



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF ANGOLA PUBLIC PROCUREMENT SYSTEM

2024





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Assessment of Republic of Angola Procurement System

[NOVEMBER DE 2023]





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GOVERNO DE
ANGOLA



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DE DÉVELOPPEMENT



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Acknowledgements

The assessment of the public procurement system of Angola using the 2018 MAPS methodology was initiated at the request of the Government of Angola (GoA), *Serviço Nacional de Contratação Pública* (SNCP), under the aegis of the Ministry of Finance. The assessment was jointly conducted by SNCP and the African Development Bank (AfDB), with the support of the French Development Agency (AFD).

The Assessment Team would like to acknowledge the valuable policy support provided by the Honorable Minister of Finance, Ms. Vera Daves de Sousa, and the extensive cooperation from the SNCP team led by Ms. Lígia Vunge (Director). The SNCP team, which included Mr. Aldmiro Matoso, Mr. Osvaldo Ngoloimwe, Ms. Carla Gomes, Mr. Lourenço Nicolau, Mr. Faustino Kilola, and Mr. Job Francisco, rendered valuable information and support in managing the activities throughout the assessment. The support of Ms. Sónia Guilherme (former SNCP Director), Mr. Kalayu Gebre-Selassie (AfDB Lead Governance Expert) and Mr. Rees Mwasambili (AfDB Chief Country Program Officer) was crucial during the early stages of the assessment.

The Assessment was led by the AfDB namely Mr. Amilcar Bilale (Task Team Leader and Regional Procurement Coordinator Ms. Chongo Chitupila (Senior Procurement Officer) and Mr. Hermínio Malate (Principal Procurement Specialist). The Assessment Team consisted of a team of experts recruited by AfDB and AFD. Mr. Marcos Ozorio de Almeida (Lead Consultant) and Mr. Tiago Neto Leite (Procurement Consultant) were hired by AfDB, while Mr. João de Almeida (Procurement Lawyer) was hired by AFD.

The Assessment Team is grateful for the inputs provided by numerous officials and experts from the GoA, private sector participants, Civil Society Organizations, Court of Auditors (*Tribunal de Contas*), the Office of the Attorney General (*Procuradoria-Geral da República de Angola*) and all the procuring entities.

The Assessment Team would also like to acknowledge the valuable comments and input from the following peer reviewers: Mr. Fasil Asaye Adal, Mr. William Dakpo and Mr. Daniel Osaye-Boakye from the African Development Bank and Mr. Knut Leipold from the World Bank.

Finally, the Assessment Team gratefully acknowledges the valuable support and guidance from the African Development Bank Management in particular from Ms. Swazi Tshabalala, the Senior Vice-President, Mr. Frank Mvula, Director of the Fiduciary Services and Inspection Department, Mr. Clement Ahossi, Procurement Manager, Mr. Ashraf Ayad, Lead Policy Officer, and Mr. Pietro Toigo, Country Manager for Angola and Sao Tome and Principe.



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Acronyms

AFD	Agence Française de Développement (French Development Agency)
AfDB	African Development Bank
AGO	Attorney General's Office (Procuradoria Geral da República - PGR)
AOA	Angolan Kwanza
CGE	State General Account (Conta Geral do Estado)
COMESA	Common Market for Eastern and Southern Africa
CPLP	Community of Portuguese Speaking Countries
CRA	Constitution of the Republic of Angola
DNIAP	National Directorate for Investigation and Penal Action
DNPCC	National Directorate of Planning on the Fight against Corruption
ECCA	Economic Community of Central Africa
ELP	Long Term Strategy (Estratégia de Longo Prazo)
ENAPP	National School of Administration and Public Policy
GoA	Government of Angola
ICU	Intensive care units
IGAE	Inspectorate-General of the Public Administration
IGF	Inspectorate-General of Finance
IPE	Individual Protection Equipment
MASC	MAPS Assessment Committee
MINFIN	Ministry of Finance (Ministério das Finanças)
MPLA	Popular Movement to Liberate Angola (Movimento Popular de Libertação de Angola)
PDN	National Development Plan – NDP (Plano de Desenvolvimento Nacional)
PPL	Public Contracts Law
PFM	Public finance management



PIIM	Integrated Plan for Intervention in Municipalities
PIP	Public Investment
PR	President of the Republic
RACPA	Angolan Annual Public Procurement Report
SADC	Southern African Development Community
SENRA	National Asset Recovery Service
SIGFE	Integrated Financial Management System of the State – IFMIS (Sistema Integrado de Gestão Financeira do Estado)
SLA	Sector Level Assessment
SNCP	National Public Procurement Service (Serviço Nacional da Contratação Pública)
SOE	State-Owned Enterprise

The medium exchange rate used in the present report is USD 1.00 to AOA 409.8361, provided by the Angolan Central Bank - Banco Nacional de Angola (BNA) for the year 2022.



Executive summary

COUNTRY CONTEXT

Following the 2017 election, the Government of Angola (GoA) is fully committed to reforms identified in the Macroeconomic Stabilisation Plan (2017) and the National Development Plan (2018-2022, and 2023-2027) that aim at promoting economic diversification and reducing oil dependency. A number of reforms have been introduced since 2018 to improve macroeconomic management, curb corruption, enhance efficiency in SOEs, and pursue a more business-friendly environment. Angola's political environment remains challenging due to the deterioration of the macroeconomic and social conditions following the oil crises and the COVID-19 pandemic. Therefore, improving governance related to procurement can contribute to a more efficient and transparent recovery.

The Angolan economy has been in recession for the last five years, precisely since 2016, in the wake of the 2014 oil price shock¹. The double crises of COVID-19 and a further drop in oil prices in 2020 added more pressure on the GoA. Real GDP contracted by 5.2% in 2020 according to preliminary numbers provided by the National Statistics Office (INE), as opposed to pre-COVID-19 estimates for 2020 that indicated the end of a long recession with 1.2 GDP growth, 0.8 percent in 2021 and is undergoing a modest recovery with growth estimated at 2.9 percent in 2022, with a similar growth rate projected for 2023. Reduced oil prices affected Angola's main revenue source, contributing to the deterioration of the fiscal situation. Inflation ended at 25% in 2020, driven by a cumulated 36% devaluation of the currency in 2020, which contributed to the increase in the debt-to-GDP ratio to 134.2 percent of GDP at the end of 2020. In January 2023, the BNA entered a new cycle of monetary loosening, lowering the reference interest rate from 19.5% to 17% amid the lower-than-expected inflation. In the context of the 60% national currency devaluation observed in 2023, the IMF, in September 2023, reviewed its inflation projection for the year from 12% to 19.5% and for 2024 from 9.6% to 25.6%. The bold reforms in the context of the Macroeconomic Stabilization Program (MSP, 2017-2018) had support from multilateral financial institutions to undertake important reforms and might contribute to a faster recovery. The IMF, AfDB, and World Bank provided budgetary support operations to support these reforms, with cumulative disbursement reaching more than US\$ 3.6 billion to date. Angola has seen a significant improvement in human development indicators over the last 20 years. Indeed, Angola's Human Development Index (HDI) score increased from 0.400 in 2000 to 0.581 in 2019, an improvement of 45.2%, which places the country in the medium human development category. Despite these improvements, Angola ranks 148th out of 189 countries and, therefore, is in the bottom quartile of the HDI. Moreover, inequality continues to be a pervasive issue, with the country's Gini coefficient being one of the highest in Africa at 0.51, and Angola's HDI score falls to 0.397 when adjusted for inequality. Indeed, despite rapid GDP per capita growth, the proportion of people living below the US\$ 1.90 poverty line showed only a small decline, from 32.3 percent in 2000 to 28.0 percent in 2014. More recent estimates indicate that the poverty rate has remained unchanged in 2018. Despite significant advances in terms of economic growth since independence, Angola has yet to transition to a sustainable economic development model.

It is critical that Angola transitions to a sustainable and inclusive development model based not solely on natural resource extraction but on growing its capital base. Angola's dependence on natural resource extraction is best illustrated by the fact that virtually all the country's exports – up to 95% in 2015 – are in the oil-sector. The GoA is committed to transitioning to a new development paradigm

¹ Due to the novelty and difficulties to gauge the long-term impacts of the present fluid international situation, created by the events unfolding in the first half of 2022, the economic analysis of this report is limited to up to the end of 2022.



as set-out in key strategic documents. Angola's long-term development plan "Vision 2025" articulates the country's conceptual view to achieve sustainable development and seeks to "extricate the country from poverty by promoting economic growth, macroeconomic stability and employment". It is based on five main dimensions: (i) macroeconomic stability, (ii) human development and employment creation, (iii) private sector development, (iv) economic competitiveness and structural transformation, (v) infrastructure development and regional integration. The Government's National Development Plan 2018-2022 is in line with Vision 2025 and sets-out 6 strategic axes: (i) human development and well-being; (ii) sustainable and inclusive economic development; (iii) infrastructure for development; (iv) consolidation of peace, strengthening of democratic rule of law, good governance, state reform and decentralization; (v) harmonious development of the territory; (vi) guaranteeing Angola's stability and territorial integrity and strengthening of its role in the international and regional context.

Summary of Pillar I

The **legal and regulatory framework** is comprehensive, and the hierarchy of laws is clearly defined by the Constitution and covers the Constitution of the Republic of Angola (CRA) itself, the Laws, comprising Organic laws, Basic laws and Laws, the Presidential Legislative Decrees and Provisional Presidential Legislative Decrees. The legal instruments that specifically regulate public procurement and public contracts are available in the Public Procurement Portal.²

The **Public Procurement Law (PPL) scope of application** covers the formation and execution of public works contracts, lease or purchase of movable assets and acquisition of services entered into by a Procuring Entity. As far as concessions are concerned, the PPL offers the relevant definitions and provides that it shall apply "(...) to the formation and execution of administrative concession contracts, namely concessions of public works, public services, exploitation of public domain and to the formation of contracts whose materialization is carried out through Public-Private Partnership".

The **level of transparency** regarding procurement opportunities is adequate. Open Tenders and Limited Tenders notices must be published in the Official Journal, Series III, and in the Public Procurement (PP) Portal, prepared in conformity with the models provided as annexes of the PPL in order to guarantee the highest possible level of uniformity, as well as in a newspaper with mass-circulation and the publication of the tender can also be given through the posting of notices at the headquarters of the Entities of the Local Administration. The lack of publication of the notice should imply the nullity of the procedure and of what derives from it - consequent nullity - including a contract that may be formed under those conditions.

The **portfolio of procurement methods offered by PPL** is aligned with the best international practices and allows for efficient management of public procurement for all levels of complexity, contractual values, and celerity. From a "law on the books" perspective, the Angolan legislator has established a model that privileges the use of the most competitive methods, which are the open tender and the restricted tender, framed in the WTO-GPA concepts of *open tendering* and *selective tendering*, respectively. It does so by making the use of other methods, necessarily less competitive, dependent on the estimated value of the contract or the verification of a situation that constitutes a material criterion for the choice of the method regardless of the value contract i.e., situations that the legislator considered as justifying the choice of less competitive methods than the open tender and limited tender like emergency procurement.

² <https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica>



The PPL is silent on the mandatory use of standard procurement documents (including standard contract terms), and this is mainly due to the way in which Angolan public procurement law conceives the contract. Standard Bidding Documents (SBDs) are available for all procurement methods and types of contracts. SBDs availability is widespread and procuring entities tend to use the available SBDs. However, more often than not, those SBDs are misused, as some of the instructions are not followed, namely with regard to the disclosure of the evaluation criteria. An explicit legal provision providing for the modification of the model contracts by procuring entities should be added to the PPL, following a specific study on the current use of existing models (rate of use, rate of incorporation of changes, most frequent changes, etc.).

The **rules for participation** set out in Section V of the PPL include provisions that protect or seek to favour domestic suppliers and domestic production (which may constitute barriers to international trade) but are, in respect of Impediments (Article 56 of the PPL), Disqualification for previous non-compliance (Article 57) and professional qualifications (Article 58), balanced and non-discriminatory. The law details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Procuring entities must **set aside 25% of their budget to contract with Micro, Small and Medium Enterprises (MSMEs)** and are obliged to **subcontract MSMEs for at least 10% of the total amount in services contracts and 25% in works contracts**.

The PPL includes: (i) regulations designed to **protect and benefit Angolan companies and goods produced in the Southern African region, COMESA and SADC** (Article 53 of the PPL), and (ii) to set conditions and restrict foreign companies' access to the national public market (Article 54). There are, therefore, barriers to international public procurement to the extent that the access of foreign companies to national public market opportunities may face a relative disadvantage compared to national companies and/or local products (domestic preference).

There are no specific provisions in the PPL, nor in any other legislative act, regulating the terms and **conditions for state-owned enterprises (SOE) to participate in the public procurement market** as bidders. Specific provisions need to be enacted to establish the rules of participation for SOEs. To be able to reach all stakeholders, the recommendation is that the next review of the PPL take into account the aforementioned suggestion and that a broad consultation be undertaken with all interested parties.

The PPL sets out in great detail the way in which **technical specifications** should be formulated, starting with Article 50 (1), which establishes that they must be included in the terms of reference and be stated in such a way as to allow competitors to participate under equal conditions and to promote competition. Technical specifications can be defined by reference to national or foreign standards.

The **award criteria are objective** because the factors and sub-factors that specify the criterion of the most economically advantageous tender must relate to the subject matter of the contract.

Although there is no explicit reference in the PPL to **life cycle cost**, procuring entities may adopt the *life cycle cost* as an evaluation factor in the framework of the most economically advantageous tender. However, such a decision would not avoid risks related to insufficient detail on proposal evaluation models - evaluation factors and sub-factors - and to the absence of a framework that guarantees a non-discriminatory application of the life cycle costing. Since the lack of legal details on the life cycle costing method may induce discriminatory and competition-reducing practices it is recommended to



add specific legal provisions that strengthen the methodologies to be used in the calculation of life cycle costs.

The PPL provides for **administrative challenges** of any acts undertaken in the context of the formation and execution of public contracts and determines that decisions rendered on administrative challenges are subject to judicial review. If the decision has not yet been taken or the time limit has not yet expired, the lodging of a challenge has no suspensive effect, except at the stages of the qualification decision, the electronic auction, the negotiation, the award decision, and the conclusion of the contract. The law also provides for administrative complaints, hierarchical appeals, and the so-called *improper hierarchical appeals*^{3[OBJ]}.

Procuring Entities should set up **Public Procurement Units (PPU)** and designate **Project or Contract Managers**. The duties and powers of both the units and managers are detailed in Presidential Decree Nr 88/2018. Out of 593 existing Procuring Entities, there are currently 142 Public Procurement Units created and fully operational. Efforts should be made to ensure a higher number of functional/operational PPUs, since that will enhance the procurement function.

The PPL not only allows the use of **e-Procurement solutions**, but also creates an exclusive procedure available only in these solutions. Article 12(2) of the PPL establishes that the National System for e-Procurement aims to ensure the dematerialization of Public Procurement by carrying out the process of formation and execution of public contracts, through Electronic Platforms, which may be developed and managed by the State.

There are some **sector-specific public procurement rules** in the Oil, Mining, and Electricity sectors as well as in the Defence/Armed Forces.

Public Private Partnerships (PPP) are the object of a specific law that establishes the procedures for launching and contracting PPPs, the rules relating to their monitoring and supervision, as well as the competences of the PPP Governing Body. The choice of method for the formation of the public-private partnership contract must comply with the regime provided for in the Public Procurement Law.

SNCP makes **model procurement documents** available for the existing procurement methods. Template notices, debriefing minutes, notifications, procedural reports, etc. can be reviewed and downloaded in editable formats from the SNCP standard procurement documents section of the SNCP website. Both the past and present PPLs (of 2016 and 2020) and Presidential Decree nr. 201/2016 are **silent on whether the model documents are mandatory or not**. Consequently, the PPLs and Decree nr. 201/2016 do not indicate whether Procuring Entities have the right to modify model procurement documents or not and they do not stipulate the consequences of modifying model procurement documents or not using them at all. It is recommended that a study on the current use of the existing model procurement documents (including *inter alia* rate of use, rate of incorporation of changes, most frequent changes, etc.) is undertaken. The results of the study can be used to add explicit legal provisions in the PPL, which indicate the parameters within which procuring entities may modify model procurement documents. Subsequent to the promulgation of the 2020 PPL, SNCP updated the model contracts. An analysis of the updated model contracts shows that their content is compliant with the PPL. However, this does not mean that the existing models cannot be improved by incorporating typical clauses that have been tested in numerous countries, such as the FIDIC

³ A hierarchical appeal lodged with a body that exercises supervisory power over another body of the same legal person, outside the scope of the administrative hierarchy, shall be considered "improper".



Conditions of Contract. Examples of contracts that can be improved are complex and high-value infrastructure contracts.),

A National Sustainable Public Procurement Strategy is needed. This Strategy would align with the PPL, which sets out Sustainability as one of the general principles of the PPL and would result in the implementation of the requirements of the PPL on Sustainability, specifically the following requirements: (i) that companies observe the principles and rules of corporate governance, namely regular reporting, organised accounting, internal control systems and social, labour and environmental accountability; and (ii) environmental or social sustainability is used as an evaluation factor within the Most Economically Advantageous Tender (MEAT) award criterion.

The obligations related to public procurement arising from **binding international agreements** are clearly established and reflected in national procurement laws and regulations. This is exemplified by the PPL's explicit reference to the preference rules also established in favour of bidders who are nationals of, or are based in, member states of COMESA or SADC or are based in such territories, or in favour of goods produced, extracted or cultivated in such states, as well as the impediments arising from boycotts by international and regional organizations to which Angola belongs, namely the United Nations (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the African Union (AU), the Southern African Development Community (SADC), the Economic Community of Central Africa (ECCAS) and the African Development Bank (AfDB).

Summary of Pillar II

The institutional framework of the national public procurement system is, in general, adequate to achieve good functioning regarding the organisation of the procuring entities. Procuring entities are clearly defined under Angolan constitutional and administrative law, including the main components of the government (Legislature, Executive, and Judiciary) and the entities of central, local, and autonomous public administration as well as public companies.

The **National Public Procurement Service (SNCP)** is designated in the law as the national authority on procurement. The PPL provides that SNCP, as the body responsible for the regulation and supervision of Public Procurement, undertakes the operation, regulation, oversight, auditing, and supervision of the public procurement system. The PPL and the SNCP statute confer on SNCP, supervisory, and auditing functions that are typical of regulatory authorities and which, in order to be well exercised, require independence, from both the regulated entities and the government. Independence must, therefore, be granted at two levels: (i) organic and structural independence, relating to the composition of the decision-making bodies, the way officials are appointed, and the type and duration of their mandates; and (ii) functional independence, including administrative and financial autonomy and its relationship with the political powers i.e., powers of direction, tutelage, and superintendence. In summary, the powers of the SNCP are well formulated, but for their application to be effective - and respected by all public procurement market players - SNCP must be granted the status of an **independent administrative authority**, which is the status consistent with the performance of the typical functions of a regulatory authority.

There is an **e-Procurement system** (maintained by SNCPE) in use since 2018. It covers the pre-awarding phase (e-procurement planning, e-publication, e-tendering, e-reverse auction, e-evaluation/e-awarding), post-awarding phase (contract management) and supporting features (e-registration, supplier management). Since it was implemented, 65 contracts were awarded using the system (37 under the new Electronic Dynamic System, created under the new PPL, and in force since 2021). **The system has been used by approx. 1% of the Procuring Entities in 79 e-Procurement**



procedures corresponding to an aggregated value of AOA 332.5 billion. The Government should identify gaps and devise an action plan to expand and widely implement e-GP, and more specifically the SNCPE, in the country. Such an action plan shall allocate relevant resources to change management-related activities, including a robust capacity-building program.

Expanding the use of e-GP, along with increased collaborative procurement, would be viewed as the ultimate measure to improve the performance of the Angolan procurement system. No other measure could be viewed as having the same potential for improvement. Moreover, such an improvement would be feasible in the short term, since the e-GP already exists and is functional. Additionally, central purchasing already has two sector-based experiences i.e., health and defence, that should now be replicated in a cross-cutting central purchasing body in key sectors of government spending and policy implementation.

Summary of Pillar III

The assessment reveals relevant weaknesses in the public procurement operations and market practices. Findings show that procurement planning can be improved through better market research capabilities and better definition of requirements and outcomes. The absence of a sustainable procurement strategy, in conjunction with the absence of a practice of sustainability criteria usage may compromise the principle of value for money.

During the selection and contracting process, **PEs fail to properly document all the steps of the process.** This may be aggravated by the almost insignificant use of the available e-procurement solution. In regard to procurement methods, the PPL seems to cover the methods, although the newly created Emergency Procurement method seems to take longer than the Direct Award (or at least has similar time frames), thereby failing to comply with its main objective.

In terms of predictability and transparency of the procurement processes, evidence shows that the **available SBDs are widely (mis)used**, with PEs failing to properly adopt and adapt the SBD provisions. Additionally, procurement notices, contract awards, and other prescribed notices are not being published, raising questions about the transparency of the procurement process.

Post contract award practices equally require significant improvements. Reports show that, especially in the Works area, several contracts are implemented with delays; some of the delays are due to lack of funding or delayed payments. In addition, contract amendments are not properly recorded, creating difficulties in assessing the impacts of those delays, as well as challenges in assessing whether the outcome of the contract matches the objectives or not.

Due to the very **limited use of the available e-procurement system**, the lack of structured data that allows for complete monitoring of activities is seen as one of the greatest challenges of the Angolan system.

Some responses to the Private Sector Survey showed that there is a **negative perception of openness and effectiveness in engaging with the private sector**, this is despite SNCP initiatives to engage with Civil Society Organisations.

On the private sector's capacity to engage in public procurement activities, the assessment showed that only 5% of the existing businesses are registered as suppliers in the Public Procurement Portal.

Finally, the assessment showed that there are **no sectoral public procurement strategies in place.**



Summary of Pillar IV

There are effective **control and audit systems**, but coordination between the various entities involved could be improved. One serious shortcoming is that individual audit reports, as well as the Annual Audit Report of the Court of Auditors, are not published and accessible to the public and interested stakeholders. It was not possible to ascertain if there is a legal requirement to publish the reports. The State General Account should include, in the Chapter on Public Procurement, a section dedicated to Monitoring and Auditing where summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE, and the SNCP should be made mandatory and included in the Angolan Strategic Procurement Plan (PECPA). Efforts need to be made to set up **tailor-made follow-up systems** in order to trace audit outcomes from the issuance of the recommendation to effective implementation. As a common feature from the point of view of weaknesses in almost all management areas of the national Public Procurement System, a very serious effort should be made to increase the **statistical coverage of information**, its rigorous processing, and its publication. Once again, this task is practically impossible without the expansion of the use of **e-GP**, if possible, associated with the much wider use of **collaborative procurement**, especially central purchasing, with the inherent reduction of administrative costs (including data management).

In general, efforts are being made to better **prevent fraud and corruption** and there is a body of legal norms - from procurement to criminal law - and manuals and guides that seem sufficient to improve the integrity outcomes of the system. But it is a traditionally difficult area and several aspects need to be improved, e.g. the establishment of cooling-off periods, the inclusion, for purely pedagogical purposes, of the reference to prohibited practices in procurement documents, the need to collect information on beneficial ownership, the publication of statistical information on the activity of the organs of supervision and control, by areas or sectors of activity of the public administration, and also of the Courts, especially the Court of Auditors, the Civil and Administrative Chamber of the Provincial Court and the Civil, Administrative, Tax and Customs Chamber of the Supreme Court, and Criminal Courts. There are some instruments in use to identify corruption risks, e.g., the Guide to the Prevention and Management of Risks of Corruption and Related Infringements and a Code of Ethics; however, there is no information regarding the number of procuring entities adopting such instruments.

The competences of the bodies that receive, examine, and decide on applications for **review of decisions** are clearly defined in the law and the system is served by three types of challenge. First, the **administrative complaints** to the body that carried out the act considered by the interested party to be illegal or irregular (the same applies to cases of omission - failure to carry out an act considered to be due). Second, the **hierarchical appeals** against decisions on administrative appeals are to be lodged with the hierarchical superior of the body that practiced the act being challenged. Third, the **judicial appeals** to the court can be lodged to the Civil and Administrative Chamber in the case of acts practiced by organs of the central and local administration of the State and by the governing bodies of legal persons governed by public law, and to the Civil and Administrative Chamber in the case of acts of local organs of the State below the Provincial Governor and legal persons and companies managing public services at local level.

As far as civil society engagement is concerned, there is not much evidence of CSO participation either when invited to public consultation initiatives or in regular monitoring of the ongoing procurement process. There are no CSOs engaged in social audit and control of public procurement, and there is no evidence that civil society contributes to shaping and improving the integrity of public procurement.



Overview of compliance

The following table provides an overview of the assessment findings on the level of sub-indicators. Each sub-indicator is identified depending on the findings (full compliance / gaps identified / substantive gaps identified). This table also shows the identified red flags.

PILLAR I		Full compliance	Gaps identified	Substantive gaps identified	Red flags
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) – Scope of application and coverage of the legal and regulatory framework		X		
	1(b) – Procurement methods	X			
	1(c) – Advertising rules and time limits		X		
	1(d) – Rules on participation			X	
	1(e) – Procurement documentation and technical specifications	X			
	1(f) – Evaluation and award criteria			X	1(f)(b)
	1(g) – Submission, receipt, and opening of tenders			X	1(g)(d)
	1(h) – Right to challenge and appeal			X	
	1(i) – Contract management		X		
	1(j) – Electronic Procurement (e-Procurement)	X			
	1(k) – Norms for safekeeping of records, documents, and electronic data.			X	1(k)(a) 1(k)(b) 1(k)(c)
	1(l) – Public procurement principles in specialized legislation	X			
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures		X		
	2(b) – Model procurement documents for goods, works, and services			X	2(b)(b)
	2(c) – Standard contract conditions		X		
	2(d) – User’s guide or manual for procuring entities	X			
3. The legal framework reflects the country’s secondary policy objectives and international obligations	3(a) – Sustainable Public Procurement (SPP)			X	
	3(b) – Obligations deriving from international agreements	X			



PILLAR II		Full compliance	Gaps identified	Substantive gaps identified	Red flags
4. The public procurement system is mainstreamed and well-integrated with the public financial management system.	4(a) – Procurement planning and the budget cycle			X	
	4(b) – Financial procedures and the procurement cycle			X	
5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory function			X	5(a)(a)
	5(b) – Responsibilities of the normative/regulatory function		X		
	5(c) – Organisation, funding, staffing, and level of independence and authority			X	5(c)(a)
	5(d) – Avoiding conflict of interest	X			
6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities, and formal powers of procuring entities			X	6(a)(d)
	6(b) – Centralised procurement body			X	
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology			X	7(a)(a) 7(a)(b) 7(a)(c)
	7(b) – Use of e-Procurement			X	7(b)(a)
	7(c) – Strategies to manage procurement data			X	7(c)(a)
8. The public procurement system has a strong capacity to develop and improve	8(a) – Training, advice, and assistance		X		
	8(b) – Recognition of procurement as a profession			X	
	8(c) – Monitoring performance to improve the system	X			

PILLAR III		Full compliance	Gaps identified	Substantive gaps identified	Red flags
9. Public procurement practices achieve stated objectives.	9(a) – Planning			X	9(a)(a) 9(a)(c)
	9(b) – Selection and contracting			X	9(b)(f) 9(b)(g) 9(b)(j)
	9(c) – Contract management in practice			X	9(c)(c) 9(c)(e) 9(c)(g)
10. The public procurement	10(a) – Dialogue and partnerships between public and private sector			X	



PILLAR III		Full compliance	Gaps identified	Substantive gaps identified	Red flags
market is fully functional.	10(b) – Private sector’s organisation and access to the public procurement market			X	
	10(c) – Key sectors and sector strategies			X	10(c)(a)

PILLAR IV		Full compliance	Gaps identified	Substantive gaps identified	Red flags
11. Transparency and civil society engagement strengthen integrity in public procurement.	11(a) – An enabling environment for public consultation and monitoring			X	
	11(b) – Adequate and timely access to information by the public			X	
	11(c) – Direct engagement of civil society			X	
12. The country has effective control and audit systems.	12(a) – Legal framework, organisation, and procedures of the control system			X	
	12(b) – Co-ordination of controls and audits of public procurement	X			
	12(c) – Enforcement and follow-up on findings and recommendations			X	
	12(d) – Qualification and training to conduct procurement audits	X			
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals			X	
	13(b) – Independence and capacity of the appeals body				
	13(c) – Decisions of the appeals body ⁴				
14. The country has ethics and anti-corruption measures in place.	14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities, and penalties		X		
	14(b) – Provisions on prohibited practices in procurement documents			X	
	14(c) – Effective sanctions and enforcement systems			X	
	14(d) – Anti-corruption framework and integrity training			X	

⁴ Not assessed, as not applicable.



PILLAR IV		Full compliance	Gaps identified	Substantive gaps identified	Red flags
	14(e) – Stakeholder support to strengthen integrity in procurement			X	
	14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour	X			
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules			X	14(g)(e)



1. Introduction

Background

The Government of Angola (GoA), represented by the National Public Procurement Service (SNCP) through the Ministry of Finance, requested the African Development Bank (AfDB) to conduct an assessment of the public procurement system of Angola in collaboration with the government.

The assessment was carried out with the full involvement of all stakeholders and development partners using the Methodology for Assessing Procurement Systems - MAPS (Version 2018). The assessment has the objective of laying the foundation for strengthening the public procurement system in Angola in line with the government's commitment to improving the Public Financial Management (PFM) systems since 2010, notably through the enactment of new Procurement Laws and Regulations in 2010, 2016, and 2020.

The registry of procurement-related spending is available on the *Sistema Integrado de Gestão Financeira do Estado - SIGFE* (Integrated Financial Management Information System of the State - IFMIS), which controls all financial expenditures of the State, including the ministries and other central government entities, as well as sub-national government entities (which are essentially extensions of central government). The adoption of the SIGFE has helped improve government financial commitment controls.

Strategic context and rationale

Despite improvements in governance and accountability, the perception of corruption remains a challenge, especially in the public sector. According to the Mo Ibrahim Index of African Governance, Angola's overall score oscillated around 38 out of 100 points from 2008 to 2019 (a high of 39.2 in 2012 and a low of 37.5 in 2009). The Country Policy and Institutional Assessment (CPIA) score improved from 3.20 in 2011 to 3.44 in 2018. The 2019 Transparency International Corruption Perception Index gave Angola a score of 26, ranking it 146th out of 180 countries, still indicating that the country continues to face corruption challenges. The World Bank's Worldwide Governance Indicators improved in three out of six dimensions of governance between 2012 and 2017, especially in the rule of law, albeit from very low levels (from a percentile rank of 8.45 in 2012 to 11.54 in 2017). These indicators are evidence that the Angolan Government needs to address the real and perceived risks of corruption and lack of transparency to prevent any adverse effects on Angola's economy and political stability.

Public finance and procurement management reforms remain a priority. The Government has continued to strengthen PFM systems and it has made progress in developing a legal and regulatory framework for public procurement starting in 2010, but there is more to be done. The procurement law ("Law nr. 9/2016, dated 16 of June 2016",) brought significant improvements: (i) adopting a modern legislation to regulate public procurement and to comply with principles of fairness, transparency, competitiveness, and cost effectiveness; (ii) establishing the SNCP to discharge the mandate of public procurement oversight; and (iii) introducing a mandatory requirement to publish bidding opportunities to achieve greater equity and transparency. In 2017, the GoA developed an e-Procurement system, which was piloted successfully in 2018. In the wake of the pilot the Government has made efforts to roll the system out to as many entities as possible. More recent improvements were introduced through the latest procurement law dated December 23, 2020 ("Lei nº 41/20, Lei dos Contratos Públicos") – PPL -, by introducing the requirement for market research prior to launching a



given procurement process relaxing the requirements for bid securities, reduction of the term of framework agreements from eight to four years and the procedures for the debarment of bidders. The MAPS assessment thus aims to contribute to the wider range of structural reforms undertaken by the GoA to secure macroeconomic stability and fiscal consolidation under the scope of the Macroeconomic Stabilization Program (MSP, 2017-2018), which was superseded by the *Plano de Desenvolvimento Nacional* – PDN (National Development Plan – NDP).

Development objective

The broad development objective of the assessment is to support the GoA in the development of a transparent, effective, competitive, and accountable public procurement system by strengthening the capacity of institutions in charge of public procurement. The ultimate goal is to improve the performance of the Public Procurement System and to ensure optimum results in the use of public funds and delivery of services to the citizens. The assessment of the institutional, organizational, and human resources capacity in public procurement is also expected to contribute to the Public Procurement Reform agenda.

The main objectives of the assessment are as follows: (1) evaluate the strengths, weaknesses, and gaps of the public procurement system in Angola, and benchmark it against international best practices and standards; (2) guide the government to prioritize efforts in public procurement reform to enable: (i) governance of risk management in the procurement cycle; (ii) balanced accountability mechanisms between the government, citizens, and private sector entities (iii) application and monitoring of sustainable public procurement; and (iv) integration of the public procurement system within the overall public finance management, budgeting and service delivery processes.

The analysis of the public procurement system of Angola using the MAPS Assessment tool would help in the identification of gaps and the findings of the assessment could inform the planning process for public procurement reform in Angola.

Need for an in-depth assessment

The AfDB assessed the country's procurement system in 2019 under the Country Fiduciary Risk Assessment (CFRA). The purpose, main findings, and recommendations are summarized below.

According to the AfDB, the GoA has made progress in developing a legal and regulatory framework for public procurement starting in 2010. The procurement law ("*Lei nº 9/216 dos Contratos Públicos*", dated 16 June 2016) brought significant improvements: (i) adopting modern legislation to regulate public procurement and to comply with principles of fairness, transparency, competitiveness, and cost-effectiveness; (ii) establishing the SNCP to discharge the mandate of public procurement oversight; and (iii) introducing a mandatory requirement to publish bidding opportunities to achieve greater equity and transparency. The legal framework is generally consistent with internationally accepted practices promoting open tendering (although the law promotes it, competitive bidding, in practice it is not yet the most widely used procurement method), allowing free access to the public procurement market and enabling aggrieved bidders to appeal through a complaints' mechanism.

Some of the recommendations emanating from the 2019 review of the country's procurement system were taken into consideration in the latest Law nr. 41/2020, dated 23 December 2020 (Public Procurement Law -PPL). There is a need to conduct a comprehensive review of the country's procurement system, to take into consideration the latest developments at the national and international level.



Due to the recent coming into force of the PPL, the timing of the MAPS assessment has been critical, seeing that, as will be seen along the Report, there are recommendations for improvements to be introduced in the law in the short, medium, and long terms. Of course, short-term modification will be difficult to achieve due to the lengthy legislative process to approve new laws. Even with this constraint, the Ministry of Finance, and especially SNCP, have demonstrated their willingness to tackle the task of implementing improvements based on the present MAPS Report recommendations.

Scope and methodology

The assessment was conducted on all four pillars of MAPS, i.e. (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency.

The assessment focused on the strengths, weaknesses, and gaps of the public procurement system in Angola and benchmarked it against international best practices and standards. The evaluation covered the central government, local government, and parastatal organizations. The original request was limited to the core assessment, which was later extended to include the supplementary Sector Level Assessment that was carried out within the health sector, due to the potential impact it has on the well-being of the population, the plausible results it can deliver in the short and medium term, as well as especially in relation to the COVID19 pandemic, the emergency procurement rules enacted and the situation of procurement of the Individual Protection Equipment (IPE), vaccines, intensive care units (ICU) and other related medicines, equipment, and materials. This resulted in a deeper analysis of 24 existing indicators and the addition of 8 new sub-indicators, which were undertaken as a specific Sector Level Assessment (SLA) of the health sector in the second half of 2022 and annexed to the present main report.

The MAPS Assessment Steering Committee (MASC), led by the SNCP, was established with representatives from stakeholders involved in public procurement, including key ministries, parastatal organizations, the private sector, and donors, to make it a multidisciplinary team.

