derives economic advantages from the future use or transfer of the work(s) in the fact that the public authority shares in the risks and/or made a financial contribution (Also: *Auroux vs Roanne*).

No direct economic interest is present when the public party merely exercises its urban-planning powers even if this power collides with land allocation²².

The third and fourth question of the Oberlandesgericht were interpreted as the question:

*Whether the concept of ‘public works contracts’, within the meaning of Article 1(2)(b) of Directive 2004/18, requires that the contractor be under a direct or indirect obligation to carry out the works which are the subject of the contract and that that obligation be legally enforceable*²³.

The Court answered by stating that the second requirement for a public works contract is that the contractor is “under a direct or indirect obligation to carry out the works that are subject to the contract (...)”²⁴. It is irrelevant if the contractor carries out the work himself or uses subcontractors to carry out the work. The ECJ continues by stating that a public works contract should furthermore have the objective to realize “a work corresponding to the requirements specified by the contracting authority” as stated in Article 1(2)(b) of Directive 2004/18.

²¹ ECJ EG 25 March 2010, Case C-451/08 (*Helmut Müller*) r.o. 50 – 54.

²² ECJ EG 25 March 2010, Case C-451/08 (*Helmut Müller*) r.o. 46.

²³ ECJ EG 25 March 2010, Case C-451/08 (*Helmut Müller*) r.o. 59.

The fifth and sixth question of the Oberlandesgericht were interpreted as the question:

*Whether the ‘requirements specified by the public contracting authority’, within the meaning of Article 1(2)(b) of Directive 2004/18, may consist either in the contracting authority’s exercise of the power to ensure that the work to be carried out addresses a public interest or in the exercise of the power which it is recognized as having to examine and approve building plans.*²⁵

To answer this question the ECJ states that when a public authority merely exercises its urban-planning powers to examine building plans or take a decision within their sphere of power “this does not satisfy the obligation that there be ‘requirements specified by the contracting authority’, within the meaning of that provision”.²⁶

It can be concluded that the ECJ sets three cumulative requirements for a contract to be a public works contract (Bregman et al., 2017):

1. The public authority has a direct economic interest in the contracted work(s);
2. The public authority demands a construction duty in the contract;
3. The public authority sets requirements that exceed their public planning powers.

2.2.4. Consequences for Dutch practice

When looking at the definition of economic benefit as described by the ECJ in the case *Müller*, there are several implications for Dutch urban area development (Bregman, 2010, pp. 603–608). Public works and areas that are part of an urban area development and that will be transferred to the municipality after delivery of the development (or at a later time) or over which the municipality will have a legal right of use, are assumed to yield an economic benefit to the municipality. This

²⁴ ECJ EG 25 March 2010, Case C-451/08 (*Helmut Müller*) r.o. 60 – 63.

²⁵ ECJ EG 25 March 2010, Case C-451/08 (*Helmut Müller*) r.o. 64.

²⁶ ECJ EG 25 March 2010, Case C-451/08 (*Helmut Müller*) r.o. 68.

benefit to the municipality is also assumed to be present when the municipality profits from rising returns on the commercial development. Additionally, when municipal land is sold below market price, they are assumed to make a financial contribution to the project, this also fall within the definition of an economic benefit as described by the ECJ. If public authorities want to select a partner other than through European procurement, it is therefore important to ensure they do not yield economic benefits related to the contract. To ensure this, public authorities should be careful when setting up a competitive market price and ensure they do not include any clauses in the contract to cream of profits higher than set in the contract (Bregman et al., 2017, p. 183).

Looking at the second requirement for a public works contract, it is important to emphasize the difference between a construction duty and a redelivery notice (Dutch: terugleververplichting). When a construction duty is included in the contract this can lead to the conclusion that the contracting authority yields an economic benefit. When parties however agree that the land will be given back to the contracting authority, if the contractor does not develop the land within the agreed timeframe, it cannot be concluded that the contracting authority yields any economic benefit from the contract (Bregman et al., 2017, p. 183).

Lastly, the term *exercise of urban-planning powers* is of great importance to Dutch urban area development. The explanation of the ECJ confirms that the Dutch land-use plan (Dutch: bestemmingsplan) and the building aesthetics program (Dutch: beeldkwaliteitplan) do not lead to *requirements specified by the contracting authority* as meant in the Directive 2004/18. Additionally, according to Bregman (2010, p. 607) it does not matter if the urban-planning powers are executed through public or through private law. He states that the ECJ has deliberately kept its distance from this discussion. In the Netherlands an important part of the urban-planning powers are executed through contracting instead of through public law. Bregman states that contractual obligations that do not exceed urban planning powers, and are meant as an anticipative measure for a future land-use plan or as an alternative to public law obligations should therefore not be seen as requirements specified by the contracting authority.

2.2.5. Procurement or sale procedure

For municipalities the question remains whether the procedure they design for land allocation is subject to the procurement law, or should be seen as a sale procedure to which the procurement act does not apply. The main answer to this question was given by the European Court of Justice in the case Helmut Müller. When the procedure developed by the municipality for the sale of a piece of land meets the following cumulative criteria, it should be considered a public works contract, and thus should be procured in accordance with the procurement act:

1. The public authority has a direct economic interest in the contracted work(s);
2. The public authority demands a construction duty in the contract;
3. The public authority sets requirements that exceed their public planning powers.

If one of these criteria is not met, the contracting authority selling the piece of land in the form of a competitive sales procedure is in principle not obliged to follow a formal procurement procedure.

There are however two main exceptions. The first exception is mentioned in art. 1.7 sub b Aw 2012 and refers to cases in which a clear cross-border interest (Dutch: duidelijk grensoverschijdend belang) is present. When a clear cross-border interest is present in a selection procedure for municipal land sales this might lead to the necessity to follow procurement law.

The second exception can be found in municipal procurement policy. Many municipalities have a written document in which they have set additional rules and cases in which they will follow the rules of procurement. If such a policy document is present and includes a clause that states that municipality will follow procurement rules, municipalities are in principle obliged to follow these rules. In many cases these municipal procurement policies do however also include a clause that states that in special cases it is possible to deviate from the clause mentioned above (Kersten et al., 2011, p. 69).

Next to the obligatory procurement, it is according to art. 51 lid 6 of the directive (2014/24/EU)²⁷ also possible to follow procurement rules voluntarily. If a contracting authority chooses to follow the procurement rules voluntarily, they are obliged to keep following the procedure till its conclusion²⁸.

When a municipality does not meet the three cumulative criteria as mentioned above and does not have any obligation to select a party in accordance with the municipal procurement policy they are in principle free to choose if they want to follow the rules of procurement when designing a selection procedure for a municipal land sale.

When a public party is not sure whether they need to follow the rules of procurement for a specific competitive land sale procedure they can decide to formally publish the selection procedure. This allows parties to make a formal complaint before the start of the procedure if they think the procedure should have followed European procurement law (Braat & Keulen, 2013). This can prevent complicated and lengthy legal procedures at the end of the procedure.

For the purpose of this thesis it is assumed that parties are aware of the procurement rules and the Müller criteria. It is assumed that the selection procedures for municipal land sale procedures are checked by the municipal legal teams and are not subject to the procurement law.

2.2.6. Unlawful government support

As mentioned in the introductory paragraph of this sub-chapter a second element that is important to consider when designing a municipal land sale procedure is whether no unlawful government support is given to a specific party when awarding the contract.

According to art. 107 of the Treaty on the Functioning of the European Union (TFEU, also; Treaty of Rome) state aid is prohibited. State aid is assumed to be present when the following criteria are met (art. 107 TFEU as discussed in Bregman et al., 2017, pp. 184–186):

- Aid granted by a member state or through state resources in any form whatsoever;
- The aid grants economical favours to certain undertakings or the production of certain goods, which would not have gotten the same economic favours through normal commercial routes;
- The advantage is selective. It benefits a specific undertaking or production of goods;
- The benefit distorts or threatens to distort competition and affects trade between member states.

To prevent the pretence of state aid in land sale procedures governments should ensure that the land is sold at a competitive price. There are two ways in which a competitive price can be set. The first option is an open bid procedure in which multiple parties can make a bid for the land. The second option is to perform an independent valuation of the market value of the land (Bregman et al., 2017, pp. 185–186).

2.2.7. Conclusion on legal framework

This sub-chapter mainly focusses on the uncertainty whether the procurement law should be applied when municipalities sell the piece of land in a competitive selection procedure in which the plot will be awarded to the party with the best plan in combination with the best price.

According to the Helmut Müller case, sale procedures are in principle not subject to rules of procurement. Parties are thus free to design the procedure according to their wishes. However when three cumulative criteria are met, the sale procedure will take the form of a contract of works and thus be subject to the procurement act. These three criteria are:

1. The public authority has a direct economic interest in the contracted work(s);
2. The public authority demands a construction duty in the contract;
3. The public authority sets requirements that exceed their public planning powers.

²⁷ The Dutch legislator was of the opinion that it was not necessary to implement this article in Dutch legislation (van Romburgh, 2017, p. 40)

²⁸ HR 4 April 2003, RZG/ComforMed, NJ 2004, 35

When a contracting authority is not sure whether the European procurement procedures have to be followed, it is advised they carefully test the criteria of the Müller case. In addition, parties should, in the light of the general principles of procurement, ask themselves the question if it might be useful to follow an European procedure on a voluntary basis. When a party does not want to follow the procurement law, formally publishing the selection procedure for the competitive land sale can prevent lengthy complains after the conclusion of the procedure.

For the purpose of this thesis it is assumed that municipalities thoroughly checked if any step in the sale procedure of the municipal land would lead the enactment of the procurement law. It is assumed that procurement law does not apply.

In all cases the municipality needs to make sure the price for the plot is competitive to avoid discussions about unauthorized state aid. When parties make a bid in competition this competitive price is assumed to be set (Braat & Keulen, 2013).

2.2.8. After thoughts

Sale procedures and public law

When the municipality follows a sale procedure there is freedom of contract²⁹. Consequently a municipality is free to select a party in competition or in one-on-one negotiations. However in accordance with article 3:14 BW (Dutch civil code) and fixed jurisdiction, legal entities governed by public law need to take the written and unwritten rules of public law into account. These laws include the principle of prudence and the principle of equal treatment and equality.³⁰ Discussion about how far these principles of prudence and equal treatment go are still ongoing. In a recent ruling by the Dutch court it was stated that the principle of prudence does not imply that a public entity (in the case of the ruling a municipality) should take into account commercial interest in negotiations governed by private law³¹. The principle of equal treatment is only compromised when, without

objective and legitimate grounds, equal cases are not treated equally³². According to the recent court ruling no open procedure is required in a sale procedure. Therefore, the municipality is not obligated to create an equal playing field by setting the same requirements for participating parties when the negotiations with these parties were not taking place at the same time³³. The appeal procedure in this case is still serving.

Scarcity goods

When a sale procedure involves a scarce permit there might be additional rules that public entities need to take into account.³⁴ A sufficient degree of publicity should be present in the procedure to ensure that participating have equal chances in accordance with the formal requirement of equal treatment. The degree of publicity is argued to be sufficient when the information is published timely, when the publication is adequately done and the award criteria and rules are clear, precise and unambiguous³⁵. A permit is defined as a scarcity good when the total of applications exceeds the number of available permits³⁶. Discussion about scarcity goods and the need for open procedures has not been resolved. The question remains whether the transparency needed when selling scarcity permits should also apply on land transactions. According to a note written in reaction on the conclusions of the explanatory statement (In which the question about the need of transparency of scarcity permits was discussed) this is not the case (de Groot & Vidal, 2017). However certainty is not given. Therefore, it is important to keep in mind follow future jurisprudence on this topic.

2.3. Light market selection

To find more effective and cheaper ways for selecting a winning party in municipal land sale procedures new initiatives and ideas are developed to lighten the requirements put on private parties. Although these new methods do

²⁹ ECLI:NL:RBMNE:2018:1116. r.o. 5.2.

³⁰ ECLI:NL:RBMNE:2018:1116. r.o. 5.2.

³¹ ECLI:NL:RBMNE:2018:1116. r.o. 5.3.

³² ECLI:NL:RBMNE:2018:1116. r.o. 5.4.

³³ ECLI:NL:RBMNE:2018:1116. r.o. 5.5.

³⁴ ECLI:NL:RVS:2016:1421 (Conclusie van toelichting)

³⁵ ECLI:NL:RVS:2016:1421 (Conclusie van toelichting)

³⁶ ECLI:NL:RVS:2016:1421. r.o. 2.5.

not yet have a strong scientific basis, in practice they are called 'light market selections'.

2.3.1. What are light market selection?

Light market selection processes aim to lighten the award criteria set in the selection procedure, decreasing cost and time while increasing quality (ten Have (ed.), 2017)(Figure 15).

According to Neprom & Akro Consult (2011) the light market selection procedures are especially useful in complex, extensive and large urban area developments for which making a bid at an early stage is difficult due to the high level of uncertainty. In many cases government parties will have series of dialogue rounds with different parties to explore their vision. These dialogue rounds are seen as consultation rounds with the goal to choose one vision or partner for the development of the urban area (Neprom & Akro Consult, 2011; ten Have (ed.), 2017).

Light market selections are sometimes confusingly referred to as market-selection light. This might suggest that light market selection is a type of selection procedure such as an open or a restricted procedure. This is not the case. The selection procedures refer to the procedures contracting authorities can use in procurement processes. These procedures are fixed in the Dutch procurement law. Light market selection is not a formal selection procedure. Rather it is a method for selection in competitive sale procedures. Light market selection focuses on the how selection criteria and award criteria are shaped. In practice light market selection can refer to either a selection based on a vision or a selection based on the type of partner that the competing party is.

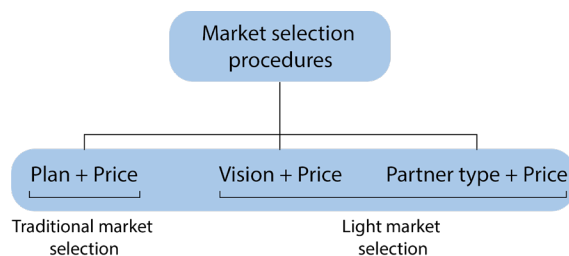


Figure 15: Types of market selection procedures (own illustration).

2.3.2. Vision based selection

In the light market selections based on vision focus is on the vision of competing parties about either the specific plot or the surrounding. Parties do not present a fully worked out plan but rather present

an idea or vision for the tender project. Although it is not described in practice what exactly is meant by 'vision' it can be concluded that the selection will not be based on a design for the area. It does not include renders, or specific plans (Neprom & Akro Consult, 2011).

2.3.3. Partner type based selection

The second type of light market selection is light market selection based on the type of partner the municipality wants to have. In this case the municipality is not looking for a plan or a vision for a project but for a partner with whom they can make a vision and a plan after selection (Neprom & Akro Consult, 2011).

Light market selection based on partner type should not be confused with finding a partner for a Public-Private Partnership. The selected party in light market selections will have a contractual relationship with the municipality. They will be able to buy the land and talk with the municipality about the land price, the vision and the plans for the area after selection has taken place. The light market selection based on partner type should also not be confused with one-on-one contracting. In one-on-one contracting the public party chooses a party they want to work with without a prior selection procedure. In a light market selection a tender procedure is followed in which participating parties can compete and explain what type of party they are. Based on their pitch one party will be selected. With this party the municipality will continue negotiations about future plans (Neprom & Akro Consult, 2011).

In this type of light market selection the selection criteria are very important. The municipality sets selection criteria to describe their ideal partner. In the award criteria a framework is made to explain how the partner is selected. The object of the tender and the subject of the tender in this case become the same (Neprom & Akro Consult, 2011).

2.3.4. Restrictions and potential problems

When a European procurement procedure has to be followed the selection procedures that can be used are restricted, meaning that in most cases only an open procedure, a restricted procedure or a competitive dialogue procedure can be followed. This would mean that series of dialogue rounds in a free form, which are often incorporated in light market selection, cannot be incorporated in the

procedure to improve the vision or understand what type of partner a competing company will be. This can be a possible restriction to designing a light market selection (Kersten et al., 2011). When a selection procedure is however focussed on the sale of the plot, procurement law is not applicable and municipalities have a larger degree of freedom.

Additionally, when the formal principles of procurement are followed, close attention should be paid to the award criteria. The tendering party has to carefully describe how they will make an objective choice between competing parties. It might be difficult to objectively describe criteria that will lead to the best vision or partner selection (Kersten et al., 2011). This is especially important as this already shows to be difficult in current traditional market selections. During a recent discussion about the use of light market selection methods a suggestion was done to take inspiration from job application procedures and use pre-defined competences as objective selection criteria for selecting a partner (Stedelijketransformatie.nl, 2018).

Lastly, Kersten et al. (2011) point out that there might be functional problems in selecting a party based on a vision or the type of party they are. When a partner is selected, agreements will have to be made about commitments to acquire the lands. Sometimes it can still be unclear what agreements should be made about the price of the plot. Without making a plan it will be hard for participating parties to estimate a good price for the land. Also, the question is raised what will happen with disputes or disagreements about the plan development after selection. Kersten et al. (2011) suggest that customized solutions are needed to make light market selection possible.

2.3.5. Conclusion on market selection light.

Light market selection focusses on selecting a partner based on their vision for the project and project area or based on the type of partner they are. When a tendering party wants to design a market selection 'light' they need to consider the design of selection and award criteria. An important question is how a party will be selected. Additionally, it has to be kept in mind that when an assignment has to be procured according to European procurement law the types of selection

procedures that can be followed are limited. This can limit the possibilities of applying light market selection methods in the market.

2.4. Transaction costs of procurement

As already discussed in the introduction to this thesis, little research has been done on the role of transaction costs in selection procedures for public land sale (Buitelaar, 2004; De Schepper et al., 2015; Shahab et al., 2018). Practitioners have voiced concerns about the height of transaction costs in selection procedures. They state that the transaction costs accompanied by current selection procedures are too high. This is affecting the profitability of the building sector and is resulting in a decline of parties that are willing to participate in the procedures (Clahsen, 2017). To look at the possibilities of improving selection procedures for land sales by public parties it is important to get a better understanding of what transaction costs are. Therefore the following section will elaborate on transaction costs economics. Subsequently, a system will be presented to measure transaction costs.

2.4.1. Transaction cost economics (TCE)

Research on transaction costs can be led back to the late 1930s when it was introduced by Ronald Coase, a British economist and author. He defined transaction costs as "the cost of carrying out a transaction by means of exchange on the open market" (Coase, in Soliño & Gago de Santos, 2010; Thomassen et al., 2016). According to Coase' theorem, the bargaining of a contract would be efficient if there were no transaction costs. In practice however transaction costs will always occur since for the contract to be signed, parties have to be informed, motivated and driven to sign. Bargains have to be made to come to an agreement. Coase theorem is nowadays seen as a broad view on the costs that can be considered transaction costs (Soliño & Gago de Santos, 2010).

Since the first mention of transaction costs by Coase the theory has been developed and popularized by Williamson in his book "Markets and hierarchies. Analysis and Antitrust Implications: A study in the Economics of Internal Organisations" (Williamson, 1975, 1998, 2008, 2010) and applied on development theory by Alexander in the article "A transaction-cost theory

of planning” in 1992 (Alexander, 1992 in Buitelaar, 2004). According to these researchers that follow the New Institutional Economics principles (NIE, introduced by Williamson (1975)) the widely used concepts of efficiency and equity in production—that come forth from welfare economics—are influenced by transaction costs and other institutional aspects (Shahab et al., 2018). When transaction costs are high, they can cause a decrease in efficiency of production. Thus according to Buitelaar (2004) transaction costs, from an efficiency point of view, should be seen as a dead weight loss, while minimizing transaction costs can be seen as maximizing process efficiency.

Looking at selection procedures involving land sales, it is important to stress that transaction costs should be seen as social cost for society since these costs have to be recuperated in some way. On the public side most costs will be covered by the sale of land and tax income. On the private side this costs will be discounted in current and future projects. Returns on investments in projects that are won by tendering parties have to be higher to make up for lost tenders in the past.

Before diving deeper into the costs of transactions, first a better understanding of transactions is needed. Williamson (1998) defines a transaction as ‘*the transfer of property rights regarding goods or services*’ (Shahab et al., 2018). Shahab et al. added that ‘*[additional to] goods and services, the transfer of information knowledge and ideas can also be considered as a transaction*’. Although there is no overall consensus in literature on the definition of transaction costs, from the above mentioned definition of transactions it can be derived that transaction costs should be seen as costs that can be associated with the transfer of property rights. It should be noted that many variations of this definition exist. Most of them focus on the exclusive or negative definition of transactions stating that transaction costs are costs that cannot be directly related to the cost of (physical) production (Buitelaar, 2004; Nilsson & Sundqvist and Webster & Lai in Shahab et al., 2018). Other authors however focus on a more inclusive description of transaction costs. Soliño & Gago de Santos (2010) and Thomassen et al. (2016) for example describe transaction costs as “the comparative cost of planning, adapting and monitoring task completion under alternate governance structures”. Shahab et al. (2018) on

the other hand focus on the institutional basis of transaction costs and thus follow a definition introduced by Marshall (2013, in Shahab et al., 2018, p. 188), “transaction costs are the costs of the resources used to: define, establish, maintain use and change institutions and organisations; and define the problems that these institutions and organisations are intended to solve”. Looking specifically at selection procedures transactions cost can be described to “encompass legal, financial and technical advisory costs incurred by both public and private sectors in procurement and operational phases of the project” (De Schepper et al., 2015; Dudkin & Väililä, 2006; Soliño & Gago de Santos, 2010).

In neo-classical economics the market is assumed to be frictionless with perfect information and knowledge. Due to these assumptions the only cost incurred in a project -according to this theory- were production costs (Buitelaar, 2004). New Institutional Economists criticized this economic theory. By assuming frictionless trade and perfect information the topic of transaction costs and institutions is neglected, as transaction costs and institutions come forth from imperfect information and friction in trading. This is one of the reasons why institutional theory has found its way into social science literature over the last decade (Buitelaar, 2004).

Transaction costs economics is based on the assumptions of imperfect and asymmetrically distributed information which creates opportunistic behaviour and exploitation of information asymmetry.

According to De Schepper et al. (2015) the information asymmetries can lead to adverse selection and moral hazard. To overcome this problem vertical integration of the production chain can in some cases be a solution. Williamson (1975) refers to this as *Hierarchies*. In-house production and vertical integration are however not always a solution. It can raise costs due to diseconomies of scale in selection procedures and lack of competition for supplies. Consequently, it does not always increase efficiency.

Therefore Williamson and other advocators of NIE emphasize the importance of institutions. Institutions can according to North (as cited in Shahab et al., 2018) be defined as “rules of the game [that are meant to] reduce uncertainty by

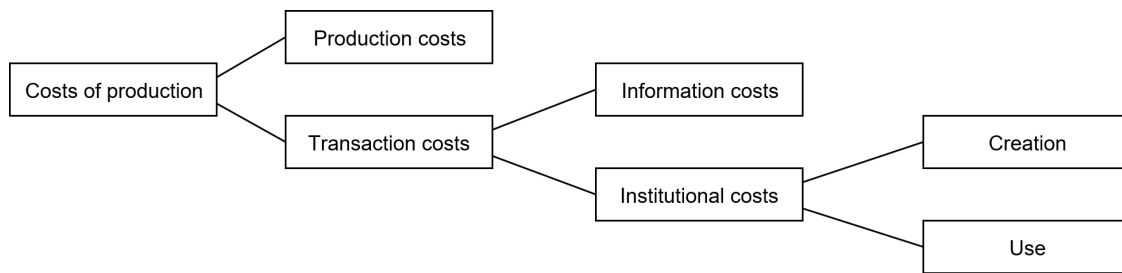


Figure 16: Specifying the cost of the production process (Buitelaar, 2004).

providing structure to everyday life”. Institutions can be used as a means to decrease opportunistic behaviour and the exploitation of information asymmetry.