The Assessment was conducted in three phases:

- 1. Planning and Preparing for the Assessment Phase, which includes:**
 - Consultation with SNCP
 - Establishing a multi-disciplinary team
- 2. Conducting the Assessment Phase, which includes:**
 - Desk review of the documents making up the legal and regulatory frameworks and other relevant policy documents based on a checklist of Background Documents (Document 5- on MAPS website)
 - Collecting other relevant qualitative data
 - Collecting hard data as required by MAPS for quantitative indicators in the form of statistical information on public procurement performance
 - Conducting data analysis against the MAPS indicators
 - Formulating findings and recommendations
- 3. Reporting Phase, which includes:**
 - Preparing the Angola MAPS Draft Assessment Report
 - Sharing of the draft report
 - Preparing the Final Assessment Report
 - Follow-up



Main activities undertaken

The AfDB funded the Ministry of Finance (MINFIN) to conduct the Assessment. SNCP contracted the Lead consultant and a procurement specialist with solid knowledge of the Angola public procurement market. *Agence Française de Développement (AFD)*, which partnered with the AfDB for the core assessment, funded a procurement lawyer to complete the three-specialist team.

The Assessment started with an inception meeting held between the assessment team (composed by the representatives of the AfDB and AFD, and the consultants, with SNCP) and followed the activities listed in the Concept Note, which was approved by all the stakeholders involved in the process, i.e., SNCP, MASC, AfDB and AFD, as well as presented in a semi presential launch workshop held in September 2021. Due to the ongoing travel restrictions, related to changing situation of the COVID-19 pandemic, the decision was to advance the assessment remotely. This process was hampered by many issues, mainly related to the lack of experience of the Angolan officials in managing remote conferencing tools. Therefore, the AfDB and AFD, organized with SNCP and the MINFIN a first interviews / data validation mission that happened virtually in January 2022. Once the travel restriction started to be eased, a mission by two members of the assessment team (the procurement expert and the procurement lawyer) was undertaken in March 2022, to complement activities that were not completed in the virtual mission. A second mission to validate the findings and recommendations with the MASC was held at the end of June 2022. This mission did not achieve the full intended purpose, leading the Assessment Team and the AfDB and AFD to organize a second mission with all the three members of the Assessment Team, undertaken in November 2022, to finalise the validation discussions with the MASC, other GoA, and private sector stakeholders. The full report, reviewed with the comments of the MASC handed to the GoA in June 2023, already incorporating the health sector 'Sector Level Assessment (SLA)', agreed between the GoA and the AfDB, to be piloted under the supervision of the MAPS Secretariat, as foreseen in the Revised Concept Note approved by the Bank and the MAPS Secretariat.

Key information sources were:

- a) Documents making up the legal and regulatory framework
- b) Procurement records of the sampled procuring entities
- c) Interviews
- d) Workshops
- e) Data collection
- f) Private sector surveys and consultations with Civil Society Organizations

Sample Cases

In accordance with paragraphs 27 and 28 of MAPS methodology (2018), sample cases were selected for review of actual procurement procedures, looking for a representation of the reality in Angola, both in terms of distribution between Works, Goods and Services⁵, and Government level.

A total number of 128 cases were analysed, distributed among 32 procuring entities (PEs) (the sample includes all the processes (77) run in the e-GP system that has been used by 26 different PEs. During the data collection process, contracting authorities were briefed about the assessment objectives, especially in what concerns to the procurement operations and market practices. Emphasis on the

⁵ Angolan legislation does not distinguish between "consulting services" and "other services", as is the case in many other countries.



fact that the assessment is not an audit was given. Due to COVID-19 pandemic, data was collected mostly through electronic means. However, during two field missions, the Procurement Consultant validated the information through sample checks. The sampling was negatively affected by the absence of a single source of information and by the PEs' lack of collaboration, that in many cases failed to provide data or data sources. The approach and methodology of sampling are given as part of the Annex in **Volume III**.

Consultation with Private Sector Entities and Civil Society Organizations

To seek inputs from the Private Sector and Civil Society Organizations (CSOs), two surveys were launched:

- **on October 19, 2021**, via an electronic survey titled “Questionário ao Sector Privado sobre o Sistema de Contratação Pública de Angola” (Private Sector Questionnaire on the Angolan Public Procurement System), aiming to seek contractors and suppliers' feedback on their perception of the current state of the Angolan public procurement system, namely in terms of private sector participation, existence of conflicts of interest, and fraudulent or corrupt practices.
- **on October 25, 2021**, also via an electronic survey titled “Questionário às Organizações da Sociedade Civil sobre o Sistema de Contratação Pública de Angola” (Civil Society Organisations Questionnaire on the Angolan Public Procurement System), with the same objective as above from NGOs and other civil groups involved in monitoring procurement and/or public finance.

Both surveys were carried out through a combination of electronically anonymous feedback via a Microsoft Team Survey and on-line interactions with representatives of Private Sector Entities and CSOs. The Private Sector Survey was sent to over 1.000 representatives of private sector entities, whose e-mail was registered in the SNCP's database and/or were part of the “Angola Business Opportunities Seminar” held by the AfDB. Despite multiple reminders and extensions of the deadline to complete the survey, only 86 participants responded⁶. As to the CSOs survey, it was initially sent to 54 representatives of CSOs, whose contact was provided by the AfDB. However, no responses were obtained through this attempt. Additional efforts were made to get CSO's feedback and through the engagement with Transparency International (Portugal chapter), 1 response to the on-line survey was obtained and (on-line) meetings were held with civil society representatives.

On January 27, 2022, an online meeting was held with Private Sector Entities. The meeting was attended by forty-five (45) participants representing contractors and suppliers. The meeting, hosted during the Virtual Mission held by the Assessment team in January 2022, was initiated with opening remarks by the Lead Consultant, followed by a brief presentation of the survey's preliminary conclusions by the Procurement Consultant. Those preliminary conclusions were the starting point for the discussions around indicators 10, 11, 13, and 14, which focused on the public procurement market, transparency and integrity, procurement appeals mechanisms, and ethics and anti-corruption. The results of the survey responses and the discussions held with the Private Sector are captured at relevant sub-indicators of the report.

Limitations and Challenges

Despite the existence of a Public Procurement Portal and an electronic procurement system, the Assessment Team encountered relevant difficulties in obtaining information. The assessment team noted several inconsistencies in the data contained in the databases held by the SNCP, with

⁶ The survey period was between October 19, 2021, and February 28, 2022.



incomplete, duplicated, and untraceable information. Additionally, some of the contracting authorities had issues in providing material data on their public procurement procedures, either due to difficulties in locating/identifying the selected public procurement procedures, or the dispersion or disorganization of the filing system or even because of the (extended) time period to which the procedures referred to (the years of 2019, 2020 and 2021).

Likewise, obtaining Policy Documents and Legal Diplomas proved to be challenging. Indeed, desk research was hampered by the lack of easy access to the different instruments the assessment team needed to analyse.

Validation Workshop

As mentioned above, a Validation Workshop, which assumed a hybrid mode, was held on 29 June 2022. In total, 32 attendees participated virtually in the Workshop. A presentation on the main findings, gaps and recommendations was made by the Assessment Team, followed by a discussion period with Stakeholders, who were thus able to comment and provide feedback that was embedded in the draft Assessment report. As mentioned above, due to the workshop not achieving its full intent, a second validation/awareness workshop was held on 9 November 2022, with the participation of around 120 participants (mainly from the Government and private sector, but also from the academia) at the workshop venue and 22 participants from the provincial governments.



2. Analysis of Country Context

2.1. Political, economic, and geostrategic situation of the country

Country Overview

The Republic of Angola is a large country with a land mass of 1,246,700 km², located in the west of the Southern Africa region, bordered by the Republic of Congo, the Democratic Republic of Congo, Zambia, Namibia, and it has a coastline on the Atlantic Ocean. It has a population estimated at 30.81 million people.

Figure 1: Republic of Angola geographic location



Source: Encyclopaedia Britannica Inc.

Angola is a lower middle-income country with an economy that is heavily reliant on oil and gas resources that account for about 35% of the GDP and 95% of the country's export revenue. The oil dependency makes the economy very sensitive to oil price fluctuation and requires further efforts from the government towards economic diversification. To reduce oil dependency, the Government has embarked on reforms aimed at improving transparency and accountability in the use of public resources, as well as mobilizing domestic revenue as part of efforts to achieve economic diversification and reduce dependency on hydrocarbon. This commitment is driven by the Government's long-term development agenda as outlined in its long-term development strategy 2025 dubbed "Vision 2025"⁷ (*Estratégia de Longo Prazo, ELP*), for equitable and inclusive development of all Angolans, as well as the National Development Plan - NDP for the period of 2018/2022⁸ (*Plano de Desenvolvimento Nacional – PDN 18-22*), and the latest National Development Plan - NDP for the period of 2023/2027 (*Plano de Desenvolvimento Nacional – PDN 23-27*).

⁷ <http://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/zmlu/mdmz/~edisp/minfin033818.pdf>

⁸ <https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/zmlu/njax/~edisp/minfin601408.pdf>



The GoA endeavored to enhance governance and accountability in the public sector. But more remains to be done. Angola's economic structure is burdened by an undue reliance on income from oil, which has thwarted policies to mobilize non-oil revenue. Governance reforms already undertaken in the extractive industry and in state-owned enterprises are crucial to improving competitiveness and private sector participation and promoting economic diversification. Furthermore, the Government has embarked on important reforms to enhance Public Financial Management (PFM), including improving the budget process and increasing transparency in the management of oil and mining revenue. The budget and accounting functions have continued to improve, notably with the adoption and roll-out of the Government's Integrated Public Financial Management System (SIGFE). In addition, the Government has implemented measures to increase transparency and accountability in the oil sector.

Political Context

Angola experienced a protracted civil war – 27 years - which resulted in damage to infrastructure, internal displacement of people and Angolan refugees, low levels of education, shortage of a skilled labour force and weak institutional capacity, to name a few. Following the end of the civil war in 2002, Angola has been politically stable, and a new constitution adopted in 2010 reformed the Presidential System. In 2017 following elections in August, João Manuel Gonçalves Lourenço was elected President, in the wake of the victory of his political party, the Popular Movement to Liberate Angola (*Movimento Popular de Libertação de Angola* - MPLA).

Following the 2017 election, the GoA is fully committed to reforms identified in the Macroeconomic Stabilisation Plan (2017) and the National Development Plan (2018-2022) that aim at promoting economic diversification and reducing oil dependency. A number of reforms have been introduced since 2018 to improve macroeconomic management, curb corruption, enhance efficiency in SOEs, and pursue a more business-friendly environment. The commitment of the Government to the reforms has been reinforced by the Minister of Finance on several occasions amid the COVID-19 crisis.

Angola's political environment remains challenging due to the deterioration of the macroeconomic and social conditions following the oil crises and the COVID-19 pandemic. Therefore, improving governance related to procurement can contribute to a more efficient and transparent recovery.

The 2021 budget assumed a conservative price of US\$39.00 for the barrel of Brent crude oil, and administrative reform to rationalize costs and improve coordination efforts took place in 2020 and reduced the number of ministries from 28 to 21 and the number of senior management positions in the government from 559 to 313. Also, a new income tax code that introduced progressivity in the system has been in force since September 2020 and aims to contribute to a fairer system and broaden the tax base. The new income tax law introduced 13 tax brackets varying from 10 to 25 percent. Furthermore, a new law on public procurement entered into force in January 2021 to further increase transparency and accountability. The Government thus continues to promote reforms and is counting on the support of multilateral organizations to continue with the efforts that improve its debt profile and sustainability. The context of fiscal constraints and claim for continuous improvement through the procurement system would result in better use of public resources.

Economic Overview

The Angolan economy has been in recession for the last five years, precisely, since 2016 in the wake of the 2014 oil price shock⁹. The double crises of COVID-19 and further drop in oil prices in 2020 added

⁹ Due to the novelty and difficulties to gauge the long-term impacts of the present fluid international situation, created by the events unfolding in the first half of 2022, the economic analysis of this report is limited to up to the end of 2022.



more pressure on the GoA. Real GDP contracted by 5.2% in 2020 according to preliminary numbers provided by the National Statistics Office (INE), as opposed to pre-COVID-19 estimates for 2020 that indicated the end of a long recession with 1.2 GDP growth. Reduced oil prices affected Angola's main revenue source, contributing to the deterioration of the fiscal situation. Inflation ended at 25% in 2020, driven by a cumulated 36% devaluation of the currency in 2020, which contributed to the increase in debt-to-GDP ratio to 134.2 percent of GDP at the end of 2020. The bold reforms in the context of the MSP (2017) had support from multilateral financial institutions to undertake important reforms and might contribute to a faster recovery. The IMF, AfDB and World Bank provided budgetary support operations to support these reforms with cumulative disbursement reaching more than US\$ 3.6 billion to date. Therefore, when the COVID-19 crisis hit, the country was in a better position as important reforms were already implemented and helped the country to better accommodate the COVID-19 shocks and engage with creditors and the G20 to show the progress made and present reassurance that the country would continue on the path of fiscal responsibility and reforms.

Social Context

Angola has seen a significant improvement in human development indicators over the last 20 years. Indeed, Angola's Human Development Index (HDI) score increased from 0.400 in 2000 to 0.581 in 2019, an improvement of 45.2%, which places the country in the medium human development category. This improvement was driven by increases of 15.8 years in life expectancy at birth, 0.8 years in mean years of schooling and 66.1% in gross national income (GNI) per capita during the same period. Despite these improvements, Angola ranks 148th out of 189 countries, and therefore is in the bottom quartile of the HDI. Moreover, inequality continues to be a pervasive issue, with the country's Gini coefficient being one of the highest in Africa at 0.51, and Angola's HDI score falls to 0.397 when adjusted for inequality. Indeed, despite rapid GDP per capita growth, the proportion of people living below the US\$ 1.90 poverty line showed only a small decline, from 32.3 percent in 2000 to 28.0 percent in 2014. More recent estimates indicate that the poverty rate has remained unchanged in 2018. Regarding education, while school enrolment has increased sharply in recent years, the quality of education is poor since schools have few resources and an estimated 75% of teachers do not have any formal training or qualifications. As a result, the literacy rate among youth aged between 15 and 20 is only 75%. Similarly, the health sector is grossly under-resourced, with only one physician, 23 healthcare workers, and 63 nurses per 100,000 people. Maternal and child mortality rates in Angola are about double the average in lower-middle-income countries. In terms of gender, Angola has seen very little progress in recent years and the country ranks 118th out of 153 countries in the Global Gender Gap Index. The country notably registered a decrease in the share of women in parliament and wider gaps in education, counterbalancing progress on economic participation and opportunity as well as increased life expectancy.

Development Challenges

Despite significant advances in terms of economic growth since independence, Angola has yet to transition to a sustainable economic development model. The decades of conflict during the struggle for independence and the 27-year civil war that followed had severe consequences on the population, infrastructure, and economy. The end of the war in 2002 and the burgeoning oil industry resulted in strong economic growth, but only a small share of the population benefitted substantially from this economic prosperity. Dependence on oil exports has created macroeconomic instability, and Angola has suffered periods of fiscal contraction due to commodity price fluctuations. Although the country had a large growth in gross domestic product (GDP), this was achieved by depleting natural capital for consumption rather than reinvesting in other types of capital to generate sustainable growth.

It is critical that Angola transitions to a sustainable and inclusive development model based not solely on natural resource extraction but on growing its capital base. Angola's dependence on natural



resource extraction is best illustrated by the fact that virtually all the country's exports – up to 95% in 2015 – are in the oil sector. This economic model has run its course (due to sustainability issues, environmental impacts, and an increase of renewables in the global energy matrix), as international oil prices (even with the present increase) are projected to remain well below their peak far into the future and oil reserves and production have fallen. Economic diversification and capital accumulation will be crucial to reduce oil dependence and stimulate growth. Angola has significant potential in several sectors, including agriculture, fishing, mining, and manufacturing. To capitalize on these areas of potential economic expansion, it is key to improve the business climate, enhance competition, and increase access to finance. In addition, increased investment in key infrastructure – including in energy, transport, and water – as well as in human capital is key to improving productivity and competitiveness. Moreover, improving economic governance will be central to promoting sustainable and inclusive development. Weak institutions are a major constraint to achieving a stable macroeconomic framework, a conducive business environment, and an effective state that can efficiently mobilize critical investments and provide essential public services to its citizens.

The GoA is committed to transitioning to a new development paradigm as set out in key strategic documents. Angola's long-term development plan "Vision 2025" articulates the country's conceptual view to achieve sustainable development and seeks to "extricate the country from poverty by promoting economic growth, macroeconomic stability and employment". It is based on five main dimensions: (i) macroeconomic stability, (ii) human development and employment creation, (iii) private sector development, (iv) economic competitiveness and structural transformation, (v) infrastructure development and regional integration. The Government's National Development Plan 2018-2022 is in line with Vision 2025 and sets out 6 strategic axes: (i) human development and well-being; (ii) sustainable and inclusive economic development; (iii) infrastructure for development; (iv) consolidation of peace, strengthening of democratic rule of law, good governance, state reform and decentralization; (v) harmonious development of the territory; (vi) guaranteeing Angola's stability and territorial integrity and strengthening of its role in the international and regional context.

2.2. The Public Procurement System and its links with the public finance management and public governance systems

This section provides a brief characterisation of Angola's national public procurement system, starting by presenting some indicators that express its relative importance within the national economy and then describing the legal framework that governs the formation and execution of public contracts and the institutional framework, identifying the key actors on the demand, supply, and regulatory and control sides of the public market.

Characterization of the public procurement market

Based on the Angolan Annual Public Procurement Report 2021 (RACPA 2020)¹⁰, in 2021, public procurement accounted for Angolan Kwanza (AOA) 3.906 billion (in terms of the value committed), corresponding to 26.4% of the National State Budget for 2021, as approved. (AOA 14.785 billion). The e-GP solution was used for 40 bids corresponding to a total of AOA 80 billion in the same year. This represents a significant increase when compared to 2020, when four bidding procedures (Open Tender) were awarded through the e-government procurement platform (SNCPE), accounting for AOA 42 billion (1.6% of the total public procurement expenditure). This is perhaps justified by the introduction of the new Electronic Dynamic Purchasing System, which represented 60% of the number

¹⁰ Available on the link:

<https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4z/miy3/~edisp/minfin3267045.pdf>



of electronic bids and 13% of their value. It is estimated that 50 percent of contracts are awarded using non-competitive methods.¹¹

The weak production and processing of data and information continues to affect the analysis of the public procurement system and that will not improve without the generalisation of the use of the e-GP, including not only the contract awarding modules but also the necessary business intelligence tools necessary to run effective monitoring, oriented to a fair combination of compliance and performance. This reality, which is noted in several areas throughout this assessment, is also identified by other sources, for example the recently published Global Data Barometer¹². This barometer contains a module co-developed with the Open Contracting Partnership that “assesses the global availability of structured data on procurement planning, tender, award, and implementation phases” to “provide an improved mapping of the (i) extent to which comprehensive and detailed public procurement data is available around the world; and the (ii) extent to which procurement data is being used.”. Reflecting one of the most persistent structural weaknesses of the system, Angola scored zero points in both indicators.

The legal framework

The Angolan legal system, together with the other members of the Community of Portuguese Language Countries (CPLP)¹³, can be considered part of a group called "Common Portuguese-speaking Law", which, thanks to historical vicissitudes, still today reflects a dominant influence of the so-called Roman-Germanic family. Within the public law framework and beyond constitutional law itself¹⁴, either the Angolan administrative law¹⁵ or the Angolan public procurement law is strongly influenced by its Portuguese and European counterparts¹⁶. Mastering the background of the legislative solutions, understanding the aims of the reforms that have been made over recent years and, above all, framing public procurement within the broader framework of the Angolan legal system is critical to be able to assess to what extent some poor performance may be due to lower quality legislative solutions or, in whole or in part, to pure non-compliance with legal and regulatory provisions formally in force¹⁷.

¹¹ Annual public procurement report for 2022, available at <https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4z/ntc0/~edisp/minfin3574518.pdf>.

¹² <https://globaldatabarometer.org>

¹³ <https://www.cplp.org/>

¹⁴ It is worth highlighting the affinity between the Portuguese Constitution and those of the several Portuguese-speaking African countries and East Timor, namely in the consecration of a) the republican principle with the direct election of the Head of State; b) the unitary state principle, with the rejection of federalism and c) the social state principle with the attribution of a relevant role to the State in the social and economic organization. Dário Moura Vicente, *Comparative Law - 4th ed., 1st v.: Introduction, legal systems in general*, Lisbon, 2019, pp. 85 ff.

¹⁵ The model of public administration itself. (...) Equally relevant is the fact that lawyers trained in these systems share, to a large extent, the same mental frameworks. Due to the communion of sources of concepts and axiological references existing between these legal systems, and also thanks to the cooperation in the fields of legislative production, law tuition in universities and the training of magistrates, the ease of communication between lawyers coming from the above-mentioned countries and territories is evident today. The frequent citation of Portuguese and Brazilian authors by the doctrines of the countries in question bears witness to this ease of communication. We can, to this extent, speak of a common legal culture or a community of language and legal culture". Dário Moura Vicente, *Comparative Law - 4th ed., 1st v.: Introduction, legal systems in general*, Lisbon, 2019, pp. 86 ff.

¹⁶ European public procurement law, basically consisting of both the 2014 Directives and the result of their transposition into Portuguese law through the Public Procurement Code and the doctrine developed based on the vast case law of the Court of Justice of the European Union (CJEU), has decisively influenced some legislative reforms in CPLP countries.

¹⁷ Usually referred to as the difference between the *law on the books* and the *law in practice*.



Key legal acts

The key legal text governing the system is the Public Contracts Law (PPL), approved by Law nr. 41/2020, of 23rd December, which, without explicitly assuming it, has an undeniable codifying vocation¹⁸. In fact, the Angolan legislator, following the same line as it had already done in 2016¹⁹, has comprehensively covered the matters that need to be regulated throughout the life cycle of the public contract²⁰, from the decision to contract to the contract performance regime. It starts in Title I by dealing with a set of general provisions, including the proclamation of general principles²¹, which are to be applied to the procurement procedures and process and guide the actions of all actors involved in the formation and execution of public contracts. The subjective and objective scopes of application, as well as some cross-cutting provisions relating to ethics and review mechanisms that enable private actors to challenge the administrative decisions of public procuring entities, are also set out in Title I. The core of the PPL, which comprises Titles II to VI, covers the life cycle of the public contract, and Title VII deals specifically with the implementation of Public Works and Public Services Concessions. Finally, Title VIII of the PPL sets out the sanctioning regime applicable to the infringement of certain rules by candidates, bidders, and contractors²².

The structure of the PPL, which arranges the contents of the law in nine titles - composed of chapters, sections, and articles – provides an idea of how the legislator, after stating the specific principles of public procurement, covers the life cycle of the public contract.

Table 1: Structure of the Public Contracts Law

Public procurement general principles, key definitions	Title I	General Provisions
Contract life cycle (From formation to implementation)	Title II	Types and Choice of Procedures ²³
	Title III	Contract formation
	Title IV	Central Purchasing
	Title V	Performance of Public Works Contracts
	Title VI	Performance of Goods and Services Contracts
	Title VII	Public works and services concessions
Sanctions for non-compliance by bidders, candidates, or awardees	Title VIII	Penalties
Others	Title IX	Final and transitional provisions

¹⁸ In contrast to the general trend towards gradual “decoding” in the systems of the Roman-Germanic family.

¹⁹ As observed by Pedro Fernandez Sanchez "After the revolutionary milestone of 2016, the qualitative leap achieved by Angola's legal system justified its stabilization, taking the opportunity to consolidate the benefits obtained by Law 9/16." Pedro Fernández Sánchez. The 2020 reform of Angola's Public Procurement Law, *Revista de Direito Administrativo*, nr. 10, January-April 2021.

²⁰ Not the entire public contracting system, as there are matters relating to the institutional framework and operating model, as well as areas of intersection with the management of public finances that will continue to be covered by separate and specific legal texts.

²¹ Fourteen principles are set out in Article 3 of the PCL: legality, economy, probity, formalism, the pursuit of public interest, impartiality, proportionality, good faith, sustainability and accountability, competition, publicity, transparency, equality, and continuity and regularity.

²² The system of sanctions contained in the PCL covers only situations occurring during the contract formation phase and relating to acts or omissions of natural or legal persons holding the status of tenderer, candidate or contractor arising from their intervention in the procedure.

²³ Corresponding to the concept of procurement methods.



Objective scope of application

As regards the objective scope of application, the main innovation introduced by the new PPL in relation to its predecessor Law nr. 9/2016, of 16 of June (PPL 2016), was the expansion of Article 2(1)(b), which now includes *"the formation and execution of administrative concession contracts, namely public works concessions, public services concessions, public domain exploitation concessions and the formation of contracts to be implemented by means of Public-Private Partnerships"*, which filled a long-identified gap in the country's legal framework with respect to this important type of public contract. Recognising the strategic importance of this type of contract for the satisfaction of public needs, the legislator was careful to ensure that the procedures for its formation are as open and competitive as possible, establishing Article 24 (5) of the PPL that *"In public procurement procedures aimed at signing a concession contract the Public Tender or the Restricted Tender by Prior Qualification must be adopted, regardless of the base value of the estimated investment."* With the same diligence, the legislator included in Title VII a substantive regime that enables the exercise of powers of control and supervision by the grantor, as well as the regime of sequestration and redemption of the concession and termination for reasons of public interest.

The Table 2 below lists the contracts to which the PPL applies:

Table 2: Objective scope of application of the PPL

Contracts Subject to the PPL	Comments	Legal base
Public works contracts; Leasing or Acquisition of movable goods; and Acquisition of services.	Corresponding to the so-called administrative contracts which represent most of the contracting undertaken by the Procuring entities (public works, goods, services)	Article 2 (1) of the PPL
Contracts which are carried out by means of a Public-Private Partnership.	Law 11/19 of 11 May (Law on Public-Private Partnerships) submits the formation of partnerships to the legal framework of Public Procurement. Once certain assumptions are met, the process of choosing the private partner must be based on the terms and limits defined by the PPL.	Article 2 (1) (b) of the PPL
Administrative concessions, namely: <ul style="list-style-type: none"> - Public works concessions - Public services concessions - Public domain exploitation concessions 	In certain sectors, there are specific legal texts that define the regime of formation of concessions and exclude the application of PPL. That is the case of oil, diamond, electricity, and gambling sectors.	Article 2 (1) (b) of the PPL
All other public contracts, as long as there is no special regime applicable to these contracts.	The PPL applies, on a subsidiary basis, to the formation of other contracts to be concluded by Contracting Public Entities that are not subject to a special legal framework; For example: lodging contracts, foreign technical assistance contracts, management contracts, contracts relating to the production of programmes intended for broadcasting, by broadcasting, television or information technology entities, contracts entered into under financing agreements, etc..	Article 2 (1) (a) of the PPL

Source: Practical Manual of Public Procurement – 4th Edition, March 2022, SNCP

In Article 7, the PPL excludes from its scope of application a set of contracts, either because they are subject to a special legal framework or because reasons of secrecy and security or other characteristics of the subject matter of the contract (acquisition of real estate or certain financial services) or of the contracting parties (in the case of in-house contracts) do not justify, or even advise against, their



opening to competition under the normal terms prescribed by the PPL. The 2020 PPL has also excluded from its scope contracts for the acquisition of legal services and legal representation.

It should also be noted that according to the combined interpretation of Article 7 (2) and Article 2 (1)(d), contracts entered into by state-owned enterprises or companies in the public domain with a value of less than AOA 500 000 000,00 are excluded from the application of the PPL.

Table 3: Contracts excluded from PPL scope of application

Contracts Excluded from the PPL scope	Comments	Legal Base
Contracts governed by specific law ²⁴ .	<ul style="list-style-type: none"> - Oil Sector - Presidential Decree nr. 86/2018 of 2 of April - Mining sector - Mining Code, Law nr. 31/2011 of 23 of September - Electricity sector - Law 14-nr. A/1996 of 31 of . - Armed forces – Presidential Decree nr. 289/1204 of 14 of October - Individual employment contracts in public functions. 	Article 7 (1) (d) of the PPL
Contracts entered into under the rules of an international organisation to which the Republic of Angola is a party to.	- Contracts governed by rules of international law.	
Contracts which are declared secret under the terms of the law or whose execution must be accompanied by special measures, discretion, security, and those for the acquisition of arms and military and police equipment and technology, relating to the defence or security of the State.	The strategic and operational nature of these contracts justifies their exclusion. All other contracts, provided they are not subject to autonomous or special regulation, must be carried out under the provisions of the PPL.	
Real estate rental or acquisition contracts.	Governed by the Law on Public Property - Law nr.18/10, of 6 August.	
Contracts concluded between procuring entities	The so-called inter-administrative contracts, when the activity developed by the procuring entity is not an essential part of its corporate object and is subject to competition	
Contracts for the acquisition of financial services (for example, the issuance, purchase, sale, and transfer of securities or other financial products) and contracts for services provided by Banco Nacional de Angola (BNA).	In relation to the BNA, only contracts of an essentially financial nature are excluded from the application of the PPL. Other contracts, such as those for acquisition of goods, consumables, or public works, fall directly within the objective scope of the PPL.	Article 7 (1) (f) of the PPL
Legal services (representation by a lawyer, legal advice)	Exclusion applies to arbitration or conciliation held in Angolan territory or otherwise, and to legal proceedings before courts, public authorities, or international institutions as well as to legal advice for the preparation of the above-mentioned lawsuits.	Article 7 (3) of the PPL

Source: Practical Manual of Public Procurement – 4th Edition, March 2022, SNCP

²⁴ Specific in relation to the general regime set forth by the PLC.



Procurement methods, thresholds, and timescales

It should be noted with regard to procurement methods that they constitute, in the Angolan law, administrative procedures that organise a series of acts and formalities for the purpose of awarding public contracts and are regulated by the PPL and, where necessary, supplemented by rules of administrative law. As in other legal systems, the methods are typical in the sense that the choice can only concern one of those exhaustively listed in the law and once made, it triggers the imperative application of the formalities legally prescribed for them. The method to use in a given procurement is chosen by the contracting authority on its own initiative and, once the contract formation procedure has commenced, the contracting authority is bound to award a contract unless no proposals are eligible or any of the situations provided for in Article 98 of the PPL²⁵ occur.

Compared to the previous law, the PPL innovates through the creation of two new methods: the dynamic electronic procedure and the emergency contracting procedure.

The new **electronic dynamic procedure** is a procedure "carried out on the electronic platform, in which the Contracting Public Entity allows any interested party to participate as a bidder, by submitting prices" – Article 5 (r) of the PPL– and includes an auction whose opening deadlines are related to the value of the contract to be formed (see Table 4 below).

The additional new **emergency procurement** is defined as a "public procurement procedure in which the Public Procuring Entity requests a natural or legal person to submit a proposal or invoice to address unforeseeable situations objectively qualified as emergencies under this Law" – Article 5 (m) of the PPL – **emergency procurement**. It is autonomous from the *simplified procurement* method, which continues to exist. As both methods are triggered by an invitation to a specific provider, in the case of the emergency method the invitee can simply submit to the Procuring Entity an invoice instead of a proposal, while in simplified contracting the need to formulate a proposal is maintained. It should be emphasised that it is incumbent on the Procuring Entity to prove, when stating the reasons for the decision to choose the procurement method, or when so required, that "(...) *the time limits or formalities established for the other public procurement procedures cannot be complied with*" in the particular procurement concerned – Article 31 (1) *in fine* of the PPL.

The way in which organisations purchase, from a procedural point of view, is perhaps the most distinctive aspect of public procurement compared to private procurement²⁶. This way of acquiring or purchasing translates into a portfolio of procurement methods which can be classified according to their openness to the market and competition²⁷.

The Table 4, below, shows the portfolio of procurement methods available to public contracting authorities:

²⁵ Article 98 of the PCL lists the reasons for non-award which include the cases where (i) no bids have been submitted, (ii) all bids have been rejected or (iii) where unforeseen circumstances make it necessary to modify fundamental aspects of the bidding documents after the deadline for submission of bids has expired or to postpone the invitation to bid for a period of not less than one year. The same applies in the case of a definitive loss of interest in the contract by the Procuring Entity.

²⁶ The different nature of the "shareholder", which in the case of public procurement is the citizen/taxpayer and legally protected interests, is decisive in the comparison between public and private procurement.

²⁷ For ease of comparison with other systems, the national procurement methods are grouped according to the GPA-WTO correspondents https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm



Table 4: PPL's procurement methods

GPA equivalent	Angola	Thresholds (AOA)	Minimum time limits (calendar days)*	Legal base
Open tendering	Competitive bidding (Concurso Público)	None	20 – 120 days	Article 65 (2) of the PPL
	Restricted procedure (Concurso Limitado por Prévia Qualificação)	None	Request for participation: The deadline freely set by the ECP Proposal: 20 - 120 days	Request for participation: Article 125 of the PPL Proposal: Article 132 (2) (f); Article 65 of the PPL
	Electronic Dynamic Purchasing Systems (Procedimento de Aquisição Dinâmico Electrónico) 28	None	4 hours (up to 18.000.000) 3 days (up to 72.000.000) 10 days (up to 182.000.000)	Article 150 (1) of the PPL Article 150 (2) of the PPL Article 150 (3) of the PPL
Selective tendering	Restricted bidding by invitation (Concurso Limitado por Convite)	Up to 182,000,000.00	6 days	Article 136 (3) (d); 138 of the PPL
Limited tendering	Direct award (Contratação Simplificada)	Up to 18,000,000.00	n.a.	Article 142 (2) (d)
	Emergency Procurement (Contratação Emergencial)	None	n.a.	Article 148 of the PPL

Source: Assessment Team analysis

Authorisation of expenditure

The PPL prescribes that *"The competence for the authorisation of expenditure inherent to the formation and execution of contracts covered by the scope of application of this Law shall be determined in a specific normative act of the President of the Republic"*, with the exception of *"(...) the sovereign bodies, local authorities, independent administrative entities, whose competence to authorise expenditure shall be defined under the terms of the respective Organic Laws or Statutes."*

²⁸ Minimum of 4 hours when the estimated contract value is equal to or less than AOA 18 000 000.00, a minimum of 3 calendar days when the estimated contract value is less than AOA 72 000 000,00 and a minimum of 10 calendar days after publication when the estimated contract value is equal to or greater than AOA 182 000 000.00.



(Article 36, of the PPL). The expenditure to be considered is the total cost estimated to be incurred with the respective contract implementation, even if the price has to be liquidated and paid in instalments. The fractioning of the expenditure with the intention of omitting the total cost of the contract and distorting the application of provisions that depend on the thresholds established by law is prohibited (Article 39, of the PPL).