It is important to find a balance between the creation and use of institutions to reduce transaction costs since institutions themselves also generate transaction costs (Buitelaar, 2004). Buitelaar explains this by distinguishing two kinds of transaction costs: *Information costs*, which are the transaction costs that are incurred due to the lack of knowledge and thus are the costs of finding the right information, and *institutional costs* which are the costs of creating and using an institution (Figure 16).

The design and use of the selection method can be seen as an institutional transaction cost while the search for information in the preparation phase are information transaction costs.

An example to show the difference between institutional transaction costs and information transaction costs is the example of El Paso, Mexico; an area which does not have any institutions in place. The lack of institutions such as a land-use plan creates uncertainty for land owners. They have to acquire information individually to get certainty about the plans of their neighbours (Buitelaar, 2004). Due to the lack of institutions local authorities do not have any plan-making costs and thus no transaction costs. However, the local landowners are faced with considerable transaction cost to acquire information and certainty.

In the previous example, the transaction costs saved by the public party considerably increased the costs for the private party. This emphasizes the importance to look at the transaction costs of all the parties involved: A redistribution of transaction cost does not imply that transaction costs disappear.

Other important aspects of TCE for the purpose of this thesis are the characteristics of transactions that affect the height of transaction costs. Shahab et al. (2018) listed three aspects that are often mentioned in TCE literature: uncertainty, asset specificity and frequency. They also add two additional aspects: the number of agents involved and the involvement of intermediaries (Figure 17).

Uncertainty, as mentioned before is positively related transaction costs. When uncertainty increases due to limited, incomplete or asymmetric information, establishing a contract becomes more difficult, expensive and risky (Saussier, 2000 as cited in Shahab et al., 2018) and thus transaction costs increase.

Asset specificity also positively related to transaction costs. Asset specificity is a “specialised investment that cannot be re-deployed to alternative uses or by alternative users without a loss in productive value” (Williamson as cited in Shahab et al., 2018). Examples of asset specificity are amongst others; brand name capital, dedicated assets, site specific asset and physical asset (Shahab et al., 2018; Williamson, 1998). When asset specificity of an activity or aspect of the process is high this means that it cannot be reused for future projects, meaning it should be considered a transaction cost.

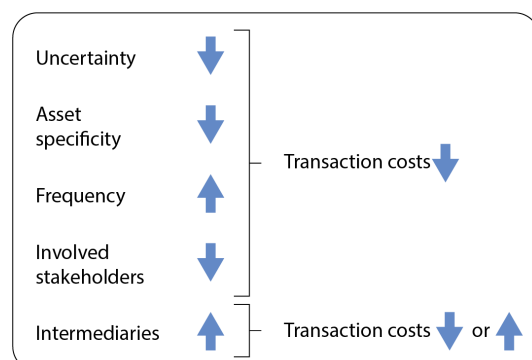


Figure 17: Characteristics of transactions and how they affect transaction costs (own illustration inspired by Shahab et al. (2018)).

The third factor is frequency. When activities are conducted with a higher frequency this can increase efficiency of that activity due to the learning effect. When the efficiency of an activity increases this also decreases the level of transaction cost. Thus, frequency and transaction costs have a negative relation (Shahab et al., 2018).

The fourth aspect that can influence transaction costs are the number of agents involved in an activity. With all other conditions remaining the same, the total transaction costs will rise when more parties are involved. However it should also be noted that the transaction costs per party can go down due to the fact that costs can be shared amongst a higher amount of people (Shahab et al., 2018).

Lastly, Shahab et al. (2018) mention the involvement of intermediaries. Intermediaries are often hired to clear uncertainties and to reduce risks. It is not clear if the involvement of intermediaries has a positive influence on transaction costs. This depends on the height of the fee of the intermediary compared to the decrease in transaction costs. The saved costs should be higher than the fee that has to be paid to the intermediary.

2.4.2. Measuring transaction costs

In this thesis the negative definition of transaction costs will be used and thus all costs other than the costs of physical production will be considered transaction costs. The selection of this definition is mostly a practical choice and is based on the suggested way to identify transaction costs by Buitelaar (2004). Transaction costs are hardly incorporated in economic analysis and are therefore often hard to distinguish. By taking the neo-liberal economics as a starting point, the question can be asked whether the incurred cost can be defined as production costs according to the neo-liberal economic principles. When the answer to this question is *no* it can be established that transaction costs were made. When the production costs are subtracted from the total costs of a project the resources used to locate trading partners and execute transactions will be left. These are the transaction costs of the process (Soliño & Gago de Santos, 2010).

To measure transaction costs Soliño & Gago de Santos (2010) presented a classification

framework, dividing transaction costs in ex-ante transaction costs and ex-post transaction costs.

1. *Ex-ante* (front-end) transaction costs.
 - *Search and information costs*: transaction costs incurred in determining whether the required good is available on the market, its lowest price and so on.
 - *Bargaining costs*: costs required to reach an acceptable agreement with the other party of the transaction, drawing up an appropriate contract.
2. *Ex-post* (back-end) transaction costs.
 - *Policing and enforcement costs*: the costs of ensuring that the other party fulfils the terms of the contract and of taking appropriate action (often through the legal system) if not.

Transaction costs associated with procurement in the context of this paper refer to the *ex-ante* transaction costs as mentioned above. They are comprised of legal, financial and technical advisory costs during procurement phase of a project. (Dudkin & Vällilä, 2006; Soliño & Gago de Santos, 2010). This includes the costs of organizing the bidding process, construction of proposals, negotiation meetings and evaluations of the bids (Thomassen et al., 2016). Ex-post transaction costs will be disregarded for the purpose of this paper since they are imposed after contracting and thus fall outside the research timeframe of this thesis in which a focus is set on the timeframe between project start and contracting.

In his paper Buitelaar (2004) sets out an example on how to distinguish transaction costs. To do so he distinguishes three phases in a development process: the start-up phases (also called the exploration phase), the plan making and the execution phase. A long list of activities is made within every phase. These activities are then classified as either transaction costs or production costs, within the different process phases. The first process phase is an exception. According to Buitelaar the project start-up can be regarded as transaction costs in full. This phase is made up out of many different activities that are difficult to distinguish. However, most of them can be attributed to the exploration of the current information and the future possibilities of the area. This does not fit the description of production costs. Shahab et al. (2018) make a similar

Transaction cost of selection – Municipality	Transaction cost of selection – Winning private party	Transaction cost of selection – Unsuccessful private parties
<ul style="list-style-type: none"> • Internal labour costs • Preparation of tender documents • Property planning • Technical advise • Financial advise • Legal advise • Constructor remuneration 	<ul style="list-style-type: none"> • Internal labour costs • Architect / landscape architect • Technical advise • Financial advise • Legal advise • subcontractors • Rendering / computer graphics 	<ul style="list-style-type: none"> • All cost of participation

Table 4: Transaction costs occurring during tendering (Thomassen et al., 2016).

suggestion to identify transaction costs but give additional steps to get a better understanding of the influencing factors of transaction costs. Besides identifying the different activities in the process, the actors involved in the specific activities should also be identified. When actors and activities are identified also the factors that influence the activities (uncertainty, asset specificity, frequency, number of agents and involvement of intermediaries) can be analysed.

Additionally, Thomassen et al. (2016) have identified specific groups of transaction costs in selection procedures (Table 4). The listing of these transaction cost groups might help to identify the transaction costs within a project. However, it should be noted that depending on the process, transaction cost groups should be added or deleted from the list.

Lastly, a distinction has to be made between the winning party in the selection process and the losing parties. Due to the often high asset specificity of these procedures cost incurred for the project cannot be re-allocated to other projects. Therefore all project costs that are made by the losing parties should be considered transaction costs (Thomassen et al., 2016).

2.4.3. Conclusion on transaction costs

Transaction costs can be defined as all costs that are not related to the production. They include costs of gathering information and using institutions such as a procurement or selection procedure. Transaction costs will always exist. However, high transaction costs can decrease the efficiency of a process and therefore should be kept to a minimum. Moreover, the transaction costs that are made by losing parties in selection procedures will be discounted over future

projects. This will increase the costs involved in these projects and the social costs of development. In literature five elements can be found that influence transaction costs. These are: uncertainty, asset specificity, frequency, the number of agents involved and the number of intermediaries involved.

Several authors (Buitelaar, 2004; Shahab et al., 2018; Thomassen et al., 2016) have attempted to set a framework which helps to identify transaction costs. Due to the complexity of selection processes it becomes evident that the identification of transaction costs is not an easy task, especially because the costs are often numerous and ill-specified. In order to make an attempt to identify the transaction costs in a process various simplification therefore have to be made. Most authors divide the project process in several phases to which the activities of the process can be allocated. Also simplified definitions of TCE are taken as a starting point of exploration.

For the identification of transaction costs in the cases in this thesis, the transaction cost groups used by Thomassen et al. (2016) will be used as an orientation point. Additionally, the framework of Buitelaar (2004) will be used to weigh the different costs. Furthermore, an overview of the involved stakeholders and their influence on the project will be made, as suggested by Shahab et al. (2018) to get a better understanding of the transaction cost allocation.

2.5. Literature discussion

From the literature review it can be conducted that selection procedures should not only be accelerated and more effective, they should also be less cost intensive to keep up with the changing

environment and rising complexity of development projects. High quality demands set by municipalities together with rising building costs can result in expensive and time consuming procurement procedures. This is a reason for private parties to become more critical towards the selection processes in which they want to compete. In some cases, they decide to stop competing in selection procedures all-together. The change towards contractual relations in combination with municipal land sale procedures and the new environment and planning act create opportunities if used in the right way.

The current shift towards more facilitating municipal policy, in which they are not actively involved in the development of plots, creates an interesting discussion about the use of tools other than rules and regulations to steer and influence project outcome, such as activating and motivating developers. Light market selections fit into this vision of creating less restrictions. These procedures focus on creating more freedom and flexibility for developers to develop their concept with less municipal constraints and requirements. Transaction costs might decrease due to the limited (asset specific) demands which collides with the goal of this research.

However, there are also downsides to a more distant involvement of municipalities. They will in the end make the choice to whom they will sell the land. Setting less rules can be a cause for uncertainty. From this perspective it can be argued that traditional procedures in which a clear rule of demands and restraints is set up might be favourable to reduce uncertainty and connected transaction cost. The question for municipalities thus is about balancing certainty and flexibility in the process.

From this the conclusion is drawn that municipalities should clearly formulate their goals


and the interests they need to represent. A critical look should be taken at what is needed to get to a successful development. Additionally, municipalities are advised to take a clear position to be either activity involved in the urban area development or take a more facilitating role. When a facilitating role is taken some shaping and controlling policy tools will be lost because the municipality is no long taking the development decisions. Policy tools in facilitating policy focus more on capacity building and collaboration which makes it often harder to keep control. Formulating clear goals and taking a clear position can according to transaction cost theory reduce uncertainty and thus transaction costs.

Lastly, as discussed in sub-chapter 2.2 municipalities should be careful when defining the assignment for the selection process for municipal land sale to ensure the assignment is not subject to procurement law. Within the boundaries of procurement law uncertainty exists about the question whether vision based selection and partner type based selection are allowed.

From the literature study it is concluded that, to answer the main research question two separate questions should be answered:

3. Which selection procedure for municipal land sale should be used to reach the objective of minimizing transaction costs?
4. How can the chosen procedure be improved compared to current practice?

In this chapter it has become clear that light market selection procedures might not always be better than traditional market selection procedures or other sale procedures. This underlines the importance of answering the first question mentioned above before being able to draw any conclusion on improving a selection procedure.



3. EMPIRICAL RESEERACH



Figure 18: Winning design 5TRACKS. Coulissen West, Breda (www.5tracksbreda.com)

PROJECT INFORMATION

CITY:	BREDA
LOCATION:	Railway
FUNCTION:	Mixed use
FOCUS:	Business
SQ METERS	40.000 GFA
NAME WINNING PLAN:	5Tracks
NAME WINNER:	TBI
# COMPETING PARTIES:	
ROUND 1	9
ROUND 2	4*
PROCEDURE	Free
*One dropped out	

3.1. Coulissen West, Breda

This chapter is a summary of the complete case study that can be found in Appendix 11.3.

Coulissen West is part of one of the biggest urban area re-developments in the Southern part of the Netherlands. Parties were asked to develop a vision for the plot and surrounding area. Municipal goals and wishes were deliberately kept vague and no hard demands were set to give competing parties flexibility (Gemeente Breda, 2015).

3.1.1. Process description

The process of this competitive sale procedure can be split up in three phases:

- The preparation phase (6 months);
- The bid phase (8 months);
- The contract phase (2,5 months).

During the preparation phase an informational brochure was developed and a market consultation was held with 12 developing parties to get a better understanding of the important aspects of the assignment. With the help of this consultation a process letter, legal participation requirements and a concept letter of intent were drawn up. Additionally, a data room was created on which parties could find all the necessary information.

The bid phase consisted of two rounds. In the first round the nine competing parties that signed up in the open procedure were asked to supply a terse vision for the development. Four parties were selected for the second round in which a design for the plot had to be made. In this round three dialogue sessions were held. One of the four competing parties dropped out at the beginning of the second round. One winner was chosen and losing parties were invited for an evaluation. In the contract phase the final contract was drawn up and the letter of intent was signed by the winning party.

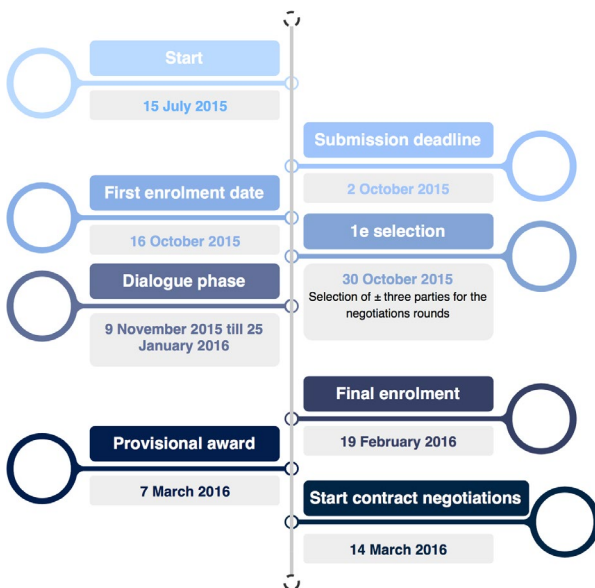


Figure 19: Timeframe selection procedure Coulissen West (own illustration).

A complete timeline of the process can be found in Figure 19.

In the second round points were awarded on three aspects:

- Program & conceptual vision 20%
- Spatial and functional translation of conceptual vision 40%
- Land value and realty check/ Robustness 40%

The winning party got the highest score both on price and quality.

3.1.2. Cost implications

Municipal costs

Costs of tendering public party	€ 333.800	Labour, Plan costs, process advise and other
Remuneration costs	€ 50,000	2x25.000 euros for non-winning parties
Total TC	€ 383,000	

The municipality had a good overview of the costs and spend around 383,300 euros on the procedure including internal hours. The spend costs according to the municipality are highly depended on the duration of the procedure. This project had to be started from scratch, thus taking considerably long compared to other municipal land sale procedures in Breda. Additional costs were also made due the inclusion of a remuneration fee of 25,000 euros for the parties in the second round who did not win.

Private party costs

Average costs of tendering private parties	€ 117,000	Design, advise and illustration & formatting
Design costs	€ - [REDACTED]	Subtracted for winning party
Remuneration fee per party	€ - 25,000	Subtracted for non-winning parties
Total TC	€ 226,000	3 parties

For private parties the combined transaction costs are estimated at 226,000 euro. These costs are relatively low because for the non-winning party the remuneration fee has to be subtracted from

the cost and for the winning party the design costs are not counted as transaction costs. Additionally internal labour costs are not included in this calculation because the interviewed private party did not have those numbers.

One of the interviewees (Interviewee 2, developer) argued that under current market conditions even though the transaction costs seem relatively low, development would not have been possible with the same conditions.

3.1.3. Process time frame

The most important difference in experience between public and private parties concerned the time intensity of the process.

The process took a total of 1,5 years. The municipality was content with the timeframe and intensity of the process. They stated that the dialogue rounds were seen as an added value to discuss the plans of the competing parties.

Private parties were less content with the time frame. Although dialogue rounds, according to interviewee 2, led to constructive conversations they were very time intensive and experienced as extra deadlines with which parties had to comply.

3.1.4. Strengths and weaknesses

Several strengths and weakness of the process were underlined by the interviewed parties.

- The municipality asked for a sketch design as a final product. According to private parties they had to deliver more than that.
- Public and private parties agreed that there are opportunities in setting clearer demarcations to avoid that parties do too much work.
- The pre-selection process was experienced as a positive aspect by private parties to select a limited amount of parties for the second round to reduce total transaction costs.
- An important insight to the municipality was that private parties need permission of the board of the company to compete. This permission will not be given if municipal demands or goals are unrealistic.
- According to Interviewee 2 a good balance between costs, winning chances, time intensity and reality of the demands is needed for parties to compete.



Figure 20: District E, winning plan land sale procedure Railway district, Eindhoven (source: <https://goo.gl/JEfPk1>).

PROJECT INFORMATION

CITY:	Eindhoven
LOCATION:	Railway
FUNCTION:	Mixed use
SQ METERS	70.000 GFA
NAME WINNING PLAN:	District E
NAME WINNER:	AMVEST
# COMPETING PARTIES:	
ROUND 1	3
PROCEDURE	Form Free

3.2. District E, Eindhoven

This chapter is a summary of the complete case study that can be found in Appendix 11.4.

District E is the name of the winning plan in the selection procedure for the sale of the central square in the railway district in Eindhoven. The municipal vision focusses on an international hotspot with health and welfare as central functions. The towers that can be built on the plot are meant for living. On the ground floors shops and other business functions can be situate (ZRI, 2016a).

3.2.1. Process description

Also this process can be split up in three phases:

- The preparation phase;
- The bid phase;
- The contract phase.

Different from the procedure of Coulissen West, no market consultation was conducted. The preparation phase was used to develop an ambition framework and a guideline for the process.

During the preparation phase three parties were selected to compete in the procedure. Only the invited three parties were allowed to compete. They were expected to participate in two dialogue rounds to discuss their plans. Points were awarded on five aspects with a maximum of 120 points (ZRI, 2016b):

- | | |
|------------------------------|-----------|
| • Land bid | 20 points |
| • Spatial design and program | 40 points |
| • Area vision | 30 points |
| • Social renting program | 20 points |
| • Interaction | 20 points |

Points for land price were awarded with a relative system in which the highest bidder got 20 points. Points for the other criteria were scored with an absolute scoring system. The jury that awarded the points consisted of municipal employees and citizens.

A complete timeline of the process can be found in Figure 21.

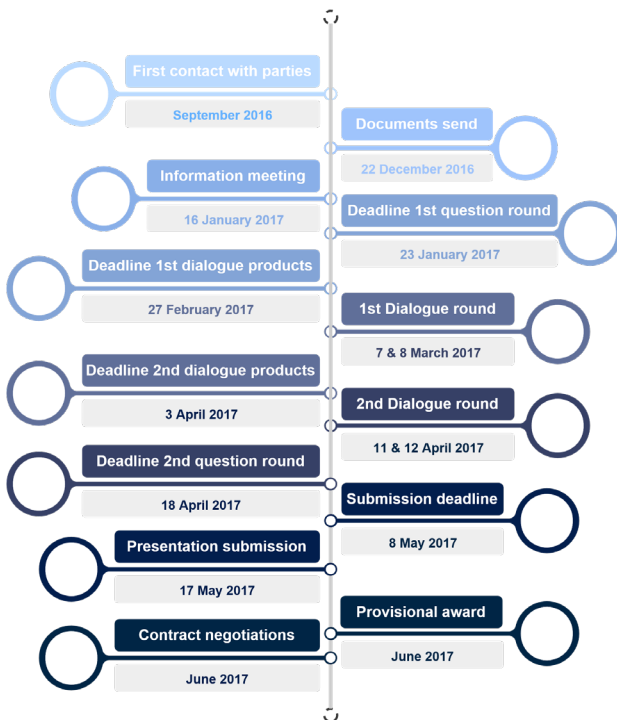


Figure 21: Timeframe selection procedure District E (own illustration).

3.2.2. Cost implications

Municipal costs

Costs of tendering public party	€ ?	Costs unknown
Remuneration costs	€ 0	No remuneration was provided
Total TC	€ 200,000	Rough estimate Real costs unknown

The municipality has no clear overview of the cost they spent on the selection procedure. A rough estimate is that around 200.000 euro was spent on internal labour cost. Other costs are unclear. The municipality argued that even if municipal costs would be clear this would not give a complete overview since many third parties participated on voluntary basis.

No remuneration fee was provided to the parties that did not win. It is argued by the municipality that the costs a private party make is the private risk of competition.

Private party costs

Average costs of tendering private parties	€ 331,000	Design, advise and illustration & formatting
Design costs	€ - [REDACTED]	For winning party
Total TC	€ 813,000	

The transaction cost of the three parties combined are estimated at 813,000 euros. Equal to the first case no information is present about the internal labour costs since hours are not kept.

For the winning party the design costs are not transaction costs, they have thus been subtracted from the total amount.

According to the interviewed private parties costs saving could have been accomplished when the demands had been less specific. Many drawings and details were of little relevance and had to be remade by the winning party at a later stage after contracting when more information was known.

3.2.3. Process time frame

The time frame for this selection procedure was limited to 6 months. Both public and private

parties experienced the time frame as a positive aspects in the process. On the other hand the time intensity was mentioned as a negative point by developing parties. The intensity of the procedure put large pressure on the working capacity of competing companies.

3.2.4. Strengths and weaknesses

Also in this process several strengths and weakness of the process were underlined by the interviewed parties.

- The selection of three parties at the beginning of the process was mentioned as a strength by both public and private parties.
- Transparency around the choice for the three specific development companies could be improved according to private interviewees.
- The municipality was positive about the dialogue rounds.
- Experiences of developers with the dialogue rounds differed. Parties were free to use the dialogue as they wished, however one of the parties felt it was too much focussed on providing information to the municipality instead of on getting information from the municipality.
- The idea of a split in the scoring process between quality and price was viewed on positively by all parties. However the result was looked on less favourably since points for price were related on a relative scale an points for quality on an absolute scale.
- A second point of improvement focuses on the provision of information. According to private parties important pieces of new information were send during the procedure making it necessary to make last minute changes.
- According to private parties improvements can also be made in terms of risk allocation. Some risks assigned to private parties were seen as unacceptable.
- The municipality mentioned procurement law as a final treat for the used procedures. Careful planning was needed to ensure only a vision for the area was asked and not a design for the surrounding area since this would have resulted in an assignment that would have been subject to the procurement law.

3.3. Case study findings

From the case studies several aspects stand out and conclusions can be drawn. In this sub-chapter the findings from the cases will be discussed and some main and important elements will be highlighted in the conclusion.

3.3.1. Findings from Coulissen west

The first point of attention in the case of Coulissen West is that the municipality together with their advisor actively tried to get the number of competitors down as soon as possible with minimum effort. Although the intention was there this goal was not entirely reached. The municipality mentioned that although they had asked for a vision that had to be written down in a small number of pages parties still handed in big booklets with information. Improvements can be made in the formulation of the requirements. Setting harder demarcations and restrictions to requirements can prevent private parties from doing too much work. This will also benefit the municipality who will not have to go through the extensive plans. This can lead to a reduction of transaction costs at the private side.

Additionally, the interviewed private party emphasized the intensity of the process was too high. A second opportunity therefore lays in creating a process that is less time consuming and intensive. Setting less demands can decrease the amount of work that has to be done by parties. However this points also connects to the first point. When clear demarcations are set parties will not do too much and unnecessary work. For the municipality it is important to consider how much details are needed to make a bid.