Table 5: Competence for the authorization of expenditure – contract value criterion

Competent bodies	Thresholds (in AOA) are set out in the Annual Implementation Rules of the State Budget for each economic year					
	Up to 1 000 million	Up to 1 750 million	Up to 2 000 million	Up to 2 500 million	Up to 3 000 million	Above 3 000 million
Holder of the Executive Power	✓	✓	✓	✓	✓	✓
Vice-President of the Republic	✓	✓	✓	✓	✓	✗
Ministers of State	✓	✓	✓	✓	✗	✗
Ministers and Provincial Governors	✓	✓	✓	✗	✗	✗
Municipal Administrators	✓	✓	✗	✗	✗	✗
Other Bodies of Central State Administration and SOEs	✓	✗	✗	✗	✗	✗
Managers of Budgetary Units of Local Government Bodies of the State	✓	✗	✗	✗	✗	✗

Source: Practical Manual of Public Procurement – 4th Edition, March 2022, SNCP
AOA 3.000.000.000.000 = USD 7.320.000

Table 6: Competence for the authorization of expenditure – in simplified contracting

Competent bodies	Thresholds (in AOA) are set out in the Annual Implementation Rules of the State Budget for each economic year			
	Up to 72 million	Up to 182 million	Up to 364 Million	Above 364 Million
Holder of the Executive Power	✓	✓	✓	✓
Vice-President of the Republic	✓	✓	✓	✗
Ministers of State	✓	✓	✗	✗
Ministers and Provincial Governors	✓	✗	✗	✗
Municipal Administrators	✓	✗	✗	✗
Other Bodies of Central State Administration and SOEs	✓	✗	✗	✗
Managers of Budgetary Units of Local Government Bodies of the State	✓	✗	✗	✗

Source: Practical Manual of Public Procurement – 4th Edition, March 2022



AOA 364.000.000 = USD 888.160

Table 7: Competence for the authorization of expenditure – in emergency contracting

Competent bodies	Thresholds (in AOA) are set out in the Annual Implementation Rules of the State Budget for each economic year					
	Up to 500 million	Up to 875 million	Up to 1000 million	Up to 1250 million	Up to 1500 Million	Above 1500 million
Holder of the Executive Power	✓	✓	✓	✓	✓	✓
Vice-President of the Republic	✓	✓	✓	✓	✓	✗
Ministers of State	✓	✓	✓	✓	✗	✗
Ministers and Provincial Governors	✓	✓	✓	✗	✗	✗
Municipal Administrators	✓	✓	✗	✗	✗	✗
Other Bodies of Central State Administration and SOEs	✓	✗	✗	✗	✗	✗
Managers of Budgetary Units of Local Government Bodies of the State	✓	✗	✗	✗	✗	✗

Source: Practical Manual of Public Procurement – 4th Edition, March 2022, SNCP
AOA 1.500.000.000 = USD 3.660.000

Participation of foreign companies in public tenders

The PPL includes regulations designed to protect and benefit Angolan companies and goods produced in the Southern African region, Common Market for Eastern and Southern Africa (COMESA) and Southern African Development Community (SADC) (Article 53 of the PPL) and to condition and restrict foreign companies' access to the national public market (Article 54 of the PPL).

Table 8: Measures to promote national enterprises

Measures to promote national enterprises	Legal Basis
<p>The bidding documents may contain rules aimed at promoting preferential contracting of national individuals or legal entities that are Micro, Small and Medium-Sized Enterprises (MSMEs) under the Angolan law:</p> <p>At the negotiation phase²⁹, the bidding documents may establish rules of preference in the access to this phase for national competitors;</p>	Article 53, of the PPL

²⁹ Public contracting authorities may include a negotiation phase in all procedures (Article 22 (2), of the PPL).



Measures to promote national enterprises	Legal Basis
<p>In the awarding:</p> <ul style="list-style-type: none"> - When the award criterion is the lowest price, a margin of preference can be established for the prices proposed by national competitors, up to 10% of the price proposed by foreign competitors; - When the award criterion is that of the most economically advantageous tender, an increase of the global score attributed to the proposals of national competitors can be established up to 10% of that score. <p>With regard to the protection of national production and when the most economically advantageous tender criterion is adopted, the bidding documents may provide for the awarding of higher points to goods produced, extracted or farmed in Angola.</p> <p>In contracts where subcontracting occurs, they may impose that a minimum percentage of the value of the subcontracted services be reserved for national individuals or companies.</p>	
<p>In Public Procurement procedures, Procuring entities must:</p> <ul style="list-style-type: none"> - Set aside 25% of their budget to contract with Micro, Small and Medium Enterprises (MSMEs). - Establish that Large Companies are obliged to subcontract MSMEs by at least 10% in services contracts and 25% in works contracts. 	<p>Joint Executive Decree nr.157/2014, of 4 June³⁰.</p>

Source: Practical Manual of Public Procurement – 4th Edition, March 2022

Table 9: Access conditions for foreign Candidates and Bidders

Access conditions for foreign Candidates and Bidders	Legal Base
<p>Foreign natural or legal persons may apply or submit proposals in contract formation procedures whose estimated value is equal to or greater than:</p> <ul style="list-style-type: none"> - AOA 500 000 000,00, when it is public works contracts, and - AOA 182 000 000,00, for leasing or acquisition of goods or services. 	<p>Article 54 and Annex V, of the PPL</p>

Source: Practical Manual of Public Procurement – 4th Edition, March 2022

Table 10: MPMEs qualification criterion

	Number of workers ³¹	Annual Turnover (values in USD)
Micro Enterprises	Less than 10	Less than 250,000.00
Small Enterprises	Between 10 and 00	Between 250,000.00 and 3,000,000.00
Medium Enterprises	Between 100 and 200	Between 3,000,000.00 and 10,000,000.00

Source: Law nr. 30/2010, 13 of September

³⁰ Provisions regarding support for MSMEs are provided in the Law for the Promotion of National Entrepreneurship (Law nr. 14/2003, of 18 July) and in the Law for Micro, Small and Medium Enterprises (Law nr. 30/2011, of 13 September).

³¹ For the sake of this classification, workers are considered to be those persons who have worked in the company for six consecutive months, subject to a work contract and registered with the Social Security.



Review mechanisms for bidders

In Chapter IV (Administrative Challenges) of Title I, the PPL provides for administrative challenges of any acts undertaken in the context of the formation and execution of public contracts (which may harm the legally protected interests of individuals) and determines that decisions rendered on administrative challenges are subject to judicial review (Article 21, PPL). The lodging of a challenge has no suspensive effect, except at the stages of the qualification decision, the electronic auction, the negotiation, the award decision, and the conclusion of the contract, if the decision has not yet been taken or the time limit has not yet expired. The law also provides for complaints, hierarchical appeals and the so-called improper³² hierarchical appeals (in the case of appeals it is mandatory that the decision be communicated to the SNCP).

The institutional framework

The main Angolan public market actors in the areas of demand, supply and regulation and control are presented in brief, giving an idea of their number and size. In the case of the actors present on the demand side (public procuring entities) and in regulation and control, their presentation is facilitated by the fact that they are strongly marked, in the definition of attributions and competences, by the applicable legal framework, namely the respective organic laws. In the case of supply-side actors, statistical information is presented on companies who are already co-contractors, obtained from the database of the suppliers' registry.

The national public procurement system is strongly marked by the characteristics of the country's system of government, in which the central role of the President of the Republic (PR), as the holder of the executive power, stands out for most decisions. The role of the PR is indeed decisive when it comes to authorising the expenditure. The thresholds³³ above which the competence lies with the PR are relatively low, which translates into a significant concentration of power at the supreme level of public administration. This concentration, with the inherent risks of reducing the autonomy and management responsibility of the procuring entities at the various lower levels of the Public Administration, has not even been used to promote the centralisation of procurement or other forms of collaborative procurement³⁴. The system can thus be characterised by being highly concentrated at the level of the decision authorising the expenditure, without which no contract can be formed, and exceptionally decentralised insofar as the majority of the contracting public entities procure in an isolated manner, even when they purchase goods and services of common use or undertake very standardised and low complexity works.

The Angolan public procurement system is characterised, with regard to the subjective scope of application of the PPL, by covering public procuring entities at central, sub-central and other entities³⁵ levels, including state-owned enterprises and public or private legal entities which may be qualified as bodies governed by public law. According to PPL (Article 6) PPL are procuring entities:

Entity	Legal framework
President of the Republic	Under Article 120(d) of the Constitution of the Republic of Angola (CRA), "The President of the Republic, as holder of the Executive Power, has the following

³² A hierarchical appeal lodged with a body that exercises supervisory power over another body of the same legal person, outside the scope of the administrative hierarchy, shall be considered improper.

³³ See Tables 4, 5 and 6

³⁴ Although some of the instruments considered essential for centralized procurement such as the legal regime of framework agreements were already available since the enactment of the 2016 PCL.

³⁵ In the sense in which the concept is used in the GPA/WTO
https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm



Entity	Legal framework
	powers: d) to direct the services and the activity of the State's direct, civil and military administrations, to supervise the indirect administration, and to exercise jurisdiction over autonomous administration;" It must be borne in mind that, according to the Angolan constitutional framework (Article 108(1) CRA), the powers of the President of the Republic are threefold inasmuch as he "is the Head of State, the holder of Executive Power, and the Commander-in-Chief of the Armed Forces".
Entities of Central and Local State Administration	The organization and functioning of the auxiliary bodies of the President of the Republic are governed by Presidential Legislative Decree nr. 8/2019, of 19 of June
National Assembly	The National Assembly is a sovereign organ (Article 105, of the CRA) and "is the Parliament of the Republic of Angola" (Article 141 para 1, of the CRA) exercising political and legislative powers (Article 161, of the CRA), including the approval of the General Budget of the State (Article 161, e), the law on public contracts (Arts 161, b) and Article 165, paragraph 2 of the CRA), with powers of control and supervision (Article 162, of the CRA), with particular emphasis on "receiving and analyzing the General Account of the State, as well as other public institutions that the law requires it to oversee, which may be accompanied by the report and opinion of the Court of Auditors, (...)" and, finally, powers in relation to other organs (Article 163, of the CRA)
Courts	The Courts are organs of sovereignty (Article 105, of the CRA), with the Court of Auditors (Article 182, CRA), whose Organic Law was approved by Law nr. 13/2010, of 9 of July, and amended by Law nr. 19/2019, of 14 of August, standing out for its importance in the framework of prior, concomitant, and successive supervision of public contracts.
Attorney General's Office	The Organic Law of the Attorney General's Office was approved by Law nr.22/2012, of 14 of August.
Independent Administrative Entities	The Law on Independent Administrative Entities was approved by the Law nr. 27/2021, of 25 of October. According to Article 2 (1) Independent Administrative Bodies are non-territorial entities that, regardless of their designation and not integrated in other bodies of the Public Administration, pursue their attributions with organic, functional, and technical autonomy, without being subject to the direction, supervision, or administrative tutelage of the Executive Branch. (2) The Independent Administrative Bodies shall have administrative and financial autonomy, as well as attributions and competences in matters of regulation of economic, social, and administrative activity (...) and of promotion and defence of competition in the public and private sectors.
Local authorities	The legal regime of local authorities is set out in Article 217 (1) of the CRA and in the Organic Law on the Organisation and Functioning of Local Authorities, approved by Law nr. 27/2019, of 25 of September.
Public institutes	The Legal Regime of Public Institutes was approved in Presidential Decree nr. 2/2020 of 19 February
Public funds	According to Article 4, al. d) of Presidential Legislative Decree nr. 2/2020 of 19 of February, public funds are a form of public institute when they are " <i>autonomous public assets, endowed with legal personality, administrative, financial and patrimonial autonomy specifically created to pursue certain public purposes of an economic nature, namely in the fields of fostering economic and social development, maintenance and conservation of</i>



Entity	Legal framework
	<i>infrastructure and economic stabilization.</i> " Public funds, unlike public foundations, are integrated in the General Budget of the State.
Public associations	The legal regime of public associations is set out in the Basic Law on Public Associations, approved by Law nr. 13/2012 of 13 of January
Public Companies and Companies with Public Shareholding, as defined in law	The Basic Law of the Public Enterprise Sector, approved by Law nr. 11/2013, of 7 of September, does not offer a definition or a general concept of public company, but provides in Article 3 that public companies are those that, by law, are expressly qualified as such. Paragraph 2 adds that the capital of these companies is held entirely by the State. As for the companies with a public sector shareholding, the same law prescribes in its Article 4 that "they are commercial companies created under the Commercial Companies Law, in which the State directly, or through other public entities, exerts isolated or jointly a dominant influence by virtue of any of the following circumstances: a) Holding all or most of the capital or voting rights; b) Right to appoint or dismiss the majority of the members of the administrative or supervisory bodies". Public Companies and Public Shareholding Companies that do not benefit from operational subsidies or any operations with funds from the State Budget are excluded from the application of the PPL.
Entities governed by public law	An Entity governed by public law is any legal person that, regardless of its public or private nature, pursues public interests without any commercial or industrial character and that in its pursuit is controlled or financed by the Angolan State from the General State Budget.

In comparison with the previous regime of Law nr. 9/2016, of 16 June (PPL 2016), the extension of the scope of application to the so-called "*Entities governed by public law*" should be highlighted, so the PPL can be considered as covering a broad spectrum of the public procurement discipline in accordance with all international standards. The PPL also extends its applicability to all public companies regardless of whether their financing is fully guaranteed by the state budget or not³⁶. This is incoherence with the funding source criterion, State-owned Enterprises (SOE) and Public Domain Companies (PDC) that do not benefit from operational subsidies or any operations financed by the State Budget are excluded from the application of the PPL.

The Table below shows the distribution of entities across the three levels of government:

Table 11: Distribution of Contracting Authorities by level of government

Level of Government	Number of entities
Central	601
Provincial	1464
Other entities (Public Institutes and Independent Administrative Bodies)	204
Courts	27
	2296

Source: SNCP

³⁶ The less ambitious regime regarding the scope of application of the public procurement law contained in Article 4 of Law 20/2010, which stated in paragraph 2 that "This law is also applicable to public companies fully funded by the General State Budget, under the terms to be defined." survived until the revocation operated by Law 9/2016.



Interested parties, candidates, bidders, and contractors

The Angolan public procurement law characterises the supply side by offering legal definitions for candidate³⁷ and bidder³⁸ and contains also provisions concerning the rights and obligations of companies who, being interested³⁹ in public procurement opportunities and related information, have not yet reached the stage of bidding.

As for suppliers, the GoA maintains a database of more than 3200 registered suppliers. Of these, approximately 7% are foreign. Also noteworthy is the weight of MSMEs, which exceeds 90% of the companies for which information is recorded (83%).

Table 12: Distribution on suppliers registered in the Database

	Micro	Small	Medium	Big	Without information on size	Total
Foreign	25	42	29	49	71	216
National	847	1019	488	188	463	3005
Total	872	1061	517	237	534	3221

Source: SNCP

Regulatory and Control Bodies

The National Public Procurement Service (SNCP)

The National Public Procurement Service (*Serviço Nacional da Contratação Pública* - SNCP) is a public law instituted entity with legal personality and capacity and qualified as a public institute of the Administrative or Social Sector⁴⁰. It is endowed with administrative and financial autonomy and its own assets, and its key functions include the support to the government in matters of definition and implementation of policies and practices relating to public procurement, the supervision, auditing, and monitoring of public procurement processes in collaboration with the competent bodies, the enactment of regulations and instructions to standardize public procurement procedures and the ruling of administrative challenges presented by candidates or bidders.

The key **supervisory functions** (Article 6) of SNCP comprise the monitoring of compliance with the public procurement laws and regulations by the procuring entities, candidates, and bidders, including with the specific rules concerning the functioning and management of the state e-procurement platform. In case the SNCP finds that the rules or principles of public procurement are being violated in a procurement procedure, it can order the suspension of the procedure to promote the elimination of flaws, illegalities, and irregularities inherent in the process of contract formation (Article 440 (3) of the PPL).

³⁷ According to Article 5 (e) of the PCL a candidate is the "natural or legal person that participates in the qualification phase of a Selective Tender (*Concurso Limitado por Prévia Qualificação*) through the submission of an application".

³⁸ According to Article 5 (i) of the PCL, a competitor is the "natural or legal person who participates in any procedure for the formation of a contract by submitting a proposal".

³⁹ In relation to interested parties, the provisions of the PCL concerning the conduct of interested parties (Article 9), clarifications and rectifications of the bidding documents (Article 51), errors and omissions of the project in a public works contract or concession formation procedure (Article 52), consultation and clarifications of the parts of the procedure (Article 69) should be highlighted.

⁴⁰ The typical powers of a regulatory body may justify the granting of the status of Independent Administrative Entity foreseen in Law 27/21 of 25 October.



The **supervisory and regulatory attributions** (Article 8) encompass the supervision of the public procurement market operation, the proposal of legislative enhancements deemed necessary, and the production of standard bidding documents and other documents of compulsory use for the public procurement procedures. Finally, the SNCP also performs **auditing functions** (Article 7), including internal and external audits on electronic platforms, procuring entities, and public procurement procedures launched by the procuring entities.

The Court of Auditors

The Constitution of the Republic of Angola (CRA) defines the Court of Auditors as “*the supreme body for monitoring the legality of public finances and judging the accounts that the law subjects to its jurisdiction*” (Article 182 of the CRA). This concept highlights the jurisdictional nature of the Court, its hierarchical level as a high court and delimits its powers to matters within its area of expertise.

First and foremost, due to its central importance in the context of public procurement, the **a priori control** is the one that takes place before the acts and contracts subject to it can produce material and financial effects. In this sense, the Court’s prior approval constitutes a condition of effectiveness.

The prior review of the Court of Auditors applies to:

- the contracts of any nature, with a value equal or superior to the one set out in the law that approves the General Annual State Budget, when celebrated by entities subject to its jurisdiction, or in an equivalent norm of the municipal administration;
- the drafts relating to the contracts identified above, when they are to be signed by public deed and the respective costs must be satisfied at the time of their signing⁴¹; (the notary must attach a copy of the resolution of the Court of Auditors to the respective deed);
- the contracts for external financing to the State, within the scope of public investment projects.

The current thresholds for submission of contracts to prior review and prior approval are set forth by Article 10 of the 2022 State Budget Law, approved by Law nr. 32/2021, of 30 of December:

ARTICLE 10

(Prior Control)

1. Without prejudice to the powers of the supervisory, control and inspection bodies of the State Administration, a priori control shall be exercised by means of the prior approval or Declaration of Conformity issued by the Court of Auditors.
2. The President of the Republic, as Holder of the Executive Power, shall submit to the Court of Auditors, for a priori control purposes, the contracts of any nature with a value equal to or higher than AOA 11 000 000 000,00 (Eleven thousand million kwanzas).
3. The Budgetary Units of the Bodies of Central and Local Government and other similar entities shall submit to the Court of Auditors, for the purposes of a priori control, the contracts of any nature whatsoever, with a value equal to or higher than AOA 700 000 000,00 (Seven hundred million kwanzas).
4. The contracts that require a priori control, under the terms of this Article, shall only become effective after the prior approval or Declaration of Conformity of the Court of Auditors has been obtained or after the expiry of the time limit established in paragraph 6 of Article 8 of Law nr. 13/2010, of 9 of July, relative to the Organic and Procedural Law of the Court of Auditors, as amended by Law nr. 19/2019, of 14 of August.

⁴¹ In such cases, the notary must attach a copy of the resolution of the Court of Auditors to the respective deed.



5. Whenever Public Procuring entities enter into contracts under the delegation of competences by the President of the Republic, as Holder of the Executive Power, the value limits to be considered for preventive audit purposes are those defined in number 2 of this article, regardless of the body executing the expense.

Contracts subject to prior review shall be deemed to have received the prior approval 30 calendar days after they reach the Court of Auditors unless any missing or additional information is requested, in which case the deadline shall be interrupted until they are submitted. The contracts are legally ineffective until they obtain the respective prior approval. In cases where approval is refused, the entities subject to its jurisdiction shall send to the Court, within 15 days, a copy of the annulment of the respective budgetary commitment note, in order to be attached to the process. Contracts subject to prior review shall be submitted to the Court of Auditors within 60 calendar days after their approval.

The following contracts are not subject to prior review:

- *Contracts for the acquisition of arms and military technology for the defence and security forces and contracts for technical assistance for national defense;*
- *Contracts concluded as a result of Emergency Procurement⁴²;*
- *Contracts that, within the scope of previously targeted public works contracts, result in the execution of extra work or the correction of errors or omissions⁴³.*

*The Court of Audits performs the so-called **successive control** (ex post review) under which it judges the accounts of entities subject to its jurisdiction and carries out enquiries and audits aimed at assessing the legality and regularity of the realisation of expenses and collection of income. This audit also aims to verify whether, in relation to contracts that have been subject to prior review, the corresponding expenses were made with the prior approval of the Court.*

*In 201944, the legislator added to the competences of prior and post review the so-called **concomitant control**, which is carried out through audits, enquiries and investigations regarding:*

- *Contracts that are not subject to prior review;*
- *The execution of contracts which have received prior approval;*
- *Contracts resulting from emergency procurement, or the simplified contracting method based on material criteria;*
- *Contracts under execution that have been modified in a way that does not imply a change in value that would make them susceptible to prior review.*

Attorney General's Office - AGO (Procuradoria Geral da República - PGR)

*The CRA defines the Attorney's General Office (AGO) in Article 189 (1) as "a State body with the function of representing the State, particularly in the exercise of criminal prosecution, defending the rights of other natural and legal persons, defending legality in the exercise of the jurisdictional function and monitoring legality in the preparatory phase of proceedings and with regard to the carrying out of sentences." And Article 189 (2) adds that the "Attorney's General Office (AGO) enjoys administrative and financial autonomy and constitutes a hierarchical organic unit under the direction and management of the Prosecutor General.". The role of the AGO is particularly relevant when it comes to preventing and fighting corruption because the Government decided to rely on this body to concentrate the implementation of its strategy instead of creating one or several specialised agencies for this purpose. The main tasks of the **National Directorate of the Plan to Fight Corruption (DNPCC)***

⁴² These contracts are subject to concomitant supervision, through audits, enquiries, and investigations.

⁴³ Ditto.

⁴⁴ Law 19/2019, of 14 August, Article. 9-A.



of the AGO are (i) to prevent and combat acts of corruption and fraud with effective measures, (ii) to supervise and control possible acts of public improbity which may damage public assets, (iii) to prevent negligent or culpable actions or omissions which may cause losses to public assets, embezzlement, misappropriation, squandering or waste of public property; (iv) Cooperate closely with the National Directorate of Investigation and Penal Action of the AGO, providing it with all kinds of information, sound and image records collected on possible criminal practices. It also has powers to investigate criminal cases of manifest gravity and particular complexity, when a concentrated direction of the investigation and cases determined by the Attorney General of the Republic is justified. It has powers to (i) develop actions to prevent and combat acts of corruption or fraud with effective measures to combat these phenomena, (ii) carry out inspection and control actions of possible acts of public improbity, liable to damage the public assets, (iii) prevent negligent or culpable actions or omissions (iv) investigate, by means of enquiries, acts of corruption or fraud committed by public agents, with a view to confirming acts of public improbity, (v) request, when necessary, audit reports on financial movements involving expenses borne by the State. It is worth mentioning that the DNPCC is the main executor of the **Strategic Plan for Prevention and Combating Corruption (2018 - 2022)**⁴⁵ which is intended to provide a framework for achieving the following objectives: (i) Promoting integrity, transparency, accountability culture, as well as improving services in the Public Administration; (ii) Promoting the involvement of society in preventing and fighting corruption; (iii) Intensifying corruption prevention and promoting integrity in the public and private business sectors. The **National Directorate for Investigation and Penal Action (DNIAP)**, which is an AGO's body resulting from the organizational structure approved by Law nr. 22/2012 of 14 August, is the unit at national level with competences to direct, investigate, instruct, and prosecute criminal cases in which the defendants are Public Prosecutors, Judicial Magistrates, Members of the National Assembly, as well as entities with presidential nomination. Even more recently, in 2018, the Law on Coercive Repatriation and Extended Forfeiture of Assets ⁴⁶ established the National Asset Recovery Service (SENRA), giving it the main mission of identifying, locating, and seizing goods, financial and non-financial assets or products related to crime, whether these goods are in Angola or outside the country. It also has the power to ensure cooperation with foreign counterparts, as well as to exercise the other powers conferred by law, with emphasis on the possibility of bringing any civil, administrative or tax action with the aim of recovering assets illicitly removed from the State. Within the scope of criminal proceedings in the DNIAP, SENRA promotes an asset investigation with a view to identifying and locating the assets that may be subject to a confiscation order and adopting the necessary measures for their recovery. SENRA assists both the DNIAP and the other criminal investigation bodies in the AGO. From the procedural point of view, SENRA's actions are always carried out as an attachment - with the character of investigation and asset recovery - to the main case, which deals with the criminal offence itself.

2.3. National policy objectives and sustainable development goals

Angola's commitment to long-term development is outlined in its long-term development strategy 2025 (Estratégia de Longo Prazo, ELP), for equitable and inclusive development of all Angolans, as well as the National Development Plan for the period of 2018/2022 (Plano de Desenvolvimento Nacional – PDN 18-22)⁴⁷. In addition, as stated above in “Development objective” (page 20), of Chapter 1 - Introduction, “the Government has embarked on reforms aimed at improving transparency and

⁴⁵ No mid-term implementation assessment of 2019-2020 implementation of the Plan is accessible and the content of preparatory work on a plan for 2023 and beyond is not known. The final implementation report is due in the last quarter of 2022.

⁴⁶ Law 15/18, of 26 December.

⁴⁷ Once the next PDN is published, a review of the plan is recommended.



accountability in the use of public resources, as well as to mobilize domestic revenue as part of efforts to achieve economic diversification and reduce dependency on the hydrocarbon”.

To increase the efficiency in the Government spending, the PDN had the establish the goal of increasing from 30% to 60% the number of public investment contracts procured through open competitive bidding⁴⁸.

On a practical/operational level, the Integrated Plan for Intervention in Municipalities (PIIM) aims to materialise Public Investment (PIP), Development Support Expenditure and Basic Activities actions, with priority for those of a social nature, to inhibit the rural exodus and promote more inclusive economic, social, and regional growth in Angola. This Plan aims to increase the autonomy of Angola's 164 municipalities within the scope of the policy of decentralisation of administrative powers and thus increase the quality of life throughout the country.

2.4. Public Procurement Reform

The reform of public procurement in Angola has been taking shape since 2010, when Law nr. 20/2010, of 7 September, which was the first Public Procurement Law, was approved, as well as Presidential Decree nr. 298/2010, of 3 of December, which established the then designated Public Procurement Office (GPC), now the SNCP. Since its creation in 2010, still as GPC, the SNCP has been investing in a strategy to monitor and modernize public procurement, based on the design of working tools and powers with the contracting authorities, to increase compliance with legislation, greater transparency and improve the quality of public expenditure.

It is in this context that the process of confirmation of expenditure by the Minister of Finance was created in 2014, which aims to implement a process of verification of public procurement procedures, and in 2015 the SNCP succeeded the GPC in what was the first general and systematic regulation of public procurement matters by the Angolan government. In 2016, Law nr. 9/2016, of 16 June, was passed, which preceded the current PPL. It is also this year that a set of complementary diplomas appear, with particular emphasis on the one that creates the Register and Certification of State Suppliers, the one that regulates the formation and execution of Framework Agreements and the one that approves the Standard Bidding Documents. In 2017 the e-GP Regulation was published, approved by Presidential Decree nr. 202/2017, of 6 of September, and, the following year, a pilot project on electronic public procurement began, with promising results, from high participation of companies to savings in the order of 26%⁴⁹. The following year, and in what is seen as an effort towards the professionalization of the Procurement function, Presidential Decree nr. 88/2018, of 6 of April, is published, which creates the Public Procurement Units⁵⁰ and establishes the figure of the Contract Manager. Also, in 2018, the Angolan Public Procurement Strategic Plan 2018-2022 was published, where a matrix of strategic objectives (20 in total) was outlined, coinciding with the four pillars of the MAPS Assessment. It was also this year that the auditing activity of the SNCP began, culminating with the carrying out of seven audits, some in conjunction with other inspection bodies *Inspecção Geral da Administração do Estado* (IGAE) and *Inspecção Geral de Finanças* (IGF). The monitoring and audit activity has been complemented with the publication of various instruments, namely the Integrated

⁴⁸ See Meta 2.2 of Programa 2.1.1: Melhoria da Gestão das Finanças Públicas, PDN 2018/2022, page 143.

⁴⁹ Source: Newspaper “Expansão” (Issue No. 493, 5 October, 2018), available at <https://www.expansao.co.ao/angola/interior/aquisicoes-via-internet-poupam-um-em-cada-quatro-kwanzas-nas-compras-do-estado-60016.html>.

⁵⁰ We will see throughout the report that the creation of the Public Procurement Units in the legal landscape does not yet constitute their effective large-scale operationalization.



Strategy for Moralization in Public Procurement, which comprises a Guide to the Prevention and Management of Risks of Corruption and Related Infringements and a Code of Ethics. More recently, the creation of the Academy of Public Procurement, in a partnership between the SNCP and the National School of Administration and Public Policy-ENAPP, stands out. Throughout the reform process, the monitoring of public contracting has been a constant, and different documents have been published, including reports and statistical bulletins, which have contributed to measuring the fulfilment of some of the strategic objectives that have been set.

Though, as highlighted in other sections of the report the procurement reform process faces several challenges, such as institutional framework, with the procurement authority lacking administrative and financial independence, the low level of capacity of the operational procurement units and lack of trained staff, amongst others that are set out in details in the findings and recommendations of the Report.



3. Assessment

3.1. Pillar I - Legal, Regulatory and Policy Framework

Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards while the practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulations, procedures, and bidding documents formally in use.

- **Synthesis of the indicator**

The **legal and regulatory framework** is comprehensive, and the hierarchy of laws is clearly defined by the Constitution and covers the Constitution of the Republic of Angola (CRA) itself, the Laws, comprising Organic laws, Basic laws and Laws, the Presidential Legislative Decrees and Provisional Presidential Legislative Decrees. The legal instruments that specifically regulate public procurement and public contracts are listed and can be consulted and downloaded from the Public Procurement Portal⁵¹.

The **PPL scope of application** covers the formation and execution of public works contracts, lease or purchase of movable assets and acquisition of services entered into by a Procuring Entity. As far as concessions are concerned, the PPL offers the relevant definitions and provides that it shall apply "(...) to the formation and execution of administrative concession contracts, namely concessions of public works, public services, exploitation of public domain and to the formation of contracts whose materialization is carried out through Public-Private Partnership". The procuring entities, as will be seen in Pillar II, are also very clearly defined in the sense that PPL does not leave out any entity that, regardless of its legal nature, uses public money in the procurement of goods, services and works.

The **level of transparency** regarding procurement opportunities is adequate. Open Tender and Limited Tender notices must be prepared in conformity with the models provided as annexes of the PPL in order to guarantee the highest possible level of uniformity and published in the Official Journal, Series III (OJ III), and in the Public Procurement (PP) Portal,, as well as in a newspaper with mass-circulation. Publicity of tenders can also be given through the posting of notices at the headquarters of the Entities of the Local Administration. The lack of publication of the notice should imply the nullity of the procedure and of what derives from it – the so-called consequent nullity - including a contract that may be formed under such conditions.

⁵¹ <https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica>



The portfolio of procurement methods offered by PPL is aligned with the best international practices and allows for efficient management of public procurement, for all levels of the acquisition complexity, contractual values and required celerity. From a *law on the book's perspective*, the Angolan legislator has established a model that privileges the use of the most competitive methods, which are the open tender and the restricted tender, framed in the WTO-GPA concepts of *open tendering* and *selective tendering*, respectively. The portfolio also includes other methods, necessarily less competitive, dependent on the estimated value of the contract or the verification of a situation that constitutes a material criterion⁵² for the choice of the method regardless the value contract i.e., situations that the legislator considered as justifying the choice of a less competitive method than the open tender and selective tender like the emergency procurement.

PPL is silent on the mandatory use of standard procurement documents (including standard contract terms), and this is mainly due to the way in which Angolan public procurement law conceives the "contract Standard Bidding Documents (SBDs) are available for all procurement methods and types of contracts. Its availability is widespread and procuring entities tend to use the available SBDs. However, more often than not, those SBDs are misused, as some of the instructions are not followed, namely in what regards to the disclosure of the tenders' evaluation model. An explicit legal provision setting the room for customisation of the model contracts allowed to procuring entities should be added to the PPL, but this legislative initiative should be preceded by a specific study on the current use of existing models (rate of use, rate of incorporation of changes, most frequent changes, etc.). The **rules for participation** set out in Section V of the PPL include provisions that protect or seek to favour domestic suppliers and domestic production (which constitute barriers to international trade) but are, in respect of Impediments (Article 56 PPL), disqualification for previous non-compliance (Article 57 PPL) and professional qualifications (Article 58 PPL) balanced and non-discriminatory. The law details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Procuring entities must **set aside 25% of their budget to contract with Micro, Small and Medium Enterprises (MSMEs)** and are obliged to **subcontract MSMEs for at least 10% of the total amount in services contracts and 25% in works contracts.**

The PPL includes regulations designed to **protect and benefit Angolan companies and goods produced in the Southern African region, COMESA, and SADC** (Article 53 PPL) and (ii) to condition and restrict foreign companies' access to the national public market (Article 54 PPL). There are therefore barriers to international public procurement to the extent that the access of foreign companies to national public market opportunities may face a relative disadvantage compared to national companies and/or local products (domestic preference).

There are no specific provisions in the PPL, nor in any other legislative act, regulating the terms and **conditions for state-owned enterprises (SOE) to participate in the public procurement market** as bidders. Specific provisions need to be enacted to establish (or limit) the rules for the participation of SOEs. Legal provisions limiting SOE participation in public procurement enhance competition, reduce conflicts of interest, promote private sector growth and improve transparency. The PPL sets out in great detail the way in which **technical specifications** should be

⁵² As opposed to the value criterion.



formulated, starting with Article 50 (1) of PPL which establishes that they must be included in the terms of reference and be stated in such a way as to allow competitors to participate under equal conditions and to promote competition. Technical specifications can be defined by reference to national or foreign standards.

The **award criteria are objective** because the factors and sub-factors that densify the criterion of the most economically advantageous tender must relate to the subject matter of the contract.

Although there is no explicit reference in the PPL to **life cycle cost** procuring entities may adopt the *life cycle cost* as an evaluation factor in the framework of the most economically advantageous tender. However, such a decision would not avoid risks related to insufficient detail on the tender evaluation models – i.e., evaluation factors and sub-factors - and to the absence of a framework that guarantees a non-discriminatory application of the life cycle costing. Since the lack of a detailed legal regime on how to apply the method of calculating life cycle costs can lead to discriminatory practices and restriction of competition it is recommended to add specific legal provisions on how to calculate the life cycle costs.

The PPL provides for **administrative challenges** of any acts undertaken in the context of the formation and execution of public contracts and determines that decisions rendered on administrative challenges are subject to judicial review. The lodging of a challenge has no suspensive effect, except at the stages of the qualification decision, the electronic auction, the negotiation, the award decision, and the conclusion of the contract, if the decision has not yet been taken or the time limit has not yet expired. The law also provides for administrative complaints, hierarchical appeals, and the so-called *improper hierarchical appeals*⁵³. Taking into account the tradition of the Angolan legal system, as well as the existence of mechanisms for reviewing decisions - (i) before the body that made the decision, and through an appeal to its hierarchical superior if the decision is rejected and (ii) before the courts, either following an administrative decision of complaint or hierarchical appeal or directly without the need for a complaint or administrative appeal.

On **Public Procurement Units (PPU)**, the duties and powers of both the units and managers are detailed in a specific presidential decree. There are currently 142 Public Procurement Units created and fully operational, out of a universe of almost 593 Procuring Entities. Efforts should be made to ensure a higher number of functional/operational PPU's, since that will significantly enhance the procurement function performance.

The PPL not only allows the use of **e-Procurement solutions**, but also added a new procedure that can only be conducted electronically i.e. the Electronic Dynamic Purchasing System... Article 12(2) of the PPL establishes that the National System for e-Procurement aims to ensure the dematerialization of Public Procurement by carrying out the process of formation and execution of public contracts, through Electronic Platforms, which may be developed and managed by the State.

There are some **sector-specific public procurement rules** in the Oil, Mining, Electricity sectors as well as in the Defence/Armed Forces.

Public Private Partnerships (PPP) are the object of a specific law that establishes the procedures for launching and contracting PPPs, the rules relating to their monitoring and supervision, as well as the competences of the PPP Governing Body (PPPGB). The choice of method for the formation

⁵³ See footnote 3.



of the public-private partnership contract must comply with the regime provided for in the Public Procurement Law (Article 14/1 of the Law nr. 11/2019).