3.3.2. Findings District E

Both the public and private parties involved in the selection procedure of District E were positive about the selection of three parties from the start of the procedure. The public party was ensured of three parties that would go all the way to design an impressive plan and developers were positive about their winning chances. Additionally parties mentioned that the process steps and question of the municipality were clear. Selecting three parties can however also have a downside, as was the case in the this selection process. The participating developers agreed that they would have been less happy if they had not been asked to participate. Especially because it was not completely clear how parties were chosen. The municipal organs that made this choice had a

thorough deliberation but this was not made public. One of the elements that could thus be improved is the transparency in this process.

A second problem that was encountered during the selection was connected to the rating procedure. As discussed the rating of price was done relatively. Therefore it was possible for one party to get 100% of the points on price. Quality was rated on an absolute scale. In this case differences were much smaller and due to the school-system grading none of the parties got all the points. This system can enhance calculative behaviour and increases uncertainty. In future selection procedures this process has to be thoroughly looked at.

Another complaint of developers was that important knowledge became apparent during the process leading to the necessity to make design changes. This is a costly process and stresses the importance of having all the right documentation ready at the start of the process.

A fourth opportunity is present in the use of dialogue rounds. Discussing mutual expectations about the dialogue can avoid confusion and ensure an effective use of the tool.

Overall it can be concluded that parties were positive about the winning chances and the duration of the project. In terms of costs of the procedure, time intensity and reasonability of demands improvements can still be made.

3.3.3. Conclusion about the case studies

From the cases different elements can be distinguished that would improve the procedure and lower the transaction costs of selection. Those elements are in multiple ways related to the five elements to decrease transaction costs as mentioned in Figure 17.

Due to *uncertainty* about the outcome and because parties want to do better than other they will do more than what is asked of them. By demarcating demands certainty is created leading to less transaction costs. Additionally, when looking at the dialogue rounds content-wise parties were really positive because

dialogue helped to get the assignment clear. However dialogue should be used for the purpose of sharing information. If the sharing of information is not (completely) possible the dialogue rounds lose part of their value and become deadline moments to present the progress that has been made.

In both cases complains were voiced about elements in the procedure that were to specific and not relevant for awarding but that did have to be submitted. By setting less *asset specific* demands the transaction costs can be brought down. In order to do so municipalities have to have a clear understanding of what they are asking, but more importantly, why.

In the case of District E, parties were very positive about their winning chances. This was mostly due

to the fact that the *number of competing parties* was low.

No conclusions can be drawn about the *frequency*, however one of the municipalities stated that they deliberately *hired an advisor* with experience. Although this costs money it does save costs because the municipality would otherwise have to plan the procedure themselves and with little experience this would cost time and thus money. On the other side a critical note was voiced by in case 2 by one of the developers who stated that the advisor made several mistakes in the documentation that was sent. This led to extra confusing. These examples underline that an advisor can both increase and decrease transaction costs.

3.4. Additional findings

During interviews and discussions with municipal officials and developers several examples were mentioned about either good or bad elements in selection procedures. Although these elements did not relate to the cases described in the previous paragraphs, they did give an understanding of what parties appreciate and do not appreciate in selection procedures. The examples can be subdivided in three categories which will be discussed below.

3.4.1. Unreasonable demands and promises

According to several private party interviewees the demands and ambitions of municipalities are in some cases unrealistic and too farfetched (Interviewee 2, 6, 7). Interviewees gave three extreme examples of how far the demands can go. Unfortunately, these examples cannot be cross-checked with written documentations the examples were however cross-checked with other interviewees.

In one project the municipality demanded that the party winning the tender would take over all future asbestos claims from people that had worked and lived in the building that was on the plot at the moment of sale. Although the risks of claims can be argued to be low it should be questioned if this is a fair demand and whether municipalities should be able to wave away claims related to buildings that were owned by them at the time problems might have occurred. When claims are put on the company that buys the plot this can in extreme cases lead to bankruptcy. Additionally, the parties that agree to these kinds of conditions are parties willing to take a lot of

risks. Setting these kinds of requirements therefore will attract a certain type of partner. The municipality should wonder if they want this type of partner. Furthermore, from their public function it should be asked whether they should allow for this kind of risk taking to take place.

An second example was about what parties are willing to promise to meet the wishes of the municipalities. One of the interviewees (Interviewee 2) came up with an example where a party promised that people would live longer if they were living in the area they had designed. Asking for a desired quality that is unrealistic can thus lead to unrealistic offers which parties will not always be able to provide.

Lastly, an example of a procurement of a prime development location in Amsterdam was given. The procedure was open but a fast pre-selection led to a total of four parties in the second round. In this second round it became clear that the tender included a construction duty. This construction duty is not a problem when a seller is in the picture however in a tender phase this is rarely the case. Winning a selection procedure with a construction duty without a certain buyer

is a big risk to developers. In this case it led to the result that only one of the four parties made a final offer. The other parties withdrew from the competition. The offer made by the party that did submit a plan did not include a big amount of office space -which was preferred by the municipality- but largely consisted of housing since the risks of housing are lower. Even though the market was good the tender still failed. The municipality ended up with a plan that did not fit their wishes and did not have a choice between different plans.

3.4.2. Winning chances

Although the number of competing parties in the analysed cases was limited, private party interviewees still stress the winning chances and thus the number of parties competing are important for their choice to compete or not. In one of the cases described in the previous paragraphs municipalities consciously chose to select three parties of whom they asked to design a plan (ZRI, 2016b). This was considered positive by the competing parties. In the other case the tender was split up into a first and a second round; the pre-selection and the selection round. The first round was open to all potential bidders. Based on the vision provided in this round four parties were selected for the second round (van de Griend & Kievits, 2016). The advantage of a preselection is that parties that want to compete get an equal chance to do so. However, as was discussed in the case, municipalities should be aware of what they ask of parties in the pre-selection.

The emphasis of private party interviewees on their winning chances was backed by an example in which municipalities had designed open procedures in which they asked a high number of parties to make a plan. If ten parties make a plan, this will mean that nine plans will be thrown in the bin after the competition. Creating high costs.

One of the private party interviewees (Interviewee 7, developer) mentioned a situation in which they participated in a tender in which approximately three parties would be selected in the pre-selection phase to design a plan. Based on this information the party decided to compete in the tender. In the pre-selection phase the municipality however decided not to select three parties but to select five parties for the second

round. This was unacceptable to the competing party. His winning chances were significantly brought down. While he had anticipated on a winning chance of 33 percent this now had been brought back to 20 percent. This considerably increased the risk of competing but since they had already started the procedure there was no way of going back.

3.4.3. Different procedures for different situations

One of the municipal officials with whom an interview was held explained his considerations when choosing the right selection procedure for the right place. He emphasized that every situation is different and thus asks for a different approach (Interviewee 11, municipality). He described a railway area in which three different plots were sold using different procedures.

For the first plot a one-on-one selection was done. The municipality wanted to include this plot in their redevelopment plans but it belonged to a private party. Therefore the municipality decided to work together with a developer who had made an unsolicited proposal to make a plan that they could present to the owner of the plot. The owner liked this plan and thus sold the plot with the agreement that they could come back to the building after it was finished. In this situation the municipality was not in a position to design a tender because they had no ownership.

For the second plot the municipality decided to design a light market selection procedure. This plot was to be developed just after the economic crisis of 2008. Risks were high and investment possibilities limited. Also, the land on which the development had to be made had multiple owners. Therefore parties were asked to explain what they wanted to do with the plot, with whom they wanted to do it and how they wanted to do this in a global way. No bids were asked in this phase. Based on the stories of the different participating parties one party was selected with whom the municipality entered an exclusive process in which the plans were developed further and in which the residual land value was calculated.

The third procedure took the form of a land sale through dialogue as was also used in the case of Coulissen West. The tendering parties (municipality and NS) agreed that they wanted to

be involved in the process in which they could form the plans in dialogue with the competing parties. The number of competing parties in this case was quickly brought down from 23 interested parties to three parties with whom dialogue rounds were held. In this case the economic situation had improved. The municipality thus had more room to navigate and steer in developments.

Other interviewed parties also had different reasons for choosing different procedures depending on the time, the place and the situation of the process. Although many parties could list which procedure they favoured, none of them could answer the question of what their ideal selection procedure would look like. What can be concluded from this is that different situations ask for different solutions. These examples show that there is not one way to do it right. Rather, the procedure should be designed to fit the specific situation.

3.5. Conclusion on empirical research

The first conclusion that should be drawn from studying different cases and talking to different interviewees is that there are many elements in the different procedures that are largely appreciated by the competing parties. However, a lot of room is left for improvement.

- Set demands by municipalities were not always considered useful to competing parties.

In the interviews several examples were given of seemingly useless elements in the procedure. Almost all developing parties could give examples of work they did for a procedure that did not add to the quality of the plan that was asked by municipalities. Often named examples were the design of detailed floor plans and technical drawings.

- Cost saving initiatives do not always result in minimal transaction costs.

Even though municipalities often do take measures to decrease the transaction costs in selection procedures, this does not always yield results. In the case of District E, costs were indeed saved by only asking three parties to develop a

plan, however due to the high requirements and many demands the three selected parties made a lot of costs. Improvements can still be made to decrease transaction costs by taking a more critical look at those requirements.

- Time investment also results in transaction costs.

Additional to the transaction cost investments parties made, also a time-investment had to be made both by public and private parties. This time investment was in most cases not translated into costs. Wages and hours of people contributing to the procedures were not calculated or written down. This is an interesting finding especially because several parties argued that the time-intensity of the procedures was too high.

- Winning chances and reality of demands influence the choice of private parties to compete or not.

Next to the time investment, costs and profitability there turned out to be two elements that were important to competing developers: the winning chances and the reality of the demands set by the municipalities. The parties that were interviewed about the case studies all argued that they were happy that only three parties were selected for the final round. At the same time they could however give many examples in which all parties are part of the competition until awarding. This was viewed as less favourable.

An unexpected finding was that developers thoroughly look at the demands that municipalities set. Many examples were given in which these demands were viewed as unrealistic. This can be a reason for parties to not compete in specific selection procedures.

- There is no ideal or standard selection procedure.

Looking at the procedures that are currently being used in in practice, it can be concluded that there is no ideal standard selection procedure for municipal land sale. Although many parties have selection procedures which they favour over others, none of the could list an optimal procedure for every case.

4. SYNTHESIS



4. Synthesis

4.1. The current situation

4.1.1. Wishes and ambitions of municipalities

From the case studies and interviews it can be derived that municipalities have different wishes and ambitions, resulting in different selection procedures for municipal land sales. To one of the interviewees the choice for a selection procedure instead of a flat land sale was highly dependent on the positioning of a plot in the city (Interviewee 1, municipality) while for another interviewee a flat sale would almost never be an option (Interviewee 5, municipality). Both interviewees however agreed that especially for plots situated in the most densely populated areas of the city - at important and key locations such as in railway districts, around public squares or in flag ship area's that are important for the image of the city - high quality is important. The interviewed municipal employees pointed out that the quality can be heightened when competition is created. Additionally, the interviewed municipal employees (1, 5 & 11) agreed that dialogue rounds in the competition process can be of added value to increasing this quality of the submitted plans. The dialogue rounds, according to the interviewees, provide the opportunity to explain the municipal vision and ambitions and help to create visibly better plans. The interviewees all seemed to be aware of the social costs involved in the procedures they chose. However they all took other steps to limit those costs.

Additional to the quality requirements (for example: percentage social rent, openness of the building, etcetera) interviewed municipalities also had demands concerning the minimal land value offered by competing parties. In the studied cases municipalities allocated different values to the land price offered by public parties in the selection procedures. Between 20 to 30 percent of the points are rewarded for the price while 70 to 80 percent of the points are rewarded for the quality of the design. All interviewed public parties agreed that quality offered should weigh higher than the offered land value (Interviewee, 1, 5 & 11). However, they had different strategies concerning the minimal value that they wanted to get for the plots. In the first case study the minimum price was

not communicated with parties but listed at the notary. In the second case study the minimum price was communicated up front. In another example given by one of the interviewees price was not at all part of the selection (Interviewee 11). One of the parties mentioned that they wanted to at least get the book value for the plot (Interviewee 1, municipal employee).

Thus, looking at the current demands of public parties in competitive municipal land sale procedures it can be concluded that for most municipalities quality is of relatively high importance compared to the price. The comparative importance of price and quality can however differ within bandwidths (Figure 22).

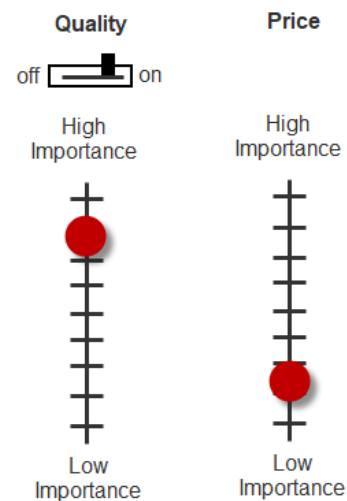


Figure 22: Municipal criteria for design of land sale procedures (own illustration).

Two important notes should be made. First, it should be noted that municipalities can decide to select a party based only on price. The interviewed municipalities however seemed reluctant to do so. Second, in most of the discussed cases a minimum price for the land was pre-determined. Only in one example discussed during the interviews price did not play any role in the selection and was calculated after selection based on a residual land value calculation.

4.1.2. Needs and wishes of private parties

The prime objective of private parties in urban area development is to make a profit (Interviewee 3, developer). Therefore, the choice to compete in selection procedures always involves weighing the

alternatives. Alternatives, such as making unsolicited proposals and finding one-on-one opportunities are in some cases viewed as more profitable than competitive selection procedures. They bare less risks and are often less time intensive. This alternative to market selection was also mentioned earlier by Heurkens & de Zeeuw (2017) who suggested that it was a way to avoid costly, complex and time-consuming selection processes. The choice to only compete in a limited amount of tenders and only in special cases compromises the effectiveness of tenders since competition goes down when parties decide to stop competing. The fear of authors such as De Schepper et al. (2015); that the amount of bidders in selection procedures might decrease, thus seems to become reality.

From the interviews four main questions were derived that the interviewed parties asked themselves when considering to compete in a selection procedure:

- What are the chances of winning this selection?
- What are the costs of competing in the selection procedure?
- What is the intensity of the procedure?
- How realistic are the demands, conditions and ambitions set by the tendering party?

Chances to win

The chances to win a selection depend on both internal and external factors. Internal factors can for example be knowledge about the area or expertise and experience with a certain type of developments (Interviewee 2, developer). If those internal elements are present a developing party will look at the external factors that influence the chances of winning a project. These chances are to a high extent related to the type of selection procedure that is chosen by the tendering party. Questions such as how many parties will compete in the pre-selection for the selection and how many parties will be selected in the pre-selection are important. If the procedure is open and thirty parties apply to compete, chances are much lower than when there are just three parties due to a restricted procedure.

Costs of competition

The second element that is weighed are the costs of competing in the selection procedure. To the

losing parties these costs should be considered transaction cost as described in paragraph 4.4. These costs depend on several aspects. The first origin of high costs related to the selection procedure are the demands and ambitions set by the municipality. If municipalities ask (too) much, or their demands are not completely clear, private parties will invest a lot of money which is not always well spend. During the interviews several examples were given of demands that were seen as unrealistic or disproportional. A second origin of the high cost is that once parties make the choice to compete they have to go all the way. If they don't do everything possible while other parties do, their chance of winning will diminish, and all the money spent will be lost (Interviewee 10, developer). Developers do agree that this is not only a problem created by the demands of municipalities and the demands that are set in the tender. Developers make each other crazy by always wanting to do more and better than the others. The fact that the intensity and costs of tendering procedures for municipal land sales increase is thus at least partly caused by their own hand (Interviewees 2 & 3, developers). A third origin of (rising) costs is the recovering economic market. Currently, the real estate market is flourishing meaning that architects and constructors, after a long time of economic instability have sufficient (and in many case too much) work. They can ask higher prices. This can make plan development more expensive. In the years of economic downfall, it was often possible to make a no-cure no pay deal with an architect, so he would bear his own risks and get paid when a tender was won. Currently however those kinds of deals are not possible anymore due to the rising amount of work, the rising prices and the rising scarcity of available architects and (sub-)contractors (Interviewee 2 & 6, developers). One of the interviewees even stated they would not compete in the same tenders anymore as a few years ago. One of the reasons for this was that the costs would no longer weight up to the benefits (Interviewee 2, developer).

Intensity of the process

The third element that is weighted by developers who want to compete in a tender is the intensity of the process and the total time budgeted for the process. Interviewee 2 (developer) stated that the intensity of tender projects especially when dialogue rounds are included are too high. Too many internal hours have to be spent to be able to reach the demands and ambitions of the tendering party. Although the interviewee pointed out that dialogue rounds were of added value because they create clarity they also should be considered additional deadlines in which the developer had to impress the municipality. Interviewee 3 also mentioned this intensity problem. The deadlines set in selection procedures by municipalities according to this interviewee are often too optimistic. Making it impossible to fulfil the set demands and ambitions and often leading to delays after the awarding of the contract. Interviewee 6 (developer) additionally stated that the dialogue rounds are only useful when they are used to discuss the municipal vision. When dialogue is focused on the plans parties are making the interaction moments might feel like deadlines because every time a new presentation has to be made. Moreover, when plans are shared during the process it can happen that, although not intended, ideas might reach the other competing parties (Interviewee 6, developer).

Realistic demands and conditions

The last element that is weighted by interviewed developers are the reality of conditions and demands that need to be considered for awarding the contract. Several developers that were interviewed mentioned that the demands of tendering parties are sometimes disproportional and go beyond their job as a developer (Interviewee 2, 3 & 6, developers). On the other hand, competing parties themselves also feel that they need to offer more and more to win a selection procedure. Several examples of extreme demands were given in paragraph 3.4.1. Although these examples are extremes, the level of reality is an important consideration for developers to compete in a tender or not (interviewee 2, 3 & 10, developers).

Thus, looking at the current demands of private parties it can be concluded that the above mentioned five elements: profitability, winning

chances, costs, intensity and realistic demands should be balanced and fair for parties to be willing to compete in a selection procedure. Equal to the needs of the municipality, the needs of private parties can vary within a bandwidth (Figure 23).

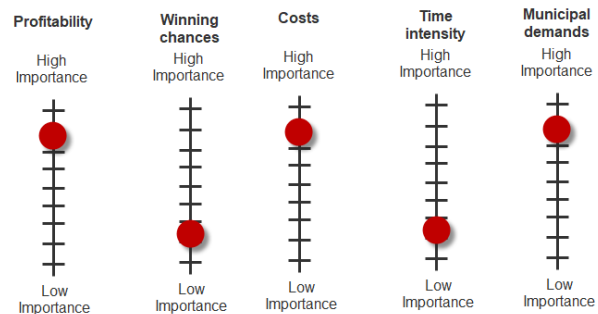


Figure 23: Private party criteria to participate in selection procedures or not (own illustration).

4.1.3. The current competitive land sale procedures

Looking at the structure of current selection procedures it is not possible to describe one type of selection. Every selection procedure is different and depends largely on choices of the municipality. These choices are mostly based on the municipal goals for the area. Therefore, it can be said that the current processes can be derived from the demands of the public parties which are based on the desired price and the desired quality that municipalities have set.

Some municipalities prefer open processes in which all parties can subscribe for the tender, leading to high numbers of plan submissions. Other municipalities restrict the number of parties through a pre-selection or even skip this whole pre-selection and directly ask three parties to make a design. Additionally, the level of elaboration differs widely. Some public parties ask for a preliminary design while others actively try to reduce the workload for private parties by asking a vision or sketch design.

Overall it can be concluded that the focus of municipalities during the design of the selection process is on the balance between price and quality and secondly on how this quality should be defined. In both studied cases this led to a procedure of competitive land sale with awarding based on design. According to interviewed parties (Interviewee 2, 3 & 6) most competitive municipal land sale procedures follow this traditional method.

In both studied procedures some elements were included to lighten the burden on private parties such as the limitation of participating parties (case 2) and the limitation of municipal demands (case 1). However, looking at the general picture it can be concluded that the procedure is mainly designed to accomplish the goal of the municipality for the plot: Ensuring that a piece of land is developed at a desired quality level while yielding a set profit.

4.2. Current mis-match

When looking at the current situation it becomes clear that especially to the interviewed market parties the current forms of tendering are not sufficiently rewarding due to the risks and high costs of potential loss. This causes potential competitors to stop competing (Interviewee 2 & 10 developers). It can be argued that this is a result of healthy market forces. Pushing parties off the market who are no longer competitive enough. However as stressed before it also limits the choice of public parties who design the selection procedure to enchant competition. Not taking the private interest into account (enough) can result in a failed bidding, or maybe more bothersome; an unfit partner for the development of the plot. When the private objectives of potential partners are not considered they will most likely not participate. Leading to missed chances.

Although this image is quite negative, from the interviews held with different parties from practice it also became apparent that there are still chances and opportunities. Some parts of the designed selection procedures by municipalities can indeed said to be affective as discussed in chapter 0. This paragraph however focuses on the elements in the processes that (can) form a mismatch. The possible mismatches presented in this paragraph are derived from the discussion in paragraph 6.1 in combination with the literature study and conducted case studies.

4.2.1. Internal contributors

The demands of municipalities vary largely, even for the same type of developments the goals can be different. This results in a varying supply since different goals will yield a different output. When addressing the question whether they want to participate in the designed selection procedures, private parties take different factors into account as explained in paragraph 6.1.2. These factors are

weighed differently depending on the type of private party. As discussed in sub paragraph 4.1.4 developing-investors have a different objective from core developers.

In the following paragraphs seven potential mismatches are highlighted. The summation is not limitative but rather forms a short-list of the most important mismatches that came forth from the cases and interviews.

Process design vs. process output

A mismatch between process design and process output can derive when public parties do not set enough boundaries to limit the products that parties can submit. Due to the competition parties will feel that they need to do better and thus more than other parties. When no boundaries are set, they will provide elements that are not required but do cost extra money, driving up the transaction costs of tendering.

Desired quality vs. intensity of the process
Often a mismatch exists between what public parties ask of private parties and the time investment that private parties are willing to make. Interviewee 3 (developer) mentioned a case in which a preliminary design was asked. Making a preliminary design is considered to be too time consuming by private parties. Additionally much of the work has to be redone after awarding.

Desired quality vs. reality of municipal demands

Several interviewees mentioned that the desired quality set by public parties leads to unrealistic demands and risks that private parties are not willing to take, such as the responsibility for asbestos claims.

Desired quality vs. award system

As explained in the case 2, choosing a good awarding system is essential to the success or possible failure of a selection procedure. Choosing the wrong weight system can have major consequences. This was confirmed by several advisors (Interviewee 9 & 12) and thus should be a major concern for municipalities.

Process design vs. costs of the process

When a process for selecting a adequate party for the land sale is designed costs are not always (high) on the priority list. Developers argue that the costs of selection procedures are currently too high.

Process design vs. intensity and duration of the process

According to interviewed private parties, the designed process often leads to too time intensive procedures. This is largely due to sub deadlines during the process and dialogue rounds that to some of the interviewees felt as deadlines.

Competition vs. chances to win

Some municipalities want the procedures to be open for everyone who wants to compete to enhance competition. An increase in competition will however decrease the winning chances of parties competing in the tender. Also more parties will make costs, driving up the total transaction costs of the procedure.

What is asked vs. What is needed

The potential mismatch between what is asked and what is needed collides with the question whether some elements of the tender can be discussed after (provisional) awarding. Several interviewees (Interviewee, 2 & 6, developers) suggest that some element of the plans can and should be discussed in a later stage; after awarding. It should be questioned whether demands such as floor plans are needed to decide which plan fits best on the plot that is tendered.

4.2.2. Overview of internal contributors

The potential mismatches can be divided in three groups of solution directions (Figure 24). The first group is related to the definition of a clear goal by the municipality. This while result in a better

understanding of *why* the elements in the procedure are important. The second group is related to choosing an appropriate procedure for the specific case. A sub-optimal choice will lead to sub-optimal results and unkneced transaction costs. The last group is related to critically looking over the selection procedure that is chosen and optimizing it when and where possible.