- **Findings**

The legal framework regulating public procurement is well structured from the point of view of sources of law. The Public Procurement Law (PPL)⁵⁴, was approved through a law of the National Assembly - the Parliament and legislature of the country - and is therefore in the hierarchical level immediately following the Constitution, which gives it the greatest possible legitimacy within the national legal system. It is positive that the law on public procurement is enacted by the legislative branch⁵⁵ which makes its modification more difficult consequently providing more stability in the management of the System. Taking into account that the National Assembly also oversees the executive power⁵⁶, changes in the PPL are less likely to occur under the impulse of short-term political motivations. In terms of coverage, the PPL addresses key issues that need legislative treatment according to the main international standards⁵⁷ and state the principles that should guide public procurement⁵⁸ and the basic definitions necessary for a good understanding of the legal text. Also worth noting, the fact that the PPL covers the whole procurement cycle - from formation to execution of public contracts – which, being already embedded in the PPL itself, has the potential to convey important message that as in many other countries, the tendency to focus too much on the pre-contractual phase needs to be balanced in favour of both the planning and the implementation phases. Also, the result of good systematics, the PPL culminates with provisions relating to enforcement and sanctioning⁵⁹, which must be applied, by force of the Constitution, in accordance with the principles of criminal law and of the administrative offenses.

Angola's legal system is well structured, and the hierarchy of laws is defined by the Constitution as follows: (i) the **Constitution of the Republic of Angola (CRA)**; (ii) the **Laws**, comprising: (a) **Organic laws**, (b) **Basic laws**, (c) **Laws**, the other normative acts dealing with matters within the legislative competence of the National Assembly that do not have to take any other specific form, the most important example of which is Law nr. 41/2020, of 23 of December – the **Public Procurement Law**⁶⁰ (PPL); (iii) **Presidential Legislative Decrees** and (iv) **Provisional Presidential Legislative Decrees**.

The legal instruments that specifically regulate public procurement and public contracts are available in the Public Procurement Portal⁶¹.

⁵⁴ Approved by Law 41/20, of 23 December.

⁵⁵ Although the legislative power is also exercised by the President of the Republic in areas not reserved to the National Assembly by the Constitution.

⁵⁶ For example, when it appraises and approves the annual General State Account and the opinion issued on it by the Court of Auditors, which includes information about the public procurement system.

⁵⁷ Especially those that can be extracted from the European Union Directives on public procurement (2014) that influence, via the Portuguese Public Procurement Code (initially enacted in 2008), the Angolan public procurement law.

⁵⁸ From a scholarship point of view, the principles of law, to be accepted and used as a criterion for interpreting other sources of law and evaluating a conduct - acts and omissions - do not need to be received or proclaimed by the written law. However, its mention in the legal text is understood and welcomed for its pedagogical and prophylactic value, making the public procurement law more intelligible to all.

⁵⁹ While it is debatable whether the sanction provisions should be dealt with in a separate legal text, their insertion in the PPL immediately conveys the message that failure to comply with relevant principles and standards should result in the application of a sanction.

⁶⁰ The literal translation of the title of this law would be "*Public Contracts Law*" from the official language of Angola (Portuguese). However, to facilitate the reading in accordance with a more usual denomination at the international level, the designation "*Public Procurement Law*" (PPL) has been chosen.

⁶¹ <https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica>



As far as **International Law** is concerned, Article 13 of the CRA prescribes that general or common international law received under the terms of the Constitution shall form an integral part of the Angolan legal system. International treaties and agreements duly approved or ratified shall come into force in the Angolan legal system after they have been officially published and have entered into force in the international legal system and for as long as they are internationally binding on the Angolan state. Powers (to bind the Angolan state) in the area of conventional international law⁶² are distributed between the President of the Republic and the National Assembly.

The PPL applies to the formation and execution of public works contracts, lease or purchase of movable assets and acquisition of services entered into by a Procuring Entity. Incidentally, Article 5 of the PPL, in its definition of a services procurement contract, immediately includes consulting services: "d) Acquisition of Services - a contract whereby a Procuring Entity obtains a certain result from manual or intellectual work or consulting services, against payment of a price;".

As far as concessions are concerned, Article 5 of the PPL offers the relevant definitions of "f) *Public Domain Exploitation Concession*", "g) *Public Works Concession*", "h) *Public Service Concession*" and "q) *Public-Private Partnership*". The Title VII of the PPL "Concessions of public works and public services" (Articles 405 to 427) was added by the 2020 revision (Law nr. 41/2020, of 23 of December). Article 2(b) - Scope of application – provides that it shall apply "(...) to the formation and execution of administrative concession contracts, namely concessions of public works, public services, exploitation of public domain and to the formation of contracts whose materialization is carried out through Public-Private Partnership;".

Of great relevance, as regards the choice of the type of procedure⁶³ Article 24 (5) of the PPL provides that "*In public procurement procedures tending to the execution of a concession contract the Public Tender or the Restricted Tender must be adopted, regardless of the base value of the estimated investment*".

The Law on Public Private Partnerships (Law nr. 11/2019, of 14 of May) states [Article 14 (1)] that the choice of procedure for the formation of a Public Private Partnership contract must comply with the regime provided for in the Public Procurement Law and this law also governs the competence and functioning of the jury of the procedure [Article 15 (3)].

Specific legislation (primary and secondary) on public procurement is accessible free of charge through the portal of the National Public Procurement Service (SNCP)⁶⁴. However, access to legislation in general - published in the Official Journal ("Diário da República") - is difficult because: i) access to the paper version of the Journal is paid; ii) Online access to the Official Journal is not available through the Official Press single portal which is inaccessible <http://www.imprensanacional.gov.ao/index.php?id=124>; and iii) the overwhelming majority of legal texts published online - on the Jurisnet portal and specialized portals such as the SNCP's - are stored as images, which causes enormous difficulties in their visualization and handling, particularly by legal professionals.

⁶² Mainly governed by the Vienna Convention on the Law of Treaties.

⁶³ Correspondent to the concept of "procurement method" in the Angolan public procurement law.

⁶⁴ <https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica>



The portfolio of procurement methods⁶⁵ offered to procuring entities is sufficient for an efficient performance of public procurement and includes more and less competitive methods adjusted to the value of the contract to be concluded or other circumstances which, regardless of the value of the contract, justify the application of a particular method. The more open methods i.e. the open tender and the limited tender are the methods by default, which reflects the preference by the legislator for the more competitive methods/procedures.

The PPL (Title II - Types and Choice of procurement methods) comprises the necessary rules on the definition of the available methods and the requirements or conditions of which the verification depends on their choice under the terms of the PPL. The enumeration of the **procurement methods** is exhaustive, and it is not possible for the Procuring Entities (PEs) to use any other method or variant other than those foreseen in the law. The choice is made (i) on the basis of the value of the contract [Article 23 (1) of the PPL], which is considered to be the standard choice criterion, or (ii) on the basis of the so-called material criteria⁶⁶ (Articles 27 to 31 of the PPL). As in the previous law (PPL of 2016), the **estimated value of the contract** is calculated in function of the economic value of all the goods, services or works which are the subject matter of the contract to be entered into and, when a lower value has not been fixed in the specifications, the base price corresponds to the lowest of the following values: a) the maximum value (threshold) of the contract that can be formed through the selected procurement method or b) the limit of the competence, fixed by law or by delegation of power, of the contracting authority to authorize the expenditure inherent to the contract to be entered into. The PPL introduced two new norms in Article 23 with the purpose of making the fixing of the value more reliable: (i) the new paragraph 5 states that "The fixing of the estimated value of the contract must be based on objective criteria, using, principally, the reference prices of the service to be rendered or of the good to be supplied, practiced in the Republic of Angola, in order to guarantee transparency and to enhance competition;" and (ii) "In the event that there are no prices in the country for the service to be rendered or the good to be supplied, the fixing of the contract value may be based on the average unit costs of services of the same type, based on the costs practiced in the domestic and international market."

The expenditure to be considered in the contract formation "(...) is the total cost with the execution of the respective contract, even if the price has to be liquidated and paid in instalments in accordance with the respective contractual clauses or with the applicable legal and regulatory provisions. The "fractioning of expenditure with the intention of defrauding the rule of the unity of expenditure is prohibited. (Article 39 of the PPL).

The Development of a Reference Price Database was foreseen in Strategic Objective (SO) 3.5 of the PECPA 2018-2022. Although its implementation was scheduled to be completed by 2019, so far this has not happened, and therefore the provision of Article 23 (5) of the PPL cannot be complied with.

The PPL states in Article 22/1 that "(...) Public Contracting Authorities shall adopt one of the following procurement methods: i) Open Tender ("Concurso Público"); ii) Limited Tender ("Concurso Limitado por Prévia Qualificação"); iii) Restricted Tender ("Concurso Limitado por Convite"); iv) Direct award ("Contratação Simplificada"); v) Electronic Dynamic Purchasing Systems

⁶⁵ In the Angolan public procurement law, the correspondent to "method" is "procedure" which is, as in many other topics, revealing the influence of the EU Public Procurement Directives (2014) and the Portuguese Public Contracts Code enacted under them.

⁶⁶ See footnote 48.



("Procedimento Dinâmico Electrónico"); vi) Emergency Procurement ("Procedimento de Contratação Emergencial")⁶⁷.

GPA equivalent	Angola	Thresholds (AOA)	Minimum time limits*	Legal base
Open tendering	Open Tender (Concurso Público)	None	20 – 120 days	
	Limited Tender (Concurso Limitado por Prévia Qualificação)	None	Request for participation: deadline freely set by the PEs Proposal: 20 – 120 days	Request for participation: Article 125 of the PPL Proposal: Article 132 (2) (f); Article 65 of the PPL
	Electronic Dynamic Purchasing Systems (Procedimento de Aquisição Dinâmico Electrónico) ²	None	4 hours (up to 18.000.000 AOA) 3 days (up to 72.000.000 AOA) 10 days (up to 182.000.000 AOA)	Article 150 (1) of the PPL Article 150 (2) of the PPL Article 150 (3) of the PPL
Selective tendering	Restricted Tender (Concurso Limitado por Convite)	Up to 182,000,000.00 AOA	6 days	Article 136 (3) (d); 138 of the PPL
Limited tendering	Direct Award (Contratação Simplificada)	Up to 18,000,000.00 AOA	n.a.	Article 142 (2) (d)
	Emergency Procurement (Contratação Emergencial)	None	n.a.	Article 148 of the PPL

From a "*law on the books*" perspective, the Angolan legislator has established, since the 2016 PPL, a model that privileges the use of the most competitive methods, which are the open tender and the restricted tender, framed in the WTO-GPA concepts of "open tendering" and "selective tendering", respectively. It does so by limiting recourse to other methods (necessarily more restricted and less competitive than those above) to criteria (i) of value (maximum thresholds of estimated value of contract which authorise the choice of each type of closed method) or (ii) *material criteria*⁶⁸, that is, concrete situations which, independently of the estimated value of the contract to be formed, authorise recourse to methods less competitive than open tendering and limited tender.

Angolan Administrative Law, in combination with the PPL, allows for the understanding that the **lack of publication of the tender notice** should imply the nullity of the procedure and of what

⁶⁷ For a detailed overview of the methods, see Table 4 (pages 34/35)

⁶⁸ See footnote 48.



derives from it⁶⁹, including a contract that may be formed under those conditions. Another positive aspect is that the rendering of **clarifications**⁷⁰, at the request of the bidders or at the initiative of the procuring entity, as well as the rectification of elements or data contained in the tender documents at the initiative of the procuring entity, should not exceed the end of the second third of the deadline for the presentation of applications or bids and, when occurs, should lead to the extension⁷¹ of the deadline set for the presentation of the applications or bids by, at least, a period equivalent to the delay verified.

Open Tender notices shall be prepared in conformity with the model in Annex IV of the Law and published in the Official Journal, Series III (OJ III) and in the Public Procurement (PP) Portal,, as well as in a newspaper with mass-circulation and the publicity of the tender can also be given through the posting of notices at the headquarters of the Entities of the Local Administration. In the **Limited Tender**, Article 117 of the PPL (Notice) prescribes that the notice shall be prepared in conformity with the model in Annex VI of the PPL and published in the OJ III and in the PP Portal,, as well as in a newspaper with mass circulation in the country and can also be advertised through the posting of notices at the headquarters of the Local Administration Entities.

The **lack of publication of the tender notice** should imply the nullity of the procedure and of what derives from it - consequent nullity - including a contract that may be formed under those conditions.

In accordance with Article 65 of the PPL, which by its systematic insertion can be considered to contain **general rules on establishing timelines**, the Procuring Entity establishes, in the **open tender notice** and in the tender documents, the date and time at which the deadline for presentation of bids ends, which must take into account the time necessary for its preparation, in function of the nature, characteristics, volume and complexity of the deliverables that constitute the subject matter of the contract to be signed. The Article states that the time limit for the presentation of bids shall be fixed reasonably, between twenty and one hundred and twenty days, in order to allow for its preparation in adequate conditions and in conditions of effective competition. Although the interest in providing adequate time for the preparation of good bids makes it advisable to grant longer deadlines rather than shorter ones, the possibility offered by the general regime of reaching one hundred and twenty calendar days - one third of the annual budget execution period - seems exaggerated, especially if we also take into account another important principle of public procurement, along with that of competition, which is that of efficiency and the timely pursuit of the public interest. The practical application of this rule should be monitored in order to conclude whether it needs a legislative revision. In the case of **Limited Tenders**, the legislator, contrary to what it does in other methods, does not set any minimum nor maximum time limit and attributes to the procuring entity a discretionary power limited only by the enunciation of a general principle, according to which, in setting the concrete deadline it must take into account the *time necessary in light of the requirements demanded*. In the absence of jurisprudence on public procurement in the country, the concrete setting of time limits for the submission of bids and applications must be monitored with special attention and, in the event

⁶⁹ So-called consequent nullity.

⁷⁰ Article 51 of the PPL.

⁷¹ Article 51 (3) of PPL.



that the prevailing practice of tighter deadlines is verified, the recommended legislative revision should proceed with greater urgency.

Articles 67 and 117 of the PPL define, with great rigour and extension, the **mandatory content of the notices** to be published in the case of public tenders (Annex IV of the PPL) and limited tenders by prior qualification (Annex VI of the PPL) which cover the information typically considered key for interested parties to decide to acquire the bidding documents (in which all the details must be made available). The publication of the notice in a wide circulation newspaper in the country may include only the summary of the most important elements referred to in the annex referred to in the previous number, provided that the date of dispatch for publication in the Official Journal is indicated. Among these elements, the address or, when applicable, the website or electronic platform of the Procuring Entity where the bidding documents are available must be included.

The **rules for participation** set out in Section V of the PPL include provisions that protect or seek to favour domestic suppliers and domestic production (which constitute barriers to international trade) but are, in respect of Impediments (Article 56 of the PPL), disqualification for previous non-compliance (Article 57 of the PPL) and professional qualifications (Article 58 PPL) balanced and non-discriminatory.

With regard to suppliers who are subject to Angolan law - natural and legal persons - the participation rules contained in the PPL are open and inclusive (see sub indicator 1(d)(a), especially if the openness of participation is analysed by assessing the extent of the impediments, a matter in which the Angolan system seems aligned with international practice. Procuring entities must (i) set aside 25% of their budget to contract with **Micro, Small and Medium Enterprises (MSMEs)** and (ii) establish that Large Companies are obliged to **subcontract MSMEs** for at least 10% of the total amount in services contracts and 25% in works contracts. When **foreign companies** are involved, the PPL includes regulations designed to (i) protect and benefit Angolan companies and goods produced in the Southern African region, COMESA, and SADC (Article 53 of the PPL) and (ii) to condition and restrict foreign companies' access to the national public market (Article 54 of the PPL).

There are therefore **barriers to international public procurement** – an important component of international trade - to the extent that the access of foreign companies to national public market opportunities may face a relative disadvantage compared to national companies and/or local products (domestic preference): Its main features are as follows: (i) the bidding documents may contain rules aimed at promoting preferential contracting of national individuals or legal entities that are Micro, Small and Medium-Sized Enterprises (MSMEs) under the Angolan law; (ii) at the negotiation phase, the bidding documents may establish rules of preference in the access to this phase for national competitors; (iii) In the awarding: (a) When the award criterion is the lowest price, a margin of preference can be established for the prices proposed by national competitors, up to 10% of the price proposed by foreign competitors; (b) When the award criterion is that of the most economically advantageous tender, an increase of the global score attributed to the proposals of national competitors can be established up to 10% of that score.

Regarding the **protection of national production** and when the most economically advantageous tender award criterion is adopted, the bidding documents may provide for the awarding of more



scoring points to goods produced, extracted or harvested in Angola. In contracts where subcontracting occurs, they may impose that a minimum percentage of the value of the subcontracted services be reserved for national individuals or companies. Preferences assigned through the award criterion (lowest price: 10% of price; most economically advantageous tender: 10% in scoring points) and domestic production (local content), preferences may also be established in favour of bids from competitors who are nationals of or based in States belonging to the Common Market of Southern and Eastern Africa - COMESA or Southern African Development Community - SADC, or for goods produced, extracted or cultivated in those States.

Another explicit legal barrier is enshrined in Article 54 of the PPL. According to this rule foreign natural or legal persons may only apply or submit proposals: (i) in procurement procedures where the estimated value equals or exceeds that set out in Annex III of the PPL (AOA 500.000.00 for public works contracts and AOA 182.000.000 for goods and services contracts); (ii) in Direct Award procedures, when this method is adopted for material reasons⁷²; (iii) when, because of the technical nature of the services to be provided under the contract, it is reasonably foreseeable that no national natural or legal person can adequately perform the contract, and finally, (iv) in design contests, unless the Procuring Entity expressly restricts such participation in the Terms of Reference.

Foreign natural or legal persons are understood to be those not covered by the scope of application of the Law on the Promotion of National Entrepreneurship. The Table below shows the distribution of suppliers registered in the Suppliers Portal, by size and nationality (in March 2022):

	Micro	Small	Medium	Large	Without information on size	Total
Foreign	25	42	29	49	71	216
National	847	1019	488	188	463	3005
Total	872	1061	517	237	534	3221

In the same vein as the aforementioned rules that seek to establish barriers to the access of foreign operators and/or products to the Angolan public market, Article 180 of the PPL also

⁷² See above footnote 48.



includes, among the guiding principles for the activity of the central purchasing bodies, preference for the acquisition of goods and services that promote the protection of national industry (...).

The matter of **eligibility** is, at least in part, marked by the sanctioning regime, which may result in important restrictions to the participation in a certain procedure [situation that is assessed *in casu* by the Evaluation Committee and decided by the procuring entity in case of verification of impediment that determines the exclusion of a proposal that has been submitted by a competitor who is impeded as provided in Article 81 (1) (b)] or to the participation in any procedure for the duration of the sanction (in the cases foreseen in Article 9 (1) and 437 (1) (a) (b) of the PPL).

In the case provided for in Article 437 PPL the law does not refer to any procedural rule applicable, so it would be advisable to add this matter to the legal provision in force, thus avoiding the use of analogical application⁷³.

⁷³ What is particularly discouraged in the case of the application of sanctions.



Systematic area in the PCL	Conduct / Offence	Layout	Sanction	(due) Processes
Ethics in contract formation (conduct of interested parties)	Practices: - corrupt - fraudulent - restrictive of competition - criminal - other ethically or socially reprehensible practices	Article 9 (1 – 2), PCL	Impediment to participate in public procurement procedures between 1 and 3 years	Article 9 (3 – 7), PCL
Rules for participation – Impediments and List of non-compliant companies	- serious or repeated breach of contractual obligations resulting in early termination of the contract - application of fines corresponding to more than 20% of the value of the contract in which the procedure	Articles 56 (1) (f) and 57, PCL	Impediment to participation in an ongoing public procurement procedure	Silent Note: given the gap in the law, and bearing in mind the risks of analogical in the domain of sanctions (which is evident in the situation underlying Art 9/3), the addition of an identical rule to Art 9/3 with a view to expressly regulating the process for imposing the sanction should be considered
Sanctioning regime (Impediment of participation due to breach of contract)	- breach of contract that has given rise in the last three years to the application of penalties that have reached the maximum applicable values; - a breach of contract that has resulted in two terminations of contract for breach of contract in the last three years	Article 437 (1) (a) (b), PCL	Impediment to participate in public procurement procedures for up to 1 (one) year	Silent Note: given the gap in the law, and bearing in mind the risks of analogical in the domain of sanctions (which is evident in the situation underlying Art 9/3), the addition of an identical rule to Art 9/3 with a view to expressly regulating the

In the case provided for in Article 437 PPL the law does not refer to any procedural rule applicable, so it would be advisable to add this matter to the legal provision in force, thus avoiding the use of analogical application.

According to Article 56 of the PPL, **an interested party may not be a candidate or bidder**, or be a member of any candidates' or bidders' consortium if: (a) is the object of a boycott by international and regional organisations of which Angola is a member; (b) is in a state of insolvency or bankruptcy, declared by a court decision, in the process of or are undergoing liquidation, dissolution or cessation of activity, subject to any preventive means of liquidation of assets or in



any similar situation; (c) has been convicted of a crime affecting their professional conduct by a sentence that has the force of *res judicata*, if, in the meantime, their rehabilitation has not taken place, in the case of individuals, or, in the case of legal persons, the members of their administrative, management or directorate bodies have been convicted of those crimes and they are in office until the sentence is enforced; (d) has been subject to an administrative penalty for serious professional misconduct, if, in the meantime, their rehabilitation has not occurred, in the case of natural persons, or, in the case of legal persons, where such an administrative penalty has been imposed, the members of their administrative, management or directorate bodies, and they are in office until the completion of the penalty imposed on them; (e) have, in any capacity, directly or indirectly, provided advisory or technical support in the preparation and elaboration of the parts of the procedure, susceptible to distort the normal conditions of competition; (f) They are on the list drawn up by the SNCP referred to in the following article. A **self-cleaning regime** is provided for in Article 56 of the PPL which may be used provided that one of the following situations occurs: (a) Demonstration that he/she has compensated or taken measures to compensate any damage caused by the criminal offence or misconduct; (b) Full clarification of the facts and circumstances through active co-operation with the competent authorities; (c) Adoption of technical, organisational and personnel measures that are sufficiently concrete and appropriate to avoid further criminal offences or misconduct.

The regime of control and sanction of prior contractual non-compliance mentioned in Article 56(1)(f) is developed in Article 57 (**List of non-compliant companies**). The Procuring Entities shall send to the SNCP, annually or whenever necessary and requested, a detailed report indicating the Contractors, suppliers of goods or service providers, natural or legal persons who have committed a serious or repeated breach of contractual obligations that has resulted in early termination of the contract or the imposition of fines in excess of 20% of the value of the contract. It should be stressed that SNCP may, under the terms of Article 437 of the PPL apply the **sanction of prohibition of participation** in public procurement procedures for a period of one year to entities that are in any of the following situations: (a) Breach of contract that has given rise, in the last three years, to the application of sanctions that have reached the maximum applicable amounts; (b) Breach of contract that has been the subject of two sanctioning resolutions in the last three years based on the definitive breach of the contract due to a fact attributable to the co-contractor, in either of the situations of termination of the contract by the Employer or the grantor. Recidivism - whereby the company attempts to participate in a procedure even though it is aware of the impediment constitutes a very serious offence (Article 439 PPL). Article 9 of PPL provides for a **due process** insofar as “the application of the sanction (...) shall be preceded by a prior hearing of the alleged breaching party, which should be notified to present the factual grounds for ascertaining the material truth within eight days.” and “the decision by the Authority responsible for the Regulation and Supervision of Public Procurement may be challenged in Court.”.

Finally, the evaluation also concluded that there are no specific provisions in the PPL, nor in any other legislative act, regulating the terms and **conditions for SOEs to participate in the public procurement** market as bidders. Legal provisions that discipline or limit state-owned enterprise (SOE) participation as bidders in public procurement processes offer several benefits, including promoting fair competition by preventing undue advantages, avoiding conflicts of interest and self-dealing, fostering private sector development, enhancing transparency and accountability, ensuring efficient resource allocation, holding bidders accountable for performance, and attracting foreign investment, ultimately contributing to a more efficient, transparent, and



equitable procurement process while safeguarding public resources and encouraging economic growth.

The **formulation of the rules of participation/eligibility** of Section V of the PPL (Articles 53 to 58) is not, with the exception of barriers to foreign trade and protection of the MSME, restrictive and seems adequate to guarantee that suppliers participating in public procurement procedures (i) are not debarred nor excluded from participating and (ii) hold the appropriate professional qualifications in cases where the execution of contracts requires, under the law, a particular professional qualification. In the Limited Tender, specifically regulated in Articles 115 to 133 of the PPL, the following is worthy of note: (i) the requirement that the minimum technical capacity to be established in the tender program be adequate to the subject matter of the contract to be entered into, describing situations, qualities, characteristics or other factual elements relating to the candidates, particularly with respect to curricular experience, human, technical, functional or other resources, organizational capacity or environmental management. The express prohibition [(Article 120 (2)) of the Procuring Entity establishing any **minimum technical capacity requirements that prove to be discriminatory** or capable of preventing, restricting, or distorting competition must be emphasized. This is a matter that must be specifically monitored with a statistical analysis covering at least two years of practice.

The PPL lists on its Article 45 the **bidding documents required for each procedure/method** of procurement i.e. Open Tender — the notice, the tender programme and the specifications; Limited Tender — the notice, the tender programme, the specifications and the invitation to tender; Restricted Tender — the invitation to tender and the specifications; Direct Award — the invitation to tender and the specifications; Electronic Dynamic Purchasing System — the notice; Emergency Procurement — the emergency request. **In case of divergence**, the provisions of the tender's program take precedence over any non-compliant provisions contained in the notice or in the invitation, in the Limited Tender. The **bidding documents must be available for consultation** by interested parties at the procuring entity's premises indicated in the notice, during the respective working hours and until the end of the period fixed for the presentation of bids, and also on the electronic platform of the Procuring Entity, when this is used in the bidding procedure. The **supply of the bidding documents may be free of charge or paid for**. Under the terms of Article 69 (6) of the PPL the maximum fees to be charged by the procuring entities for the supply and downloading of the bidding documents are set by a normative act of the President of the Republic⁷⁴. The Procuring Entity must use the criterion of the estimated value of the contract and the cost of preparing the bidding documents. The fee should be set in an amount **up to 0,05% of the estimated value of the contract** and must not exceed the value corresponding to AOA: 250,000.00 (two hundred and fifty thousand kwanzas). The fee for acquiring the bidding documents is published in the tender notices.

The PPL sets out in great detail the way in which **technical specifications** should be formulated, starting with Article 50 (1) of the PPL which establishes that they must be included in the terms of reference and be stated in such a way as to allow competitors to participate under equal conditions and to promote competition. Although the expression "**functional specifications**" is not used in the law, these can be considered covered by the wording of Article 50 (2) according to which the technical specifications define the characteristics required of a product, namely the levels of quality or use, safety, dimensions, including the requirements applicable to the product

⁷⁴ Presidential Decree 196/16, of 23 September.



in terms of terminology, symbols, tests and test methods, packaging, marking and labelling and which allow a material, a product or a good to be objectively characterised in a manner corresponding to the use for which it is intended by the Procuring Entity. Corroborating this understanding, according to which functional specifications may be introduced, are the provisions of Article 388 of the PPL, which is contained in a Chapter on Specific Provisions relating to contracts for the acquisition of movable goods and according to which "The contract for the Acquisition of Movable Goods may have as its object the Acquisition of Movable Goods already existing or of goods to be manufactured or adapted at a time subsequent to the conclusion of the contract, in accordance with the characteristics, specifications and technical, functional or other requirements set by the Procuring Entity in the specifications".

Technical specifications can be defined by **reference to national or foreign standards**. They are defined by reference to national technical specifications related to the design and use of products, where these exist, or "other documents", in particular, and in order of preference, national standards transposing already accepted international standards, other national standards or internal technical approval conditions, or any other standard. Without prejudice to the provisions of paragraphs (1) and (2)(d) of Article 53 of the PPL [local content - see above indicator 1(d)(b)], it is **not permitted to include technical specifications that mention products of a given manufacturer or provenance or mention particular manufacturing processes** whose effect is to favour or eliminate certain companies or products, and it is also prohibited to use brands, patents, or types of brand, or to indicate a particular origin or production, except when it is impossible to describe the specifications, in which case it is permitted to use those, accompanied by the expression "or equivalent".

Clarifications necessary for the good understanding and interpretation of the bidding documents must be requested by the interested parties, in writing, by the end of the first third of the deadline fixed for the presentation of proposals or bids and must be provided in writing by the end of the second third of the same deadline. The competent body for the contracting decision can also, on its own initiative, correct the elements or data contained in the bidding documents **until the end of the second third of the timeline** set for the presentation of proposals or bids.. When the clarifications or rectifications are communicated after the deadline established for this purpose, the deadline set for the presentation of the applications or the bids, depending on the case, must be extended by at least the same period of time as the delay. The clarifications and rectifications must be immediately added to the bidding documents that are available for consultation and, when in use, made available on the electronic platform of the Procuring Entity, and all interested parties who have acquired or downloaded them must be promptly notified of that fact. The **clarifications and rectifications become an integral part of the bidding documents**, prevailing over them in case of divergence. (Article 51 of the PPL).

The **award criteria** are objective because the factors and sub-factors that densify the criterion of the most economically advantageous tender must relate to the subject matter of the contract. Also, Article 82 (3) of the PPL determines that the factors and possible sub-factors which reflect the criterion of the most economically advantageous proposal cannot directly or indirectly refer to situations, qualities, characteristics, or other factual elements relative to the competitors, with the exception of the provisions relative to "local content" and "domestic preference" of Article 53 (2)(c) to (e). The award criteria are specified in the bidding documents. In accordance with Article 82 (1) of the PPL, the bids for which there are no grounds for exclusion are evaluated according to (and only according to) the award criteria established in the bidding documents. Therefore, the



award decision is made (and can only be made) exclusively on the basis of the award criteria set out in the bidding documents. The choice of **lowest price award criterion** does not necessarily mean that non-price related aspects, for example factors related to quality or environmental or social sustainability, cannot be considered. In this case, these non-price related aspects should be included in the technical specifications and evaluated on a pass/fail basis.

Although there is no reference in the PPL to "**life cycle cost**" (LCC) a procuring entity can, in principle, use the "life cycle cost" as an evaluation factor in the framework of the most economically advantageous tender. However, it incurs risks related to (i) insufficient detail on proposal evaluation models - evaluation factors and sub-factors - and (ii) the absence of a framework that guarantees a non-discriminatory application. So detailed provisions about the use of LFC are required in Angolan public procurement law to make its use safe, especially in what concerns the risks of a wrong use hampering fair competition and equal treatment.

There are no specific provisions regarding the **assessment of technical capacity in the formation of consultancy service contracts**.

The bidding documents, namely the procedure programme in the public tender and in the selective tender, must **establish the award criteria** and the respective factors and sub-factors to be applied.

The officials and agents of the Procuring Entity involved in the planning, preparation, or execution of public procurement procedures or in the execution of public contracts, as well as the members of the Evaluation Commission, (Article 8 (f) of the PPL) must maintain secrecy, **treating as confidential all information obtained within the scope of the procedure** of which they become aware, except as otherwise provided by law. On a different level, the Evaluation Commission can ask the bidders any clarifications about the proposals that it considers necessary for its analysis and evaluation and these clarifications, when given, need to be notified to all the competitors (Article 80 of the PPL).

In accordance with Article 70 of the PPL, immediately following the expiration of the deadline for submission of bids, the Evaluation Committee proceeds, in a public session, to the opening of the envelopes referred to in Article 63 or, in the event the Procuring Entity has chosen electronic receipt of the bids, to their decryption, downloading and opening as referred to in Article 64. For justified reasons, the public session of the bid opening can take place within ten calendar days after the one indicated previously, on a date determined by the Procuring Entity. The alteration of the date of the public act must be immediately communicated to all interested parties who purchased the bidding documents and published by the means that the Procuring Entity deems most appropriate, and a copy of the act of the decision for the alteration must also be attached to the documents.

Minutes of the proceedings of the **bid opening public session** are signed by all the effective members of the Evaluation Committee and may also be signed by the bidders or their representatives that were present in the session [Article 70 (6)]. Competitors can lodge a **hierarchical appeal of the Evaluation Commission's deliberations** during the public session. The interested party can appeal to the holder of the competent Ministerial Department, when the



contract is to be celebrated by the State or to the maximum body of the Procuring Entity, in the remaining cases. It has to be filed **within five calendar days** counted from the date of the delivery of the minutes of the bids opening session. (Article 78 of the PPL).

Proposals can be submitted on paper or in electronic format, as explicitly foreseen in Articles 63 and 64 of the PPL. There are clear provisions regarding the security and inviolability of tenders before the deadline for opening for both paper and electronic tenders. In case the procuring entity chooses to receive **proposals on paper**, the documents that constitute the proposal must be presented in an opaque and closed envelope on the front of which must be written the word "Proposal" and the name or denomination of the competitor. In this envelope a duplicate of each of the documents that constitute the proposal must be included. In the case of the presentation of variant proposals, each one must be presented in an opaque, closed, and sealed envelope, on whose face must be written "Variant Proposal" and the name or denomination of the competitor. These envelopes must, in turn, be kept in another opaque, closed, and sealed envelope, on the face of which the name of the procedure is identified. (Article 63 of the PPL). The Procuring Entity may impose, under the terms established in Article 132 (2) (e), that the proposals be presented **in an electronic platform**, as long as it guarantees that they can only be opened after the deadline for their presentation. (...).

As far as secrecy and confidentiality at the contract execution phase is concerned, Article 355 of the PPL stipulate a **duty of secrecy** in both directions, that is, not only of the sensitive information of the co-contractor but also of the procuring entity itself. This is clear from its wording: "The Procuring Entity and the co-contractor shall keep secret any matter subject to secrecy, under the law, to which they have access in the execution of the contract". Also in the framework of the execution of the contract, and in relation to the technical supervision powers held by the procuring entity, the law expressly provides for the guarantee of respect for **professional or commercial secrets and other legally protected information**: Article 366(2) provides that "*Without prejudice to the guarantee of professional or commercial secrecy and the regime applicable to other information protected by law, the supervision is limited to aspects that immediately relate to the manner of execution of the contract, and may be carried out, namely, by means of inspection of premises, equipment, documentation, computer records and accounting, by means of measurements of the state of progress of the works or requests for information*". There is, however, **no express provision on the guarantee of confidentiality and non-disclosure of business secrets and other legally protected information of the tenderer or the proposal submitted** by the tenderer (at the tender submission and evaluation stages). Therefore, the PPL can be improved with the addition of this mention to the classification of documents and information of the proposals like "for reasons of commercial, industrial, military or other secrecy, the interested parties may request, until the end of the first third of the period set for the submission of the proposals, the classification, in accordance with the law, of documents which constitute the proposal, for the purposes of restricting or limiting access to them to the extent strictly necessary (...)".

The PPL provides for **administrative challenges** of any acts undertaken in the context of the formation and execution of public contracts and determines that decisions rendered on administrative challenges are subject to **judicial review**. The lodging of a challenge has **no suspensive effect**, except at the stages of the qualification decision, the electronic auction, the negotiation, the award decision, and the conclusion of the contract, if the decision has not yet



been taken or the time limit has not yet expired. The law also provides for complaints, hierarchical appeals, and the so-called improper hierarchical appeals⁷⁵. In the case of appeals, it is mandatory that the decision be communicated to SNCP.

Any acts performed by the Procuring Entity within the scope of the procedures covered by the PPL which may harm the legally protected interests of private parties are susceptible to administrative challenge, which includes the possibility of directly challenging any bidding document [Article 15(1)(2)]. The complaints lodged in the bids opening public session, as well as the hierarchical appeals lodged against the decisions of the Evaluation Commission deciding on those complaints, are mandatory, insofar as lodging them is a **necessary prerequisite for recourse to the courts**. The remaining administrative appeals are optional. With the exception of challenges filed in the bids opening public session, administrative challenges must be filed within **five calendar days** as of the notification of the act to be challenged, unless another deadline is stipulated in the Law (Article 16 of the PPL) and **shall not, as a rule, have suspensive effect**. However, while they are pending a decision, the procuring entity may not proceed with the qualification decision or with an electronic auction, negotiation, award decision or execution of the contract. Administrative challenges must be **decided within five calendar days of the date they are filed**, and any silence is equivalent to acceptance, which is a special rule compared to the general rule of tacit acceptance set out in Article 58 of the Rules of Procedure and Administrative Activity and increases the pressure on the procuring entity for a timely decision. Where there is a hearing of counter-interested parties, the deadline for the decision is counted from the end of the deadline set for that hearing.