4.2.3. External contributors

Additional to differing opinions of municipalities and developing parties also external contributors can cause a mismatch between tender design and outcome. The most mentioned factor that can influence the outcome of selection procedures for municipal land sale is the economic situation. During the economic crisis 10 years ago, municipalities feared that parties would not compete (or that the tender would not result in awarding) since they were not wanting to take risks. Now the danger has shifted to the other side. It should be questioned whether parties are not taking too much risks and making too much promises that they will not be able to deliver.

The economic conditions can also influences the costs of participating in a selection procedure. In times of economic downfall parties such as architects and constructors are often willing to contribute based on a no-cure no-pay structure because the amount of work is limited. However, when the economy is doing well, there will be enough work. Thus, architects and constructors will ask full prices when contributing to a tender.

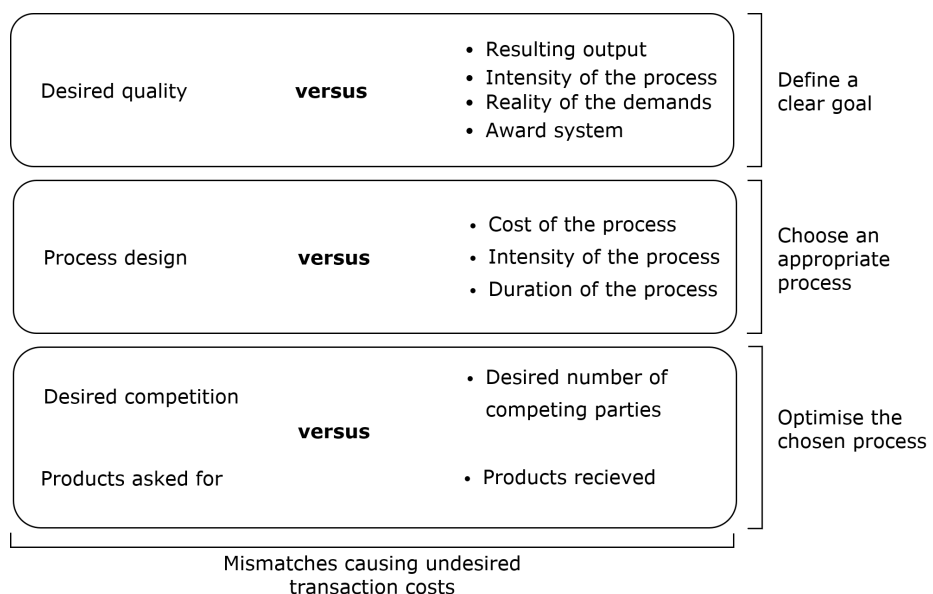


Figure 24: Potential mismatches in selection procedures (own illustration).

4.3. Future needs

To improve selection procedures for municipal land sales it is not only important to look at the current situation but also at what parties will need in the future. Analysing future needs will enable parties to find solutions that are flexible to possible future chances and anticipate on them.

4.3.1. Municipal future needs

Looking at the current trends of decentralisation city planning will most probably remain a prime task of municipalities. Thus, tools to create the desired quality are important, while at the same time municipalities need to consider the costs they are making. Municipalities have to organize their tenders in an efficient way meaning that (Jansen, 2018):

- Demanded performances should add value for public goods;
- Costs of the performance should be less than the value that is realized by it;
- Costs also must be limited independent of the performance;

Public parties do not only represent their own needs but also the needs of society. Thus, next to their individual costs and benefits also the cost to society should be considered. This means that the municipality has a broad cost perspective and needs to weigh all transaction costs in relation to the added quality. Costs made by private parties who lose a selection procedure have to be won back in subsequent procedures, costing money to society.

Looking at the future, the most important change in the field of environmental planning will be the Environment and Planning Act. As explained in sub-chapter 2.1, this act will give municipalities more freedom in planning regulation. To ensure this freedom can be used the selection procedures of the future need to contain enough flexibility for public parties to act upon.

Another aspect that municipalities need to consider towards the future is the risks they are willing to take. This concerns their own risks related to involvement in selection procedures, but this also includes the risks they are letting the market parties take. When these risks become too high this can potentially lead to plans that will be cancelled or, in extreme cases, bankruptcies. While municipalities are not responsible for the

risks taken by private parties it can be questioned whether the encouragement or facilitating of extreme risk taking should be considered good governance or not.

4.3.2. Private party future needs

The five elements on which private parties base their choice as discussed in sub-paragraph 4.1.2 will most likely also in the future play an important role. However, the relative importance of these elements compared to the others can change over time as types of private parties change. This has also been the case in the past years and decades as discussed in paragraph 2.1.4.

While public parties consider both their own transaction costs and the transaction cost to society private parties will focus mostly on their own transaction costs related to the selection procedure. The weighing criteria mentioned by private parties (as discussed in paragraph 4.1.2) can essentially be brought down to a required balance between (chances of) transaction costs (winning chance, costs, time intensity and demands set by municipality) and profitability. Therefore, the five elements mentioned in paragraph 2.4 to lower transaction costs will be very important to them:

- Asset specify needs to be as low as possible.
- It is better to have less parties involved.
- Frequency of tenders within the municipality ideally should be high.
- Uncertainty should be kept low.
- Intermediaries should only be involved if they add more value than they cost.

4.4. Future selection design

The current mismatches in selection procedures and the demand for improvement of these procedures are an important focus point of this Thesis. In this paragraph the elements and important considerations for this future design are discussed.

4.4.1. A wicked problem

From the descriptions in the cases and the needs and wishes of stakeholders in selection procedures for municipal land sale it become evident that the design of an ideal selection procedure is a wicked problem (Koppenjan & Klijn, 2004, p. 123 ff) that involves complex decision making. There is no true or false but only a better or worse situation. Thus

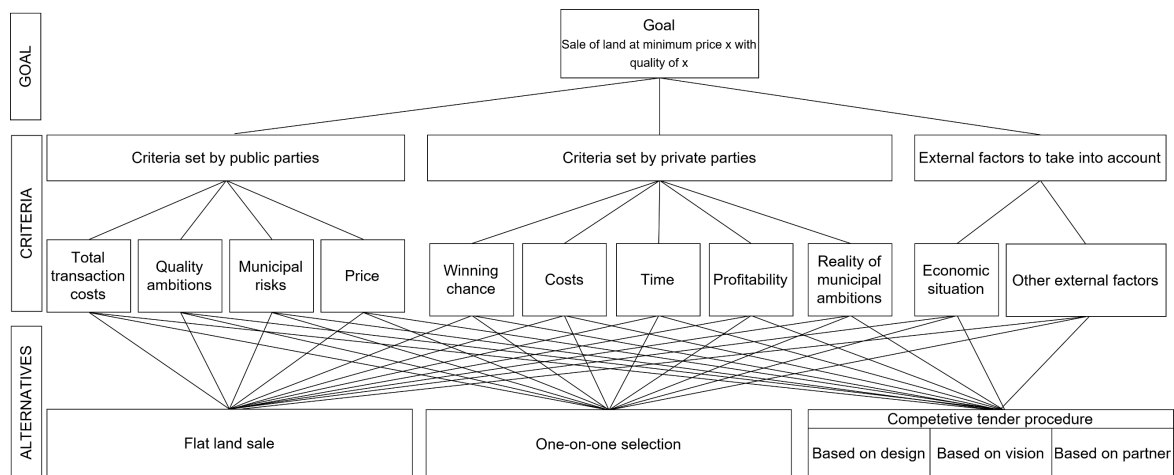


Figure 25: Analytical Hierarchy Model for decision making on municipal land sale (own illustration).

there will not be one solution or design that is appropriate for all municipal land sale procedures. Every development plot is unique, asking for a different approach and different types of stakeholders to be involved. Making a design for a selection procedure is a problem-solving activity to minimise and resolve development constraints while maximising development potential (Adams & Tiesdell, 2013, p. 80). Municipal officials involved in selection design are involved in second-order design activities. They “modify (ed.) the decision environment within which other development actors operate, including developers, investors, architects and surveyors.” (Adams & Tiesdell, 2013, p. 12). Through doing so they can set constraints or create potential. This can give the municipality significant influence over the first order design, namely; the build environment (Adams & Tiesdell, 2013, pp. 12–13). It is essential for the municipality to be aware of this power and the outcome of their decisions.

4.4.2. The analytical hierarchy model

To create insight in the complexity of the problem, the decision space and possible outcomes, the Analytical Hierarchy Process (AHP) can be used. This model which was designed by Saaty (1980) is used as a decision support tool in complex decision problems. It helps decision makers to formulate and analyse their decisions (Berrittella, Certa, Enea, & Zito, 2007) (See sub-paragraph 1.7.3).

Figure 25 shows the Analytical Hierarchy Model for the decision process around municipal land sale procedures. The goal of the municipality is to sell a piece of land which has to be developed with

quality x and sold for a minimum amount y . The municipality can use three regularly used alternative processes to sell the land:

1. **Flat land sale:** The land will be sold to the party offering the highest bid. There is no qualitative award criterium. In this case the municipality has to accomplish their quality ambitions through another way.
2. **One-on-One selection:** The municipality chooses one party which whom they start negotiations about the design and the prices after which they sell the plot to this party. This procedure is most often a result of unsolicited proposals made by private developers.
3. **Competitive selection procedure:** The municipality organizes a competitive selection procedure in which several parties compete to buy the plot.

When a competitive selection procedure is chosen the municipality can, as discussed in paragraph 2.3, choose between three main types of competitive selection procedures for the municipal land sale:

- a. **Design based selection:** Select a party based on the design they present.
- b. **Vision based selection:** Select a party based on the vision they have for the plot and the surrounding area.
- c. **Partner based selection:** Select a party based on their qualifications and experience.

To choose one of the alternatives the municipality has to weigh the different criteria. First, they have

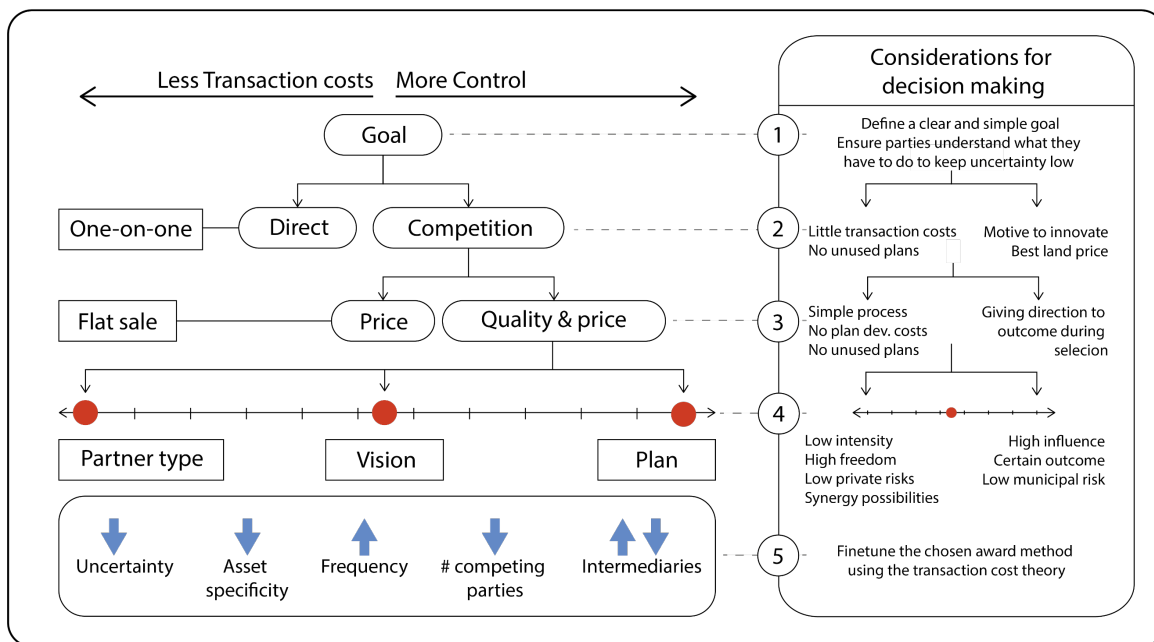


Figure 26: Breaking up the complex decision making problem for municipal land sale procedures (own illustration).

to consider their own criteria. Next to their own criteria they also have to take the criteria set by private parties into account. This will ensure that mis-matches between municipal demands, wishes and expectations on one side and private party wishes on the other side can be avoided. Lastly, external circumstance should be taken into account to avoid mis-matches related to the economic environment in which the sale procedure will take place. The way in which municipalities weigh the different elements will lead to one of the alternative solutions that will best fit the goal given the criteria that have to be considered.

4.4.3. Step-by-Step decision making

To solve the problem of complex decision making the problem should be broken down in smaller elements that are easier to comprehend. This can be done by identifying the difference between the alternative solutions. Through combining this analysis with the conclusions from Figure 24 a step-by-step decision framework was designed. This framework can help municipalities to make more conscious decisions to keep transaction costs as low as possible (Figure 26).

Step 1: Defining the goal of the municipal land sale.

Before being able to make effective choices about the best method for the land sale procedure the goal of the land sale needs to be clear. This is often

a difficult process since the many different municipal organs have different views on what should be accomplished by selling the piece of land. However, when the municipality does not have a clear story about why they want to sell, it will be even more difficult for private parties to comprehend this. Leading to uncertainty and, according to transaction cost theory, thus to additional transaction costs.

Step 2: Competition or direct sale

The second question that can be asked is whether competition is necessary to create a satisfying outcome. If a municipality already has a preferred party in mind that can develop the area, for example because this party is already working on other projects nearby or because the developing party has good connections with other private stakeholders that have a say in the development of the plot, a one-on-one selection can be considered. In this case the municipality will start direct negotiations with one party about the future development after which they can sell the plot to this party. One-on-one selection to a large extent decreases the risks to the private party involved. Making the private party willing to invest more from the start. One of the interviewees (interviewee 5, developer) stated that due to the good communication and high amount of certainty about the future development in one-on-one procedures they are willing and able to make higher bids in comparison to competitive sales

procedures. On the other hand, competition can challenge parties to create new ideas. It enhances innovation. This might be a reason for developers to choose for a procedure in competition.

Step 3: Awarding based on price or more

When the choice is made for a competitive land sale process the municipality should consider whether to sell the land to the highest bidder or whether to incorporate other elements in the procedure such as the quality parties can provide, and the track record that parties have. This choice depends on two questions that municipalities should answer:

1. How much influence does the municipality need and want on the future quality of the plot?
2. Are there other methods besides setting quality demands in the procedure to steer the desired quality level?

If the municipality does not need significant influence over the outcome or if they have other ways to reach desired quality levels, the municipality should be inclined to choose for a flat sale procedure when looking at the decision process from the view of minimizing transaction costs. In this case no plans will be made in vain.

There are many reasons for a municipality to choose for a procedure in which they can influence the quality. The most important being to ensure a certain standard of living or a specific feeling for the area. This is especially true for plots in inner city areas with an important function to connect people and draw people to the city such as railway districts. Additionally, as addressed before, a competitive land sale procedure with awarding based on quality enhances innovation and it allows municipalities to set rules and ambitions for the (aesthetic) design of the future development.

Step 4: Partner type, vision or plan

When choosing for a land sale in competition the municipality can make a choice between three main awarding methods. As discussed they can sell to the party that has the best design or the best vision or they can sell to the party that will be the best future partner, for example based on their experience in the area or their track record.

These options should not be seen as three separate options but rather be viewed on a sliding scale with

awarding based on design on one side of the spectrum and awarding based on partner type on the other side of the spectrum. Choosing for either side of the spectrum has different advantages and disadvantages that have to be considered. Choosing for partner selection will yield lower transaction costs since the process is less intensive and not a lot is asked of the competing parties. Also, parties have a lot of freedom in their design choices and their risks are low. Lastly, partner selection can result in good synergy opportunities since public and private parties will discuss and negotiate about the final plans after selection. On the other hand plan selection will give more certainty about the outcome for public parties. Their risks are therefore lower than with partner type selection (Figure 26).

Step 5: optimizing the decision

When the municipality has chosen a starting position on the spectrum line, the final step is to optimize and finetune the chosen awarding type to create the most efficient selection procedure for the competitive land sale in terms of minimizing transaction costs.

4.4.4. Transaction cost theory to shape and improve decision making

To ensure that the transaction costs are considered throughout every step, the five elements that influence transaction costs according to transaction cost theory (Figure 9) should be considered when going through the decision tree.

The elements of uncertainty and asset specificity as well as the number of agents involved should be kept as low as possible within the chosen procedure to ensure the decrease in transaction costs. Transaction cost theory also discusses that the frequency of transactions should preferably be high. This will reduce the costs due to the learning curve. To municipalities that do not sell a lot of land this can be difficult. They should consider using intermediaries with experience. Using the right intermediary can lower the number of mistakes in a procedure and thus bring transaction costs down.

With every step the municipality needs to weigh what they need to reach their goal with the minimum amount of transaction costs. When the choice for one of the alternatives in step 4 has

been made the last step is to optimize the chosen procedure in terms of involved transaction costs. Also for this last step transaction cost theory can be used.

Decreasing uncertainty

During the interviews many elements were discussed to decrease uncertainty. Most important and most often mentioned was the clarity and the demarcation of what municipalities ask of private parties. Both private parties and municipalities pointed out that improvements can be made on this topic.

Demarcating what parties can hand in with their final bid can be done by for example limiting the amount of pages to a set maximum above which the bid will be invalid. This does not only ensure parties do not do too much but it also ensures parties will keep to the point. Secondly, when parties are for example asked to write a vision about the plot the addition of renders in the bid can be prohibited. This ensures parties will not make a design.

To ensure the tender is clear it is important to take enough time before the start of the selection procedure. Municipalities should make sure that all the documents are complete and right at the beginning of the selection procedure and refrain as much as possible from sending additional tender documents during the tender. Additionally, municipalities should take a critical look at what research they can do themselves and what research can be done by competing parties. When three parties have to do a soil research this can drive up the costs compared to when the municipality would do this once and sent the results to the competing parties.

Furthermore, no tender is without risks. These risks can either be taken by the public party themselves or by the private party. When considering if a risk should be allocated to private parties ensure that these parties can influence and possibly cover themselves against those risks by taking action. If this is not possible consider setting guarantees. For example: when no land use plan is in place at the moment of awarding but parties do have to buy the plot immediately, many supervisory boards of developing companies will not approve. This risk can be decreased by delaying the sale moment to the moment at which the land use plan is approved.

Municipalities can consider using dialogue rounds to reduce uncertainty. These dialogue rounds should be focused on what private parties want to discuss. They should reduce the uncertainties competing parties have about the project. This requires an open minded municipality and the ability to answer questions and guide parties in the desired direction. Therefore the right people need to be present at the table in the dialogue rounds to answer questions about the vision and the area.

Thinking about asset specificity

Selection procedures are not only seen as a large expense by private parties. Competition enhances innovation. Ideas on topics of concept design and sustainability can —when a tender is not won— be reused in other concepts of developers. The ability to reuse ideas can lower transaction costs of these element in the specific project. Ideas can only be re-used if they are not specific to the asset. When designing a selection procedure municipalities should thus be aware of the asset specific elements in the tender and focus on decreasing those as much as possible. This can be done by having a critical look at what demands are needed to make a good choice. Earlier in this thesis the example of floorplans was given. Those plans are asset specific to the design for the plot and cannot be re-used. The question should be asked if they are really needed to ensure a successful selection procedure. In principle awarding based on partner type is less specific than awarding based on design since the main elements asked of competing parties when awarding based on partner type will concern aspects such as references while with awarding based on design a specific design is asked for the plot that is sold.

Choosing the right number of competing parties

When deciding on the number of parties that should compete in a selection procedure again a critical outlook is needed. How many parties are needed to come to a good selection? Municipalities do not only need to decide whether they want the tender to be open to everybody or only to a restricted number of developer that are chosen, they also need to consider the use of a pre-selection and the intensity of the pre-selection. Especially when more production is asked (Awarding based on design) it is important to keep the number of parties that are involved low.

Especially for complicated inner city projects there are not an endless number of parties that are able to complete the task. In these cases selecting three potential partners for competition might be a good alternative to a pre-selection.

Frequency dilemma's – Learning of past mistakes

The frequency with which municipalities organise competitive land sale procedures influences their experience. This can ensure that less mistakes are made. While municipalities cannot endlessly organise competitive land sale procedures to learn from them, evaluation the procedures that are held and looking back at past procedures can give important insights in what can be improved in the future. Private parties are mostly positive about evaluating the tender after completion and their experiences can add to the learning curve for future projects. The studied cases give good examples of evaluation and reflection processes.

Additionally, other parties can be asked for help. While municipalities might not organize a lot of competitive land sale procedures themselves they can take a look at procedures held in neighbouring municipalities. This again stresses the importance of a good evaluations that can be shared.

Consider hiring an advisor

The learning curve can also be improved by involving a third party with experience with competitive land sale procedures. A third party should only be involved when they truly add value to the project. When asking an intermediary such as an advisor to help with the selection procedure for the lands sale the municipality should always keep track of the added value and the added costs of the intermediary. When the added costs transcend the added value the use of an

intermediary becomes a burden instead of a profit. When considering involvement of an advisor it is important to consider the following elements:

- How much experience is present in the municipal tender team?
- How complicated is the land sale procedure?
- What can the advisor add?

When the municipal experience with tenders is low and/or the procedure is complicated for example due to shattered land ownership or a difficult position of the plot in the inner centre and when the advisor can add important value or knowledge that is not present within the municipality, the involvement of an advisor is advisable. When a choice is made to involve and intermediary also consider what his role will be in the procedure. This can either be a leading role or a smaller facilitating role.

4.5. Conclusion of synthesis

The problem that municipalities face when choosing an adequate selection process for a land sale procedure is a wicket problem. Municipalities do not only have to consider their own wishes in terms of quality and price but they also need to consider the wishes of potential tendering parties as well as external influences such as the economic situation at the time of tendering. Choosing an inadequate procedure might lead to unnecessary transaction costs. Therefore a decision tree was made in this chapter to guide municipalities through the decision making process. With the help of the five steps that are combined with five elements that lower transaction costs, municipalities are guided towards an optimal choice in terms of keeping the transaction costs as low as possible.



5. VALIDATION



5. Validation

As discussed in the methods section of this thesis an expert panel was held to validate the solution design that came forth from the research findings from the literature review, the case studies and interviews. The expert panel was used as a tool to strengthen the synthesis to formulate more accurate conclusions. This chapter gives an overview of the content and structure of the panel and discusses the outcomes.

5.1. Panel structure

The panel was held in a timeframe of two hours and divided into two parts. A total of eight people participated in the discussion. Three participants represented the consultancy sector, two participants represented developing parties, one participant represented a municipality and two participants joined from a research perspective. Unfortunately the public sector was underrepresented since only one municipal participant was present. It should be noted that this might have created a bias in the outcome of the panel.

The agenda for the panel can be found in Appendix 11.5. Since the participants all spoke Dutch, the prime language used during the panel was Dutch.

The first part of the session focused on a discussion of three propositions about which parties could voice their opinions and explain their ideas. The original propositions can be found in Appendix 11.5. The translated propositions are:

1. In the choice for a selection procedure for a municipal land sale the keeping transactions costs as low as possible should be considered a prime goal.
2. Selection based on partner type should become the norm in municipal land sale procedures.
3. Municipalities have to prevent that municipal land sale procedures become subject to the procurement law, even if this means the municipality can give less qualitative direction.

The first proposition focused on transaction costs and how important those transaction costs were for parties involved in municipal land sale procedures. The discussion on this topic helped to get a better understanding of how parties weighted the transaction costs compared to other elements that are important when a choice is made for specific selection method.

The second proposition was related to the different options of competitive selection. During

the interviews the term *partner selection* was often mentioned as a good alternative to the currently widely used *plan selection* procedures. The proposition was used to test if this view on partner selection was shared by a broader group of people.

The third proposition was connected to the procurement law. In several interviews procurement law was mentioned as something that municipalities should keep away from if possible. Additionally, a lot of uncertainty was present among interviewees about the consequence of being obliged to follow a (European) procurement procedure. This is in line with the doubts that are voiced in literature about the reach of the procurement act (paragraph 2.2.8) This proposition was used to get a better overview of what parties know about the rules of procurement. Additionally the relative importance of quality could be discussed.

After a break the second part of the panel session started with an explanation of the preliminary findings, synthesis and conclusion that were derived from chapter 2 & 0. During the presentation of the thesis' synthesis, parties were able to ask questions and discuss the findings from the synthesis.

By discussing the propositions without knowing the conclusion of this research the possible bias towards the propositions was avoided as much as possible. This led to an open discussion in which parties discussed what was important to them.

5.2. Propositions

5.2.1. Transaction costs as a prime goal
All parties agreed on the importance of transaction costs. However, none of them agreed that transaction costs should be a prime consideration in deciding which procedure to choose for a municipal land sale. The main points of discussion are listed below.

1. Transaction costs are partly made to acquire high quality standards. Selection procedures in

which high demands are set often enhance creativity. It drives developers to their limits and empowers innovation, creativity and new ideas.

2. When looking at transaction costs a critical look should be taken at the winning chances of parties and thus at the number of parties involved in the procedure. To the present private parties the consideration to participate in a selection procedure was highly dependent on the number of parties with whom they had to compete. Developers conduct a probability calculation and then weigh if competing is worthwhile.

3. Private parties stress the importance of selecting the winning party at an earlier stage in the design process. In the discussion it became clear that the present municipality does not always see this as an option. It was argued that early on in the process plans are still too much of a dream. The plans can still switch to all sides resulting in a different winner when you chose early on in the process or later.

4. Even if less is asked of parties they often will still do the work because they need it to make accurate calculation to come up with a accurate land price.

Concluding the discussion it can be confirmed that parties agree that limiting transaction costs is not a prime goal. It is related to other elements such as creativity and innovation. Parties believe that competition creates qualitative value which should not be curtailed to decrease transaction costs. There are however aspects that can influence the transaction costs, such as the number of parties that take part in the tender and the amount and specificity of what is asked in the tender.

5.2.2. Partner selection the future norm

In the discussion about the second proposition the opinions were more divided. The following arguments were discussed:

1. Selection based on partner type can help to bring the transaction costs of tendering down. An example was given of a tender in which floor plans had to be made in the selection procedure. It was argued that these floorplans did not have an added value for the municipality to have, other than to have them. Unnecessary demands can raise the transaction costs of a selection procedure.

2. Partner selection might lead to increased uncertainty for municipalities. When demands are

limited, it is harder to reach consensus about who will be the winning party. There might only be a limited amount of parties about whom the award commission feels certain. To several of the panel members this seemed to be positive instead of a negative point. Having less parties that are fit for the process makes it easier to choose. It was argued that, as long as there are minimally three parties to choose from, enough competition is present.

3. Partner selection leaves little room for the 'unusual suspects'. Municipalities will often invite parties that already have a track record with the type of development they want. Therefore, new parties make little chance since they will not be able to show past experience with the desired development assignment.

Additionally some suggestions were given to solve problems around partner selection and a discussion was held about when to use partner selection.

4. A suggestion was made to combine the partner selection with a waiting list for parties that were not selected. If collaboration with the winning party is not optimal the municipality can contact the parties on the waiting list. To make this possible municipalities should be able to say good bye to a party if the collaboration does not go as planned.

5. One of the panel members mentioned that it is justified for a municipality to ask more when the stakes are higher and the profit margins are substantial. Complicated processes ask for a higher level of care of municipalities who often have great stakes in the outcome of the development for their city. However it can also be argued that especially in these complicated cases the freedom of parties is very important.

5.2.3. Uncertainties about the procurement law

The third discussion focussed on the uncertainties of the possibility to select based on partner type in the procurement law.

1. the discussion about whether competitive land sale procedures are subject to procurement law is an ongoing topic which often leads to discussion and doubt for municipalities who are deciding how they want to sell a piece of land.

2. Private parties stress that when an assignment has to follow European procurement law the assignments becomes different. It is no longer a development assignment which include a high amount of freedom to create innovative ideas but rather a construction assignment with fixed criteria which will attract different parties that would like to compete.

3. One of the interviewees mentioned that although the freedom of selection procedures is bigger when European procurement law does not have to be followed, the procurement law has become more flexible in the past years. It is not as static as it used to be due added procedures that allow for dialogue. Additionally, it should be noted that although in most competitive procedures for lands sale European procurement is not applicable, many municipalities have stated in their municipal policy that they will follow the rules of procurement.

4. Parties agreed that it is important to have a level playing field with a proportional and transparent process. Even if this is not explicitly required because the procurement act is not applicable.

5.3. Synthesis discussion

The feedback on the synthesis focused on seven main aspects:

- How many parties should compete in the selection procedure?
- How to define a goal?
- Can municipalities demarcate their demands sufficiently?
- How to anticipate on future changes?
- Can partner type selection and plan selection collide?
- The five decision points for private parties to compete.
- The importance of flexibility.

1. How to find the ideal amount of parties to compete? During the discussion the number three is mentioned several times. One of the panel members mentioned that three competing parties does not only provide good winning chances for competing parties but also ensures that municipalities do not have too much work when assessing the plans.

2. The first step in the decision tree of the synthesis in this research is for the municipality to define

their goal. During the panel it was discussed that this is a very difficult and time consuming process for municipalities. Due to the many opinions of people within the municipality it is not always possible to formulate a clear goal. They often focus on the 'what' instead of the 'why'. To make it possible to set clear goals a shift has to made in the municipal thinking processes.

3. Demarcating demands is often difficult for municipalities. Private parties do not always take it well when their submission is denied because they did not reach the set requirements.

4. It is difficult to design the perfect process up front. Changes might occur during the process, making it necessary to send additional tender pieces.

5. The choice between partner type selection, selection based on vision and selection based on design are a sliding scale but sometimes also elements of partner type selection an selection based on design can be combined.

6. The five elements that private parties consider when competing in a selection procedure are recognized. One of the developers mentions that they only compete when they score well on all criteria.

7. It is important to leave room for flexibility. If the whole process is framed little room is left for creativity.

The panel was concluded with a discussion about the question if changes are really needed. Parties agreed that a lot is going well and many examples can be given about good procedures. Still changes are needed.

Without new procedures and new ways of looking at land sale procedures municipalities will not be able to meet the upcoming challenges of the energy transition, the acceleration of housing construction and the improvement of affordability.

5.4. Conclusion expert panel

The conclusion of the discussion on the first proposition is that minimizing transaction costs should not be the prime goal when designing a selection procedure. Although limiting the transaction costs within the procedure is important the most important element of the process is that an outcome is reached that matches the desires and goals of the municipality.

On the second proposition no clear conclusion was reached. The panel members were divided on the question whether partner type selection should become the norm. There are several favourable arguments to support the statement however, partner type selection is always a fit procedure. The type of assignment has a lot of influence over the choice which procedure is most efficient.

From the discussion of the third proposition it can be concluded that developers are very reluctant when it comes to selection procedures that follow the procurement law because it curtails their design freedom and opportunities to have dialogue discussions. From the discussion it becomes clear that a lot of uncertainty about the effect of the procurement act on the possibility to conduct a selection based on partner type is still present. This is in line with the findings from literature.

Additionally, the following conclusions about the synthesis of this thesis can be drawn:

1. The first step of the decision tree is very important but at the same time can be a bottleneck.
2. Demarcation of demands is necessary to lower transaction costs.
3. There needs to be room for flexibility. The procedure has to match the development challenge.
4. Municipalities cannot do it alone. Often there is a lack of experience which results in indecisiveness to make steps.
5. A lot is going well. There are many examples in which municipalities have clear visions on the processes and take into account the transaction costs.
6. To meet the upcoming challenges of the housing market changes in the processes and minds of involved parties are needed.

5.5. Implications for research outcome

The fierce discussion during the panel confirms the importance of research to lower transaction costs in land sale procedures. At the same time it underlines the eminent difference in view about the solution to the problem.

The overall decision tree in combination with transaction cost theory was well received within the panel. One of the parties stated that it would provide more understanding within their organisation and has the potential to be an effective tool to more seriously consider transaction costs in competitive land sale procedures.

In the current system of tender design for competitive land sale procedures the tool will be mostly of theoretical importance. The practical use is limited mainly due to the first step in the decision tree framework in which municipalities should define their goal for the future development of the plot. During the panel it was discussed that this is often a bottleneck in current development. Goal formulation is a complex assignment due to the countless interest of different departments internally and neighbours externally. This comes back to the Analytical Hierarchy model: How should a municipality decide what is important in the formulation of their goals. To be able to use the decision tree framework effectively a shift should be made within the minds of municipal officers.

Applying the transaction cost theory within the decision framework does led to several solutions that were also mentioned by the panel members. The most important of which was the demarcation of demands.

Furthermore, questions were raised about certain aspects that municipalities need to make choices about. For example the number of parties that should be involved in a selection procedure.

6. CONCLUSIONS

The background of the slide features a complex, abstract pattern of curved, overlapping lines in various shades of blue and white. These lines create a sense of depth and movement, resembling a tunnel or a series of interconnected paths. The overall aesthetic is clean, modern, and technical.

6. Conclusions

Transaction costs in competitive land sale procedures are unsurmountable. Costs will always have to be made in order to make a selection between competing parties. In this research a solution was sought to decrease the total transaction costs. Through combining a decision tree framework with the theory of transaction costs a solution was found to make deliberate choices to safe transaction costs were possible. In order to come to this solution and the answer to the main research question seven sub-questions have been answered. Combining these questions has led to an answer to the main research question.

6.1. Answers to the sub-research questions

1. *Looking at the historic context of the Netherlands, how can the collaboration and division of responsibilities between public & private parties in public land sales procedures be characterized?*

Through the years a shift can be seen from active to more facilitating policy. At the same time many responsibilities were decentralized, leading to gaining influence of municipalities in land policy. Municipalities have largely outsourced these responsibilities leaving development to the market while setting frameworks and constraints in the form of competitive land sale procedures in which a selection is made based on the best design. Private parties competing in these competitive sale procedures have gained influence over developments but also take the risks that municipalities have outsourced.

2. *Which legal conditions are important to take into account in municipal land sale procedures?*

When looking into the legal constraints of land sale procedures the boundaries of procurement law have to be taken into account as well as unauthorized state support.

In principle land sale procedures are not bound by procurement law. The Aw 2012 is not applicable on land sale procedures. However if three cumulative criteria are met, the land sale procedure should be qualified as a contract of works, in which case the procurement law should be applied. This will limit possibilities of light selections since formal procedures have to be followed. These three criteria are:

- a. The public authority has a direct economic interest in the contracted work(s);

- b. The public authority demands a construction duty in the contract;
- c. The public authority sets requirements that exceed their public planning powers.

In all cases the municipality needs to make sure the price for the plot is competitive to avoid discussions about unauthorized state aid. When parties make a bid in competition this competitive price is however assumed to be set.

Scientific experts and practitioners have not found a consistent answer to the question what the real implications of the procurement law on partner type selection procedures are. Discussions are still being held. The new version of the *Reiswijzer gebiedsontwikkeling*, which is currently being written, will probably create clarity and include further advise on how to handle situations in which the procurement act has to be followed while municipalities want to follow a partner type selection. For the purpose of this research the focus was however made on sale procedures.

3. *How can light selection procedures be defined and how do they relate to the selection methods that are currently used?*

Light market selection focusses on selecting a party for the sale of a plot based on their vision for the project or based on the type of partner they are. The award criteria in light market selection procedures are, different from traditional market selections, focussed on finding a fit vision or partner type for the sale of the municipal land. In traditional selection processes parties are often asked to make a completely worked out design. In light market selections the transaction costs can be decreased since less and different demands are set. These light processes are useful in complex projects with many uncertainties and high costs.

4.

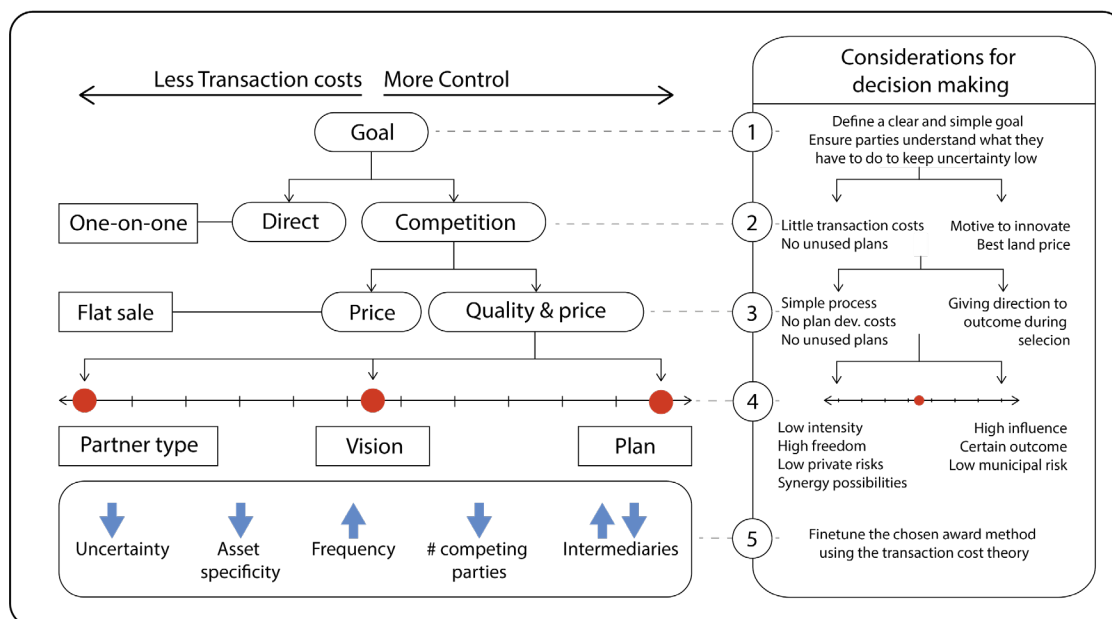


Figure 27: Breaking up the complex decision making problem for municipal land sale procedures (own illustration).

5. How can transaction costs for both public and private parties be defined and how can they be identified in the used processes for municipal land sale procedures?

In this thesis transaction costs are defined as all the costs other than the costs of physical production. A split is made between information costs and institutional costs in accordance with Figure 16. Additionally, five pillars are found that influence transaction costs; uncertainty, asset specificity, frequency, the number of agents and the involvement of intermediaries. Transaction costs can be identified with the help of several frameworks. Table 4 is used as a basis for the identification of transaction costs.

6. What can be learned from empirical research about the current problems public and private parties face in selection procedures?

When looking into current selection procedures, it should be noted that improvements are already being made. There are many elements in the studied procedures that parties liked. However room for improvement remains both in terms of time intensity and duration and in terms of costs. Furthermore the number of parties can influence the effectiveness of the procedure in terms of transaction costs as well as (unreasonable) demands that municipalities set.

7. Which decisions can municipalities take to improve for municipal land sale procedures in terms of transaction costs?

In order to design a balanced selection process in terms of transaction costs municipalities can follow the five steps in the decision tree framework (Figure 27).

1. Defining the goal for the municipal land sale.
2. Choosing between a process of competition or direct sale.
3. Choosing between based on price or more.
4. Choosing between partner selection, selection based on vision or plan selection.
5. Optimizing the chosen procedure with the help of transaction cost theory.

The first four steps include choices to either decrease transaction costs in a procedure or increase the level of control over the outcome. Municipalities can have varying reasons for choosing a specific direction. Their choice depends on the position of the land within the municipality and the goal they have formulated.

In the last step the chosen process is optimized using transaction cost theory as explained in subchapter 2.4. Several specific measures have been

discussed to optimize selection processes (Paragraph 4.4.4).

8. How do practitioners reflect on these steps?

During an expert panel the group of practitioners looked favourable at the proposed framework. However, the framework seems mostly of theoretical relevance. The first step was experienced as a critical step since it is one of the main points of struggle within the municipal process of tender design. On the other hand, the measures discussed to lower transaction costs within the framework were considered to be of practical use. Lastly some questions remained as to what is the ideal number of competing parties.

6.2. Answer to the main research question

‘How can decision making regarding selection processes for municipal land sales be optimized to decrease transaction costs for public and private parties involved.’

The presented framework in this thesis that connects a decision tree with transaction cost theory (Figure 27) can help parties to get a better understanding of transaction costs that occur

during the selection procedure. The framework has potential to guide municipalities to increase the effectiveness of the procedures they design.

Decision making regarding selection procedures for municipal land sales can be optimized in terms of minimizing transaction costs for the involved parties by using and considering the step by step framework as designed in this paper. With every step the five elements that can influence transaction costs should be taken into account:

- Uncertainty;
- Asset specificity;
- Frequency;
- Number of involved parties;
- Involvement of intermediaries.

When a motivated choice is made for one of the selection methods with the help of the decision tree, these five elements can also be used to optimise the chosen procedure.

This way municipalities have the ability to make well considered choices to keep the costs of selection procedures within acceptable cost boundaries.

7. DISCUSSION



7. Discussion & recommendations

7.1. Discussion and suggestions for further research

Process standardisation

Several interviewees discussed their hopes of finding a standard process that can be used for every selection procedures in municipal land sales. From the research in this thesis the conclusion is drawn that it is not possible to design a standard procedure due to the many place specific elements and varying municipal goals and wishes that have to be taken into account. The scope of this research is however limited. It focusses on complicated and large assignments. It is possible that a different conclusion should be drawn when looking at smaller, less complicated projects. To draw a conclusion about whether standardisation is possible for these kind of projects, further research is needed. What can be concluded from this thesis is that although the outcome might be different for every sale procedure, the questions that have to be asked in order to improve the choice for current procedures in terms of transaction costs stay the same.

Need for change

Another question that arose during the research process was: Is change really needed? When looking at the current selection processes it should be concluded that there are still several parties competing and there are still building processes that are started up. Although parties complain about high costs of tendering, these costs are apparently not unsurmountable. Still, the question remains how sustainable the current selection procedures are. When market sentiment changes will the current developments still be profitable or will it lead to another economic collapse in the in the building industry? Creating procedures with high risks and uncertainty will attract risk taking developers. Municipalities should become more aware of the consequences of choosing for a highly demanding process and setting high demands. It is important that further research is be done to map the possible risks to the viability of the projects that are subject to these high demands in case of economic downfall.

The second question in relation to the need for change that can be asked is: should the government initiate this change? It can be argued that free market forces will resolve the situation as soon as

the situation gets out of control: When there are no longer sufficient parties that want to compete in selection procedures or when many procedures fail, the system will change automatically. Municipalities should thus ask themselves how eminent the problems around tendering and selection procedures are.

Although there are arguments that state that change might not be needed when looking at the current situation, there are several arguments that suggest changes are needed to improve the potential future situation. Without change predictions are that society will not be able to meet future housing demands or successfully go through the needed energy transition.

Furthermore, it can be argued that when costs can be saved without influencing the quality of the final design a pareto efficient outcome is reached. Thus change will help to make better selection procedures for municipal land sales.

Competition versus transaction costs

A third point of discussion resolves around competition. Municipalities design the competitive selection procedures to enhance competition and challenge competing parties to do the best they can. Transaction cost theory however argues that to limit the transaction costs less parties should compete in the selection procedures. This limits competition while municipalities want to encourage it. Therefore, a good balance should be found between limiting the number of competing parties (and thus transaction costs) and keeping the procedures competitive. Although many parties have stated that three competing parties is a perfect number, still additional research can be done to look at how more or less competition influences the qualitative project outcome.

Partner or Plan based selection

In the decision tree framework in this research partner type selection, selection based on vision and selection based on plan have been depicted on a scale in which partner type selection asks relatively little of participating parties and plan selection relatively much. This same distinction has been made in literature. In practice however often combinations are found in which selection procedures contain both plan selection elements an

partner type selection elements. This should be kept in mind when applying the decision tree framework.

The Environmental and Planning Act

As discussed briefly in the literature review, the environmental and planning act can have consequences for the outcome of municipal land sale procedures. Although the act is bound to be implemented within a few years, it is still unclear as to what implications the act will have on selection procedures in the future. Since the act has the potential to improve the freedom of public parties through public law by setting additional demands it is important that further research is done to outline the opportunities.

Principles of procurement and good governance

Earlier on in this thesis report some attention was already paid to the discussion of the principles of procurement and good governance. This thesis focusses on land sale procedures. Therefore the principles of procurement are not directly applicable. The European jurisdiction does not say anything about sales procedures. It is suggested that this is mainly due to the property law in which the European Union does not want to interfere. Still question marks can be put at the freedoms that municipalities take in selling their lands. In a simple sales procedure the principles of non-discrimination, equal treatment, transparency and proportionality as stated in the procurement act are not applicable. However keeping in mind the principle of good governance and looking at their role and responsibilities, it seems strange if municipalities do not take at heart those principles. In my opinion it is important that further discussions about this topic are initiated.

The process after selection

This thesis focussed on improving the procedures to select a party to sell a piece of municipal land to. Therefore the research has been focussed on the problems that occur up until the moment of contracting. In reality however the process does not stop at this moment. After contracting deliberation and discussion between the winning party and the municipality continues. While parties often think the process is done at the moment of contracting the opposite is true. In the case that the contract has been awarded based on partner type selection the whole plan for the area that is sold in the contract

still has to be made. Negotiations about the future design will still have to be conducted. But even when the contract is awarded based on the best designed plan the construction process cannot be started right away. From the sketch design (or preliminary) design a long way is still open to the final design. Additionally, often the permissions to change the land use plan for the area still have to be granted. Another point of consideration is what to do if the collaboration between the municipality and the winning party does not work out? Suggestions have been made that awarding should be done on a provisional basis to ensure parties can back out of collaboration will not work. The question however is whether a municipality who has lost time in the selection procedure or a private party who has already spend a substantial sum of money will do this.

Although outside the scope of this research the process after selection might thus be very important for further research on this topic.

Applicability and usefulness

Although several different parties were interviewed both on the public and on the private side, it is not possible to get a complete overview of all the opinions with the use of in depth interviews. There might be cases that have been overlooked because they were not relevant to interviewed parties but might be relevant to others. To ensure that a variety of opinions would be heard different interview rounds were held and an expert panel discussion was held for validation. Still, when using the framework a certain reservation and critical outlook should be upheld. Although the outcome of the research was recognized and understood by practitioners additional elements might be present that have been overlooked. To test the findings of this research and especially to get a broader view on the opinions of involved public and private parties, it might be useful to take an additional step towards quantitative research methods. Through questionnaires it might be possible to reach a larger audience. This can be used as an extra step to validate current findings.

7.2. Recommendations for practice

Based on the research conducted in this paper and the conclusions that have been drawn from this research, several points of advice are given to municipalities who are designing a competitive land sale procedure:

1. Argue *why* a requirement is set and what the implications are for developers.

It is important to keep the assignment to the point to avoid over-asking for two reasons. First, asking elements that are not needed to make a good selection will unnecessarily increase the transaction costs of the procedure. Every element asked of private parties competing in the selection procedure is an extra element that has to be looked at and weighed while it is not always completely clear what the goal of asking for the product was. The floor plans that were used as an example of unnecessary demands throughout this thesis might serve to get a better understanding of the size of the apartments. Looking at the goal of what is asked it might therefore be more useful to ask developers for the average floorspace of the apartments they are designing which will save time and money while the municipality still gets an answer to the underlying question of the floorplans. Second, developers weigh every selection procedure to ensure the demands are realistic. Competing parties often need permission from a supervisory board or controlling organ within their organisation. When a process is deemed too risky, parties might drop out. This can be very disappointing and frustrating to all parties involved.