Article 20 (3)(4) of the PPL has established a sanctioning mechanism that inspires concern by providing that "(...) *The interested entities that, in bad faith, resort to administrative challenges, rendering any phase of the procedure inoperative, shall be impeded from participating in any public procurement procedures, for a period of up to three years, to be determined in accordance with, namely, the seriousness of their conduct, the estimated value of the contract and the damages caused.*" and granting the competence to "instruct and decide the processes of application of the debarment to the Body responsible for the Regulation and Supervision of Public Procurement." i.e. the SNCP. Although there is still no practical experience of application of these provisions, the possibility of SNCP qualifying an administrative challenge as *lodged in bad faith* seems unacceptable in view of the guarantees of access to the law that the Constitution guarantees to all, citizens, and companies. An administrative entity, which does not even have the status of an independent administrative entity, should not have such power, even if it is subject to the general duty to reason the administrative acts it performs. The sensitivity of the matter requires, within the framework of the Angolan public procurement system, a different solution, perhaps chosen from among two alternatives: (i) revocation of the provision or (ii) if there is legitimate motivation and full proof that the situation that is intended to be regulated in this manner affects the performance of the system in a critical manner, the granting of such power exclusively to the judicial system (i.e. the courts).

Furthermore, as **administrative appeals do not have suspensive effect**, it is difficult to see how a challenge, even if brought with the implicit or explicit aim of attacking the legality of the procedure, can be such as to render the procedure or a stage thereof inoperative or cause any harm. In such

⁷⁵ See footnote 3.



situations it would seem that a mere dismissal would be sufficient. The PPL includes, in its Article 3, the "principle of good faith" and, although it rightly starts by stating that "the general principles arising from the Constitution must be respected", it does not elaborate on how the principle applies in the context. We must therefore bear in mind that both Article 200 of the CRA, which grants citizens the "right to be heard by the Public Administration in administrative processes that may affect their legally protected rights and interests" and Article 100 of the Rules of Procedure and Administrative Activity which states that "individuals have the right to request the revocation or modification of administrative acts, under the terms laid down in this law", without any a priori relatively intimidating constraint. Decisions made on administrative appeals are subject to judicial review, as explicitly foreseen in Article 21 of the PPL.

Administrative appeals must be filed within **5 calendar days from the date of notification of the act to be challenged**, unless another time limit is stipulated in the present Law, and they shall be decided within 5 calendar days from the date of their filing [Article 20 (1)]. Where there is a hearing of counter-interested parties, the time limit for the decision shall run from the end of the time limit set for that hearing [Article 20 (2)]. Administrative appeals have no suspensive effect (Article 18 PPL).

Article 21 of the PPL provides that decisions rendered on administrative appeals may be reviewed under the terms of the law (in particular, Law nr. 2/1994). **Judicial review of decisions taken on administrative challenges** regarding pre-contractual related issues must be filed within 60 calendar days from notification of the challenged decision to the addressees. There are no administrative courts in Angola. The Civil and Administrative Chamber of the Provincial Court or the Civil, Administrative, Tax and Customs Chamber of the Supreme Court have jurisdiction, depending on the body that has issued the challenged act, are competent to rule the appeals. All acts of the procuring entities, and not only the award decision, are subject to judicial review. As a rule, judicial appeals do not have a suspensive effect, although procedural law allows requesting this in an autonomous application processed in an appendix. There is **no time limit for the court to make a decision**.

Applications for appeal and decisions are not published in easily accessible places and within specified time frames. As is the case with other procedural information, there is not a culture of publicising neither the applications nor the decisions of administrative appeals. As far as judicial litigation is concerned, no national authority consulted was able to indicate any case of which it was aware of. The causes of such a low level of formal litigation deserve to be investigated and monitored by the regulatory body.

In 2021⁷⁶, the SNCP received 4 (four) complaints, which focused on issues such as the application of award criteria, and 56 (fifty-six) objections, which had a greater impact on Preliminary Reports. In 2020⁷⁷, a total of 25 (twenty-five) complaints and objections were received by SNCP, with greater incidence on those relating to preliminary reports of the procedures, as well as on contracts without preceding procedures.

⁷⁶ Angolan Public Procurement Annual Report, 2021.

⁷⁷ Angolan Public Procurement Annual Report, 2020.



Presidential Decree nr. 88/2018, of 6 of April, provided for the creation of **Public Procurement Units (PPU)** within the Procuring Entities and established the role of the Project or Contract Manager. It has also approved the *PPU Regulation* which establishes the rules of organization and operation of the PPU and the rules applicable to the activity of the Project or Contract Manager. Article 23 of such Regulation clearly defines the responsibilities of the Project or Contract Manager.

The **contract amendments** are regulated in the PPL in four ways: 1) by establishing limits for changing the amount of authorized expenditure, setting a maximum of 15% of the limit of the initial competence, forcing a new authorization of expenditure if this maximum is exceeded, which should then obey the established approval thresholds and take into account the total value of the expenditure (the limit established by Article 40 of the Annual Rules for Implementation of the General State Budget should also be observed); 2) the Non-Compliance and Modification of Works Contracts (Article 285 and 288); 3) Objective Modification of the Contract for the Lease and Acquisition of Goods and Services Acquisition (Article 367, 368 and 369); and on 4) Modifications to the Public Works and Public Services Concessions Contract (Article 418).

The PPL 2016 already provided in its Articles 328 to 338 for **alternative dispute resolution mechanisms**, including conciliation and arbitration. This was based on only two pleadings (petition and statement), limiting the process to written form and admitting only two witnesses for each fact alleged. Article 337 referred all other aspects of the process to the Law on Voluntary Arbitration. Based on this background, the 2020 legislator intended to regulate the essence of the process in Article 341, while maintaining all the mechanism **applicable only to the contractual implementation phase and to public works contracts**, thus continuing to leave out the entire pre-contractual phase and contracts for the acquisition of goods and services. The legislator has opted to rely on institutionalised arbitration centres and, when questions of legality are at stake, arbitrators shall decide strictly according to established law, and may not pronounce on the convenience or appropriateness of administrative action, nor judge according to equity. [Article 341 (5)]. The **arbitration procedure** is simplified and comprises only two pleadings i.e., the petition and the defence. Only two witnesses may be indicated for each fact contained in the questionnaire and the discussion is to be held in writing. Once the decision has been issued and notified to the parties, the process is handed over to SNCP, where it is filed. It is the responsibility of SNCP to decide all matters relating to the terms of its implementation by the administrative entities, without prejudice to the jurisdiction of the Courts to enforce the Contractor's obligations, and a copy of the decision of the arbitration court shall be sent to the competent judge for the purposes of enforcement proceedings.

The legal framework allows for the Procuring Entities to either use **paper-based or electronic tendering**. The choice must be informed in the tender notice and tender documents and must be kept accessible during the tendering process. The PPL allows the use of **e-Procurement solutions** and creates a new procedure that can only be conducted electronically, i.e., the Electronic Dynamic Purchasing System. Article 12(2) of the PPL establishes that the National System for e-Procurement aims to ensure the dematerialization of Public Procurement by carrying out the process of formation and execution of public contracts, through Electronic Platforms, which may be developed and managed by the State. The rules for the operation and management of SNCPE [Article 12 (3)] are defined by Presidential Decree nr. 202/2017, of 6 of September.

The legal framework establishes SNCPE's rules of **interoperability** with other State systems, as well as the rules of operation, integrity, and confidentiality of data, containing references to



electronic security (ISO/IEC 20000, ISO/IEC 27001, ISO/IEC 27002). Access to SNCPE's platform is subject to **registration** (free of charge) and the Public Procurement Portal enables one to consult certain information, namely notices, without the need to register or login.

There is no specific legislation on the safekeeping of procurement records, documents, and electronic data, which should be object of a future review of the PPL. Notwithstanding this shortcoming, specification with regard to cases handled on the e-GP platform, Article 36 of Presidential Decree nr. 202/2017, of 6 of September, provides that the solution must:

- "a) Comply with archiving norms, standards, and procedures to guarantee digital preservation and interoperability;
- b) Guarantee the preservation of electronic signatures used in the various procedures
- c) Implement technological mechanisms for the preservation, storage, indexing and retrieval of archives
- d) Guarantee that the information regarding each procedure can be exported in standard formats for preservation purposes
- e) Make available the access records by interested parties, candidates, competitors, adjudicators, and co-contractors, as well as other users of the system
- f) Make available its archives of access records to the Contracting Public Entity, whenever this is requested and also for the purpose of external audits;
- g) The archive of information, as well as the operational transparency and exploration reports produced by the Electronic Platform must be filed in the electronic archive platform, generated by the competent organ for the technical management."

There are some **sector-specific specific procurement rules** applicable to (i) the oil sector, regarding the acquisition of goods and services by the concession holder and associated companies; (ii) the mining sector; (iii) the electricity sector and (iv) the armed forces.

The Law on Public-Private Partnerships (Law nr. 11/2019, of 14 of May), as further detailed by the Presidential Decree nr. 316/2019, of 28 of October, establishes the **procedures for launching and contracting PPPs**, the rules relating to their monitoring and supervision, as well as the competences of the so-called PPP Governing Body (PPPGB). The PPPGB shall be responsible for deciding on the approval of the launching of the partnership and the respective conditions, by means of a joint order of the heads of the ministerial departments that are part of it and of the project in question, to be issued within 30 calendar days of submission of the report referred to in Article 9(3). The **decision to contract** is up to a) the holders of the ministerial departments that are part of the PPPGB and of the project in question; or b) the local authority, if that is the government level concerned. The **choice of method for the formation of the public-private partnership contract** must comply with the regime provided for in the Public Procurement Law and the Regulation of the PPP Law also includes a model risk allocation matrix, classified by categories, which should serve as the basis for the allocation of risks assumed by each of the partners in the PPP projects to be implemented.



- Gaps

Substantive Gaps

1 (d) (b) It ensures that there are no barriers to participation in the public procurement market. When foreign companies are involved, the PPL includes provisions designed to (i) protect and benefit Angolan companies and goods produced in the Southern African region, COMESA and SADC (Article 53 of the PPL) and (ii) to condition and restrict foreign companies' access to the national public market (Article 54 of the PPL). There are therefore barriers to international public procurement - international trade - to the extent that the access of foreign suppliers to national public market opportunities may face a relative disadvantage compared to national suppliers and/or local products (domestic preference).

1(d)(d) It establishes rules for the participation of state-owned enterprises that promote fair competition. The lack of specific provisions regulating the terms and conditions for SOEs to participate in the public procurement market as bidders is considered a substantive gap that needs to be addressed, especially due to the great influence they have in the wider public procurement market.

1 (f) (b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions. The lack of details on how to use the life cycle cost (LFC) principles in the PPL may induce discriminatory and competition-reducing practices. Need for densification of the legal framework regarding the methodologies to be used in the calculation of life cycle costs. A Red Flag is assigned because addressing this gap requires a legislative amendment..

1 (f) (c) Quality assessment in consulting services is not a practice. There are no specific provisions regarding the assessment of technical capacity in the formation of consultancy service contracts.

1 (g) (d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework. There is no express provision on the guarantee of confidentiality and non-disclosure of business and industrial secrets and other legally protected information related to the tenderer or the goods or services described in the proposal submitted by the tenderer as a legitimate exception to the rule of full disclosure that derives from the principle of transparency. A Red Flag is assigned because addressing this gap requires a legislative amendment.

1 (h) (e) Applications for appeal and decisions. These are not published in easily accessible places and within specified time frames.

1 (k) (a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access. There is no specific legislation on safekeeping of procurement records, documents, and electronic data. A Red Flag is assigned because addressing this gap requires a legislative amendment.

1 (k) (b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles. Lack of specific legislation on safekeeping of procurement records, documents, and electronic data. A Red Flag is assigned because addressing this gap requires a legislative amendment.



1 (k) (c) Security protocols to protect records. There is no specific legislation on safekeeping of procurement records, documents, and electronic data. Specification with regard to cases handled on the e-GP platform. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Minor Gaps

1 (a) (d) Current laws, regulations and policies are published and easily accessible to the public at no cost - In general, access to legislation is hampered by the fees charged for the printed edition of the Official Journal and the unavailability of its online version. Specifically with regard to public procurement legislation, to our knowledge, it is noted that this is replicated on the MINFIN (17 files) and SNCP (20 files) websites, and the list of legal texts does not coincide. In addition, the versions presented are scanned documents in image format, which makes it difficult to consult them. Working with public procurement legislation is cumbersome.

1 (c) (b) Publication of opportunities provides sufficient time, consistent with the method, nature, and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The maximum time limit for submitting bids in Open Tenders seems exaggerated while the formulation of the time limits applicable to the Limited Tenders needs to be improved, since the PPL is silent on the deadline for the submission of applications. The gap in the provision for the possibility of extending the deadlines for submitting proposals in tenders that are also open to eligible international suppliers should also be addressed by the legislator, since there is no justification for it.

1(d) (c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations. Further clarity and consistency on the procedural aspects related to the application of sanctions is needed. The reasons that determine the existence of minimum but express procedural rules in the case of article 9 (for situations related to the practice of corruption, fraud, restrictive practices of competition and other criminal practices) are the same that justify the insertion of identical provisions in the case of application of other sanctions, namely those mentioned in article 437 of the PPL⁷⁸.

1 (i) (c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract. Recourse to arbitration is not available during contract implementation phase in the case of contracts for the acquisition of goods and services.

Recommendations

To address Substantive Gaps

1(d)(b) Barriers to participation in public procurement should be monitored, especially in terms of its economic impact, to eventually repeal or amend the legal provision in force.

⁷⁸ SNCP has brought to the attention of the Assessment Team that the President's Office approved Decree nr. 77/2023, dated March 20th, with the aim of establishing the identification and respective fines for infractions during bidding and contract execution phases. Due to late nature and complexity of the issue the Assessment Team was not able to incorporate the analysis of the new Decree in the present Report, suggesting that further in-depth study be pursued on this matter.



1(d)(d) Specific provisions need to be enacted to limit or establish the rules for the participation of SOEs

1(f)(b) A comprehensive and detailed set of legal provisions regarding the life cycle costing should be added.

1(f)(c) To assess quality in consulting services provisions regarding the evaluation of proposals for consulting services should be included at the first opportunity.

1(g)(d) Non-disclosure of specific sensitive information must be ensured by an express provision in the PPL.

1(h)(e) Applications for appeal and decisions must be published in the PP Portal. Consistent KPIs to monitor litigation should be put in place.

1(k)(a), 1(k)(b) and 1(k)(c) Norms for safekeeping of records, documents and electronic data must be drafted by SNCP and proposed for approval by the Government and the National Assembly ⁷⁹.

To address Minor Gaps

1(a)(d) Current laws, regulations and policies must be published online in a machine-readable format.

1(c)(b) To assess in practice if the publication of opportunities provides sufficient time for bidders, SNCP should monitor the practical implementation of the PPL provisions.

1(d)(c) Sanctions regime related to eligibility requirements must be clarified and/or developed.

1(f)(b) Methodologies to be used in the life cycle costing should be densified in the legal framework.

1(i)(c) Efficient and fair processes to resolve disputes promptly should be implemented, namely by extending the possibility of recourse to arbitration to pre-contractual stages (all types of contracts) and to the implementation stage (goods and services contracts).

⁷⁹ The procurement specific norms are to complement the general rules established by Law nr. 14/2017, of August 7th.



Summary of substantive gaps and recommendations of Indicator 1

Substantive gap	Risk classification and red flags	Recommendations
1(d)(b)		
There are therefore barriers to international public procurement – part of the international trade. Articles 53, 54 PPL.	Substantive medium-risk gap	A specific fact-based study should be conducted by the Government to assess the economic impact of this barrier before a legislative measure (repeal or modification of concerned provisions) is taken.
1(d)(d)		
The lack of specific provisions regulating the terms and conditions for SOEs to participate in the public procurement market as bidders is considered a substantive gap that needs to be addressed.	Substantive low-risk gap	Specific provisions need to be enacted to establish (or limit) the rules for the participation of SOEs.
1(f)(b)		
The lack of a specific legal regime setting the conditions and requirements for using legal details on how to use the life cycle cost principles.	Red Flag	A comprehensive and detailed set of legal provisions regarding the life cycle costing should be added
1(f)(c)		
There are no specific provisions regarding the assessment of technical capacity in the formation of consultancy service contracts.	Substantive medium-risk gap	Provisions regarding the evaluation of proposals for consulting services should be included at the first opportunity.
1(g)(d)		
No express provision on the guarantee of confidentiality and non-disclosure of business and industrial secrets and other legally protected information.	Red Flag	Add a provision to the PPL mentioning the classification of documents and information contained in the proposals.
1(h)(e)		
Applications for appeal and decisions are not published in easily accessible places and within specified time frames.	Substantive high-risk gap	(i) Establish a consistent set of specific Key Performance indicators (KPI) designed to monitor litigation (or the lack of) in public procurement (yearly time series should become available to track trends as well as comparison with (i) other areas of administrative litigation and (ii)



Substantive gap	Risk classification and red flags	Recommendations
		<p>with litigation in the national legal system in general.</p> <p>(ii) Publish applications for appeal and decisions in the PP Portal.</p> <p>(iii) Design a training programme for Lawyers and Judges on administrative and judicial challenges in public procurement</p> <p>(iv) This training should include the dissemination of commented models/templates of administrative disqualifications and judicial appeals meant to support legal practitioners (there is mention of these models on the SNCP portal but no documents are made available there)</p> <p>(iv) Treat statistical information on administrative appeals and judicial reviews with technical, legal and statistical rigour, distinguishing (i) the type of process used, (ii) the cause of the request - allegation by the interested party (iii) the date of lodging and conclusion with notification to the appellant (iv) the final result - decision to grant or reject, total or partial</p> <p>(v) Construction of a specific database for jurisprudence (administrative appeals, judicial appeals, and arbitration awards) compatible with the open government data and open legal data standards.</p>
1(k)(a)		
<p>There is no specific legislation on the safekeeping of procurement records, documents, and electronic data.</p>	<p>Red Flag</p>	<p>Specific legislation on the safekeeping of procurement records, documents and electronic data needs to be enacted. SNCP should take the initiative to devise and draft this legislation in coordination with the Minister of Finance for</p>



Substantive gap	Risk classification and red flags	Recommendations
		approval by the Government and the National Assembly
1(k)(b)		
Same as 1(k)(a)	Red Flag	Same as 1(k)(a).
1(k)(c)		
Same as 1(k)(a) and 1(k)(b)	Red Flag	Same as 1(k)(a) and 1(k)(b)

Suggestions for improvement	
Sub-indicator	
	Procurement methods
1(b)(a)	A Reference Price Database, already foreseen in the PPL, should be developed in connection with the generalization of the use of e-GP. The use of e-GP-generated information (award price, price revisions, type of good, service and works awarded, delivery place, etc.) is absolutely necessary to guarantee the provision of real-time information collected at affordable administrative costs (nearly zero if the necessary integration with e-GP platform is guaranteed). The data should be fed into the database without the interference of human action - automatic feed from the e-GP platform – and made public through an “online Public Contracts Price Index”.
	Advertising rules and time limits
1(c)(c)	Make the online version of the Official Journal available on a National Printing House Portal, with particular emphasis on the 1st and 3rd Series.
	Contract management
1(i)(a)	The path to professionalization should be sought through the creation of a specific career for procurement function with regulated access conditions.

Indicator 2. Implementing regulations and tools support the legal framework

This indicator verifies the existence, availability, and quality of implementing regulations, operational procedures, handbooks, model procurement documentation and standard conditions of contract. Ideally the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational and indicate how to apply the law to specific circumstances.

- **Synthesis of the indicator**

Although SNCP focuses on the capacity building of the procuring entities on the correct use of the PPL and has published a procurement manual on its Portal, the Agency’s main effort is to make **model procurement documents** available for the existing procurement methods. Template notices, debriefing minutes, notifications, procedural reports, etc. can be consulted and downloaded in editable formats from the SNCP standard procurement documents website section. Both PPLs (2016 and 2020) and Presidential Decree nr. 201/2016 are **silent as to the mandatory nature of the model documents**. Therefore, they do not define the room for



customisation of procuring entities nor the consequences of introducing changes or even not using the models at all. An explicit legal provision setting the room for customisation of the model contracts allowed to procuring entities should be added to the PPL, following a specific study on the current use of existing models (rate of use, rate of incorporation of changes, most frequent changes, etc.). From the analysis made of the model contracts, after being updated by SNCP in light of the new PPL 2020, their content is compliant with the PPL. However, this does not mean that the existing models cannot be improved, especially with regard to contracts for complex works (infrastructures of all types and great economic and social value), namely by incorporating typical clauses that have been tested in numerous countries, such as the FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer.

- **Findings**

The regulations that supplement and detail the provisions of the public procurement law are consistent with it and no contradictions have been identified.

With the exception of the Presidential Decree nr. 202/2017, all the regulations are available in the PP Portal, which should become the most comprehensive source of information on public procurement in the country. Despite this, the **gap detected in relation to the publication of court decisions** makes the interpretation of the rules very difficult and based almost exclusively on the legal scholarship (which since 2016 has seen an increase in attention in relation to public procurement). Furthermore, almost all **legal texts are published in a non-editable format, i.e.**, pictures of the documents which makes the work of lawyers, legal advisors, and public procurers very difficult, e.g., for making simple citations.

Normative powers are clearly distributed under the Constitution, which translates, from a legislative point of view, into the promulgation of laws (e.g. the PPL) by the National Assembly or Presidential Decrees (e.g. the organic statute of the SNCP). At the infra-legislative level, **regulatory powers** are attributed by the Article 11 of the PPL combined with Presidential Decree nr. 162/2015, of 19 of August, to the SNCP which is “...responsible for “operation, regulation, supervision, observation, audit and oversight of the public procurement system”. **Regulations are kept updated and accessible** (although not in a user-friendly manner as stressed in 2 (a)(b).

As mentioned in the synthesis of the Indicator, SNCP makes **standard procurement documents** available for the existing procurement methods (details are in the aforementioned section).

Both PPLs (of 2016 and 2020) and Presidential Decree nr. 201/2016 are silent as to the **mandatory nature of the standard procurement documents**. Therefore, they do not define the room for customisation allowed to procuring entities nor the consequences of introducing changes or even not using the models at all. Since from a material point of view, other formulations of procurement documents, including the contracts, may also be compatible with the rules and regulations in force, the law should be clear and unequivocally establish the regime for the use of models. The legal basis for scrutinising changes introduced by procuring entities is weak under the current legal framework. As to model contracts in particular, both PPLs (2016 and 2020) are completely silent, so, as far as these are concerned, the room for manoeuvre of procuring entities is greater.

As far as the tender documents referred to in Article 47 of the PPL are concerned, the responsibility for their update is with SNCP [see above 2(b)].

According to Article 108 (1) of the PPL, the **contract must contain, under penalty of nullity**, (a) the identification of the parties and their respective representatives, as well as the title in which



they intervene; (b) the indication of the act of awarding and of the act of approval of the draft contract; (c) the description of the subject matter of the contract; (d) the contractual price; (e) the period of performance of the main services which are the subject matter of the contract; (f) the reference to the deposit provided or to be provided by the contractor when required under Article 99. Furthermore, the following documents are always part of the contract (by automatic effect of Article 108 (2) and regardless of the will of the Parties): a) The clarifications and rectifications relating to the specifications; b) The specifications; c) The awarded proposal; d) The clarifications on the awarded proposal provided by the adjudicator. It should be noted therefore that the **notion of "contract" in Angolan public procurement law covers much more than the document called "contract"** which is made and signed only at the final stage of the bidding process (after the award decision). As it follows from that Article 108 (2) the contract is the collection of the documents mentioned, the last of which is called the "contract" is the least important according to the rule of precedence in case of divergence of contents between the various documents. **In case of divergence** between the documents referred to in paragraph 2, the precedence is determined by the order in which they are listed in that paragraph and in case of divergence between the documents referred to in Paragraph 2 and the clauses of the contract, the former shall prevail. [Article 108 (5), (6)].

The model contracts, available on the PP Portal, are compliant with the PPL. However, the **existing models can be improved**, especially with regard to contracts for complex works (infrastructures of all types and great economic and social value), namely by incorporating typical clauses that have been tested in numerous countries, such as the FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer⁸⁰.

A **comprehensive procurement manual**, covering the entire procurement cycle is regularly updated by the SNCP and available to consult and download from the public procurement portal⁸¹. It was not possible to evaluate usage uptake of the manual by the procuring entities, seeing no track of usage was made available by SNCP nor was it possible to gauge with the contracting entities studied.

- **Gaps**

Substantive Gaps

2 (b) (b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding. Both PPLs (of 2016 and 2020) and Presidential Decree nr. 201/2016 are silent as to the mandatory nature of the model documents. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Minor Gaps

2 (a) (b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place. Presidential Decree nr. 202/2017, of 6 of September is available in the Ministry of Finance website, but not in the Public Procurement Portal. Furthermore, the format of legal text documents published should be user friendly, e.g. to allow for editing and making citations.

⁸⁰ SNCP should do this in conjunction with DOA.

⁸¹ The latest version was issued in March 2022 (4th edition) to reflect the new PPL 2020.

<https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4z/mdc3/~edisp/minfin3077056.pdf>.



2 (c) (b) The content of the standard contract conditions is generally consistent with internationally accepted practice. Existing models can be improved, especially with regard to contracts for complex works.

- **Recommendations**

To address Substantive Gaps

2(b)(b) The use of Standard Documents should be clarified. An explicit legal provision establishing the scope for customisation of model contracts allowed to procuring entities should be added to the PPL, following a specific study on the current use of existing models (rate of use, rate of incorporation of changes, most frequent changes, disputes related to formal issues deriving from the model documents, etc.). The possibility of imposing an obligation to include explicit references to prohibited practices, and even the insertion of self-declarations of abstention from illegal behaviour on the part of competitors, should also be considered in this study (and could be implemented at both a legal and regulatory level). This last aspect is related to indicator 14 (b).

To address Minor Gaps

2(a)(b) To have a relevant set of regulations readily available in a single accessible place, SNCP should publish in the PP Portal the Presidential Decree nr. 202/2017 and all public procurement related Court rulings (e.g. by the Administrative Chambers of the Provincial Court and the Supreme Court, the Court of Auditors, and the Constitutional Court).

2(c)(b) Standard contract conditions should be reviewed by SNCP. Existing contracts data should be collected and treated to enable the calculation of the following KPIs: (i) percentage of contracts drafted by simply filling in the blanks in the models; (ii) percentage of contracts in which "non-standard clauses" were introduced; (iii) percentage of contracts that did not follow the existing templates at all; (iv) percentage of disputes occurring in each of the situations described, a) before the start and b) during the execution of the contract. Realistically, to make this approach and analysis meaningful, collecting and processing this data during a minimally representative statistical series would be necessary⁸².

The added value of using some FIDIC contract standard clauses should be assessed (for possible use in more complex engineering and infrastructure projects) in the framework of the procurement documents review, update and enhancement ((which should be a permanent task for the SNCP, not only when there is a legislative change with a direct impact on documents, but also as a result of the above-mentioned study and the calculation of the relative KPIs).

Summary of substantive gaps and recommendations of Indicator 2

Substantive gap	Risk classification and red flags	Recommendations
2(b)(b)		
The scope of contents to be covered by the Standard Documents and its mandatory use are not provided by the legal provisions in force.	Red Flag	An explicit legal provision establishing the scope for customisation of model contracts allowed to procuring entities should be added to the PPL

⁸² To be monitored closely by SNCP on a yearly basis.



Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, etc., and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, i.e., whether the legal framework is coherent with the higher policy objectives of the country.

- **Synthesis of the indicator**

Despite the fact that sustainability is described as one of the general principles of the PPL and the companies should “observe the principles and rules of corporate governance, namely regular reporting, organised accounting, internal control systems and social, labour and environmental accountability.” and that Article 82 (2) (a) (iii) allows for the use of environmental or social sustainability related evaluation factors within the Most Economically Advantageous Tender (MEAT) award criterion, there is no policy nor strategy in place to implement SPP so a **National Sustainable Public Procurement Strategy is needed**.

The obligations related to public procurement arising from **binding international agreements** are clearly established and are reflected in national procurement laws and regulations. This is exemplified by PPL's explicit reference to the preference rules also established in favour of bidders who are nationals of, or are based in, member states of the COMESA or SADC or are based in such territories, or in favour of goods produced, extracted or cultivated in such states, as well as the impediments arising from boycotts by international and regional organizations to which Angola belongs, namely the United Nations (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the African Union (AU), the Southern African Development Community (SADC), the Economic Community of Central Africa (ECCAS) and the African Development Bank (AfDB).

- **Findings**

Although sustainability is described as one of the general principles of the PPL which also prescribes that the companies should “observe the principles and rules of corporate governance, namely regular reporting, organised accounting, internal control systems and social, labour and environmental accountability.” and the PPL allows for the use of environmental or social sustainability as an evaluation factor within the Most Economically Advantageous Tender (MEAT) award criterion, there is **no strategy nor policy in place to implement a proper Sustainable Public Procurement**. Preparatory work aiming the development of a National SPP strategy is underway but with limited or no results.

The obligations related to public procurement arising from **international agreements** are clearly established and are reflected in national procurement laws and regulations. They comprise **preference rules** established in favour of bidders who are nationals of, or are based in, member states of COMESA or SADC or are based in such territories, or in favour of goods produced, extracted or cultivated in such states and the **boycotts** by international and regional organizations to which Angola belongs, namely the United Nations (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the African Union (AU), the Southern African Development Community (SADC), the Economic Community of Central Africa (ECCAS) and the African Development Bank (AfDB).

- **Gaps**



Substantive Gaps

3(a)(a), 3(a)(b), 3(a)(c) and 3(a)(d) Sustainable public procurement (SPP) policy/strategy. Currently there is no policy nor strategy in place to implement SPP, no implementation plan or systems and tools in place to operationalise, facilitate and monitor the application of SPP.

Minor Gaps

No minor gaps have been detected.

- **Recommendations**

To address Substantive Gaps

3(a)(a), 3(a)(b), 3(a)(c) and 3(a)(d) A Sustainable public procurement (SPP) policy/strategy and its operational plan must be drafted to address sustainability concerns.

Summary of substantive gaps and recommendations of Indicator 3

Substantive gap	Risk classification and red flags	Recommendations
3(a)(a) 3(a)(b) 3(a)(c) 3(a)(d)		
There is no policy/strategy in place to implement SPP, no implementation plan or systems and tools to operationalize, facilitate and monitor the application of SPP	Substantive high-risk gap	The adoption and implementation of a National SPP strategy should be included as a Strategic Goal in the next multi-annual strategic plan for public procurement. SNCP should draft a National SPP Strategy with a roadmap and action plan.

3.2. Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.

Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system

This indicator focuses on how well integrated the procurement system is with the public financial management system given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.



- **Synthesis of the indicator**

The institutional framework of the national public procurement system is, in general, adequate to achieve good functioning regarding the organisation of the procuring entities. Procuring entities are clearly defined under Angolan constitutional and administrative law, including the organs of sovereignty (National Assembly, President of the Republic, Government, Courts) and the entities of central, local, and autonomous public administration as well as state owned companies.

- **Findings**

The PPL has a specific provision on the making and publication of Annual Procurement Plans, which is complemented by a provision in the Budget Execution Law that requires these plans to be published within 15 calendar days of the publication of the Law approving the State Budget.

In 2022, with a universe of 593 procuring entities, 518 Annual Procurement Plans were published, representing an 87% coverage.

Additionally, from the sample analysis, only 40% on average of the procedures were foreseen in the Entity's Annual Procurement Plan. In the cases where there was a Plan, only 17% were updated. Taking into consideration only the procedures processed in the e-procurement system, the percentage of procedures included in the Annual Procurement Plan falls to 26%, with no record of any having been updated.

Based on the PEFA 2022 draft report, Angola has scored D on the PI - 11. Public Investment Management, which is the indicator that measures “the extent to which the government conducts economic appraisals, selects, projects the costs, and monitors the implementation of public investment projects, with emphasis on the largest and most significant projects”. The score is largely justified by the lack of evidence regarding cost, impact, and benefits analysis.

The rules of budgetary execution and the Framework Law of the State Budget clearly determine that no expenditure can be assumed by any Budgetary Unit without the respective expense being duly and previously committed.

The **National Project Portfolio**, managed by the Public Investment Directorate (DNIP) of the Ministry of Finance (MINFIN), is divided into Sectorial Portfolio and Provincial Portfolio, managed by each Sector/Provincial Government. According to the Presidential Decree nr. 31/2010, of 13 of April, the National Project Portfolio can be reviewed every two years, considering any changes in the Provincial, Sector or National policy priorities and is subject to a monitoring process which consists in a quarterly report on the financial and physical execution of the contracts by the Sectors and Provincial Governments and on a monthly report on the financial execution of the contracts performed by the Public Investment Directorate of MINFIN. The financial progress of each Project is recorded in the information system that supports PFM. However, the physical execution tracking of each project is based on the reports provided by the beneficiaries.

SNCP is currently piloting a web-based information system “SGC – *Sistema de Gestão de Contratos*”, integrated with the e-GP and IFMIS, that will allow for a full cycle contract management, from procurement planning to payment.

Articles 9(3) and 30 of the State Budget Law determine that **no expenditure can be undertaken by any Budget Unit without a previous budget allocation** that ensures funds will be available for payment when needed according to the contract. Also importantly, the decision to procure, which initiates the procurement procedure, can only be taken when the appropriation is entered into



the budget "except where the notice, invitation or programme of the procedure states that the award of the contract shall be subject to approval of the relevant budget allowance" (Article 32(2) of the PPL).

The PPL stipulates **30 calendar days as a rule in terms of payment deadline**, exceptionally allowing for an increase up to **60 calendar days**, if clearly stated in the contract. The contract templates available on the PP Portal, include a provision stating that "the payment period after receiving the invoices must not exceed that stipulated in the legislation (90 days)", which corresponds to the period after which unpaid invoices are considered "in arrears" (Article 14 (3) and (4)) by the Presidential Decree nr. 73/2022, of 1st of April, Rules for the implementation of the General State Budget. The payment of invoices to suppliers is however affected by the rules in force for the **approval of withdrawal orders ("ordens de saque")**, whose final validation is in most cases, and by virtue of the thresholds set, made by the Minister of Finance. This excessive concentration of powers may, on occasion, lead to delays in payments. The information contained in the IFMIS reveals full compliance with the legislation with regard to the punctual payment of invoices. However, an **analysis of the 2021 data** shows several processes that are in principle subject to public procurement rules, in which the issuing of the commitment is separated from the confirmation of the payment by a few days, which suggests that the existing record in the IFMIS may not be accurate. Linked to this, information shared by the SNCP shows that although the majority of invoices are paid on time, cases have been detected where the payment period exceeded the 90 calendar days prescribed by law. In the survey launched by the Assessment Team, **60.5% of the companies considered that the (contractual) payment clauses are not fair while 85% of respondents in the private sector survey stated that delays in the payment of invoices occurs "often" or "almost always"**.

- **Gaps**

Substantive Gaps

4 (a) (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning. Based on the sample cases, a significant number of cases was not preceded by a procurement plan nor market research.

4 (b) (b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders. The national regulations/ procedures for processing of invoices and authorisation of payments are not clear to potential bidders.

Minor Gaps

4 (a)(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts. There are integration gaps between the e-GP and IFMIS that should be addressed.

- **Recommendations**

To address Substantive Gaps

4(a)(a) Ensure publication of procurement plans. SNCP to ensure the enforcement of publication of procurement plans through the e-procurement system and the public procurement portal. Also considered critical the inclusion of provisions on the preparation and/or updating of the Annual Procurement Planning for each project in the Schedule for the Preparation and Approval of the



Annual Programming of the Public Investment Programme (Article 23 of the Presidential Decree nr. 31/2010, of 13 of April).