2. Select three parties for the competition.

Although in this research no prove has been found that three is the ideal number of competing parties both public and private interviewees were positive about this number of competitors. Three competitors can be selected as a basis. When legitimate and comprehensive reasons can be submitted that prove it useful to select more or less parties for the procedure municipalities can deviate from this number.

When a municipality cannot decide which three parties to invite it might be useful to design a pre-selection procedure in which three parties are chosen based on a very light selection process. To keep down transaction costs it is advisable to refrain from using multiple pre-selection rounds and important to get the number of competitors down as soon as possible.

3. Competitive market selection procedures are not always the optimal choice.

As discussed in this thesis there are several reasons why a municipality might chose for a flat land sale procedure or a one-on-one procedure. Both are more cost efficient than competitive market selection procedures. Municipalities are often reluctant to use these procedures because it decreases their choice and control over the design outcome. This is partly true because no selection will be made based on the designs that developers present. There might however also be other tools with which municipalities can reach the needed level of control. In one-on-one selection the land can be awarded in a provision sale contract that will become definite after negotiations about the design between the municipality and the developer have been concluded. If negotiations fail the municipality can dissolve the contract and get into contact with another party. In a flat-land sale procedure the municipality can in set rules through the use of the land-use plan. In the future additional rules and requirements can be formulated with the Environmental and Planning Act.

It is important to be open minded towards the options that are available to sell the land in order to improve the current situation and decrease the transaction costs of the procedures. Making new choices will not be an easy step. A decisive and clear government focus is needed to make changes in the current system possible.

Conclusively the main point of advice is to formulate the *why*:

- Know why the choice is made for a specific procedure.
- Know why a specific number of competitors is invited to take part in the procedure.
- Know why specific demands are set in a procedure.

From this thesis the conclusion was drawn that there is no perfect solution. Therefore it is important that when a choice is made for a certain selection procedure it is clear why and how this choice was made. Additionally, when the choice is made the five elements to decrease transaction costs should be taken into account throughout the process.



8. REFLECTION

8. Reflection

This thesis was written in a time frame of nine months. A period in which both highlights and moments of struggle have passed with this report as a result. In this reflection I will look back at this period to reflect on both the outcome and the process.

8.1. Reflection on the outcome

Relation between initial goal and outcome

Throughout my thesis project several people have asked me about the 'right' way of tendering. This is a question with which I have struggled throughout the process. From the perspective of transaction costs it can be argued that the process with the least transaction costs would be the best process. However if that would have been the conclusion of this thesis it would have been of very limited relevance since the empirical question is not which process yields the least transaction costs but rather which process yields the least transaction costs while keeping qualitative outcome at a desired level. Due to this qualitative aspect the question was less easy to answer. In several interviews I came across people that were of the opinion that partner type selection was the solution to most of the current problems. And although I can understand this proposition when looking at the costs and time that can be saved during the process and especially at all the effort that is not in vain, I do not agree that partner type selection is always the best outcome in complicated and large scale selection procedures. Partner type selection, as argued, increases the uncertainty of the design outcome compared to plan selection. Municipalities do at the moment of (provisional) awarding not know what the plan for the future development will be. Additionally, new parties on the market without a track record will get no opportunity to show what they can do. This might be good reasons for municipalities to consider a plan selection.

On the other side I talked to several people who argued that partner type selection would lead to a lesser qualitative outcomes due to the limited demands set in the process. This, in my opinion is also incorrect. It is true that when a partner is chosen the negotiations and discussion about the design will take place after awarding. At this time the developer is not in competition anymore with other parties. It thus can be argued that the party will be less motivated to give everything they have. However in the case that negotiations and discussions about the design take place after awarding communication can be much more direct and precise. The municipality does not have to worry about providing all parties with the same pieces of information and can be very clear about what they want and do not want. After awarding the municipalities have different tools to put pressure on the development of a good design. Firstly, the land use plan often still has to be changed which a developer cannot do without the municipality. Secondly, a municipality can choose to award a provisional contract meaning that when the developer and the municipality are not able to get on one line the contract can be dissolved. It is thus not true that a process in which less demands are set will lead to lesser qualitative results. This quality is however not reached through the force of competition but through the power of dialogue and communication. This can, when used the right way, be much more powerful.

8.2. Reflection on the process

Formulation and consistency

One of the first points of struggle throughout this research was finding the right formulation and using this consistently. Looking back this had several reasons.

Part of the texts were written in Dutch legal jargon which was difficult to translate correctly without changing the meaning of the sentence. Additionally, reading the texts and law acts required some background knowledge and know-how which I was lacking at the beginning of the process. This amongst others led to confusion about the use of the words *procurement* and *selection procedure*.

A second cause for the struggles with formulation was that scientific research on the topic of *light market selection* was slim and inconsistent. During the process I came to conclude that this is the case because there

is not one clearly thought out process which can be called a *light market selection*, rather it is a concept to shape a selection process.

Thirdly, I struggled greatly with defining the right research scope. Leading to several changes in my research question. These changes were not always consistently repeated in the text leading to extra confusion.

These struggles in formulation resulted in extra work and in some cases miscommunication with my mentors. By talking about my research to my mentors both from university and from Fakton and by asking friends to peer review my work, I was able to reduce these inconsistencies and reformulate texts to be more coherent. During the process this was often frustrating and time consuming. However looking back it has largely improved the quality of my work and my understanding of the topic.

Redefining the research question

At the start of the research I thought that it would be possible to point out or describe an optimal procedure that could be used in all complex competitive sale processes. During the process this turned out to be a misconception. The decision making process was not as simple as expected at the beginning and with every interview new perspectives and angles were added that complicated the decision process. One of the hardest elements was thus to let go of my initial research question and reformulate the question to its current form.

To enable myself to get to this new research question I stopped writing for a few days after which I rolled out 8 meters of sketch role to write down all the thoughts and connections that I had found during the literature study and the first interviews. This led to many new insights and breakthroughs in my process and turned out to be a very useful step.

Case study as a method

Very early in the my thesis process I decided on a framework of literature study, empirical study, synthesis and evaluation. At that time I was only partly aware of the struggles that would present themselves around discussing the costs of tendering with both public and private parties in the case studies. I had not foreseen how difficult it would be to obtain any numbers at all. Municipalities often do not keep track of the costs of tendering. In many potential cases the numbers were unclear or incomplete. At first this was a major drawback, however looking back at the process now, I think it emphasizes the importance of my research: municipalities are often unaware of the costs involved in the procedure.

Compared to municipalities, the interviewed developers all had a clear overview of their external costs. The main point of struggle in these overviews was however that internal costs were not calculated. Developers refer to these costs as a time investment but in practice do not have any price connected to this investment. Additionally, the exact numbers in most cases were confidential. Therefore they could not be added to the research. This was solved by clustering costs in three categories and anonymising the interviewees as is also discussed in paragraph 1.9.

During the research on the case studies it became clear that the case studies could only provide a rough idea of the costs of selection and could merely serve as examples to provide positive and negative elements in selection procedures. Basing my conclusion on two cases would result in a limited validity and transferability of my research. Therefore I decided to conduct additional interviews with municipalities and developers that were not connected to a specific case. These interviews improved my understanding about the different perspectives on tendering and provided a broader view on how transaction costs could be decreased. Looking back the case studies formed a good addition to the research because they gave some content to ideas and opinions of interviewed parties. However, to design a framework of decision making to reduce transaction costs it is questionable if this was the best method. In the general interviews more room was left for comparison between different cases in which the interviewees were involved. Thus giving a better ideas of possible positive and negative aspects of specific selection procedures.

Process and feedback

Looking at the process, the process timeline and the moments of feedback I am very positive. The deadlines that I had set at the P1 presentation turned out to be reachable and realistic. After every moment of feedback I had time build in the timeframe to take a step back and adjust the text where needed. At the same time my process framework left sufficient space for adjustments in approach as was for example needed with the case studies. Fixing the interviews during the summer holiday was relatively easy since it is a slow period in terms of work pressure. For two interviews I was however too late to fix a date which meant that I had to wait till after interviewees were back from vacation. Luckily these interviewees were available right after their holidays making it still possible to conduct the interviews.

Concluding remarks

As discussed, writing a thesis is a process with ups and downs, problems and solutions. Above all it is however a great learning process in which I got the chance to improve my knowledge of selection processes in municipal land sale procedures. It was a great experience to talk to experts in the field, discuss my thoughts and see my report evolving into a final product.

When I started the process of writing this graduation thesis I had three personal goals:

1. My thesis should have practical relevance;
2. My thesis should contribute to solving current problems on the development market;
3. My thesis should contribute to creating more efficient procedures and less waste.

Looking back not everything went as planned and room for improvement is always left, however I am glad to say that I feel that I have reached my goals. During the expert panel the line of thought to make more efficient decisions to decrease transaction costs was appreciated by the people that were present and led to an invitation of a municipality to present the findings of this thesis in the town hall. Additionally, I was invited to further rounds of discussion about the concept of the Reijswijzer gebiedsontwikkeling. This thesis therefore feels as a first step towards increasing my knowledge on the topic and will hopefully lead to many future challenges to optimize selection procedures.

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11. APPENDICES

11. Appendices

11.1. Framework semi-structured interviews

Theme	Topic	Question	Set of interviewees	Goal
Experience	General experience	Wat was u algehele ervaring van het proces?	Public & Private	Introductory question to the subject. Get parties to remember the process and get a first feeling with how the process was perceived.
	Positive experience	Kunt u een positieve kant van het proces belichten?		
	Negative experience	Kunt u een negatieve kant van het proces belichten?		
Costs	Costs decision	Kan u een inschatting geven van de door u gemaakte kosten tijdens het tenderproces met daarbij een uitsplitsing tussen arbeidskosten, proces plan kosten, bestemmingsplan kosten, kosten van juridisch, financieel en technisch advies, kosten van uitgekeerde deelnamevergoedingen en overige kosten?	Public	Get a better grip on the actual costs in different processes with the goal to relate them to the followed procedure.
		Kan u een inschatting geven van de door u gemaakte kosten tijdens het tenderproces met daarbij een uitsplitsing tussen arbeidskosten, architectkosten, kosten van juridisch, financieel en technisch advies, kosten van (onder)aannemers voor gunning, tenderkosten en overige kosten?	Private	
		Komen de gemaakte kosten overeen met de verwachtingen vooraf?	Public & Private	
	Welke kostenpost is relatief hoog uitgevallen in vergelijking met de verwachting?	Connected to the previous question: Understand where the cost related pitfall are		
	Possible opportunities	Wat is de oorzaak van het hoger uitvallen van deze kosten? Waar zijn winsten te behalen? / Welke kosten zouden omlaag kunnen en moeten gebracht?	Public & Private	Find out whether parties are aware of untaken opportunities of possible changes that can improve the tender proces in terms of costs.
Process demands	Demands - Quality	Hebben de gestelde eisen geleid tot het gewenste resultaat?		Public & Private
		Was het mogelijk hetzelfde resultaat te krijgen met minder eisen?	Understand whether the chosen tenderprocedure according to parties was efficient to reach the required level of quality.	
	Denkt u dat er een goede balans was tussen de gestelde eisen en de kwaliteit die hieruit voortvloeide?	Understand whether the chosen tenderprocedure according to parties was balanced to reach the required level of quality.		
	Demands - Costs	Denkt u dat er een goede balans was tussen de gestelde eisen en de kosten die moesten worden gemaakt om aan deze eisen te voldoen?	Understand whether the chosen tenderprocedure according to parties was balanced to reach to limit the costs	
SWOT	Strengths	Wat waren de sterke punten van het gekozen proces?	Public & Private	Understand the strengths of the process identified by the party
	Weaknessess	Wat waren de zwakke punten van het gekozen proces?		Understand the weaknessess of the process identified by the party
	Opportunities	Wat waren de kansen van het gekozen proces?		Understand the opportunities of the process identified by the party
	Treats	Wat waren de bedreigingen en valkuillen van het gekozen proces?		Understand the threats of the process identified by the party

11.2. Format interview letter

Beste naam,

Deze brief is bedoeld om een achtergrond te geven van mijn afstudeeronderzoek dat wordt uitgevoerd onder supervisie van mijn begeleiders aan de TU Delft (1^e begeleider: Erwin Heurkens, 2^e begeleider: Monika Chao Duivis) met ondersteuning vanuit Fakton (begeleiding door Maarten Kievits).

Mijn onderzoeksvraag is als volgt:

'How can selection procedures for municipal land sales be optimized in terms of transaction costs to satisfy both public and private parties involved?'

Recentelijk is er veel discussie ontstaan rondom de kosten van deelname aan tenderprocedures. Vanuit de private sector zijn er klanken dat het vooruitzicht op hoge deelnamekosten steeds vaker leidt tot het afzien van deelname. De kosten zouden een (te) grote wissel op de winstgevendheid binnen de sector hebben. Uit afgelopen maand aangenomen moties in de tweede kamer blijkt dat ook de politiek erkent dat er veranderingen nodig zijn. Gemeenten en ondernemers hebben met deze reden ook een actieagenda opgesteld en aangeboden aan staatssecretaris Mona Keijzer van Economische Zaken en Klimaat.

Met mijn onderzoek wil ik een bijdrage leveren aan het vinden van oplossingen. Hierbij richt ik mij op vormvrije selectieprocedures die gemeenten volgen voor de verkoop van grond. Naast literatuuronderzoek maak ik in mijn onderzoek gebruik van case studies waarbij ik met behulp van documentreviews en interviews een beter beeld wil krijgen van een aantal specifieke casussen om zo knelpunten te kunnen analyseren. Een van deze casussen die ik graag wil bekijken naam ontwikkelingsgebied. Deze casus is voor mij interessant omdat uitleg.

Om een volledig en representatief beeld te krijgen is het van belang het proces zowel van de publieke als de private kant te belichten. Daarom zou ik ook graag met jou in gesprek gaan over de ervaringen met de tender van het gebied.

Het interview richt zich op de volgende thema's:

- Introductie & bespreken eventuele vertrouwelijkheid
- Algemene ervaring van de procedure
- Gemaakte kosten tijdens de procedure tot aan contractering
Indien mogelijk zou ik graag een gesprek hebben over de kosten uitgesplitst in de volgende subcategorieën:
 - Arbeidskosten
 - Voorbereiding van procesdocumenten
 - Bestemmingsplan voorbereiding
 - Kosten van technische, juridisch en financieel advies
 - Kosten uitgekeerde deelnamevergoedingen
 - Overige kosten
- De relatie tussen de gemaakte kosten en de eisen die gesteld zijn aan de biedingen
- SWOT (Sterke punten, kansen, zwakke punten en valkuilen tijdens het proces)

De streeftijd voor het interview is 45 minuten tot 1 uur. De vragen voor het interview zijn te vinden op pagina 2. Om de informatie uit het interview te kunnen transcriberen en het zo te gebruiken voor mijn onderzoek zou ik het interview graag opnemen. Deelname aan het interview en het beantwoorden van de vragen is geheel vrijwillig. Vertrouwelijke informatie die tijdens het gesprek naar voren komt zal te allen tijde vertrouwelijk blijven en op verzoek uit de transcriptie worden weggelaten.

Bij voorbaat wil ik je hartelijk bedanken voor je deelname. Mochten er vragen zijn over deze brief of mijn onderzoek dan kunnen deze aan het volgende email adres worden gericht: d.a.l.veenhof@student.tudelft.nl. Tevens ben ik telefonisch bereikbaar op het volgende nummer: 06 438 333 22.

Hartelijke groet,

Daniëlle Veenhof

VRAGEN VOOR HET INTERVIEW:

1. Introductie
 - 1.1 Introductie onderzoek en bespreken vertrouwelijkheid.
2. Algemene ervaring van de procedure
 - 2.1 Kunt u vertellen hoe het tenderproces precies is verlopen en hoelang het heeft geduurd?
 - 2.2 Wat was u algehele ervaring van het proces?
 - 2.3 Wat was het vooraf vastgestelde niveau van uitwerking dat van partijen werd gevraagd (bijv. SO, VO).
 - 2.4 Kwam dit achteraf overeen met wat partijen hebben geleverd of is de uitwerking verder gegaan?
3. Gemaakte kosten tijdens de procedure tot aan contractering.
 - 3.1 Kan u een inschatting geven van de door de Amvest gemaakte kosten tijdens het tenderproces met daarbij indien mogelijk een uitsplitsing tussen arbeidskosten, ontwerpkosten, presentatiekosten kosten van juridisch, financieel en technisch advies en overige kosten?
 - 3.2 Komen de gemaakte kosten overeen met de verwachtingen vooraf?
 - 3.3 Welke kostenpost is relatief hoog uitgevallen in vergelijking met de verwachting? Wat is hiervan de oorzaak?
 - 3.4 Waar zijn winsten te behalen? / Welke kosten zouden omlaag kunnen worden gebracht? En hoe?
 - 3.5 In hoeverre is bij het procesontwerp voor de tender rekening gehouden met de kosten die private partijen zouden maken?
4. De relatie tussen de gemaakte kosten en de eisen die gesteld zijn aan de biedingen.
 - 4.1 Wat waren de eisen en ambities die vooraf door de gemeente zijn gesteld?
 - 4.2 Hebben de gestelde eisen en ambities geleid tot het gewenste resultaat?
 - 4.3 Was het mogelijk geweest hetzelfde resultaat te behalen met minder eisen en ambities of een minder intensief proces?
 - 4.4 Denkt u dat er een goede balans was tussen de gestelde eisen en ambities en de kwaliteit die hieruit voortvloeide?
 - 4.5 Denkt u dat er een goede balans was tussen de gestelde eisen en ambities en de kosten die door uzelf en door private partijen moesten worden gemaakt om aan deze eisen te voldoen?
5. SWOT
 - 5.1 Wat waren de sterke punten en kansen van het gekozen proces?
 - 5.2 Wat waren de zwakke punten en bedreigingen of valkuilen van het gekozen proces?
 - 5.3 Zijn er dingen die u achteraf anders had gedaan of had veranderd in het proces? Zo ja, wat?
6. Afsluiting
 - 6.1 Heeft u nog afsluitende tips voor gemeenten die een tenderproces voorbereiden?
 - 6.2 Heeft u nog tips voor private partijen die willen deelnemen aan een tender procedure?

11.3. Coulissen West, Breda

11.3.1. Project description

Coulissen West is part of the railway zone (Via Breda) in Breda (Figure 28 & Figure 29). The surface area has the size of 80 football fields and is one of the biggest urban area redevelopments in the southern part of the Netherlands. The municipality wanted to create a new neighbourhood in this area; mixing work, living and facilities. Developments in the area include the new HSL-station (highspeed railway) and a new court house.



Figure 28: Winning design 5Tracks, Coulissen West, Breda (<https://www.5tracksbreda.com/>)

The municipality of Breda is only prepared to invest when the private sector is willing to co-invest. They consulted the market to find viable investment areas which led to the plans to develop the area around the railway station. The development is demand-orientated. The municipality was therefore actively looking for a partner with belief in the area, who would combine vision and investment power.

Via Breda was divided in several areas. Each having their own focus points. Coulissen West should become the lobby of the area and Breda. The municipality envisioned a multifunctional complex in which activity takes place 24/7. In the information booklet that was sent to interested parties the municipality furthermore added some functional wishes. First of all, the program had to fit the slogan of the area: 'internationaal ontmoeten en stedelijk leven en werken'. (eng: international encounters and urban living and working). Furthermore the programmatic focus should be on business.

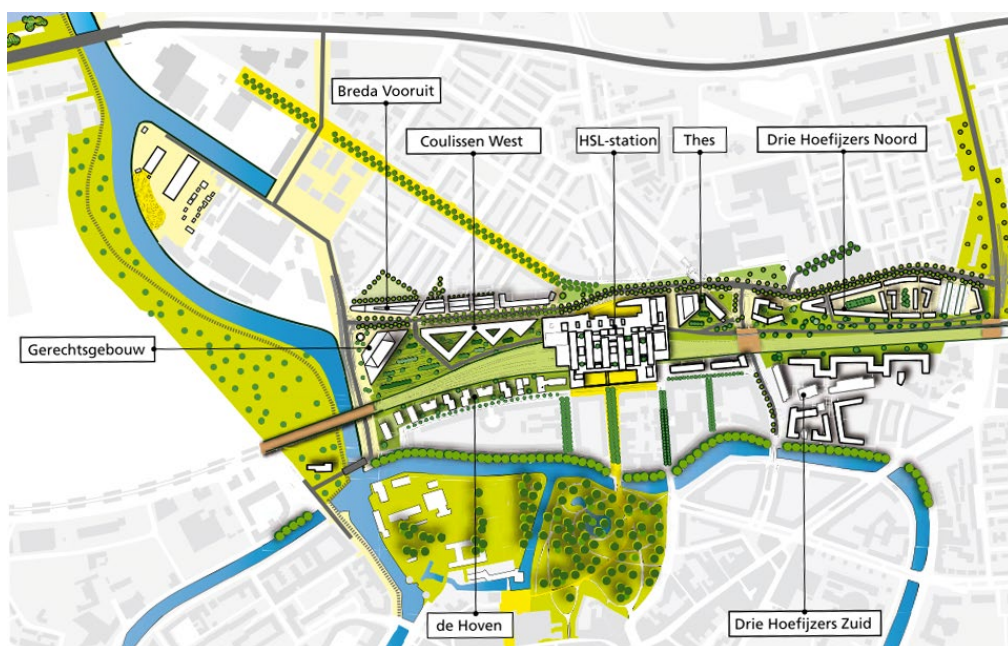


Figure 29: Development location - Bredase Spoorzone (van de Griend & Kievits, 2016).

Several examples were added in the informational brochure:

- Knowledge intensive functions such as office concept, flexible working concepts and conference concepts.
- An exceptional hotel concept that forms an addition to the current hotel supply in Breda.
- Above mentioned concept in combination with wellness, congress and hotel and catering industry (horeca).
- Long stay for expats and international students.
- Buildings that support a cross-over with educational institutions in the area.
- Room for public functions on the ground floor that add to the viability of the area.
- Concepts in which public meeting spaces are central.

Through the informational brochure the municipality tried to give a description of the area and the opportunities that exist. The description of the desired program for the plot also shows the municipal vision on the area. Goals and wishes are however kept broad and relatively vague. No hard demands are set in the brochure (Gemeente Breda, 2015).

11.3.2. Process description

Due to the complexity of the development and the importance to the improvement of the economic structure of Breda the municipality of Breda did not want to sell the land based on the highest bid (flat sale). To lower risks for potential bidding parties and at the same time keep the costs low, the municipality decided to choose a sale through dialogue procedure. The goal was to narrow the competing parties as soon as possible to work exclusively with one party towards plan development and realisation of the project (Gemeente Breda, 2015).

Preparation phase (market consultation phase)

The first phase of the tender process took 6 months. During this time the informational brochure (Gemeente Breda, 2015) was made based on important pre-conditions, wishes and demands. Furthermore, as described in the project description, possibilities for programming and conceptual directions were made. Lastly a list was made of market parties that would fit this project. In accordance with the concept of *sale through dialogue* also a market consultation was held. 12 discussions were held with developers, contractors and real estate operators. According to van de Griend and Kievits (2016) these conversations were valuable to understand which parts of the development assignment needed further elaboration. However they also served as an information round for participating private parties. Especially parties that operated on national scale had little knowledge about the local economy of Breda. Thus, the conversations were an opportunity to convince parties that profits could be made by investing in the area.

With the information from the market consultation several documents were drawn up:

- A process letter.
- Legal participation requirements.
- A concept letter of intention.

A data room was set up in order to structure the information flow to competing parties. Already existing municipal IT-systems could be used and thus no commercial data room supplier had to be involved.

To inform parties about the upcoming tender several communicational tools were used.

- The information brochure was extended into a sales brochure and a poster.
- A gathering was organized on the Proveda 2015 to present the upcoming tender.
- A press report was drawn up that would be released on the day of the tender start.

Bid phase

The bid phase started on July 15, 2015. Additional to the press report the tender documents for Coulissen West were send to over a hundred professionals in the world of real estate and urban area development.