4(b)(b) Regulations/procedures for processing of invoices and authorisation of payments should be clearer and a control mechanism to ensure accurate time recording of financial movements should be implemented in the IFMIS system. In addition, a delegation of the necessary authority for approval of withdrawal orders to the National Treasury Director should be sought, as the current segregation of duties and approval process in place already ensures the necessary oversight.

To address Minor Gaps

4(a)(c) A feedback mechanism reporting on budget execution can be enhanced by ensuring better integration between e-GP and IFMIS system and fully deploy the e-GP system.

Substantive gap	Risk classification and red flags	Recommendations
4(a)(a)		
Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning. Based on the sample cases, a significant number of cases was not preceded by a procurement plan nor a market research.	Substantive medium-risk gap	SNCP to ensure the enforcement of publication of procurement plans through the e-procurement system and the public procurement portal. Also considered critical the inclusion of provisions on the preparation and/or updating of the Annual Procurement Planning for each project in the Schedule for the Preparation and Approval of the Annual Programming of the Public Investment Programme (Article 23 of the Presidential Decree nr. 31/2010, of 13 of April)
4(b)(b)		
The national regulations/procedures for processing of invoices and authorisation of payments are not clear to potential bidders.	Substantive medium-risk gap	Regulations/procedures for processing of invoices and authorisation of payments should be clearer and a control mechanism to ensure accurate time recording of financial Actions should be implemented to improve the IFMIS system.



Indicator 5. The country has an institution in charge of the normative/regulatory function

This indicator refers to the normative/regulatory function in the public sector and its proper discharge and co-ordination. The assessment of the indicator focuses on the existence, independence and effectiveness of these functions and the degree of co-ordination between responsible organisations. Depending on the institutional set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g., one institution might be responsible for policy, while another might oversee training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-co-ordinated joint effort.

- **Synthesis of the indicator**

The National Public Procurement Service (SNCP) is designated in the law as the national authority on procurement. The PPL provides that the operating, regulation, oversight, auditing, and supervision of the public procurement system are assured by the Body responsible for the Regulation and Supervision of Public Procurement, i.e., the SNCP. The PPL coupled with the SNCP organic statute, attribute to this body regulatory, supervisory, and auditing functions that are typical of regulatory authorities and which, therefore, in order to be well exercised, require independence, both from the regulated entities and interests and from the government. Independence must, therefore, be granted at two levels: **organic and structural independence**, relating to the composition of the decision-making bodies, the way they are appointed, the incompatibilities regime, and the type and duration of their mandates; and **functional independence**, including administrative and financial autonomy and its relationship with the political powers, i.e., powers of direction, tutelage, and superintendence. In summary, the powers of SNCP are well formulated, but for their application to be effective - and respected by all public procurement market players - **require the SNCP to be granted the statute of an independent administrative authority** which is the status consistent with the performance of the typical functions of a regulatory authority.

- **Findings**

SNCP is an **administrative public law institute**⁸³ entity with legal personality and capacity and qualified as a public institute of the Administrative or Social Sector. It is endowed with administrative and financial autonomy and its own assets and its key functions include the support to the government in matters of definition and implementation of policies and practices relating to public procurement, the supervision, auditing and monitoring of public procurement processes in collaboration with the competent bodies, the enactment of regulations and instructions to standardize public procurement procedures and the ruling of administrative challenges presented by candidates or bidders. The **key supervisory functions** of SNCP comprise the monitoring of compliance with the public procurement laws and regulations by the procuring entities, candidates, and bidders, as well as with the specific rules concerning the functioning and management of the state e-procurement platform. In case SNCP finds that the rules or principles of public procurement are being violated in a procurement procedure it can **order the suspension of the procedure** to promote the elimination of flaws, illegalities, and irregularities inherent in the process of contract formation (Article 440 (3) of the PPL). The supervisory and regulatory

⁸³ A body of public law.



attributions encompass the supervision of the public procurement market operation, the proposal of legislative enhancements deemed necessary, the production of standard bidding documents as well as the other documents of compulsory use for the public procurement procedures. SNCP also performs **auditing functions**, including internal and external audits on electronic platforms, procuring entities and public procurement procedures.

In the exercise of its competences, the SNCP supports, assists, and cooperates, as the case may be, and whenever requested with any entity that requests its collaboration. (Article 5 (2) (f) of Presidential Decree nr. 162/2015).

SNCP is charged with the function of supporting the Executive in defining and implementing public procurement policies and practices [(Article 5 (1) (a))]

SNCP develops relevant activity both in the preparation of rules, regulations and instructions to standardize public procurement processes [(Article 5 (1) (e)) - which corresponds to the typical regulatory power of regulatory bodies - and to support the Executive in the definition and implementation of policies and practices relating to public procurement [(Article 5 (1) (a))], in which it is possible to frame the duty power to propose measures of a legislative nature.

This has been the practice, with the leadership of the preparatory works of the PPL approved by Law nr. 41/2020 being cited, due to its central importance for the system. By its own initiative, or consulted if another body initiates the process, SNCP is the central body in relation to the legislative and regulatory production of the system. It should be noted that this does not mean that it has legislative powers, it only means that it is the body that has among its main missions to ensure that laws and regulations are adequate and, when necessary, are reviewed by the entities with competence for that purpose.

SNCP is formally recognized as a "public procurement observatory, through the stimulation of the adoption of the best practices and the improvement of the public procurement procedures;". It is understandable that those who observe and assess the performance of the system, including its legal framework, have a special obligation to initiate its improvement, when necessary.

As part of its **information function**, the SNCP is responsible for supporting the development and administration of the **Public Procurement Portal**, proposing the technical and compliance solutions it considers most appropriate and efficient, publishing on the Public Procurement Portal, in an openly available area, the relevant information, namely the legislation on public procurement and its updates, memorandums and studies on public procurement, standard bidding documents, instructions, guidelines and reports that do not contain classified information or that are not intended to be made available only in the reserved access area. It is also the responsibility of SNCP to ensure that procuring entities publish in the appropriate and authorised places and media the information related to public procurement procedures, in accordance with the legislation in force. SNCP must also process the information made available by the procuring entities, or collected by itself, and stored in the respective area of the Public Procurement Portal, such as management reports containing indicators on reference prices for the type or types of contracts, execution times and data on compliance and non-compliance with tender documents and contracts, lists of suppliers, service providers and contractors active in the market, the list of suppliers, service providers and contractors suspended or barred from participating in public procurement procedures, lists of contracts awarded, awardees, awarded and actually paid prices.

SNCP issues several **regular publications**, e.g., the Annual Report of the Angolan Public Procurement, the Public Procurement Statistical Bulletin, and the Annual Audit Report. On a non-



regular schedule the following publications should be mentioned as important training and guidance tools: Good Practice Guide on Combating Collusion in Public Procurement (2018); Practical Guide for the prevention and risk management of corruption and related offences in public procurement (2019); Primer on Ethics and Conduct in public procurement (2019); Practical Manual on Public Procurement (2022) and the Checklist of public procurement procedures for Public Contracting Authorities (2022).

The SNCP is also responsible for the setup and maintenance of the **centralised online platforms** and other e-Procurement tools while their operational management falls under the responsibility of DNPE and the technical and functional management is provided by SETIC-FP.

The powers granted to the SNCP correspond, in their formulation, to the typical regulatory powers comprised within the regulator function. However, SNCP lacks the nature of independent administrative authority which undermines its ability to act as a true regulatory authority makes it impossible for it to act as a true regulatory authority.

SNCP has the nature of a public institute of the Administrative or Social Sector, has legal personality and capacity, and administrative and financial autonomy and its own assets. The organic statute of SNCP provides in its Article 32 (revenue) that without prejudice to the budgetary allocations that it receives for the exercise of its activities, in exchange for the acts practised and the services rendered, **SNCP is entitled to charge fees** to the beneficiaries of its activities, as foreseen by law or regulation, provided that the fee amounts are authorised. In addition to other revenues foreseen by law, the following shall constitute revenues for the SNCP: (i) the proceeds of the fees charged in consideration of services rendered; (ii) the proceeds from the sale or assignment, for any purpose, of rights forming part of its assets; (iii) the revenues arising from the financial investment of its resources; (iv) the contributions, subsidies and grants received from the State.

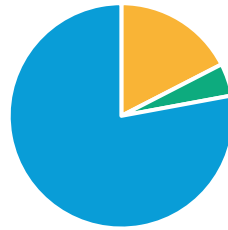
The **SNCP staff plan** (Annex I of Presidential Decree nr. 162/2015) provides for a total of 81 staff members, 75 of which are currently employed leaving room for a possible increase of activity. The organic statute is quite detailed and seems adequate to the exercise of the functions that have been attributed to SNCP (which will benefit from the statute of Independent Administrative Entity more at the external level of relationship with the PEs and other control organs than at the level of internal operating conditions that may be considered critical factors for its performance).

As prescribed by the PPL, the officials and agents of the Procuring Entity involved in the planning, preparation or performance of public procurement procedures or the execution of public contracts, as well as the members of the Evaluation Commissions, shall annually, in the manner prescribed by a specific normative act of the President of the Republic, declare their income and that of their household members, as well as their investments, assets and substantial gifts or benefits from which a conflict of interest may result in relation to their duties. The Presidential Decree nr. 312/2018 has approved the requirement for the Declaration of Assets and Income, the Declaration of Interests and the Declaration of Impartiality, Confidentiality and Independence in the Formation and Execution of Public Contracts.

Even with the positive findings assessed in the present indicator, the private sector survey paints a different angle as may be seen from the results tabulated from the perception of conflicts of interest on their day-to-day dealings with the organizations that control and oversee the Angolan public procurement environment.



Are there conflicts of interest related to public procurement in SNCP, IGAE or Court of Auditors? (Public Sector Perception)



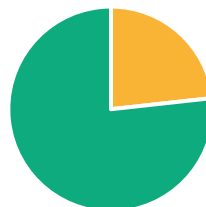
Yes, recurrent Yes, rare Not to my knowledge

Are there conflicts of interest related to public procurement in SNCP, IGAE or Court of Auditors? (Private Sector Perception)



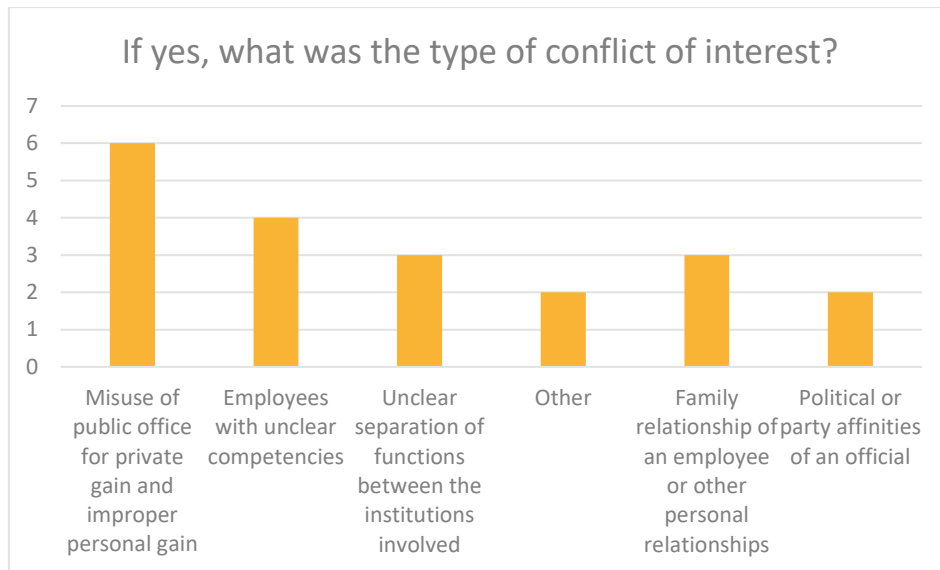
Yes, recurrent Yes, rare Not to my knowledge

In the context of Angolan public procurement, have you ever experienced a conflict of interest situation with SNCP, IGAE or the Court of Auditors?



Yes No





- **Gaps**

Substantive Gaps

5 (a) (a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government. The nature and organic statute of the SNCP is inadequate for the full exercise of the typical powers of a regulatory authority. A Red Flag is assigned because addressing this gap requires a legislative amendment.

5 (c) (a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government. The powers granted to the SNCP correspond, in their formulation, to the typical regulatory powers comprised within the regulator function. However, SNCP lacks the nature of independent administrative authority which undermines its ability to act as a true regulatory authority. The nature and organic statute of SNCP is inadequate for the full exercise of the typical powers of a regulatory authority. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Minor Gaps

5 (b) (i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement. SNCP has limited capacity to fulfill its obligations of providing the training to all that demand it, especially in the remotest provinces.

- **Recommendations**

To address Substantive Gaps

5(a)(a) and 5(c)(a) The organic law of the SNCP needs to be revised in order to grant SNCP the statute of an Independent Administrative Authority.

To address Minor Gaps



5 (b) (i) To grant SNCP the statute of an Independent Administrative Authority, its organic law needs to be revised.

Substantive gap	Risk classification and red flags	Recommendations
5(a)(a) 5(c)(a)		
The nature and organic statute of the SNCP is inadequate for the full exercise of the typical powers of a regulatory authority.	Red Flag	The organic law of the SNCP (Presidential Decree nr. 162/2015) needs to be revised to grant SNCP the statute of an Independent Administrative Authority

Suggestions for improvement	
Sub-indicator	
	Responsibilities of the normative/regulatory function
5(b)(a)	The observation and collection of information should be systematized in accordance with KPIs developed for analysis of demand for these services provided by the SNCP in order to make (i) comparative trend analyses and (ii) development of analysis of the results and association with the causes of the trend and (iii) evaluation of beneficiary satisfaction - PEs that require opinions.
5(b)(i) and 5(b)(j)	SNCP should promote training and the recognition of procurement as a profession by providing job descriptions, requisite qualifications, and competences framework. SNCP should also engage with universities and training institutions to align their curriculum to include practical public procurement case studies.
	Organization, funding, staffing, and level of independence and authority
5(c)(b)	To increase the transparency of its operation, the accounts of SNCP should be published in the corporate area of the public procurement portal.
	Avoiding conflict of interest
5(d)(a)	Efforts should be made to improve the perception of the existence of conflicts of interest among suppliers.

Indicator 6. Procuring entities and their mandates are clearly defined

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralised procuring entity exists.

- **Synthesis of the indicator**

The assessment reveals a well-defined framework for procuring entities as stipulated by constitutional and administrative law. This encompasses various branches of government, administrative bodies, and state-owned enterprises, each possessing designated responsibilities and legal competences. The regulatory function is overseen by the SNCP, regulated through its



organic law, ensuring adherence to procurement regulations. Notably, Presidential Decree nr. 88/2018 established Public Procurement Units (PPUs) and outlined the role of Project or Contract Managers, with Article 29 emphasizing harmonization of Procuring Entities' statutes with the Decree.

Angola has two sectoral central purchasing bodies. One for the health sector, medicines and medical equipment and devices, CECOMA, and another for the defence sector, SIMPORTEX.

While a centralized procurement function covering the whole of the public administration is absent, the Procurement Law (PPL) offers provisions for efficient practices such as framework agreements and sector based CPBs. These entities must uphold principles like segregation of functions, electronic tools utilization, environmental consciousness, and promotion of competition. PPL 2020 introduces the innovative option of outsourcing CPB management to third parties through detailed contracts, ensuring service continuity and quality.



- **Findings**

Procuring entities are clearly defined under Angolan constitutional and administrative law, including the organs of sovereignty (National Assembly, President of the Republic, Government, Courts) and the entities of central, local, and autonomous public administration as well as state-owned enterprises. All actors intervening in Angolan public procurement market – supply side, demand side and regulatory function - have their responsibilities and competences defined by law. In the case of procuring entities (demand side) appropriate legal texts define (i) the **attributions and competences of the entity in general**, the hierarchical dependence or tutelage relationship or regime of autonomy or independence and internal organisation (the more general aspects derive from Administrative Law and the more specific ones are, when necessary, dealt with in the so called organic laws (e.g.: SNCP, which constitutes the body responsible for the regulation and supervision of public procurement, is specifically regulated by the respective organic law, approved by Presidential Decree nr. 162/2015) and (ii) the **specific powers and duties in relation to the public procurement function** as provided by the PPL and complementary regulations.

Presidential Decree nr. 88/2018, of 6 of April - Created the Public Procurement Units (PPU), established the role of Project or Contract Manager and approved the Internal Regulation of the PPUs. Article 29 provides that the organic statutes of the Procuring Entities shall be harmonised with the Decree.

Article 24 of the PPL sets the rules for the **choice of procurement method** depending on the value of the contract. These rules provide for the delegation of powers according to risk.

Competent bodies	Thresholds (in AOA) are set out in the Annual Implementation Rules of the State Budget for each economic year					
	Up to 1 000 million	Up to 1 750 million	Up to 2 000 million	Up to 2 500 million	Up to 3 000 million	above 3 000 million
Holder of the Executive Branch (President of the Republic)	✓	✓	✓	✓	✓	✓
Vice-President of the Republic	✓	✓	✓	✓	✓	✗
Ministers of State	✓	✓	✓	✓	✗	✗
Ministers and Provincial Governors	✓	✓	✓	✗	✗	✗
Municipal Administrators	✓	✓	✗	✗	✗	✗
Other Bodies of Central State Administration and SOEs	✓	✗	✗	✗	✗	✗
Managers of Budgetary Units of Local Government Bodies of the State	✓	✗	✗	✗	✗	✗



The PPL precisely defines the accountability for the most relevant decisions taken throughout the entire procurement cycle. This starts with the decision to contract which belongs to the body competent to approve the respective expenditure. The Procuring Entity can only take the decision to contract when the amount is included in its budget unless it is stated in the announcement, invitation, or procedure programme that the awarding is dependent on the approval of the corresponding budget entry. The choice of procurement method following the decision to contract should be reasoned, which allows for the scrutiny that enables subsequent scrutiny by the organs with preventive or successive controlling powers and by those interested in the procurement opportunity. Under general administrative law, replicated in the PPL, the power to perform any public procurement related administrative acts may be delegated or subdelegated and the termination or cancellation of contracts entered into under delegated powers shall not require a new authorisation by the delegating body, unless otherwise expressly indicated.

It must be emphasized that the qualification or **awarding decision** is always taken by the entity that decided to contract on the basis of the final report submitted by the Evaluation Committee in the case where the method of procurement does not dispense with its constitution (e.g.: in direct award there is no evaluation committee).

A general cross-cutting central purchasing body to cover the more relevant transversal categories of works, goods and services is not available. The country has created **two specialized central purchasing bodies**, CECOMA for the **health sector** and SIMPORTEX for the **defence sector**.

CECOMA is a public institution responsible for developing the system for the acquisition, distribution, and maintenance of medical and non-medical for the National Health Service that has been created by the Presidential Decree nr. 269/2014, of 22 of September. According to Article 1 (2) CECOMA is a public institute in pertaining to the administrative sector, endowed with legal personality and capacity, and administrative, financial, and patrimonial autonomy.

SIMPORTEX is a public company with legal personality with administrative, patrimonial, and financial autonomy, as provided by Decree nr. 110/2018, of 26 of April. Its corporate purpose includes the import and export and the supply of goods and services necessary to carry out and implement military programmes in on an exclusivity regime and in accordance with the needs and priorities defined by the Ministry of National Defence.

The use of framework agreements is not a common practice.

Even though in practical terms the GoA does not operate a centralised procurement function nor make use of existing tools to increase the efficiency, e.g.: the framework agreements, except for the two examples stated in 6 (b) (a), the PPL does enable the use of such mechanisms and provides for a detailed regime applicable to the setup and operation of sector-based or cross-cutting central purchasing bodies (institutionalised approach) or the use of framework agreements as a tool for joint procurement and shared services. It should be stressed that, in addition to being subject to the application of the PPL as any other procuring entities, the **central purchasing bodies (CPB)** must also develop their activity with respect for the following guiding principles: (i) segregation of contracting, purchasing and payment functions, (ii) use of e-GP tools including e-catalogues and automated ordering features, (iii) adoption of electronic purchasing practices based on the action of highly qualified negotiators and specialists, with a view to reducing costs, (iv) preference for the acquisition of goods and services that promote the protection of national industry and the environment; and, last but not least, (v) the promotion of competition. The creation of CPBs is always preceded by a **feasibility study** that focuses on the need, economic and financial feasibility,



and envisaged advantages, namely from a quality and efficiency gains perspective. The **constitutive acts of CPBs** shall define their objective scope, namely the activities to be undertaken, the type or types of contracts covered and, if applicable, the sector of activity for which it is intended, the subjective scope, namely the covered entities, the mandatory or optional arrangements for contracting under the CPB's framework agreements and the criteria for remuneration of services provided, namely in contractual relations with third parties who are not covered entities, considering the appropriate performance indicators, such as the volume of purchases or savings generated. One of the main innovations of PPL 2020 is that it provides for the possibility of **outsourcing the management of CPBs** to third parties, regardless of their public or private nature. In such cases, a management contract shall identify and describe the services that constitute the ancillary activities that the third party may pursue and their terms, guarantee the continuity and quality in the execution of the services by the third party, and set the duration of the contract.

- **Gaps**

Substantive Gaps

6(a) (c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity, and capability. There are currently only 142 Public Procurement Units created and fully operational, out of a universe of almost 593 Procuring Entities.

6 (a) (d) Delegation of authority does not adequately reflect the risk related to the value of the contract to be formed. A Red Flag is assigned because addressing this gap requires a legislative amendment.

6 (b) (a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement. A cross-sector central purchasing body to cover the more relevant transversal categories of works, goods and services is not available.

6(b)(b) In case a centralized procurement body exists, the legal and regulatory framework provides for the following: (i) Legal status, funding, responsibilities, and decision-making powers are clearly defined; (ii) Accountability for decisions is precisely defined; (iii) The body and the head of the body have a high-level and authoritative standing in government. Even though in practical terms the GoA does not operate a centralized procurement function to consolidate procurement, nor make use of tools to increase efficiency (like framework agreements), except for the 2 examples stated in 6 (b) (a), the PPL does enable the use of such mechanisms and tools as seen in the provisions of PPL below.

- **Recommendations**

To address Substantive Gaps

6(a)(c) Specialized procurement function within procuring entities should be enforced and a capacity building plan implemented.

6(a)(d) Consider revising the competence thresholds according to the estimated value of the contract in order to increase the autonomy, as well as the responsibility, of the lower levels of competence. This is usually done through the Budget Execution Law.

6(b)(a) Centralized purchasing should be considered with a view to centralizing procurement of the main expenditure categories of works, goods, and services, making use of special procurement



instruments, such as framework agreements, and information technologies, such as the e-GP. For that the GoA should launch a feasibility study for the implementation of a transversal, cross-sector central purchasing agency, with a view to centralizing procurement of the main categories of works, goods, and services (top spenders) of common use within the public administration.

6(b)(b) same as 6(b)(a)

Summary of substantive gaps and recommendations of Indicator 6

Substantive gap	Risk classification and red flags	Recommendations
6(a)(c)		
Out of a universe of 593 PEs, only 142 Public Procurement Units are created and fully operational.	Substantive high-risk gap	<ul style="list-style-type: none"> - Efforts should be made to ensure a higher number of functional/operational PPU's, since that will enhance the procurement function. - The creation of a dedicated area for public procurement in each Procuring Entity "by decree" does not by itself result in the application of best practices. SNCP should continue its capacity building efforts and encourage the use of more agile means, specifically the e-GP.
6(a)(d)		
Delegation of authority does not adequately reflect the risk related to the value of the contract to be formed.	Red Flag	Consider revising the competence thresholds according to the estimated value of the contract in order to increase the autonomy, as well as the responsibility, of the lower levels of competence. This is usually done through the Budget Execution Law.
6(b)(a)		
6(b)(b)		
Even though in practical terms the GoA does not operate a centralized procurement function to consolidate procurement, nor make use of tools to increase the efficiency (like framework agreements), except for the 2 examples stated in 6 (b) (a), the PPL does enable the use of such mechanisms and tools as seen in the provisions of PPL below.	Substantive medium-risk gap	The GoA should launch a feasibility study for the implementation of a transversal central procurement entity, with a view to centralizing procurement of the main categories of works, goods, and services (top spenders), making use of special procurement instruments, such as framework agreements, and



Substantive gap	Risk classification and red flags	Recommendations
		information technologies, such as the e-GP.

Indicator 7. Public procurement is embedded in an effective information system

The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

- **Synthesis of the indicator**

The National Public Procurement Service (SNCP) is designated in the law as the national authority on procurement. The PPL provides that the operating, regulation, oversight, auditing, and supervision of the public procurement system are assured by the Body responsible for the Regulation and Supervision of Public Procurement, i.e., the SNCP. The PPL coupled with the SNCP organic statute, attribute to this body regulatory, supervisory, and auditing functions that are typical of regulatory authorities and which, therefore, in order to be well exercised, require independence, both from the regulated entities and interests and from the government. Independence must, therefore, be granted at two levels: organic and structural independence, relating to the composition of the decision-making bodies, the way they are appointed, the incompatibilities regime, and the type and duration of their mandates; and functional independence, including administrative and financial autonomy and its relationship with the political powers, i.e., powers of direction, tutelage, and superintendence. In summary, the powers of SNCP are well formulated, but for their application to be effective - and respected by all public procurement market players - require the SNCP to be granted the statute of an independent administrative authority which is the status consistent with the performance of the typical functions of a regulatory authority.

- **Findings**

There is **no evidence of tender notices for electronic procurement** being published in wide circulation media. Monitoring of outcomes, results and performance is extremely limited.

There is an **e-Procurement system** (SNCPPE) in use since 2018. It covers the pre-awarding phase (e-procurement planning, e-publication, e-tendering, e-reverse auction, e-evaluation/e-awarding), post-awarding phase (contract management) and supporting features (e-registration, supplier management). Access to the system by the Civil Servants requires a SIGFE account and follows a smooth procedure. Suppliers' registration is free of charge and provides access to the full details of the bidding processes and allows suppliers to bid. During the registration process, some of the suppliers' information is automatically obtained as the system is integrated with public data bases (e.g.: Tax Authority). **Since it was implemented, 65 contracts were awarded**⁸⁴ through the SNCPPE. There is also a **Public Procurement Portal** that serves as an access point to all the procurement related information. The published information is not following any data standard, e.g.: the Open Contracting Data Standards.

⁸⁴ Under the new Electronic Dynamic System, created under the new PPL, and in force since 2021.



The e-procurement system provides for the publication of **procurement plans** on the Public Procurement Portal. 518⁸⁵ plans referring to 2021 were published which represents an increase of 68% when compared to 2020, and other **information related to specific procurements** including the process id, procuring entity details, issuing date and deadline for proposal submission, scope of the contract, estimated value, procurement method, and bidding notice. Contrary to what may be considered good practice, within the framework of measures and procedures aimed at allowing companies, easily and free of charge, to consider their possible interest in bidding, essential information such as **bidding documents only become accessible after supplier's registration and login**. Also, with negative consequences on the transparency of the System and on the usability of the information, when published, there is much to be done regarding the standards to which the production, collection and disclosure of data related to public procurement is made. At present, the **information published does not follow any open data standards**, which makes the scrutiny of the performance of the procuring entities and of the system as a whole very difficult for the control organs and practically impossible for other entities outside the system, namely companies and the associations that represent them and civil society organisations, such as those dedicated to monitoring fraud and corruption.

The entity in charge of the **supervision of the e-Procurement** solution (software) is the Ministry of Telecommunication and Information Technologies and Media (MINTTICS) while the **regulatory function** is assigned to SNCP. The Public Assets Directorate, within the MINFIN, is responsible for the **operational management** of the suppliers' registry, the catalogue, and the aggregation of requirements/needs. The technical and functional development role is mandated to MINFIN's ICT Institute (SETIC-FP).

In 2017 an Implementation Order signed by the Minister of Finance created a working group to design, plan, develop and implement an e-GP solution. The working group comprised a steering and a technical committee, with representatives from MINFIN, Ministry of Telecommunications, Technology and Media and Ministry of Health and was advise by external experts. As a result, the so-called **SNCPPE is a fully customised solution** developed with the support of an outsourced IT expert, also in charge of the development and maintenance of SIGFE, the Integrated Financial Management Information System (IFMIS). Despite the risks and constraints of a custom-made solution, SNCPPE is now fully operational and functional, although there are some gaps related to the **absence of a standardized approach to procurement data (OCDS)** or the **lack of coverage of the post award phase**.

The **level of e-GP uptake is clearly irrelevant** as only about de 1 % of the Procuring Entities have already used it totalizing 79 procedures, corresponding to the aggregated value of AOA 332.5 billion. There is **no clear e-GP policy** nor explicit legal provision stating the circumstances that should trigger the application of the e-GP tools, especially the most relevant one concerning the e-bidding. As far as human resources are concerned, **more than 500 civil servants were trained** to use the e-GP system but this, as can be seen from the level of uptake, has not yet been of practical use so far.

Procurements processed through the e-GP system got an average of 11 bids per procedure, which is considerably higher than the average number of bids received in the correspondent paper-based procurements i.e. 6.5 bids, which shows, even on the basis of limited statistical data, the competitive potential of e-GP and the benefits that the Angolan procurement system has been missing out on in recent years, despite being technologically prepared to achieve them. When

⁸⁵ Out of a total of 593 entities.



asked about this reality (survey to the private sector), 70% of respondents confirmed that they were aware of the existence of an e-GP solution. In addition, 77.9% of the respondents considered the increase of competition would be one of the benefits of the introduction of e-GP, while 74.4% said that the e-GP would be fit for removing some barriers hampering the participation MSMEs.

Data collection is mainly a manual process that, even with supporting provisions in PPL and other decrees and regulations, is not effective. SNCP keeps an **Excel file** where it stores all the tender notices that it becomes aware of, either because some (few) entities comply with the PPL's provisions of informing, or because SNCP's team is monitoring national newspapers daily looking for tender notices. The same Excel file is used to store award notices and other information.

As said the **e-GP does not cover the entire cycle** since it is only supporting the pre-award and award phases, leaving the contract execution phase completely inaccessible thus making it impossible to use modern data analysis tools. The combination of both a very low level of comprehensiveness and reliability of published information and the irrelevant e-GP uptake make **the whole of the Angolan public procurement system extremely difficult to analyse from a quantitative point of view**, even considering the application of a basic set of key performance indicators. Furthermore, the **absence of audits on the e-GP system** does not help in understanding the reasons for such a low level of uptake.

SNCP regularly issues a **monthly and biannual statistical bulletin (BECPA) and an annual report (RACPA)**. **Despite the availability of data on procurements conducted through the e-GP system, only a very short note stating** the number of tenders conducted through the system is included in the above-mentioned reports.

The following data is available for the 2021, 2nd Semester, Edition of BECPA:

i.	Source: https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4y/nzyz/~edisp/minfin2763456.pdf
ii.	Total number of bidding processes = 674
iii.	Total number of awarded processes = 76, resulting in 87 contracts
iv.	Total value of contracts awarded = AOA 26.83 (AOA million)

- **Gaps**

Substantive Gaps

7 (a) (a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results, and performance. Public procurement information is not easily accessible and is not published under an open data standard. The Introduction of e-procurement has had a positive impact, but its coverage is still very limited.

This gap is given a Red Flag because the absence of accessible procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.

7 (a) (b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost. Available information does not cover the entire public expenditure addressed through public contracts/public procurement.



A Red Flag is assigned because the absence of accessible procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.

7 (a) (c) The information system provides for the publication of: procurement plans; information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments, and appeals decisions; linkages to rules and regulations and other information relevant for promoting competition and transparency. Available information does not cover the entire procurement expenditure and does not provide access to contract award and implementation data.

A Red Flag is assigned because the lack of information on opportunities can significantly limit competition. On the other hand, the lack of reliable statistics and information on awards and addenda prevents stakeholders from monitoring results. The absence of information on appeals prevents continuous improvement of the system. The lack of a single source for accessing rules and regulations makes the system more confusing or less clear. Taken together, these gaps prevent public procurement from achieving its objectives.

7 (a) (d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework). Available information does not cover the entire procurement expenditure and does not provide access to contract award and implementation data.

7 (a) (e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format). Available information does not cover the entire procurement expenditure and does not provide access to contract award and implementation data.

7 (b) (a) E-procurement is widely used or progressively implemented in the country at all levels of government. Extremely low level (irrelevant) of e-GP uptake: the system is used by approx. 1% of the Procuring Entities. 79 e-Procurement procedures, from which 65 were awarded, corresponding to AOA 332.5 billion.

A Red Flag is assigned to this gap because the lack of internal capacity at the GoA for the roll-out of e-GP is notorious.

7 (c) (a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology. Data collection is mainly a manual process that, even with supporting provisions in PPL and other decrees/regulations, is not effective.

A Red Flag is assigned because the absence of a reliable system for collecting data is a factor that hinders the necessary monitoring of procurement, making it impossible to implement fact-based reforms.

7 (c) (b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements. While the e-Procurement system offers limited analytic capabilities, it does not cover the entire cycle, being limited to the pre-award and award phase. The post-award phase is still missing.

7 (c) (c) The reliability of the information is high (verified by audits). Please refer to 7 (c) (a). Audits were not performed.



7 (c) (d) Analysis of information is routinely carried out, published and fed back into the system. SNCP regularly issues a semi-annual statistical bulletin (BECPA), an annual report (RACPA) and a monthly statistical bulletin. However, as stated above, the level of accuracy of the provided statistics is very limited and does not cover the entire government procurement related expenditure. Regarding the procurements done through the e-Procurement systems, despite the availability of the data, a very limited note is included in the above-mentioned reports i.e., nr. of tenders conducted through the system. The level of accuracy of the provided statistics is very limited and does not cover the entire government procurement expenditure.

Minor Gaps

7 (b) (b) Government officials have the capacity to plan, develop and manage e-Procurement systems. External technical assistance is required for the full deployment of the e-procurement solution.

7 (b) (c) Procurement staff is adequately skilled to use e-Procurement systems reliably and efficiently. Despite the number of trained civil servants, SNCP support is still required when PEs run processes using the e-GP solution.

7 (b) (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology. Procurements made through the e-Procurement system got an average of 11 bids, which is considerably higher than the average number of bids received in the paper-based procurements in the analysed samples (6.5 bids). In the private sector survey, 70% of the respondents confirmed that were aware of the existence of an e-Procurement solution. In addition, 77.9% of the respondents considered the increase of competition would be one of the benefits of the introduction of e-Procurement, while 74.4% said that it removes some participation barriers to MSMEs.

- **Recommendations**

To address Substantive Gaps

7(a)(a), 7(a)(b), 7(a)(c), 7(a)(d), 7(a)(e), 7(b)(a), 7(c)(a), 7(c)(b), 7(c)(c) and 7(c)(d) To realise the full benefits of e-GP, the enhancement of the existing e-procurement system is highly recommended. The use of Open Contracting Data Standard (OCDS) is also to be considered in order to make data available and easily accessible for all stakeholders.

To address Minor Gaps

7(b)(b) For a full realization of the e-GP benefits, the government should seek external expert advice for the identification of gaps and the development of an action plan to widely implement e-procurement in the country.

7(b)(c) To ensure Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems, the action plan for expanding the use of e-procurement should consider an extensive change management programme including capacity building.

7 (b) (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology. Same as 7 (a) (a).