A timeline of the selection process in Coulissen West is depicted in Figure 30.

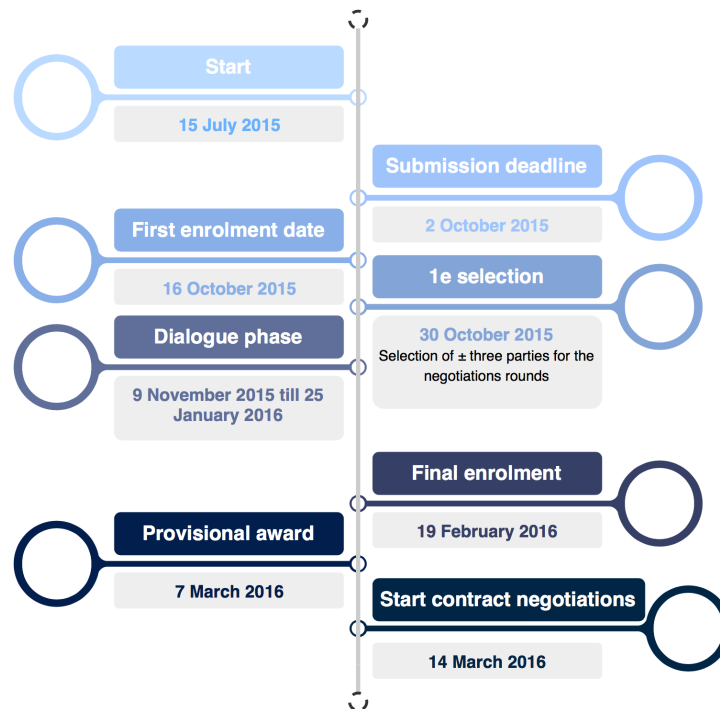


Figure 30: Timeframe selection procedure Coulissen West (own illustration).

The first bid round was completely done on paper to keep the cost of tendering as low as possible to both the municipality and the competing market parties. Parties were asked to provide a terse vision on three points. All proposals were scored on a scale from 1 to 10. The weighting criteria being as follows:

- The future performance of Coulissen West as an (international) business centre. 40%
- The added value of Coulissen West to (Via) Breda. 40%
- The cooperation with the municipality. 20%

A number of nine proposals was submitted. The members of the selection committee had to assess the proposals and write a clarification for the different criteria. These clarifications together with the given grades were used in a final discussion about the proposals. The committee decided based on mutual consent which parties would be invited for the dialogue round. In the end it was decided that four parties would be invited.

The project group decided on three dialogue rounds with each party. The conversations had a fixed agenda to create a level playing field but at the same time were very open. The municipality and participating parties were very positive about the dialogue rounds. They stated that because of their open and transparent formation the dialogue also developed these qualities, creating genuine and mutual interest in a common goal: making the best plan for Coulissen West (Gemeente Breda, 2015; M. Kievits, personal communication, June 6, 2018).

One of the four invited parties dropped out after the first dialogue round because it became clear they did not have approval from the highest level of their organization. There was not enough trust and confidence in the business market of Breda and the chances of winning compared to the risks that had to be taken for this party did not balance out. Therefore, in the second and third dialogue round only three dialogues were held (Gemeente Breda, 2015). At the end of the dialogue parties received a summary of what they had discussed with the municipality.

After the dialogue rounds parties got four weeks to make an offer and give a final presentation in the second bid round. Parties competing in the second round received a participation fee of €25.000. This fee was calculated to cover 20% to 30% of the costs. The scoring procedure was equal to the first bid round. Grading was based on three aspects that were known to parties beforehand:

- Program and conceptual vision 20%
- Spatial and functional translation of conceptual vision 40%
- Land value and reality check / robustness 40%

The winning party had the highest score on both quality and price and therefore a consensus was easily reached within the assessment committee. The provisional awarding of the project went to 5TRACKS Breda, a consortium of TBI-companies SYCHROON, J.P. van Eesteren and ERA Contour. After informing the executive board of the municipality of Breda (College van B&W) the participating parties were contacted. Additionally, a letter was sent to with an extensive explanation of the assessment. None of the losing parties made a formal objection to the provisional award meaning that the award could be finalized on May 4th, 2016.

The losing parties were invited for an evaluation interview. Both parties used this offer. The evaluation interviews helped the municipality to get valuable information about how the process was experienced and gave parties the opportunity to get extra clarification on their assessment (Gemeente Breda, 2015).

Contract phase

The contract phase in this tender was relatively easy and fast. During the earlier phases of the project a concept letter of intent was communicated with the parties. Parties could suggest adjustments during the process. The winning party did however not have any additions or remarks. Only one conversation was needed to sign the letter of intent on June 9th, 2016.

An complete overview of all the products that were provided by the municipality is given in Table 5.

Phase	Sub – phase	Product
Preparation phase	Internal workshops	<ul style="list-style-type: none"> • Inspiring information brochure for market parties • List of market consultation dialogue • Propositions for consultation dialogue
	Market consultation	<ul style="list-style-type: none"> • Summary of market consultation
	Preparing tender procedure	<ul style="list-style-type: none"> • Process letter • Participation conditions and declaration of participation. • Concept letter of intent. • Digital data room • Data room protocol • List of potential market parties to compete in the tender • Press release • Management proposal
Bid phase	First bid round & assessment	<ul style="list-style-type: none"> • Acknowledgement of receipt first bids • Script for assessment round I • Individual scoring forms • Overview assessment round I • Report selection committee • Explanatory notes of assessments for market parties
	Dialogue rounds	<ul style="list-style-type: none"> • Note on assessment process bid round II • Financial fill-in format • Land value calculation • Adjusted concept letter of intent
	Second bid round & assessment	<ul style="list-style-type: none"> • Acknowledgment of receipt second bids • Assessment of bids round II

		<ul style="list-style-type: none"> • Individual scoring forms • Overview assessment round II • Report selection committee
	(provisional) awarding	<ul style="list-style-type: none"> • Management proposal • Explanatory letter to competing parties • Press release
Contract phase	Contracting	<ul style="list-style-type: none"> • Final agreement • Results internal evaluation

Table 5: Products and involved parties per phase - Coullissen West (Based on: Gemeente Breda, 2015).

11.3.3. Cost implications – public side

What was evident in this process is that the municipality had a good overview of the costs they were making to organize the tender (Table 6). In total they spend around 383,000 euro's. This includes the internal hours spend on the process (plan costs). The municipality of Breda was the only party interviewed that had an overview of their internal costs. These costs were made by the people listed in Table 6. It has to be stressed that these internal costs depend highly on the duration of the process (Interviewee 1, municipality). This process had to be started from scratch. In less complicated projects or renovation processes the plan costs can be lower for example because the contours of the building are already there. Overall the costs spend were according to the pre-set budget.

Naam	Functie	Kernteam	Dialog	Selectiecommissie
Nora van de Griend	Projectmanager Via Breda	X	X	X
Astrid Spapé	Projectondersteuning			
Onno van der Heijden	Stedenbouwkundige Via Breda	X	X	X
Jan van Gurp	Adviseur ruimtelijke economie	X	X	X
Dennis van Berkel	Planeconoom	X	X	X
Bas Konings	Jurist	X	X	X
Harold van den Broek	landschapsarchitect	X	X	X
Bertwin van Rooijen	Programmamanager Via Breda			X
Bonnie van Wijk-Westdorp	Vastgoedspecialist			X
Jeroen Hoefsloot	Stadsbouwmeester			X
Henk Schuiling	Adviseur wonen		X	X
Erik Willemsen	Adviseur vrijetijdseconomie			X
Jack de Bokx	Adviseur mobiliteit			X
Mayke van Haaren-Stoks	Adviseur retail			ad-hoc
Marcel de Heer	Adviseur onderwijs en innovatie			ad-hoc
Peter Jeucken	Adviseur communicatie			
Maarten Kievits	Engagement Director Fakton	Voorzitter	Voorzitter	Voorzitter
Laura Wytéma	Consultant Fakton	Secretaris	Secretaris	Secretaris

Table 6: List of people involved in the tender of Coullissen West on the public side (Gemeente Breda, 2015).

All the costs mentioned in Table 7 can be considered transaction costs as explained in paragraph 2.4.2.

Plan costs	€ [REDACTED] *	Internal hours spend incl. legal and technical advise
Process advise	€ [REDACTED] *	Advice on process design
Remaining	€ [REDACTED] *	Research, external costs and printed material
Remuneration costs	€ 50,000	2x25.000 euros for non-winning parties
TOTAL	€ 383,000	

Table 7: Municipal cost estimations for tender process Coullissen West (Interviewee 1, municipality)

11.3.4. Cost implications – private side

An estimate of the total tender costs for private parties is given in Table 7. For the cost estimation of the private parties the internal labour costs are not included in the design costs. They are in principle not considered part of the tender costs. However, these costs should still be added to calculate the total transaction costs for the tender procedure. For the winning party, design costs are not part of the transaction costs since the design can be used for the production of the winning plan. Costs of advice is a questionable expense. When the advice is related to the design they are considered production costs. When the costs are however related to advise to win the tender procedure they should be considered transaction costs. In this case the advising costs are considered transaction costs. Advising costs related to the design are included in the design costs. Illustration and formatting cost should also be seen as transaction costs. Therefore the winning party made € [REDACTED] transaction costs plus internal costs spend to participate in the tender.

For parties that did not win the tender all costs should be considered transaction costs as explained in paragraph 4.4.2. In the case of Coulissen West there were three parties that competed throughout the whole process. The two losing parties got a remuneration of € 25,000 each. They thus made €92,000 (€ 117,000 - € 25,000) transaction costs each.

Additionally, it should be noted that one of the parties that participated in the tender (Interviewee 2, developer) stressed that the costs mentioned in Table 8 – although accurate in 2015-2016 – are not representative for current costs spend on tender procedures. The main reason for this is the recovering market. At the time of the tender of Coulissen West architects and other contractors were still willing to participate through a no-cure no-pay structure. Since this time the demand for people in this profession has however risen meaning that they can set higher demand and ask higher prices which will result in higher tender costs for private parties.

Internal labour costs	€ ?	
Design	€ [REDACTED] *	Concept design, architect
Advisers	€ [REDACTED] *	Technical, legal, financial
Illustration and formatting	€ [REDACTED] *	Presentation booklet etc.
TOTAL	€ 117,000	

Table 8: Estimate of tender participation costs Coulissen West for private parties (Interviewee 2, developer).

* All black parts is strictly confidential for the purpose of this graduation project. For more information please contact the author.

11.3.5. Total cost implications

Table 9 shows the estimated total transaction costs for the Tender process of Coulissen West. These costs do not include the internal labour costs of private parties and also the costs made by parties that dropped out in earlier phases of the tender process are not yet taken into account.

Public party	€ [REDACTED] *	
Private party A (winner)	€ [REDACTED] *	Excl. Internal labour costs
Private party B	€ [REDACTED] *	Excl. Internal labour costs
Private party C	€ [REDACTED] *	Excl. Internal labour costs
TOTAL	€ 609,000	

Table 9: Estimated transaction costs Coulissen West (excluding internal labor costs of private parties and cost of parties that dropped out in the pre-selection)

* All black parts is strictly confidential for the purpose of this graduation project. For more information please contact the author.

11.3.6. Implications of process time frame

From the start of the tender up to contract negotiations the process took 8 months. The tender process of Coulissen West including the preparation of the tender procedure took 1,5 year. The internal labour costs of the municipality should thus be spread over a period of 1,5 years. For private parties the tender process took 8 months.

As noted before it is important to realize that both the time frame and the time intensity of the process are prime causes for internal labour cost to rise. One of the participating parties in the tender mentioned that the timeframe in this tender, which included a pre-selection and three dialogue rounds, was a crucial downside to the project. This party would, looking back, not compete in this tender anymore. This was mainly because the dialogue rounds which were experienced as deadlines at which the party had to prove themselves over and over. This was considered stressful and too time intensive. The same party however also mentioned that the dialogue rounds also have a positive side. The municipal wishes were very clear, and the feedback given during the dialogue rounds led to plans that fitted those wishes. Thus, avoiding feedback at the end of the project that the design did not fit the demands and ambitions set by the municipality.

As mentioned in paragraph 11.3.3 also the internal costs made by the municipality are largely depended on the time frame and time intensity of the project. However, to the municipality the timeframe and intensity of the process were not seen as a downside (Interviewee 1, municipality), rather it was experienced as a positive element (Table 9). Especially the time taken for preparation before the start of the tender was experienced as positive. This led to a good starting point and clear process (Interviewee 1, municipality).

11.3.7. SWOT

In a document published by the municipality after the tender procedures several highlights and learning experiences for Coulissen West were shared (Table 10).

Elements of success	Learning experiences
Strong and balanced team	Best plan has won
Collaboration and a good vibe	Price and quality accompany each other
External process guidance	Sticking to quality and ambitions will yield results
Taking time to design a vision and tender	One central point of contact works well for market parties
Focus on integral quality	Commitment from board of market parties is essential
Specialists assess in their field of experience	A good and well considered assessment takes time
Being clear in what is and what is not asked	Dialogue is intensive but also brings energy
Open and transparent environment around the table	Goal of consult with master builders was not clear enough
Courage to do it different	Market parties appreciate the tender with dialogue

Table 10: Success factors and Learning experiences Coulissen West according to the municipality (Gemeente Breda, 2015).

The learning experiences and success factors have been incorporated in a SWOT framework in which the most important strengths, weaknesses, threads and opportunities formulated by different parties are compared (Table 11).

The most important difference in the experience between public and private parties as mentioned in the previous paragraph is the intensity of the process. While the municipality experienced this as a positive aspect the private party interviewed was not very positive about this.

The private party also had reservations about the use of dialogue rounds in a competitive setting. The dialogue rounds were experienced as very positive since they enabled the private party to understand what the municipality wanted. However, it largely increased the intensity of the process.

Another weakness formulated by the private party was the level at which the final product for tender had to be. The municipality asked for a sketch design and mentioned this sketch design should be on a vision level. However, the private party argued this was impossible since parties were asked to give a bid in the second round. Especially in large scale processes many design elements have to be known in order to make a bid. Small changes in BVO – VVO ratio can have an large impact on financial result, thus floor plans for example have to be relatively certain.

One of the opportunities that was noted by both public and private party was the formulation of rules for the game. The private party mentioned that due to the lack of boundaries they felt they had to supply more than what was asked of them, adding additional costs and time to the process. The private party felt that if they would not have delivered more, they would not be able to compete with other parties who would probably also want to deliver more than what was expected to win the tender. To the municipality these extra elements that were handed in were distracting. In the first round the municipality asked parties to present a vision. The participating parties ended up handing in thick books with plans and renders. The municipality however had to grade the visions and not the supplement plans and renders. By formulating clearer boundaries such as a maximum number of pages and setting restrictions on handing in renders parties can be prohibited from doing too much.

This problem continued throughout the process. Parties that did follow the requirements of the municipality and only handed in a vision in the first round were immediately behind in the second round. Effectively this meant that parties who did not follow the tender instructions (and handed in more than was asked for) had an advantage over parties who did follow the tender instructions and only handed in a vision.

Although the formulation of boundaries was not clear the private party was quite positive about the preselection phase. The private party noted that the preselection was good to ensure that only a few parties would make costs for a plan in the second phase. However as noted before the preselection could have been even 'lighter' by setting clearer boundaries. Public parties were not very positive about the preselection. This was mainly since parties did not hand in the elements that were asked. Additionally, one party that was selected in the pre-selection dropped out after the first selection phase.

Overall the municipality had a very positive experience with the tender of Coulissen West. The vibe was positive and as was also mentioned by the private party open and transparent communication was possible. The municipality recognized that the process was (time) intensive but also concluded that a lot of energy came forth from it. One of the learning experiences and opportunities for future tenders mentioned by the municipality is the understanding that price and quality are related. Asking for higher quality does not necessarily lead to lower land prices. In the case of Coulissen West the winning plan had both the best quality and the highest bids.

For the municipality one of the most important threats was very tangible: the party that dropped out almost directly after they were selected in the preselection dropped out because there was no commitment from the board of the company. This was an important inside. It takes time for parties to discuss within the company. Another threat is related to the costs and winning chances. In the case of Coulissen West 4 parties were selected in preselection. The municipality argued that choosing 4 instead of 3 parties should be a choice of careful consideration. Not only does it limit the winning chances of parties in the second round, but more importantly it will increase the total transaction costs and thus social costs of the tender process because it will mean that four parties will have to work out the vision they have presented in the first phase.

An important threat to the interviewed private party was firstly the relationship between costs, win chances, time intensity and reality of quality demands set by the municipality. When there is no balance between these elements, for example because the quality standards are unrealistic or take too much time to reach parties will not want to participate thus reducing competition.

Related to this first threat the private party argued that when these four elements mentioned above are not balanced private parties will look for alternative procedures in which this balance is present. It can for example become more interesting to find one-on-one chances with municipalities on other sites.

Strengths		Weaknesses	
Municipality	Private parties	Municipality	Private parties
<ul style="list-style-type: none"> • Strong & balanced team. • Collaboration and a good vibe. • External process guidance. • Taking time to design a vision and tender. • Focus on integral quality. • Specialists assess in their field of experience. • Being clear in what is and what is not asked. • Open and transparent environment around the table. • Intensive character of dialogue rounds. • Courage to do it different. 	<ul style="list-style-type: none"> • Dialogue rounds were good to get an understanding of municipal wishes • Pre-selection phase • Costs that needed to be made. • Process was clear from the start. • Open and transparent process and conversation. • No bid in first round 	<ul style="list-style-type: none"> • Goal of consult with master builders was not clear enough. • Party without commitment was selected in pre-selection. • Awarding procedure. • Not enough information present about the soil conditions. • Dialogue sessions were too long. • Clarity of demands in terms of final products. • Layout data room was not clear. 	<ul style="list-style-type: none"> • Lack of rules to the game. • Intensive character of dialogue rounds. • Dialogue sessions were too long. • Amount of work that was needed to win. • Municipality asked for sketch design we had to do more.
Opportunities		Threats	
Municipality	Private parties	Municipality	Private parties
<ul style="list-style-type: none"> • Formulation of rules of the game • Price and quality accompany each other. • Sticking following quality and ambitions will yield results. • One central point of contact works well for market parties. • A good and well considered assessment takes time. • Dialogue is intensive but also brings energy. • Market parties appreciate the tender with dialogue. • Take some time after pre-selection • Formulation of rules of the game. 	<ul style="list-style-type: none"> • Formulation of rules of the game. • Intensity (in terms of time) of the process • Intensive character of the dialogue rounds • Preselection phase can be even smaller and faster. 	<ul style="list-style-type: none"> • Commitment from board of market parties is essential. • A good and well considered assessment takes time. • Dialogue is intensive but also brings energy. • Great renders can be districting when looking at the overall picture. • If you choose more than three parties in the preselection the motivation should be very clear. 	<ul style="list-style-type: none"> • Intensity of dialogue rounds. • Making a bid without the needed knowledge. • Relationship between costs, time, chance to win and promises that have to be made. • Other processes such as one-on-one tendering are more interesting.

Table 11: SWOT Couliissen West (Own table based on information interviewee X&Y and Gemeente Breda, 2015)

11.3.8. Conclusion

Looking at the overall process the main opportunity for improvement is the formulation of the product requirements. This can lead to a reduction of transaction costs at the private side. Additionally, the interviewed private party especially focused on the intensity of the process. A second important opportunity therefore lays in creating a process that is less time intensive.

Another important point to consider is the level of detail that is asked and the level of detail that is needed to make a bid. A bid can only be made if enough details are fixed and thus the design plan is worked out to a certain detail. A sketch design according to the private party is not enough to make a good bid.

11.4. District E, Eindhoven

11.4.1. Project description



Figure 31: District E, winning plan land sale procedure Railway district, Eindhoven (source: <https://goo.gl/JEfPk1>).

District E is the name of the winning plan in the tender procedure for the sale and development of central square in the railway district (VVV terrein) next to Eindhoven central station (Figure 31 & Figure 32). The square is situated on the southern side of the Railway station. West of the square the Bijenkorf, a big warehouse, and the Septemberplein are situated. East of the square a student hotel has been build (ZRI, 2016b).

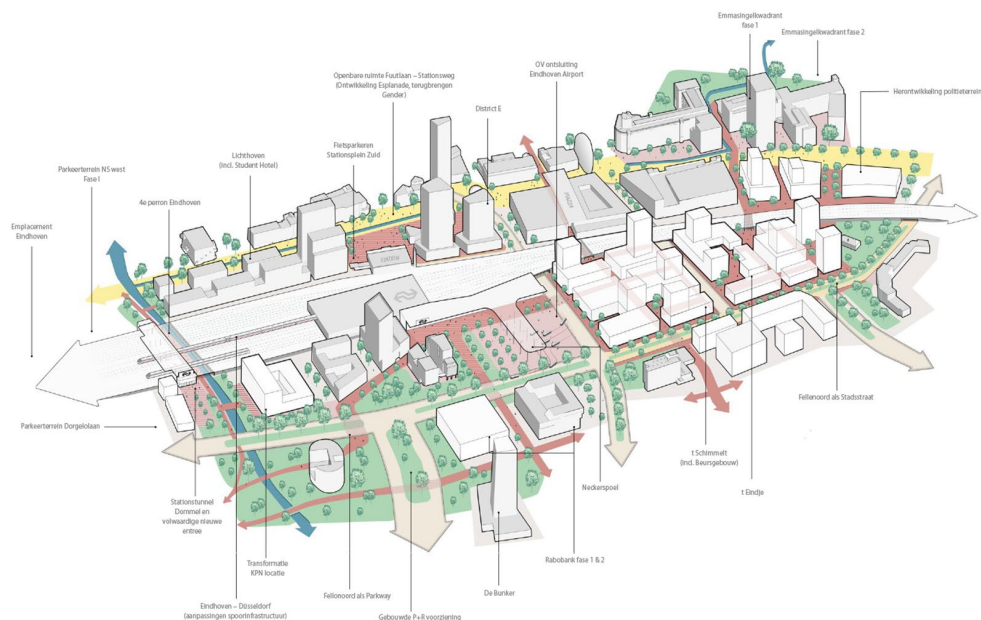


Figure 32: Redevelopment plan railway district Eindhoven. (Retrieved from: <http://www.urhahn.com/eindhoven-centraal-strategische-visie/>)

The municipality of Eindhoven had a clear vision for the development of the railway square. The square is situated in the centre of the Brainport district and functions as the daily entrance for thousands of visitors

that come to the region. Therefore a distinctive project had to be developed to reflect the DNA of the city. The development of the square is seen as an opportunity to show how development can contribute to the main values of the quality of living in a sustainable city. Health and Welfare are seen as central concepts. Recently the city council presented the new vision for the inner city called 'international hotspot'. The vision of the municipality for the railway square focusses on a large variation of living functions that including living spaces for families. The development has to be high end and iconic for the city and the Brainport region. Competing parties in the tender were asked to develop a plan for the square and additionally a vision for the surrounding area (ZRI, 2016a; Interviewee 5, municipality).

The municipality has stated the following ambitions for the area (ZRI, 2016a):

- A spatial design in which inside and outside collide;
- A space to meet and stay and thus an area of space and relaxation;
- An international node with high quality facilities;
- The idea of a vertical city;
- A green, ecological and CO2 neutral area;
- An iconic statement that will make the Brainport area a distinct place with a profile of technology, design and knowledge.

Amvest -the winner of the tender- wants to develop the railway square into an area for high end living, working, and recreation. In three towers, the highest of which is 158 meters, 450 apartments will be created, 20 percent of which will be social rent. The total floorspace will be 70.000 square meters (Jager (Ed.), 2017; vastgoedmarkt.nl, 2017). Additionally, several places for retail, food & beverages, debates, meetings, presentations and experience will be added to the buildings to create a vertical city. According to Jager (Ed., 2017) the redevelopment cost of the square goes well into hundreds of millions. According to current estimates construction will start at the end of 2019.