Summary of substantive gaps and recommendations of Indicator 7



Substantive gap	Risk classification and red flags	Recommendations
7(a)(a)		
Public procurement information is not easily accessible. The Introduction of e-procurement has had a positive impact, but its coverage is still very limited.	Red Flag	The enhancement of the existing e-procurement system is recommended. An independent review of the systems functionalities is required to identify potential gaps and to draft an action plan to ensure coverage of the full procurement process. Independent audit/review of the system security features is required to provide for the required trust on the tool and to identify potential vulnerabilities. The use of Open Contracting Data Standard (OCDS) is recommended to make data available and easily accessible for all stakeholders.
7(a)(b) 7(a)(c) 7(a)(d) 7(a)(e)		
Available information doesn't cover the entire procurement expenditure and does not provide access to contract award and implementation data.	Substantive high-risk gap Red Flag – 7(a)(a), 7(a)(b) and 7(a)(c)	Same as 7 (a) (a).
7(b)(a)		
The e-GP system is used by approx. 1% of the Procuring Entities. 79 e-Procurement procedures, from which 65 were awarded, corresponding to AOA 332.5 billion.	Red Flag	Same as 7 (a) (a).
7(c)(a)		
Data collection is mainly a manual process that, even with supporting provisions in PPL and other decrees/regulations, is not effective.	Red Flag	Same as 7 (a) (a).
7(c)(b)		
While the e-Procurement system offers limited analytic capabilities, it does not cover the entire cycle, being limited	Substantive high-risk gap	Same as 7 (a) (a).



Substantive gap	Risk classification and red flags	Recommendations
to the pre-award and award phases. The post-award phase is still missing.		
7(c)(c)		
Audits to the e-GP solution were not performed	Substantive high-risk gap	Same as 7 (a) (a).
7(c)(d)		
The level of accuracy of the provided statistics is very limited and does not cover the entire government procurement expenditure.	Substantive high-risk gap	Same as 7 (a) (a).

Indicator 8. The public procurement system has a strong capacity to develop and improve

This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: i) whether strategies and programmes are in place to develop the capacity of procurement staff and other key actors involved in public procurement; ii) whether procurement is recognised as a profession in the country's public service; iii) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

- **Synthesis of the indicator**

The assessment highlights the significant efforts made by SNCP to enhance the country's procurement system. Notably, SNCP has prioritized staff training both internally and across public procurement entities and the private sector. This endeavor led to the establishment of the Academy of Public Procurement through a collaboration with the National School of Administration and Public Policy (ENAPP). Despite challenges posed by the pandemic, multiple training courses were conducted in 2020, benefiting over 700 participants across various topics including project management, Evaluation Commission operations, proposal analysis, SNCPE procedures, and tender processes. SNCP's proactive approach involves consistent engagement with procuring entities, scheduling sector-specific monitoring, and conducting visits to provinces to assess training needs and offer guidance. Additionally, a communication channel is provided for public engagement.

While progress has been made in advancing the public procurement profession, including the creation of Public Procurement Units (UCPs) and robust training programs, certain gaps persist. The strategic objectives outlined in the Angolan Strategic Procurement Plan (PECPA) 2018-2022 include professionalizing the public procurement career. Despite these strides, a comprehensive framework for the public procurement profession, covering aspects like access, qualifications, accreditation, evaluation, and progression, remains undefined within the civil service. Development Partners have supported Angola's Public Financial Management reform, enabling system performance monitoring, albeit constrained by inadequate quantitative data. Urgency surrounds the evaluation of the 2018-2022 Strategic Plan and the expeditious launch of its 2023-2027 successor, incorporating insights from the MAPS assessment to foster continuous improvement.



- **Findings**

SNCP has been investing in **training** its internal staff, and the staff assigned to the area of public procurement at the level of Procuring Entities and private sector. In 2020, an agreement was signed with the National School of Administration and Public Policy (ENAPP), which resulted in the creation of the Academy of Public Procurement, open to public entities and the private sector. According to the information available on the RACPA, in 2020, and despite the pandemic crisis, 17 training courses were held in areas such as i) project management, ii) operation of the Evaluation Commissions, iii) analysis and evaluation of proposals, iv) procedures in the SNCPE and v) procedures for tender processes. These actions covered more than 700 people, who participated either in person or remotely.

SNCP maintains close contact with the procuring entities and has defined a monitoring calendar for the different sectors, as well as visits to the various provinces. As part of this monitoring, the training needs of those involved in the public procurement process are assessed and adjusted. The teams that provide the mentioned close contact are available to give guidance to the procuring entities. A specific **channel of communication is available for suppliers and the public** through a dedicated e-mail. Notwithstanding, most of the respondents to the private sector survey (73%) are of the opinion that **the Government does not provide the necessary resources**, namely training courses, technical guidelines, helpdesk, and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement.

The **professionalisation of the public procurement career** was part of the strategic objectives outlined in the Angolan Strategic Procurement Plan (PECPA) 2018-2022. However, although steps have been taken in this direction, namely through the creation of the **Public Procurement Units (UCPs)** and the development of an extensive **training programme**, the profession public procurer nor a special career exists in the civil service for which specific access requirements, qualifications, accreditation, evaluation, and progression are defined.

During the preparation phase of the **Strategic Plan 2018-2022**⁸⁶ a diagnostic was prepared by SNCP to identify the priority areas for improvement. Also, the Development Partners have been supporting the country in the **PFM reform**, which allowed to monitor the system performance, although with the limitations imposed by the poor quality of the quantitative information available. It is now particularly urgent to carry out a specific assessment of the Strategic Plan 2018 - 2022⁸⁷ and to quickly launch its successor for the **period 2023 - 2027**, which should already incorporate the recommendations and suggestions for improvement made in the MAPS assessment.

- **Gaps**

Substantive Gaps

8(b) (a) Professionalization of procurers. The public purchaser is still not recognized as a distinct career, and access to it is does not require any specific qualification/accreditation.

⁸⁶ PECPA 2018 - 2022

⁸⁷ The PECPA 2018-2022 Implementation Matrix clearly identifies the objectives, expected results, priorities, responsibilities, and time horizon for the implementation.



8(b) (b) Appointments and promotion are competitive and based on qualifications and professional certification. The public purchaser is still not recognized as a distinct career, and access to it is does not require any specific qualification/accreditation.

Minor Gaps

8(a)(c) Capacity building strategy for key-players and Helpdesk. In the private sector survey, when asked if the Government provides the necessary resources, namely training courses, technical guidelines, helpdesk, and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement, 73% of respondents answered “No”.

8(a)(d) Strategy for developing the capacity of key actors. Staff is regularly evaluated under different frameworks.

8 (b) (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided. Without a procurement-specific career track, and with staff belonging to different business units with different performance evaluation parameters, consistency cannot be guaranteed. However, procurement-specific training needs are evaluated by SNCP.

- **Recommendations**

To address Substantive Gaps

8(b)(a) and 8(b)(b) To allow for the recognition of procurement as a profession, the Government should promote training, define required qualifications, and develop a competences framework.

To address Minor Gaps

8(a)(c) and 8(a)(d) to ensure advisory service for the private sector, the government should implement a private sector-oriented capacity building programme.

8(b)(c) to consistently evaluate staff performance, a procurement specific staff performance appraisal model must be established.

Summary of substantive gaps and recommendations of Indicator 8

Substantive gap	Risk classification and red flags	Recommendations
8(b)(a)		
The public purchaser is still not recognised as a distinct career, and access to it does not require any specific qualification/accreditation.	Substantive high-risk gap	SNCP to promote training and the recognition of procurement as a profession by providing job descriptions, required qualifications and competences framework.
8(b)(b)		
Same as 8(b)(a)	Substantive high-risk gap	Same as 8(b)(a)



Suggestions for improvement	
Sub-indicator	
	Training, advice, and assistance
8(a)(a)	Despite the existence of an intensive capacity building plan, in the contact with the procuring entities the need for training was always mentioned, particularly in areas related to the preparation of procedures and evaluation of proposals.

3.3. Pillar III - Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency, and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

Indicator 9. Public procurement practices achieve stated objectives.

The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

- **Synthesis of the indicator**

The assessment reveals relevant weaknesses in the public procurement operations and market practices. Findings show that the procurement planning can be improved through better market research capabilities and better definition of requirements and outcomes. On the other hand, the absence of a sustainable procurement strategy and the concrete use of sustainability award criteria may compromise the achievement of value for money.

During the selection and contracting process, PEs fail to properly document all the processes. This may be aggravated by the almost insignificant use of the available e-procurement solution. In regard to procurement methods, PPL seems to cover the needs, though the newly created Emergency Procurement procedure seems to take longer than the Direct Award procedure (or at least a similar time), failing to comply with its main objective of awarding and delivering as soon as possible to avoid or minimise the impact of the emergency situation. In terms of predictability and transparency of the procurement processes, evidence shows that the available SBDs are widely (mis)used, with PEs failing to properly adopt and adapt its provisions. In addition, as stated above in relation to availability of information, procurement notices, contract awards and other prescribed notices are not being published which leads to questions and doubts about the transparency of the procurement process.

After the award of contracts, practices equally require significant improvements. Reports show that especially in the works area, several contracts are implemented with delays, some of those due to lack of funding or delayed payments. In addition, contract amendments are not properly recorded, imposing difficulties to assess the impacts of those delays, as well as to assess if the outcome of the contract matches the objectives.



Due to the very limited use of the available e-procurement system, the existence of structured data that allows for a complete monitoring of activities is seen as one of the greatest challenges of the Angolan public procurement system.

- **Findings**

There is no evidence of significant market research being conducted, especially in the paper-based procurement. In terms of contract requirements and desired outcomes, those are usually described in tender documents, although often copying and pasting from tender documents used in the past, with limited or no updates, which may lead to poor quality of the delivered goods, services or works.

In what concerns to the existence of a national strategy for sustainable procurement, it is not yet available. However, SNCP, together with other stakeholders, are working in a phased plan to achieve this. In addition, the use of sustainability criteria in practice is not happening yet.

PPL provides for 6 different procurement methods, although two of those are quite recent, created by the new PPL (Electronic Dynamic Purchasing System and Emergency Procurement). The use of multi-stage procedures in complex procedures is not a usual practice in Angola, representing less than 10% of the sample analysed. According to PEs, the available multi-stage procedure is complex and time-consuming, although there is a lack of evidence of the last.

Standard Bidding Documents (SBDs) are available for all procurement methods and types of contracts and its use is widespread. However, more often than not, those SBDs are misused, as some of the instructions are not followed, namely in what regards to the disclosure of the evaluation model. Despite the observance of cases in the samples where the evaluation criteria are clear, objective and aimed at value for money, in other cases analysed such criteria are not well defined, appearing to induce room for a discretionary decision by the evaluation committee. This analysis is confirmed by the perception of 57% of respondents to the private sector Survey, who consider that the award criteria are neither clear nor objective.

Despite not being the case in the analysed sample, during several meetings with PEs, the excessive use of non-competitive methods was mentioned, in many cases under the justification of “emergency”. In fact, the creation of the “Emergency procurement” method is seen as an attempt to somehow regulate the use of “emergency” as material criterion (justification) for the selection of the procurement method.

Procurement procedure files, in many cases, were presented incomplete and lacking information of evidence of several steps. In addition, publication requirements are now followed.

In quantitative terms, considering the sample analysed, in which it was possible to calculate the number of days elapsed between the notice/invitation and the signature of the contract in 44 procedures, it can be concluded that the timeframe for purchases of goods is on average less than 2 months. In contrast, the contracting of services takes on average approximately 6 months (14 cases) and the contracting of works takes around an average of 8 months (19 cases). If the same analysis is made from a procurement method perspective, the average number of days between the notice/invitation and the contract signature, 68 days, in emergency procurement (3 cases) is higher than the 59 calendar days verified in direct award (12 cases). On the other hand, it can be observed that in the Restricted Tender, 7 cases, the time elapsed reaches 198 calendar days, very close to the calendar 227 days verified in the Open Tender (18 cases).



The average number of bids received is higher than 10, in the cases of Open Tender and Electronic Dynamic Purchasing Systems, both competitive methods. However, the information collected does not allow to draw relevant conclusions regarding the number of responsive bids, as the available data cover less than 10% of the cases.

In what concerns the transparency of the processes, it is verified that in many cases the publication of the notices is not made according to the law.

Information gathered from SNCP revealed that in general the services contracts are implemented on time. In the case of works contracts, there are some delays, sometimes justified by a "lack of budget to continue the financial execution of the contract" or "delays in the settlement of invoices". In the private sector survey, 40% of respondents indicated that they had experienced delays in the full implementation of contracts.

Regarding timely payment of invoices, the information contained in the IFMIS reveals full compliance with the legislation with regard to the punctual payment of invoices. However, an analysis of the 2021 data reveals multiple situations of procedures where the issuing of the commitment is separated from the confirmation of the payment by only a few days, which suggests that the existing record in the IFMIS may not be accurate. Adding to that, it should be noted that almost 85% of respondents in the private sector survey stated that delays in the payment of invoices occur "Often" or "Almost always".

To begin to reduce the gap reported in 7 (c) (b), according to SNCP, contract amendments do exist, but they are not usually published. The e-GP new contract management module, which is currently in the pilot phase, provides for the recording of the contract amendments. There are also reports of projects blocked by indication of the Technical Group of Financial Controllers for lack of amendments to contracts.

Although SNCP prepares regular statistic documents), it is assumed that those documents lack accuracy and quality due to the fact that SNCP is dependent on the information disclosed by PEs.

Procurement records are not complete and accessible. During the meetings, PEs mentioned that in many instances the information is spread across different departments.

- **Gaps**

Substantive Gaps

9 (a) (a) Needs analysis and market research guide a proactive identification of optimal procurement strategies - Needs analysis and market research are not conducted or properly recorded.

A Red Flag is assigned to this gap because it is considered that the absence of mechanisms for defining procurement strategies hinders the achievement of public procurement objectives.

9 (a) (c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money - A national strategy for sustainable procurement is not available. In the sample analyzed, the use of sustainability criteria applied in practice was not detected.

A Red Flag is assigned to this gap because there are no national priorities that contribute to ensure value for money.



9 (b) (a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process - The use of multi-stage procedures is very limited.

9 (b) (b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors – SBDs are misused as, in many cases, the evaluation criteria are not clearly defined.

9 (b) (c) Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework – The files of the procurement processes are not organized and often presented incomplete.

9 (b) (f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract – Techniques to determine best value for money are not applied consistently.

A Red Flag is assigned to this gap because the failure to define appropriate award criteria prevents value for money from being obtained.

9 (b) (g) Contract awards are announced as prescribed - Procuring entities do not comply with the provisions regarding publishing of contract notices.

A Red Flag is assigned to this gap because the non-publication of contract awards and the absence of mechanisms to do so in e-GP prevent proper monitoring of public procurement, which is essential for its improvement.

9 (b) (h) Contract clauses include sustainability considerations, where appropriate - Sustainability criteria could not be detected in practice.

9 (b) (i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance - There are no clauses to incentive for exceeding defined performance.

9 (b) (j) The selection and award process are carried out effectively, efficiently and in a transparent way – The award of public contracts is not transparent in the sense that the information is not published, nor widely accessible.

The lack of transparency justifies the assignment of the Red Flag.

9 (c) (a) Contracts are implemented in a timely manner – Delays in the settlement of invoices and budget restrictions causes delays in the implementation of works contracts.

9 (c) (b) Inspection, quality control, supervision of work and final acceptance of products is carried out – Evidence related to inspection, quality control and final acceptance of works contracts is not available.

9 (c) (c) payments comply with good international practices, and payments are processed as stipulated in the contract – Information recorded in the IFMIS system regarding the date of each step suggests that it may not be accurate. Cases were presented to the assessment team showing that there are delayed payments.

The inconsistency of the information in IFMIS with that communicated by the SNCP and the perception conveyed by economic operators in the survey justify the assignment of the Red Flag.

9 (c) (d) Contract amendments are reviewed, issued, and published in a timely manner – According to SNCP contract amendments are not usually published.



9 (c) (e) Procurement statistics are available, and a system is in place to measure and improve procurement practices – Available procurement statistics lack accuracy and quality.

This gap is assigned a Red Flag because the absence of accessible procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.

9 (c) (f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised – Civil society is not traditionally involved in public procurement.

9 (c) (g) The records are complete and accurate, and easily accessible in a single file - Records are not complete and accessible.

This gap is given a Red Flag because the absence of a single file of procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.

Minor Gaps

9 (a) (b) The requirements and desired outcomes of contracts are clearly defined – Needs requirements and desired outcomes are often not fit-to-purpose.

9 (b) (b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors. To a certain extent, SBDs are misused as, in many cases, the evaluation criteria is not clearly defined.

9 (b) (e) Throughout the bid evaluation and award process, confidentiality is ensured – The protection of commercial and industrial secrecy regarding the products or services that constitute the whole or part of the proposal/bid is not guaranteed by the PPL.

- **Recommendations**

To address Substantive Gaps

9(a)(a) for a proactive identification of optimal procurement strategies, SNCP should develop guidelines on how to conduct market research and deploy the Procurement Planning module of the e-GP System to all procuring entities.

9(a)(c) the use of sustainability criteria should be aligned with the SPP strategy to be drafted - see 3(a)(a).

9(b)(a) to enhance the use of multi-stage procedures, SNCP should draft guidelines and provide training to PEs, as well as to disseminate the use of the e-GP system.

9(b)(b) Standard Procurement documents should be enhanced. SNCP should promote awareness-raising and capacity-building actions to ensure effective use of the standard documents while fully deploying the e-GP solution.

9(b)(c) To improve governance of the procurement function, an effective operationalization of the Procuring Units within PEs should be promoted.

9(b)(f) appropriate technique to determine best value for money should be promoted by issuing guidelines on how to prepare and apply evaluation models.



9(b)(g) to promote transparency, contract award notices should be published in the e-GP system and in the PP Portal.

9(b)(h) sustainable considerations in contracts should be considered.

9(b)(i) to promote contract performance, standards documents and contracts can be reviewed to provide incentives for performance.

9 (b)(j) to effectively, efficiently and in a transparent way conduct the selection and award process, Government should consider to fully deploy the e-GP solution

9(c)(a), 9(c)(b), 9(c)(d), 9(c)(e) and 9(c)(g) monitoring contracts implementation is critical. To do so, the Government should fully deploy the e-GP solution, including its contract management module.

9(c)(c) to ensure payments are processed as stipulated in the contract, IFMIS should ensure control mechanisms.

9(c)(f) Civil Society engagement in the different stages of the procurement process should be promoted.

To address Minor Gaps

9(a)(b) to achieve the desired outcomes of contracts, those must be properly established and described.

9(b)(e) to ensure protection of commercial and industrial secrecy, a provision mentioning the classification of documents should be added – refer to 1(i)(d).

Summary of substantive gaps and recommendations of Indicator 9

Substantive gap	Risk classification and red flags	Recommendations
9(a)(a)		
Needs analysis and market research are not conducted or properly recorded	Red Flag	Procuring Entities to carry out adequate needs analysis and market research to design the procurement strategy. Develop guidelines on how to conduct market research.
9(a)(c)		
A national strategy for sustainable procurement is not available	Red Flag	SNCP to develop with other stakeholder a Sustainable Procurement strategy, as a Strategic Goal in the next multi-annual strategic plan for public procurement.
9(b)(a)		
The use of multi-stage procedures is not applied in practice	Substantive high-risk gap	SCNP to draft guidelines and provide training to PEs to allow for an increased use of multi-stage bidding.



Substantive gap	Risk classification and red flags	Recommendations
		Use SNCPE, for the simplicity and guidance provided by the e-GP system, as an enabler.
9(b)(b)		
SBDs are misused as, in many cases, the evaluation criteria are not clearly defined.	Substantive high-risk gap	Considering the higher participation rates of the tenders processed through the e-GP system (SNCPE), GoA should consider to fully deploy the e-GP solution. In addition, the SNCP should promote awareness-raising and capacity-building actions to ensure effective use of the standard documents.
9(b)(c)		
The files of the procurement processes are not organized and often presented incomplete. That includes absence of proper justification of the decisions taken, from procurement method selection to award decision.	Substantive high-risk gap	An effective operationalization of the Procurement Units within each entity, especially major spenders, should be promoted, along with the professionalisation of the public purchaser's career to improve governance of the procurement function.
9(b)(f)		
Techniques to determine best value for money are not applied consistently.	Red Flag	SNCP to draft guidelines on how to prepare and apply evaluation models.
9(b)(g)		
Procuring entities do not comply with the provisions regarding publishing of contract notices.	Red Flag	Award notices feature to be developed and deployed on SNCPE/PP Portal.
9(b)(h)		
The use of sustainability criteria applied in practice was not detected.	Substantive low-risk gap	Refer to 3 (a).
9(b)(i)		
There are no clauses to incentive for exceeding defined performance.	Substantive low-risk gap	Standards documents and contracts should be reviewed to provide incentives for performance over specified level, where appropriate.
9(b)(j)		
The award of public contracts is not transparent in the sense that the information is not	Red Flag	GoA should consider to fully deploy the e-GP solution to increase effectiveness,



Substantive gap	Risk classification and red flags	Recommendations
published, nor widely accessible.		efficiency and transparency of the contracts awarded.
9(c)(a)		
Delays in the settlement of invoices and budget restrictions causes delays in the implementation of works contracts.	Substantive medium-risk gap	The GoA should make efforts to have a single source of information. GoA should consider to fully deploy the e-GP solution.
9(c)(b)		
Evidence of inspection, quality control and final acceptance of works contracts are not available.	Substantive high-risk gap	The GoA should make efforts to have a single source of information. GoA should consider to fully deploy the e-GP solution.
9(c)(c)		
Information recorded in the IFMIS system regarding the date of each step suggests that it may not be accurate. Cases were presented to the assessment team showing that there are cases of delayed payments.	Red Flag	IFMIS should ensure control mechanisms to ensure that the time recording of financial movements is accurate.
9(c)(d)		
According to SNCP contract amendments are not usually published.	Substantive high-risk gap	The GoA should make efforts to have a single source of information. The GoA should consider to fully deploy the e-GP solution.
9(c)(e)		
Available procurement statistics lack accuracy and quality.	Red Flag	The GoA should make efforts to have a single source of information. The GoA should consider to fully deploy the e-GP solution.
9(c)(f)		
Civil society is not traditionally involved in public procurement.	Substantive low-risk gap	Civil Society to be involved in the different stages of the procurement process by giving more publicity to the procurement procedures and placing invitations directed to CSOs (civil society organizations in key phases of the procedures.
9(c)(g)		
Records are not complete and accessible.	Red Flag	The GoA should make efforts to have a single source of information.



Substantive gap	Risk classification and red flags	Recommendations
		The GoA should consider to fully deploy the e-GP solution.

Suggestions for improvement	
Sub-indicator	
	Selection and contracting
9(b)(d)	SNCP should seek to learn more deeply the reason for the comments in the private sector survey regarding excessive bureaucracy of the processes and the lack of transparency of the evaluation committees by launching an extensive survey among participants in public bids to assess the pertinence of the issues raised, as well as drawing up action plans to correct any shortcomings.

Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business environment, strong financial institutions, the attractiveness of the public system as a good, reliable client, the kind of goods or services being demanded, etc.

- **Synthesis of the indicator**

In what concerns to the market response to the public procurement solicitations, there is a **negative perception of openness and effectiveness in engaging with the private sector**, though there are known initiatives promoted by SNCP to engage with the civil society.

On the private sector capacity to engage in the public procurement activities, the assessment showed that there is only a 5% of the existing businesses registered as suppliers in the Public Procurement Portal.

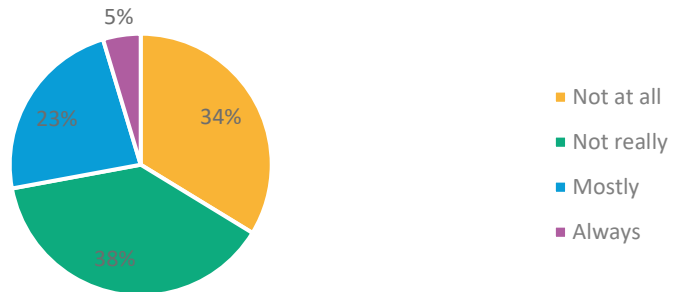
Finally, the assessment showed that there are **no sectorial public procurement strategies in place**.

- **Findings**

Despite efforts by SNCP to integrate sectoral associations, namely the Chambers of Engineers and Architects in different procedures, as well as the Agency's effort to undertake consultations with business associations in the different processes conducted, the perception of openness of the authorities to the private sector when designing and implementing reforms is not recognised.



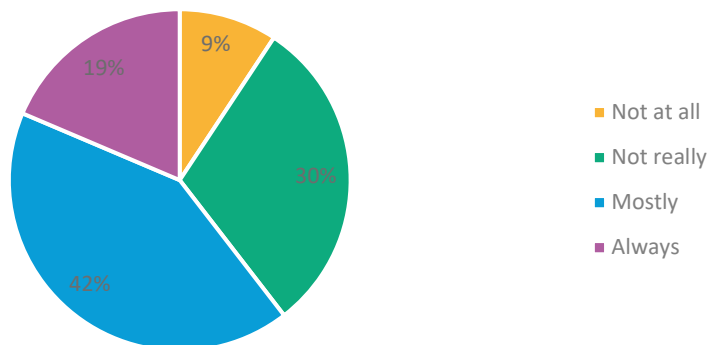
When changes are made to the legal framework for public procurement, does the Government contact private associations to communicate such changes and obtain their views?



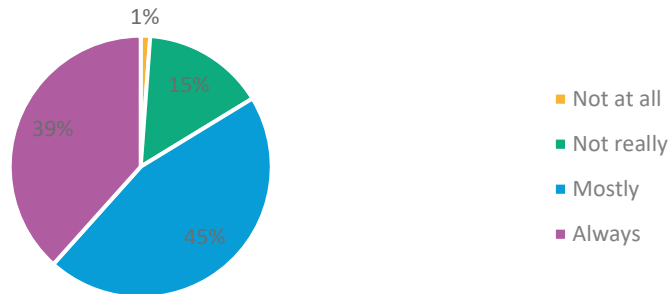
Source: Private Sector Survey

Added to this is the difficulty reported by respondents to the Private Sector Survey in keeping up with the changes introduced.

Do you find it difficult to keep up with changes in the legal framework for public procurement?



Does your company have the necessary resources to keep up with the changes introduced in the legal framework for public procurement?



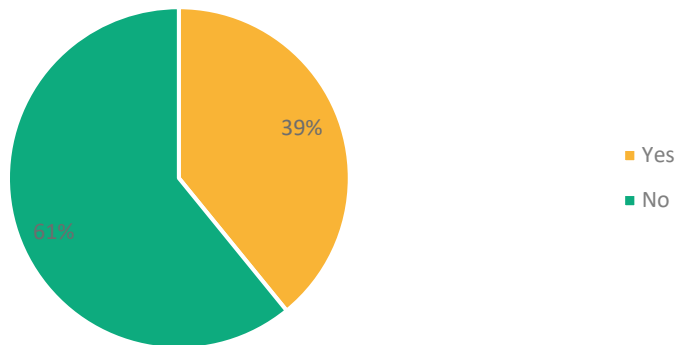
Source: Private Sector Survey

Despite, 73% of the respondents to the Private sector survey believe that the existing programmes to build capacity among private companies are not enough, with 61% of the respondents confirming that they had never participated in any training sessions provided by the Government, SNCP partnered with ENAPP to create the Public Procurement Academy. In addition, SNCP often delivers specific training to the private sector, for instance on the e-procurement solution.

Do you think that the Government provides the necessary resources, namely training courses, issuing technical guidelines, establishing help lines and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement



Please indicate if you have participated in any programmes or training sessions of this type



Source: Private Sector Survey

From the 55,957 active registered business⁸⁸, in Angola in 2019, only 5% are currently registered in the Public Procurement Portal.

Number of suppliers registered in the Public Procurement Portal., by size and origin:

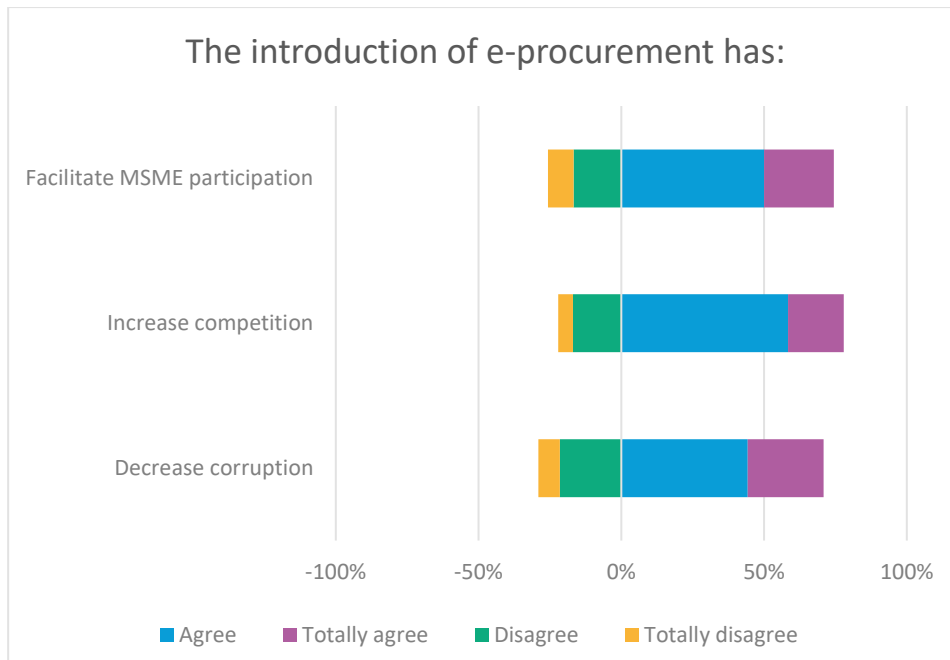
	Micro	Small	Medium	Big	Without information on size	Total
Foreign	25	42	29	49	71	216
National	847	1019	488	188	463	3005
Total	872	1061	517	237	534	3221

Despite the number of registered businesses in Angola and the number of suppliers registered in the Public Procurement Portal, there is still the perception that the public procurement market is not competitive, and this gap is perceived as the root cause of the high levels of expenditure.

The introduction of the e-procurement systems is however being perceived, by the private sector, as a game changer, that could provide significative levels of competition and delivering savings (32%, according to the 2020 RACPA's edition).

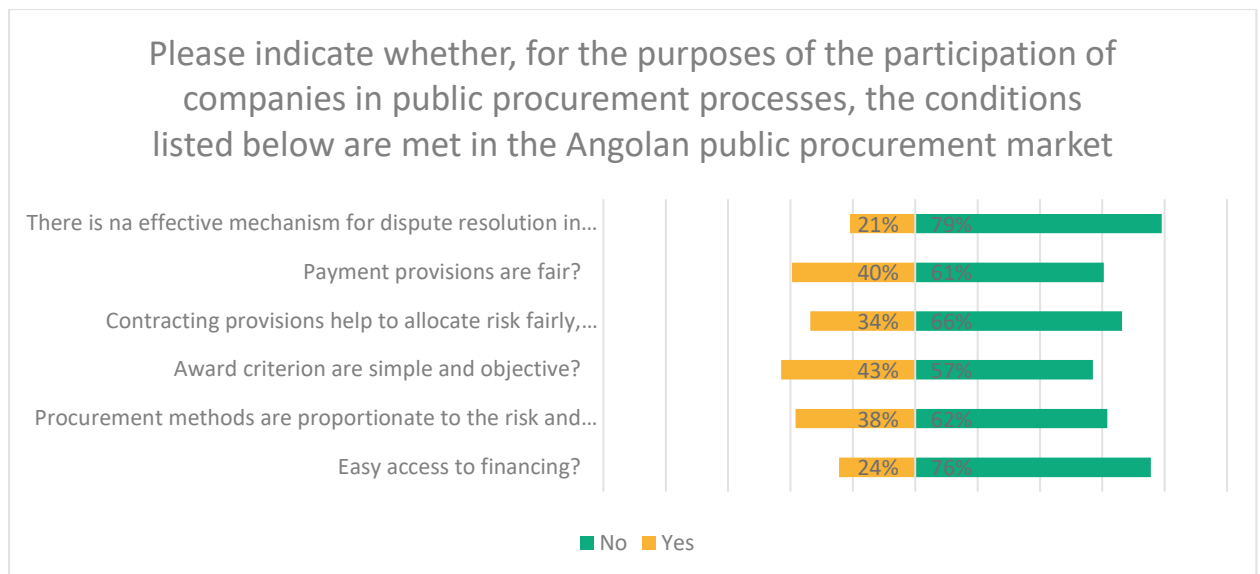
⁸⁸ <https://www.statista.com/statistics/1177548/registered-enterprises-in-operation-in-angola/>





Source: Private Sector Survey

There is a general negative perception of the market conditions, with 79% of the respondents to the Private Sector survey considering that there are no effective mechanisms for dispute resolution and 66% agreeing that contract provisions don't help to allocate risk fairly, specifically with regard to the execution of the contract.



Source: Private Sector Survey

According to the assessment key sector strategies are not identified by the government.

- **Gaps**

Substantive Gaps

10 (a) (a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public



procurement system. The dialogue follows the applicable ethics and integrity rules of the government - There is a negative perception on the openness and effectiveness of public sector engagement with the private sector.

10 (a) (b) The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace - Despite the existence of capacity building programmes targeting the private sector, the perception is that those programmes are not effective to address the private sector needs/concerns.

10 (b) (b) There are no major systemic constraints inhibiting private sector access to the public procurement market – There is a general negative perception of the market conditions.

10 (c) (a) Key sectors associated with the public procurement market are identified by the government – Key sector strategies are not identified by the government.

This gap is given a Red Flag because of the lack of sectoral strategies to promote the achievement of public procurement objectives.

10 (c) (b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives – Key sector strategies are not identified by the government.

Minor Gaps

10 (b) (a) The private sector is competitive, well-organised, willing, and able to participate in the competition for public procurement contracts – The access to public procurement opportunities is often blocked by a very limited access to information on the opportunities available.

- **Recommendations**

To address Substantive Gaps

10(a)(a) changes to the public procurement framework should be communicated through effective engagement with the private sector.

10 (a)(b) effective capacity building programmes should be designed to address the private sector needs for specialized knowledge.

10(b)(b) constraints inhibiting private sector access to public procurement must be assessed by SNCP and an action plan to address those should be designed.

10(c)(a) and 10 (c)(b) sector strategies should be drafted for the key sectors.

To address Minor Gaps

10(a)(a) Dialogue with the private sector should be promoted by the Government.

10(a)(b) Capacity building programmes directed to private sector should be promoted by SNCP.

10(b)(a) a competitive private-sector increases participation in public procurement with the use of an e-GP system.

Summary of substantive gaps and recommendations of Indicator 10

Substantive gap	Risk classification and red flags	Recommendations
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10(a)(a)		
There is a negative perception of openness and effectiveness in engaging with the private sector	Substantive low-risk gap	SNCP to engage with private sector, especially with MSMEs, to properly communicate changes to the public procurement framework.
10(a)(b)		
Capacity building programmes targeting the private sector are not effective	Substantive low-risk gap	SNCP to consult with and include the private sector in the capacity building programmes, with content tailored to their needs and concerns
10(b)(b)		
There is a general negative perception of the market conditions.	Substantive high-risk gap	SNCP to engage with private sector to better identify and qualify the level of constraints, develop, and implement an action plan to mitigate them.
10(c)(a)		
10(c)(b)		
Key sector strategies are not identified by the government.	Substantive high-risk gap Red Flag – 10(c)(a)	SNCP to work with sectors to draft sector specific strategies. Execute the SLA module of the MAPS assessment for the high expenditure areas of the government, after completion of the Health Sector pilot.

3.4. Pillar IV - Accountability, Integrity, and Transparency of the Public Procurement System

Pillar IV includes four indicators that are considered necessary for a system to operate with integrity, that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring, and oversight.



- **Synthesis of the indicator**

The assessment highlights significant deficiencies in Angola's procurement system, particularly concerning civil society participation and transparency. Discussions with Civil Society representatives reveal a minimal engagement, even when dialogues are initiated by public authorities. While the Public Procurement Academy includes civil society in its awareness efforts, there is a lack of specific capacity-building programs for this group is evident. Moreover, the Government disregards suggestions from citizens and civil society organizations, indicating a lack of responsiveness. Enhancing civil society involvement in procurement policymaking, promoting public consultation, and training these organizations becomes a crucial strategic move for long-term system improvement.