11.4.2. Process description

Preparation phase

The municipality of Eindhoven chose for a restricted procedure for the land sale. They argued that when an open procedure is followed many parties will apply but they will not send their best people because the chances of winning will be low. Therefore the municipality chose to select three parties without a pre-selection. Making the chance of winning one in three (Koenen, 2017; Interviewee 5, municipality). The three selected parties had previously successfully worked with the municipality. The municipality therefore already knew what to expect from parties and visa versa (Interviewee 5, municipality). No official procurement procedure had to be followed because the tender concerned the sale of land rather than the procurement of a building. Additionally, the municipality has explicitly stated that the Gids Proportionaliteit did not apply on the tender procedure because there is no public contract of work (ZRI, 2016b).

The municipality wanted to give enough freedom to parties to create good and creative results. Therefore, the land use plan for the area was not set before the tender but would be made in collaboration with the winning party of the tender (Koenen, 2017; Interviewee 5, municipality).

In the preparation phase the municipality formed their ambitions. In this process all possible stakeholders within the municipality were invited for three afternoons of discussion. They were asked to explain the important factors for the development seen from their field of expertise. This was a time-consuming process that according to interviewee 5 (municipality) resulted in a clear tender question and municipal ambition framework. Based on the discussions a guideline was written for the selected parties. This resulted in the publication of two documents:

- Leidraad ontwikkelcompetitie (Guidance development competition).
- Kader- en ambitiedocument (framework and ambitions document).

Bid phase

In the bid phase competing parties had several deadlines before the final submission deadline (Figure 33). The three selected parties were notified and invited to compete in the tender procedure in September 2016. They received the documents mentioned above on December 22th, 2016 and were invited for an information meeting on the 16th of January 2017. During the information meeting the municipality explained the specifications of the tender. After the first information meeting a written question round was held in which parties could send their questions concerning the tender to the municipality. The questions and answers would be published for all competing parties on the assigned days (ZRI, 2016b).

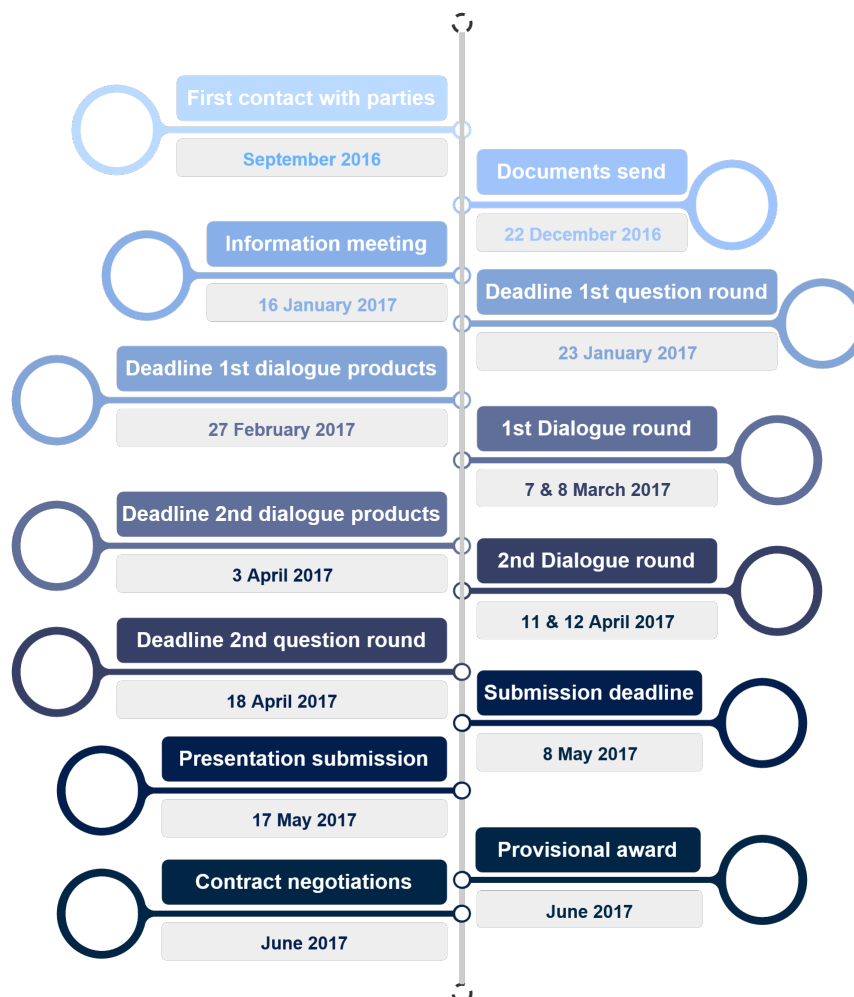


Figure 33: Timeframe selection procedure District E (own illustration).

In addition to the written question rounds parties were expected to participate in two dialogue rounds. The dialogue rounds were not taken into account for the final awarding but had to goal to confirm that the plans that would be submitted by the participating parties were going into the right direction and met all the required conditions and ambitions. Additionally, they were used to check the vision on for the surrounding area, especially the biking garage, external safety conditions and sustainability (ZRI, 2016b). The questions that parties asked during the dialogue were also shared with the other parties. However, content related to the specific plans of the different parties was confidential (Interviewee 5, municipality).

The final plans had to be submitted on May 8th, 2017. They were presented on May 17th of that year. A total of 110 point could be gained based on plans for (social) housing, appearance and the action plan. 20 points could be gained for the land bid (Koenen, 2017; ZRI, 2016b).

Before the plans were graded they were checked on the minimum requirements of completeness and financial and economic capacity. Also it was checked whether any grounds for exclusion applied. The plans were graded on 5 points:

1. Land bid	max 20 points
2. Spatial design and program	max 40 points
3. Area vision	max 30 points
4. Social renting program	max 20 points
5. Interaction	<u>max 20 points</u>
Total	max 120 points

All participating parties had to include a bid for the land in their submitted plan. The assigned score for the land bid was awarded relative to the other bids (Table 12).

Offered land price	Score
< € 17.500.000,--	Invalid bid
€ 17.500.000,--	0 points
Highest offer	20,00 points
Other offers	Offers between the lowest valid offer and the highest offer would be rated proportionally

Table 12: Scoring for offered land price Railway district Eindhoven (Leidraad Eindhoven).

Spatial design an program was subdivided in four categories for which 10 points each could be awarded:

- a. Building volume and height.
- b. Economic architecture.
- c. Climate and sustainability.
- d. Sightlines and walking routes.

Area vision was subdivided in three categories for which 10 points each could be awarded:

- a. Interaction environment and meeting.
- b. Connection.
- c. Identify and quality of the outside space.

The points assigned for social renting program was based on the amount of social rent that was present in the plan. A minimum of 10% social housing had to be present in order to have a valid submission. If only 10% of the program was social housing 0 points would be awarded. Adding extra social volume would result in more points with a maximum of 20 points.

The last awarding aspect was the interaction plan that participating parties had to make. This plan had to include their vision on the possibilities for interaction between stakeholders on and around the railway square.

In contrast to the land price, the other four elements were rated by a jury which consisted of a jury of subcommittees and a jury of stakeholders. The points given by the subcommittees had a weigh factor 2 and the points given by the stakeholder jury had a weight of factor 1. From the grades given by the sub-juries an average amount of points could be calculated. The points given for the offered land price would be added to this amount. The party with the highest amount of points won the tender procedure.

11.4.3. Cost implications – public side

Unfortunately the cost implications of the tender procedure for the public side are unclear. The municipality did not assign costs to the specific project. The estimated hours spent on the project were around 2000 (Interviewee 5, municipality). Taking an hourly wage of 100 euro this would mean that approximately 200.000 euro would be spend on the tender procedure. This is however a very rough estimate and is therefore not useful in a transaction cost calculation. According to the municipality, the governance costs of tendering are largely covered by property taxes. Additionally, the municipal interviewee remarked that

the high amount of energy for tendering is something that always has to be taken into account and weighted against the benefits of tendering.

The municipality did not provide any remuneration fees for the losing parties. This was communicated with the parties that were asked to participate before the start of the procedure. The municipality is of the opinion that the risks of losing should be seen as competition risks of private parties. If after awarding the winning plan would not be developed due to political changes or circumstances the municipality would talk with the winning party about remuneration (interviewee 5, municipality).

Lastly, the municipal interviewee pointed out that even if they had an overview of the costs this would not be representative since many participators in the award committee took part in the process on a voluntary basis. This thus limited the costs of the municipality. The companies at which the volunteers worked however did miss an employee for several afternoons. Therefore, while these spend hours were not specifically municipal costs, they should still be considered costs of tendering.

11.4.4. Cost implications – private side

Similar to the case of Coulissen West the private parties in the case of District E did not keep track of the internal costs (Interviewee 6 & 10, developers). These costs are seen as a time investment. Additionally, one of the interviewees noted that the time they spent on the tenders mostly is an addition to their regular working activities, thus increasing the hours in a working week to more than full-time (Interviewee 7, developer). When an employee spends 30 hours a week on profit generating activities and an additional 20 hours on tender procedures it can be argued that only 10 hours should be seen as costs since the employee gets paid for 40 hours a week (based on a full-time contract). Interviewee 7 (developer) noted that in some cases extra employees will have to be hired to take over the regular workload. In can be argued that these costs of hiring should also be seen as transaction costs of tendering: when there was no tender procedure hiring extra employees would not have been necessary. Interviewee 10 confirms this and explained that next to the costs mentioned below (Table 13) they spend around █████ euro on external project management. From the conversations with the interviewees it becomes clear that no good estimate can be made about the internal labour costs related to the plan development for the tender procedure.

Looking at the total amount of design costs, advisory costs and illustration and formatting costs the two parties that shared their numbers spend 347.000 euro and 315.000 euro. This amounts for an average of 331.000 euro excluding internal labour costs and optional external project management costs.

	█████ *	█████ *	
Internal labour costs	€ ?	€ ?	
Design	€ █████ *	€ █████ *	Concept design, architect
Advisors	€ █████ *	€ █████ *	Technical, legal, financial
Illustration and formatting	€ █████ *	€ █████ *	Presentation booklet etc.
TOTAL	€ 347,000	€ 315,000	(Average: € 331,000)

Table 13: Estimate of tender participation costs District E for private parties (Interviewee 6 & 10).

* All black parts is strictly confidential for the purpose of this graduation project. For more information please contact the author.

11.4.5. Total cost implications

Public party	€ ?	Rough estimate €200.000
Private party A (winner)	€ [REDACTED] * ³⁷	Excl. Internal labour costs
Private party B	€ [REDACTED] *	Excl. Internal labour costs
Private party C	€ [REDACTED] * ³⁸	Excl. Internal labour costs
TOTAL	€ 813,000	Excl. Labour costs and external management costs

* All black parts is strictly confidential for the purpose of this graduation project. For more information please contact the author.

Looking at the total cost of tendering it is hard to make a substantiated estimate since municipal costs only consist of very rough estimates. Additionally there is no insight in the internal labour costs of private parties. It can be concluded that, taking into account the rough municipal estimated costs of € 200.000 the transaction costs of tendering are at least 1.013.000 euro. But due to the lack of information it should be concluded that the real values are however much higher.

An interesting cost related aspect in this case is that no remuneration was provided to losing private parties. The municipality did not provide this remuneration because they saw the private cost investment as a business risk. Since private parties still competed it should be concluded that at least at the start of the tender procedure they thought the invested costs even without possible remuneration was acceptable when weighing their winning chances and possible future profit. One of the interviewees (Interviewee 6, developer) mentioned that the remuneration will not make a difference because it does not come close to the total investment in time and financial means of developers during a tender procedure.

Private parties mentioned that costs saving could especially have been made by limiting the number of elements and drawing asked of private parties. The required drawings amongst others included floor plans and 1:100 façade details. These drawings are not very effective when making a sketch design since at this time in the process too little is known about the amount of space that for example is needed for shafts. These floor plans therefore have to be redone in a later stage. Creating a double working load (Interviewee 6, 7 & 10, developers).

11.4.6. Implications of process time frame

From the official start of the process to awarding the process took six months. The time frame for the tender was thus relatively short despite the dialogue rounds that were included. This had both positive and negative implications.

The positive side was that the commitment to the tender is limited in terms of duration (Interviewee 6, developer). Employees of participating parties have only been busy with the tender for a total amount of six months. However, the intensity of the tender procedures was again one of the main negative points mentioned by private parties (Interviewee 6, 7 & 10 private parties). Looking back, one of the parties even called it unacceptable.

During the period of six months several employees at every development firm had to work on the tender, backed up with numerous advisors. As discussed in sub-paragraph 11.4.4 it can be concluded that tenders

³⁷ Total costs minus design costs. Design costs can be seen as production costs since the winning party can construct the building they have designed. Thus design costs should in this case not be seen as transaction costs.

³⁸ Exact costs of third participating party are unknown. Therefore the average of the cost of the other two parties is taken.

put pressure on the working capacity of developers and their employees while the future profit of the effort was uncertain. When a company is very busy with profit generating assignments it is less interesting to them to commit to a tender procedure of which the outcome is uncertain (Interview 6, developer). The economic situation can thus influence the choice of developers and associated private parties to compete or not. Compared to two years ago the available capacity at developers and at architectural firms has gone down. Therefore it has become more difficult to reassign employees to tender procedures. An architectural firm will when they are busy therefore negotiate an employment fee with the developing company for which they make the tender design, creating fixed and certain income. This will increase the costs of tendering for private parties. For the development companies themselves the internal costs are a risk (Interviewee 6, developer) because no certain income is created with these internal costs. Keeping track of those internal costs can provide a better understanding of the consideration that need to be taken into account when competing in a tender procedure.

11.4.7. SWOT

Both interviewed public and private parties mentioned that the selection of three parties at the start the tender process was a strength in this specific tender process (Table 14). Due to the direct selection of three parties no pre-selection was needed and the municipality was certain that the parties in the process had a strong connection with the area. The process of selecting the three parties that were asked to compete was however not transparent. This was seen as a weakness by one of the private parties (Interviewee 5, developer). When you are the party that is invited you will be happy, but when you would have liked to compete but were not invited you would want to know why. Although the decision was extensively discussed within the municipality and the municipality in an interview explained that private parties were selected based on their connection to the area no official document was published to support their decision. While publishing such a document will require work it can higher the level of transparency of a process. And although the municipality did not have to follow the procurement rules of transparency (since the process was designed as a sale procedure) this seems favourable from their position as public party.

A second element in the tender that was seen as a strength by the municipality were the dialogue rounds (Table 14). These dialogue rounds gave room to see whether parties were going in the right direction. At the same time parties were able to ask questions about the vision and ambitions of the municipality. Like the municipality, the interviewed development parties also mentioned the potential and opportunities in the dialogue rounds (Interviewee 6, 7 & 10, developers). Interviewee pointed out that it was nice to see how the plan was received to know if they were going in the right direction. However, other interviewees (Interviewee 6 & 7) also mentioned some weaknesses of the dialogue rounds in this tender. The dialogue rounds were focussed around a presentation of the plans while some parties did not yet want to present those but rather wanted to talk about the municipal ambitions. While the private parties were free to use the dialogue rounds as they wished they felt as if a presentation had to be given. One of the parties wanted to use the element of surprise and therefore did not show the still unfinished design in the dialogue rounds (interviewee 6, municipality). This party suggested that the dialogue round would have more added value if they were focussed at the award topics, visions and ambitions of the municipality. Their main critique on the dialogue round was that when questions were asked the municipality often supplied a vague answers (interviewee 6 & 7, developers). The mutual expectations of the dialogue rounds thus differed. Discussing these expectations could lead to more effective use of the dialogue round (interviewee 6, developer). The question should be asked what the purpose of the dialogue rounds is. They can be used to provide the municipality with information about the direction that private parties are going or the dialogue rounds can be used to ensure that private parties have a good understanding of the ambitions of the municipality. Interviewee 9 (advisor) stated that dialogue round should be focussed at the private party and their wishes to ensure they have all the information they need to provide a good plan.

A third strength that was mentioned by the private parties was the fact that the scoring process was split up in a qualitative component and a price component (Interviewee 6 & 7) (Table 15). When scoring on quality the committee did not yet know the price that was offered thus the offered price could not influence

their opinion about the quality of the product. The award criteria as a whole were perceived as very clear and understandable.

The awarding of the process however also included a component that was seen as a weakness: the land price scoring (Table 15). This was also mentioned by the municipality. The weights that were assigned to different award criteria were very important because it told competing parties on what they would be graded. However, as interviewee 6 (Developer) pointed out it is not only important what is graded but also *how* the set criteria are graded. Difference in the grades that are given for quality are often marginal and parties never get the maximum score. The scoring of quality was based on absolute values. Due to the extensive amount of criteria on which parties could score on quality and the extensive amount of people in the award committee the quality scores were very levelled. This was different for price. The party with the highest bid got the maximum amount of points. The points assigned to the other parties was relative to the party with the highest bid.

In the most extreme circumstance this could lead to the situation described in Table 14. The table shows a tender in which parties can get 100 points. 20 percent of the points (20 out of 100) are awarded for price. The party offering the highest price will receive 20 points. Parties offering a price equal to the minimal bid of € 10.000 will receive 0 points. Parties that offer prices in between the lowest and the highest bid will receive points relative to the minimal price and the highest bid. The other 80 points can be gotten by meeting the qualitative criteria and ambitions of the municipality.

	Party 1	Party 2	Party 3
Offered price	€10.000	€ 10.002	€ 10.001
Points for price	0	20	10
Points for quality	74	58	65
Final grade	74	76	75

Table 14: Example of award criteria calculation with comparative price.

The table shows that although the plan of party 1 scores considerably better on quality than party 2 and party 3 it still ends up last in the rating because they have the lowest offer. Although only 20 percent of the points (20 out of a 100 points) could be gotten on price it still seems to weigh relatively heavy on the outcome of the calculation. Especially since the price differences are marginal. This is due to the system of awarding points. Points for price are relative to the price offered by other parties thus the party offering the highest price gets 100 percent of the points on price and the party offering the lowest prices gets 0 percent of the points on price. Quality is however rated based on absolute numbers. It does not depend on how other parties are rated. This creates a faulty system in which even with minimal price difference and minimal weight on price, in the rating system price can still have a relatively large impact.

Additionally a problem is situation in the fact that parties will never receive a maximum score on quality due to the so called 'school system' of awarding points. While on price one party will always get the maximum score.

This situation as described above did not become reality in the case of district E, since the winning party received the highest score on quality also had the highest bid. However the system described above can have a serious influences on tender outcome. Competing parties analyse the award system and act on it (Interviewee, 6 & 10, developers).

Another improvement point in the procedure that was mentioned by private parties was the fact that additional information was send to parties during the procedure, making it necessary to make changes at the last minute, this added to the tender costs and increases uncertainty (Interviewee 7 & 10, developer). Additionally, interviewees argued that not enough demarcations were set for the final submission documents. Similar to the project of Coulissen West this led to very extensive documents since parties wanted to compete by doing more than the other parties. The municipality mentioned that providing better

demarcations as to what parties have to provide can be an opportunity to improve the tender procedure by lowering transaction costs for the parties involved (Interviewee 5, municipality).

A last point of improvement mentioned by private parties was the risk allocation during the process (Table 14). Some risks allocated to private parties could not be steered. An example of this was that there was no land use plan in place. The lack of a land use plan was seen as a positive element by the municipality who argued that it provided developers with more freedom. However to private parties it was perceived as a risk since the winning party had to buy the plot after awarding without guarantees that their plan would fit the future land use plan. After discussion the municipality therefore agreed that the plot could be bought after the finalization of the land use plan. This example shows that there is a lack of knowledge of municipalities about the position of private parties who need approval of their advisory board or investor to compete in a tender procedure. These parties will be unlikely to give their approval when risks as described above are present in the tender (Interviewee 7 & 10, developers).

Lastly, the municipality pointed out that procurement law can be final threat to the tender process for land sale procedures (Table 15). In the procedure used for the land sale of District E, parties were asked to make a vision for the surrounding area. This vision can however not become part of the plan that the winning party can develop since the area surrounding the plot is public space. The roads and public areas thus have to be procured (interviewee 5, municipality). To private parties this can also be a frustrating element. They put time in making a good plan for the surrounding and are even graded on these plans. The plans can however not be developed and there is no signed commitment of the public party to use the plans (Interviewee 7, developer).

11.4.8. Conclusion

In the process of the municipal land sale for the railway district (District E), all interviewed parties had positive experience with the number of parties competing in the tender procedure. The public party was ensured of three parties that would go all the way to design an impressive plan and developers were positive about their winning chances. Both parties also looked favourable on the split between the rating of quality and price. Additionally, parties mentioned that the process and the question asked by the municipality was clear.

Both parties also agreed that the rating of the price within the process was a weak point that should be done differently in the future. Furthermore, private parties mentioned risk allocation as a major point of improvement. Municipalities should become more aware of what they ask of competing parties and how this effects them. Another improvement can be found in the field of documentation. The provided text sometimes included contractions and additional information was provided during the tender. By taking more time before the start of the procedure to complete all the material these situations can possibly be prevented.

Although all interviewed parties mentioned the positive sides of the dialogue rounds in a tender procedure, still a lot of opportunities can be taken in the future by talking about the mutual expectations of parties during these dialogue rounds.

Lastly, when including the surrounding area in the design question for the municipal land sale procedure it is important to consider the possible implications of the procurement law.

Strengths		Weaknesses	
Municipality	Private parties	Municipality	Private parties
<ul style="list-style-type: none"> • 3 parties that are connected to the area • Dialogue rounds to discuss progress and ambitions 	<ul style="list-style-type: none"> • 3 parties selected up front. • Split between score on quality and score on price. • Tender based on municipal ambitions instead of restrictions. • Clear ambitions. 	<ul style="list-style-type: none"> • Land price scoring • Lack of demarcation final submission documents 	<ul style="list-style-type: none"> • Definition of the question and additional information after process start. • Land price scoring. • Lack of demarcation final submission documents • Dialogue rounds focused on providing information to municipality. • Time intensity. • Risk allocation.
Opportunities		Threats	
Municipality	Private parties	Municipality	Private parties
<ul style="list-style-type: none"> • Restrict the amount of work that can be submitted and set rules. 	<ul style="list-style-type: none"> • Defining mutual expectations of dialogue rounds. • Dialogue rounds focused on right understanding of topics. • Selecting a partner 	<ul style="list-style-type: none"> • Procurement law 	<ul style="list-style-type: none"> • The way the three parties were selected (transparency). • Accidental sharing of information of dialogue rounds with other parties • Procurement law

Table 15: SWOT District E (Own table based on information interviewee 5, 6, 7 &10).

11.5. Panel agenda

Panel afstudeeronderzoek “Transactiekosten bij gemeentelijke verkoopprocedures”

Datum: dinsdag 11 september 2018

Tijdstip: 15.00 – 17.00 uur

Locatie: TU Delft, Bouwkunde faculteit, Ruimte 01.west.770

Programma

15.00 uur **Welkom en introductie**

15.15 uur **Introductie onderzoeksvragen en debat**

- Stelling 1: Bij de keuze voor een selectieprocedure voor gemeentelijke grondverkoop moet het zo laag mogelijk houden van de transactiekosten als primair doel worden gezien.
- Stelling 2: Partnerselectie bij gemeentelijke grondverkopen moet in de toekomst de standaard worden.
- Stelling 3: Gemeenten moeten indien mogelijk voorkomen dat een verkoopprocedure binnen het aanbestedingsrecht valt, zelfs als dit leidt tot minder kwalitatieve sturing in de uitvraag.

16.00 uur **Pauze**

16.15 uur **Presentatie afstudeeronderzoek en resultaten**

- Onderzoeksvraag: ‘How can decision making regarding selection procedures for municipal land sale procedures be optimized to minimize transaction costs for public and private parties involved.’

16.30 uur **Inhoudelijke discussie en feedback**

17.00 uur **Afsluiting met een drankje**

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