The available information from SNCP reports is compromised due to inadequate database quality. Despite the Public Procurement Portal's presence, the absence of real-time data hinders Civil Society Organizations (CSOs) from effectively scrutinizing the system's performance. Leveraging existing e-GP tools could yield rapid advancements. Although Procurement Plans should be accessible on the portal, this is not consistently practiced. While the Public Procurement Portal enables interested parties to observe bid opening, only bidders actively participate. Exclusive access to debriefing during evaluation and contract award phases and the absence of published award notices underscores opacity. Although SNCP is developing the Contract Management Systems, its potential impact on monitoring contract execution remains unrealized. The report emphasizes the need for a detailed study on involving civil society and other external entities in the procurement process.

- **Findings**

The general perception, confirmed by discussions held with representatives from Civil Society (*Associação Justiça, Paz e Democracia*), is that there is **very little participation of civil society** even when its consultation is organized at the initiative of the public authorities. Although the Public Procurement Academy in order to include civil society among the recipients of its awareness-raising and training activities there are no specific programmes for capacity building for this type of recipient. On the other hand, there is also no evidence that the Government takes on board suggestions or comments made by citizens individually or through civil society organisations. A major effort to **increase the Government's openness to civil society participation in public procurement policymaking**, as well as the promotion of public consultation and training of civil society organisations in public procurement seems to be of great strategic relevance with a view to improving the system in the medium and long term.

The information provided by the reports issued by SNCP has considerable limitations, due to the **lack of quality of the existing databases**. Despite the existence of the Public Procurement Portal, no real time information is available, which makes it practically impossible for CSOs to scrutinise the functioning of the system. Also in this domain, the **use of the e-GP tools already available could introduce very fast gains**.

Procurement Plans should be published in the Public Procurement Portal and be freely and easily accessible however, as noted above in 4(a)(a) some are not published. The PPL allows for the participation of any interested party in the Bids public opening session but only bidders can have an active participation. During the evaluation and contract award phase, only bidders will eventually have access to a debriefing. On a negative note, **award notices are not yet published**



on the **Public Procurement Portal** and SNCP is only now developing the Contract Management Systems (SGC) which will eventually allow for the monitoring of the contract execution phase.

The **participation of civil society**, through individual citizens or through CSOs, should be the subject of specific and careful study before making recommendations. With the exception of problems related to the systematic lack of publication of information - especially awarding decisions - the possibility that entities outside the procedure itself may participate in it should be carefully analysed, from the point of view of the legitimacy of the actors' actions and bearing in mind the principles of constitutional law and administrative law applicable in this field.

- **Gaps**

Substantial Gaps

11(a)(a) A transparent and consultative process is not followed when formulating changes to the public procurement system, as there are no consultations to the civil society.

11(a)(b) There are no Programmes in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.

11(a)(c) There is no evidence of Government taking into account feedback received from civil society.

11(b)(a) There is a lack of complete and structured open data to ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.

11(c)(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: the planning phase (consultation); bid/proposal opening (observation); evaluation and contract award (observation), when appropriate, according to local law; contract management and completion (monitoring). The number of published procurement plans is not representative. Refer to 4 (a) (a). Article 72 (1) of the PPL allows for the participation of any interested party in the Bid opening session (Open tendering processes). However, only bidders can have an active participation. During the evaluation and contract award phase, only bidders will eventually have access to a debriefing. Award notices are not yet published on the Public Procurement Portal. SNCP is developing the Contract Management Systems (SGC) which will eventually allow for the monitoring of the contract execution phase.

11(c)(b) There is no evidence of direct participation of citizens in procurement processes through consultation, observation, and monitoring.

- **Recommendations**

To address Substantial Gaps

11(a)(a), 11(a)(c) and 11(c)(b) Government/SNCP should implement public consultations when promoting changes to the procurement policy to promote engagement with the civil society.

11(a)(b) SNCP should develop training programmes targeting the civil society and include contents on procurement monitoring.

11(b)(a) Full deployment of the e-procurement system and adoption of Open Contracting Data Standards is recommended to ensure adequate and timely access to information and business intelligence tools.



11(c)(a) Government/SNCP should implement public consultations to enhance civil society participation in the planning phase.

Summary of substantive gaps and recommendations of Indicator 11

Substantive gap	Risk classification and red flags	Recommendations
11(a)(a) 11(a)(c)		
There are no consultations to the civil society.	Substantive low-risk gap	Government/SNCP to implement public consultations as a practice when promoting procurement policy changes.
11(a)(b)		
There are no specific programmes for capacity building among civil society.	Substantive low-risk gap	SNCP to include CSOs in the training programmes. Training programmes to include monitoring of public procurement as a key subject.
11(b)(a)		
Lack of complete, structured open data.	Substantive medium-risk gap	Enhance the adoption of the e-procurement system and adopt Open Contracting Data Standards.
11(c)(a)		
The number of published procurement plans is not representative. Refer to 4 (a) (a). Article 72 (1) of the PPL allows for the participation of any interested party in the Bid opening session (Open tendering processes). However, only bidders can have an active participation. During the evaluation and contract award phase, only bidders will eventually have access to a debriefing. Award notices are not yet published on the Public Procurement Portal. SNCP is developing the Contract Management Systems (SGC) which will eventually allow for the monitoring of the contract execution phase.	Substantive high-risk gap	To enhance civil society participation in the planning phase, Government/SNCP need to implement public consultations as a practice when promoting procurement policy changes.
11(c)(b)		



Substantive gap	Risk classification and red flags	Recommendations
There is no evidence of participation of citizens in procurement processes.	Substantive low-risk gap	Government/SNCP to implement public consultations as a practice when promoting procurement policy changes.

Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

- **Synthesis of the indicator**

There are effective control and audit systems but coordination between the various entities involved could be improved. A serious shortcoming is that individual audit reports, as well as the Annual Audit Report of the Court of Auditors, are not published and accessible by the public and interested stakeholders. The State General Account should include, in the Chapter on Public Procurement, a section dedicated to Monitoring and Auditing where summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP should be included. Efforts need to be made to set up tailor-made follow-up systems in order to trace audit outcomes from the issuance of the recommendation to effective implementation. As a common feature from the point of view of weaknesses, here as in almost all management areas of the national Public Procurement System, a very serious effort should be made to increase the statistical coverage of information, its rigorous processing, and its publication. Once again, this task is practically impossible without the generalisation of the e-GP, if possible associated with much wider use of collaborative procurement, especially central purchasing, with the inherent reduction of administrative costs (including data management).

In general, efforts are being made to better prevent fraud and corruption and there is a body of legal norms - from procurement to criminal law - and manuals and guides that seem sufficient to improve the integrity outcomes of the system. But it is a traditionally difficult area and, therefore, we can easily find several aspects that need to be improved e.g. the establishment of cooling-off periods, the inclusion, for purely pedagogical purposes, of the reference to prohibited practices in procurement documents, the need to collect information on contractors’ beneficial ownership, the publication of statistical information on the activity of the organs of supervision and control, by areas or sectors of activity of the public administration, and also of the Courts, especially the Court of Auditors, the Civil and Administrative Chamber of the Provincial Court and the Civil, Administrative, Tax and Customs Chamber of the Supreme Court, and Criminal Courts. There are some instruments in use to identify corruption risks e.g., the Guide to the Prevention and Management of Risks of Corruption and Related Infringements and a Code of Ethics; however, there is no information regarding the number of procuring entities adopting those instruments.

- **Findings**



The **control framework is well defined** and is legally supported at the appropriate level. The main provisions that legitimise the actions of the control and supervision bodies can be found in the Constitution (for example, the constitutional norms relating to the Court of Auditors) and in the organic laws of each entity. Article 440 (1) of the PPL provides that “public procurement activities shall be subject to the auditing and supervisory mechanisms established by law and, to ensure its maximum effectiveness, requires that all procuring entities and their employees and agents, as well as other participants in procurement procedures, shall, in accordance with the law, promote full cooperation with the auditing, supervisory and inspection bodies of the public sector.”. Additionally, the legislator has granted the SNCP the **power of suspending the course of a procedure** in the event of non-compliance with the rules and principles of public procurement, with a view to remedying the vices, irregularities, and illegalities inherent in the process of formation of contracts. This choice is debatable especially if we bear in mind that (i) even the courts appeals do not, as a rule, have a suspensive effect and that (ii) this is not a mechanism for resolution of conflicts nor an appeal before an independent review body.

The Constitution of the Republic of Angola (CRA) defines the **Court of Auditors** as “the supreme body for monitoring the legality of public finances and judging the accounts that the law subjects to its jurisdiction” (Article 182 of the CRA). This concept highlights the jurisdictional nature of the Court, its hierarchical level as a high court and delimits its powers to matters within its area of expertise. Due to its central importance in the context of public procurement, the **a priori control** is the one that takes place before the acts and contracts subject to it can produce material and financial effects. In this sense, the Court’s prior approval (*visa*) constitutes a condition of effectiveness. The prior review of the Court of Auditors applies to (i) the contracts of any nature, with a value equal or superior to the one set out in the law that approves the General Annual State Budget, when celebrated by entities subject to its jurisdiction, or in an equivalent norm of the municipal administration; (ii) the drafts relating to the contracts identified above, when they are to be signed by public deed and the respective costs must be satisfied at the time of their signing; (the notary must attach a copy of the resolution of the Court of Auditors to the respective deed); (iii) the contracts for external financing to the State, within the scope of public investment projects. The current thresholds for submission of contracts to prior review and prior approval are set forth by Article 10 of the 2022 State Budget Law, approved by Law nr. 32/2021, of 30 of December (see the Table Inserted in the Matrix). Contracts subject to prior review (*visa*) shall **be deemed to have received the prior approval 30 calendar days after they reach the Court of Auditors** unless any missing or additional information is requested, in which case the deadline shall be interrupted until they are submitted. The contracts are legally ineffective until they obtain the respective prior approval (*visa*). In cases where approval is refused, the entities subject to its jurisdiction shall send to the Court, within calendar 15 days, a copy of the annulment of the respective budgetary commitment note, in order to be attached to the process. Contracts subject to prior review shall be submitted to the Court of Auditors within calendar 60 days after their approval. Although in practice this constitutes a major delay on the effectiveness date of new contracts, the only solution is to negotiate and change the prior review mechanism in the law of the Court of Auditors.

The Court of Audits also performs the so-called **successive control (ex post review)** under which it judges the accounts of entities subject to its jurisdiction and carries out enquiries and audits aimed at assessing the legality and regularity of the execution of expenditures and collection of revenue. This audit also aims to verify whether, in relation to contracts that have been subject to prior review, the corresponding expenses were made with the prior approval of the Court. In 2019, the legislator added to the competences of prior and post review the so-called **concomitant control**, which is carried out through audits, enquiries and investigations regarding (i) Contracts



that are not subject to prior review, (ii) the execution of contracts which have received prior approval, (iii) contracts resulting from emergency procurement or the simplified contracting method based on material criteria and (iv) contracts under execution that have been modified in a way that does not imply a change in value that would make them susceptible to prior review.

As mentioned in Indicator 7, the **National Public Procurement Service (SNCP)** is the body responsible for regulation and supervision of public procurement. SNCP is governed by public law, as an entity with legal personality and capacity and qualified as a public institute of the Administrative or Social Sector. It is endowed with administrative and financial autonomy and administers its own assets, and its key functions include the support to the government in matters of definition and implementation of policies and practices relating to public procurement, the supervision, auditing and monitoring of public procurement processes in collaboration with the competent bodies, the enactment of regulations and instructions to standardise public procurement procedures and the ruling of administrative challenges presented by proponents or bidders. The key **supervisory functions** of SNCP comprise the monitoring of compliance with the public procurement laws and regulations by the procuring entities, suppliers, and bidders, including with the specific rules concerning the functioning and management of the state e-Procurement platform. SNCP also performs **auditing functions**, including internal and external audits on electronic platforms, procuring entities and public procurement procedures launched by the procuring entities.

Also worth highlighting, the **Inspectorate General of the State Administration (IGAE)** is the auxiliary body of the President of the Republic and holder of executive power, responsible for the internal administrative control of the Public Administration, through inspection, auditing, supervision, enquiry and investigation of the activities of all bodies and services of the direct and indirect administration of the State and of the autonomous administrations, with the aim of preventing and detecting fraud, acts of corruption and improbity, irregularities and misconduct by public servants or administrative agents, as well as defending public assets and strengthening integrity and transparency in the management of public assets. IGAE directs the Public Administration's internal control system and enjoys administrative, financial, functional, and patrimonial autonomy...". IGAE operates in hierarchical dependence on the President of the Republic and holder of the Executive Power (Article 4). Among its specific functions, the following should be highlighted: (i) Exercising internal control over the activities of the Public Sector; to audit and control (...) and the budget execution of the public administrative entities; (ii) develop mechanisms to prevent corruption, promoting transparency and legality in the Public Administration; (iii) cooperate with the Court of Auditors, the Attorney General's Office, the criminal investigation bodies and other State bodies, with a view of ensuring the functional and methodological link between the inspection bodies and other control services, in order to guarantee the rationality and complementarity of interventions, safeguarding fundamental and constitutional rights, freedoms and guarantees. Despite its competences in this field **no specific information on public procurement is included in the IGAE Activity Report (2020)**.

Responsibilities and reporting lines regarding internal control and auditing are defined in the law. Article 440 (1) of the PPL sets the rule according to which **public procurement activities are subject to the audit and oversight mechanisms established by law**⁸⁹. Procuring entities are subject to auditing of (i) the SNCP which acts as the procurement specialised internal auditor of

⁸⁹ That is, not only in the PPL itself but in all laws that provide for the exercise of audit functions by a certain entity vested with the power to audit any of the contracting public entities.



the public system, focusing on the compliance of the players' conduct with the law; and (ii) the IGAE, which undertakes audits in its capacity as internal auditor of the (whole) Public Administration, which may also include aspects related to the management of public finances (annual budget and account) and public procurement.

SNCP 2019 Audit Report

Despite the small size of public procurement operations audited in one calendar year (2019), the care taken with the organisation of the information and the publishing of the report is noteworthy.

A total of 37 (thirty-seven) contracts¹ and 1852 (one thousand eight hundred and fifty two invoices², broken down as follows:

- (a) EPC I: fourteen (14) contracts and three hundred and seven (307) invoices;
- b) EPC II: 14 (fourteen) contracts and 229 (two hundred and twenty-nine) invoices;
- c) EPC III: 6 (six) contracts and 997 (nine hundred and ninety-seven) invoices;
- d) EPC IV: nothing to report since a specific procedure was audited;
- e) EPC V: 3 (three) contracts and 319 (three hundred and nineteen) invoices.

Particular attention should be paid to the **characterization of the sample of contracts by type of contract**, i.e., goods, services and works, without which the analysis of non-conformities cannot seek to identify problems that may have a greater impact on one type of contract than another. The **sample size** of the audited contracts, especially in terms of aggravated value, should also be increased. The generalization of the use of e-GP and adequate BI tools could contribute to the improvement of the audit function, both through the increase of the volume of information processed and through the possibility of cross-checking information with other sub-systems within the scope of public finance management.

is not provided and the **size of the sample** of the contracts audited in terms of value (aggregate and disaggregated) is very small.

There are sufficient internal control mechanisms and there is no evidence that these have a decisive impact on the timing and adequacy of decisions. As the system in general is very much oriented towards formal legal compliance/conformity of the procedures undertaken for the formation of public contracts, it is desirable that the control and oversight bodies pay more attention and fill gaps in observation and evaluation of: (i) the execution phase of the contracts; (ii) risks, the degree of their likelihood and the issuing of recommendations aimed at their mitigation. These **new dimensions of the control function** should constitute a priority for improving the performance of the SNCP (an entity that should become a truly independent regulatory body).

In 2020 the **Court of Auditors** carried out 4 (four) audits in the context of **concomitant control**, focusing on public procurement procedures. Within the scope of **successive control**, 54 audits of compliance and performance were programmed, and 46 audits were carried out and are still in progress, in which procurement procedures are controlled, meaning that 85% of audits of public procurement procedures can be considered to be compliance audits. Several recommendations were made at the level of internal control of the accounts and through the issuance of the Opinion on the General State Account. However, the data on its monitoring is not yet complete (Mar 2022). **No audits were conducted on the efficiency** of public procurement which is understandable



insofar as the competences of the Court of Auditors are more tailored to the control of legality (compliance) of public expenditure rather than on performance.

Among its competences, the issue of the **Opinion of the Court of Auditors on the State General Account (CGE)** is of particular importance since it is **addressed to the National Assembly** with a copy to the President of Republic and covers the accounts of the Sovereign Bodies, the Central and Local Administration, Public Institutes and Autonomous Funds and Social Security. An annual report containing a summary of the judicial decisions for the economic year in question and proposals for measures to be taken to improve the economic and financial management of the resources of the State and the public sector in general is attached to the Opinion. Following the recommendation made by the Court of Auditors itself⁹⁰, the CGE now includes a **chapter on public procurement**⁹¹ but still lacks a specific section on Monitoring and Auditing activities performed in the year under review and **follow-up information** on the main non-conformities identified and the results of the recommendations made by the Court of Auditors, the IGAE and the SNCP. Also, on a negative note, the Opinion of the Court of Auditors on the State General Account is not published on the website of the Court of Auditors, nor the Public Procurement Portal or the National Assembly's.

Audits on public procurement follow the Legal Regime of the Inspection, Auditing and Supervision of the Bod and Services of the Direct and Indirect Administration of the State,⁹² which foresees that the audited public entities should provide, within 60 calendar days from the receipt of the audit report, information on the measures and decisions adopted as a result of the audit, and may also comment on the effect of the audit, for instance by giving account of results already verified as a result of recommended changes that have been implemented in practice. The **Annual Audit Report of the SNCP 2021** assumes that monitoring the implementation of recommendations and other corrective actions by procuring entities is key however, in practice, (i) it does not give enough relevance to the practical enactment of previous recommendations and (ii) lacks to offer statistical data on, at least, the number of recommendations fulfilled versus total number of recommendations and the average time taken by audited entities to implement recommendations.

It should also be noted that this Annual Audit Report summarizes the statistical information on the audits carried out: number of audits carried out by type (global and partial), as well as a summary of the main non-conformities detected (very useful content that should be present in the reflections on the improvement of the public procurement system).

- 29 (twenty-nine) Partial Audits, relative to the formation and execution of contracts associated with the Integrated Plan for Intervention in Municipalities (PIIM), in the first half of 2021;

- 3 (three) Global Audits, in the 2nd Half of 2021.

Although the sample is very small (eighty-one (81) contracts and two thousand six hundred and one (2601) invoices were subject to analysis in the 32 audits carried out), the classification of the non-conformities detected, by type (according to the phase of the procurement cycle in which the

⁹⁰ Made in the report and opinion on the CGE for the financial years 2017, 2018 and 2019).

⁹¹ The Chapter XIV Public Procurement of the CGE 2020 includes several indicators of public procurement <https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4x/nzq2/~edisp/minfin1746385.pdf>.

⁹² Approved by Presidential Decree 170/13.



practice or omission occurs) and by degree of seriousness (very serious, serious and medium) is well designed and provides a simple way of identifying the main problems to be resolved.

The **types of non-compliance analysed** are: Choice of procedure and competence to authorize the expenditure, Appointment of the Evaluation Committee, Communication of the opening of the procedure, drafting, approval and availability of the procurement documents, public act of opening and formal analysis of the proposals, Substantive analysis (content) of the proposals, Awarding of the contract, Execution of the contract and “Others”, e.g.: treatment of documents and archiving.

It should be noted that the **individual audit reports are not published**, which means that the possibility of using the publication as a tool for disseminating information to stakeholders, especially procuring entities and companies, on how SNCP classifies the conduct and omissions in terms of compliance and preventing non-compliant practices is lost.

There are written procedures that state requirements for **internal controls** as well as written **standards and procedures for conducting procurement audits** and both IGAE and SNCP have **auditing manuals**.

Internal and external audits are carried out regularly. IGAE, SNCP and the Court of Auditors follow annual audit plans. In its 2020 activity report, **IGAE** states that its activity in that year was constrained, although it still carried out 2 of the 27 planned ordinary inspections and 11 extraordinary inspections. As for the **Court of Auditors**, it carried out 4 (four) audits of public procurement procedures, out of the 26 actions (20 programmed and 6 resulting from complaints), making a total of about 27% of the audits carried out (21). Within the scope of successive control, 54 audits of compliance and performance were programmed, and 46 audits were carried out and are still in progress, in which the control of contracting procedures is carried out, meaning that 85% of audits of public contracting procedures can be considered as compliance audits. No audits were conducted on the efficiency of public procurement.

In relation to the roles and possible overlaps of the three above mentioned audit organizations (IGAE, SNCP and the Court of Auditors), our assessment is that both IGAE and SNCP are complementary and have a more coordinated approach to auditing, seeing they basically sit under the same roof, i.e., MINFIN. SNCP supports IGAE with specialised knowhow on procurement and takes on a more supervisory role, when auditing the procuring entities. On the other Hand, due to its independence, the Court of Auditors may overlap IGAE and SNCP, though their role is to act as independent auditors.

Infringements of the law and of the principles, as well as irregularities, should be reported by anyone who has knowledge of the occurrence, attempt, or imminence of the occurrence of the concerned practice.

Article 8 (3) determines that the officials and agents of the Public Procuring Entity involved in the planning, preparation, or execution of the public procurement procedures or in the execution of the public contracts, as well as the members of the Evaluation Commission, during the exercise of their functions, are prevented from:

- Participating in any way, directly or indirectly, in public procurement procedures or in challenge proceedings relating to such procedures, over which he/she has a financial or other interest, by himself/herself or through his/her spouse, child or any other relative or kin in a direct line or up to the third degree of the collateral line, person with whom he/she



- lives in a de facto union or in a common economy or of whom he/she is a partner or business associate [(Article 8 (3) (a));
- Performing or failing to perform any act with the aim or expectation of obtaining any undue payment, gift, favor, or advantage, for oneself or for any other person or entity [(Article 8 (3) (b));
- Corrupt practices, such as offering any patrimonial advantages with a view to improperly influencing deliberations or decisions to be taken in the procedure [(Article 9 (1) (a));
- Fraudulent practices, such as intentionally stating false or erroneous facts with the purpose of obtaining favorable deliberations or decisions in procurement procedures or in the execution of a contract [(Article 9 (1) (b));
- Practices restricting competition, translated into any acts of collusion or simulation between interested parties, at any time during the procedure, with a view to, in particular, artificially establishing the tender prices, preventing the participation of other interested parties in the procedure or, by any other means, preventing, distorting, or restricting competition [(Article 9 (1) (c));
- Criminal practices, such as threats to persons or entities with a view to coercing them to participate or not, in procurement procedures [(Article 9 (1) (d));
- Any other ethically or socially objectionable practices [(Article 9 (1) (e)).

Article 9 (2) of the PPL establishes that bona fide participation, even of facts that turn out to be false, cannot be subject to any administrative or other sanction provided by law. This is an important guarantee in a country where there is little reported conflict in the area of public procurement.

There are **no tailor-made follow-up “systems”**. Several recommendations made above could, if applied, help enhancing the implementation/enforcement.

There is a **training programme targeting internal and external auditors** to ensure that they are qualified to conduct high-quality procurement audits, including performance audits. According to the information collected from the Court of Auditions, the following key actions were undertaken since 2017: (i) 1st Edition of the Postgraduate course in Public Finance - ProPALOP-TL ISC Programme (2016 - 2017); (ii) Post-graduate Course in Public Accounting (2020 - 2021) and (iii) 2nd Edition of the Post-Graduate course in Public Finance - ProPALOP-TL ISC Programme (2021).

The **selection of auditors** is carried out through an open public selection procedure. The terms of reference specify the minimum qualifications at the degree or master level in the field of Law, Economics, Finance and Business Management. More recently the Court of Auditors is actively recruiting in the fields of Data Science, ICT and Engineering.

- **Gaps**

Substantive Gaps

12(a)(e) Review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance). As far as the content is concerned, the State General Account should include, in the Chapter on Public Procurement, a specific section on Monitoring and Auditing and provide summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP. Also, the opinion of the Court of Auditors on the State General Account should be published on the Court of Auditors' website, on the Public Procurement Portal, and on the National Assembly website.



12(a)(f) clear mechanisms to ensure that there is follow-up on the respective findings. The final individual audit reports - including the position expressed by the audited entities through their hearing should be published in the Public Procurement Portal. The follow-up information on the concrete implementation recommendations contained in previous audit reports should also be published in the Public Procurement Portal.

12(c)(a) Recommendations are responded to and implemented within the time frames established in the law. Information on the implementation of audit recommendations (follow-up) is not processed and published (whether or not the recommendation has been fully or partially implemented, by what means, within what timeframe, etc.). And this information doesn't exist either quantitatively or qualitatively.

12(c)(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations. There are no tailor-made follow-up systems to monitor compliance with recommendations.

Minor Gaps

12(a)(c) Internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation. The control and oversight bodies do not pay enough attention to: (i) the execution phase of the contracts; (ii) risk management, identification of risks, likelihood, and mitigation.

12(a)(d) Independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management. Individual audit reports, as well as the Annual Audit Report of the Court of Auditors, are not published and accessible by the public and interested stakeholders.

- **Recommendations**

To address Substantive Gaps

12(a)(e) The State General Account should include, in the Chapter on "Public Procurement", a specific section on Monitoring and Auditing of the system containing summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP.

12(a)(f) Clear mechanisms to ensure that there is follow-up on the respective findings. A specific section on "Audits" should be created in the Public Procurement Portal, in which the following should be made available: (i) legislation and regulations on audits and inspections; (ii) SNCP Annual Audit Report; (iii) individual Audit Reports and (iv) follow-up information on the recommendations formulated in previous reports. The (final) audit reports - including the position expressed by the auditees in contradictory - Article 11 of Presidential Decree nr. 170/2013 - must be published in the contracting portal. Follow-up information on the concrete compliance with the recommendations contained in previous audit reports must also be published - in a specific section of the Public Procurement Portal. The SNCP Annual Audit Report should include a specific chapter on the follow-up of the recommendations issued in the previous annual report (so that the percentage of compliance with the recommendations can be measured).

12(c)(a) Audit reports should be published, and performance indicators should be monitored (e.g. rate of recommendations voluntarily implemented, fully versus partially implemented, average time to implement to access if recommendations are implemented).



12(c)(b) SNCP's Annual Audit Report should include information of the audit recommendations to assess the level of its implementation/enforcement.

To address Minor Gaps

12(a)(c) Control and oversight bodies should include in their scope of activities (i) the execution phase of the contracts; and (ii) risk management, identification of risks, likelihood, and mitigation measures.

12(a)(d) Audit reports, as well as an Annual Audit Report of the Court of Auditors, should be published in the Court's website and made accessible to the public and interested stakeholders for transparency.

12(a)(f) SNCP's Annual Audit Report should include information of the audit recommendations to set clear mechanisms to ensure a follow-up on the findings.

Summary of substantive gaps and recommendations of Indicator 12

Substantive gap	Risk classification and red flags	Recommendations
12(a)(e) The State General Account should include, in the Chapter on Public Procurement, a specific section on Monitoring and Auditing and provide summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP.	Substantive medium-risk gap	The State General Account should include, in the Chapter on "Public Procurement", a specific section on Monitoring and Auditing of the system containing summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP
12(a)(f) Final individual audit reports are not published in the Public Procurement Portal. The follow-up information on the concrete implementation recommendations contained in previous audit reports are also not published in the Public Procurement Portal.	Substantive high-risk gap	Final individual audit reports - including the position expressed by the audited entities through their hearing should be published in the Public Procurement Portal. recommendations contained in previous audit reports should also be published in the Public Procurement Portal.
12(c)(a) Information on the implementation of audit recommendations (follow-up) is not processed and published (whether or not the recommendation has been fully or partially implemented, by what means, within what	Substantive high-risk gap	Audit reports should be made public and a proper statistical treatment should be promoted (comprising the information needed to calculate audit KPIs such as the rate of recommendations voluntarily implemented, fully versus



Substantive gap	Risk classification and red flags	Recommendations
timeframe, etc.). And this information doesn't exist either quantitatively or qualitatively		partially implemented, average implementation time etc.).
12(c)(b)		
There are no tailor-made follow-up systems	Substantive high-risk gap	<ul style="list-style-type: none"> - A specific section on "Audits" should be created in the Public Procurement Portal, in which the following should be made available: (i) legislation and regulations on audits and inspections; (ii) SNCP Annual Audit Report; (iii) individual Audit Reports and (iv) follow-up information on the recommendations formulated in previous reports; - The (final) audit reports - including the position expressed by the auditees in contradictory - Article 11 of Presidential Decree nr. 170/2013 - must be published in the contracting portal; - Follow-up information on the concrete compliance with the recommendations contained in previous audit reports must also be published - in a specific section of the Public Procurement Portal; - The SNCP Annual Audit Report should include a specific chapter on the follow-up of the recommendations issued in the previous annual report (so that the percentage of compliance with the recommendations can be measured)

Indicator 13. Procurement appeals mechanisms are effective and efficient

Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

- Synthesis of the indicator

The competences of the bodies that receive, examine, and decide on applications for review of decisions are clearly defined in law and the system is served by three types of challenge. First, the



administrative complaints to the body which carried out the act considered by the interested party to be illegal or irregular (the same applies to cases of omission - failure to carry out an act considered to be due). Second, the hierarchical appeals against decisions on administrative appeals can be lodged with the hierarchical superior of the body which practised the act being challenged. Third, the judicial appeals to the court which can be lodged to the Civil and Administrative Chamber in the case of acts practiced by organs of the central and local administration of the State and by the governing bodies of legal persons governed by public law, and to the Civil and Administrative Chamber in the case of acts issued by local organs of the State below the Provincial Governor and legal persons and companies managing public services at local level.

As far as the engagement of civil society is concerned, there is not much evidence on their participation either when invited to public consultation initiatives or in regular monitoring of the ongoing procurement process. There are no CSOs engaged in social audit and control of public procurement and there is no evidence that civil society contributes to shaping and improving the integrity of public procurement.

- Findings

As a matter of principle, decisions, whether administrative or judicial, can only be taken on the basis of evidence produced by the parties. This follows from the general principles of administrative and civil procedural law. In both administrative appeals and judicial it is the (private) party concerned who is responsible for (i) taking the procedural initiative and (ii) producing evidence concerning the alleged facts (principle of burden of proof). Regarding the administrative complaints the PPL provides that the interested party shall state in the complaint or in the request for hierarchical appeal or the improper hierarchical appeal the grounds for the objection and may attach as proof the documents that are deemed necessary for that purpose.

There is no independent appeals body. The review mechanism that is in force in Angola is based on the possibility of (i) lodging a complaint to the public entity responsible for the act or omission, (ii) a hierarchical appeal to the superior of the entity that carried out the act or is responsible for the omission or the one that judged the complaint and (iii) the contentious appeal to the Court which is always admitted without prejudice to the other means of redress.

Nevertheless, under Article 17 (5) of the PPL, SNCP became aware of 25 challenges to PEs in 2020 and 56, in 2021. When asked about the enforcement of decisions, SNCP stated that “The SNCP analyses the legality of the decision taken by PEs and proposes the amendment or maintenance of the decision taken. It is difficult to say how many were upheld, but it is recommended that the EPC decision be amended, as it is illegal”.

Regarding the deadlines, both for lodging appeals and for the entities to decide, they seem to be conceived in a balanced way, allowing the necessary time for an interested party to react and properly organize the defense of the interests it considers affected, as well as for the entity that decides to prepare the respective ruling in a fair and reasoned way⁹³. In the case of administrative complaints, the deadline to complain is five (5) calendar days from the date of notification of the act following which the entity has five (5) calendar days for taking the decision, counted from the date of submission of the complaint or from the expiry of the deadline for hearing counter-interested parties. The absence of a decision by the appellate entity is equivalent

⁹³ In the case of the Courts, no deadlines are set for the decision to be taken because this could, in the extreme, lead to a situation equivalent to a denial of justice, which is prohibited by the Constitution.



to granting the application. Concerning the hierarchical appeal, the deadline for lodging is thirty (30) calendar days from the date of notification of the contested act. In the special case of hierarchical appeals against the Evaluation Commission's decisions on complaints lodged in the bids public opening session they are mandatory in nature, meaning a direct appeal to Court is not available, and must be lodged within five (5) calendar days from the date of delivery of the minutes of the session and are considered granted if five (5) calendar days after their receipt there has been no notification of a decision to the appellant. Finally, in the case of judicial reviews, the deadline for lodging is sixty (60) calendar days from the date of notification of the decision on the precedent administrative complaint or hierarchical appeal. Considering the total time taken to process procedures by type of contract referred to in 9 (b) (j), the time taken for the various types of appeal described above is reasonable.

When asked whether they had ever challenged a decision made by a public body or appealed a decision of the Evaluation Committee, 68% of respondents to the private sector survey indicated that "the decision of the contracting authority was unfair but did not believe that the appeal system was trustworthy enough to submit the appeal". However, when asked for an assessment on the practice of the appeals system, 56% of responses indicated that the System is predictable acts "always" or in "most cases" in accordance with the Law.

- **Gaps**

Substantive Gap

13(a)(c) SNCP does not issue enforceable decisions. Instead, according to their statement, they issue recommendations to the PEs.

13(a)(d) The more serious problem is the lack of court rulings on public procurement. In considering what could cause the notable scarcity of judicial recourse for resolving disputes related to public procurement in Angola, despite the legal avenues available, one might venture into a realm of speculation based on a limited dataset from a recent survey and observations from other jurisdictions. This speculative approach suggests a complex array of potential barriers that could be influencing this phenomenon.

One possible reason for this situation is a widespread lack of awareness among bidders about their legal rights and the specific procedures required to appeal procurement decisions through the judicial system. This hypothesis, while not directly proven, aligns with experiences from other contexts where information asymmetry significantly impedes the effective utilization of legal remedies. Additionally, there is a speculative concern regarding the judiciary's perceived ability to deliver fair and efficient adjudication. Such perceptions, whether they stem from direct experiences or a generalized distrust in institutional processes, might dissuade bidders from seeking judicial intervention due to doubts about achieving favourable outcomes.

Furthermore, the financial and reputational considerations associated with litigation are speculated to be significant deterrents. The anticipated costs of litigation—encompassing legal fees, court expenses, and the potential diversion of resources from business operations—are presumed to be discouraging, particularly for small and medium-sized enterprises. The reputational risks, though not empirically documented in the Angolan context, are inferred from dynamics observed in other jurisdictions. The apprehension about being labelled as confrontational or the potential negative publicity from publicly airing disputes could reasonably be expected to influence the decision-making process adversely.



- **Recommendations**

To address Substantive Gap

13(a)(c) Consider undertaking a critical review of the role of SNCP in relation to the appeals and guidance provided to the procuring entities and the enforceability of its recommendations.

It is recommended to undertake a critical study of the current system of hierarchical review and appeal, including the viability of creating a review body which is independent and has no involvement or potential involvement with procurement transactions. In the meantime, introduce short-term/interim measures such as:

- Requiring the publication of applications for hierarchical review and decisions on hierarchical review to enhance transparency and confidence in the system.
- User-friendly guidance, pending the decision on the creation of alternative models for review/appeal, to ensure better clarity as to the process to be followed and issues considered by decision-makers in hierarchical appeal and to enhance the independence of decision-makers in the hierarchical review.

13(a)(d) Consider undertaking a critical study of the reasons behind the lack of court rulings on public procurement, including the stakeholder's views on the operation of the appeals system.

Summary of substantive gaps and recommendations of Indicator 13

Substantive gap	Risk classification and red flags	Recommendations
13(a)(c)		
SNCP does not issue proper enforceable decisions. Instead, according to their statement, they issue recommendations to the PEs.	Substantiative low-risk gap	Consider undertaking a critical review of the role of SNCP in relation to the appeals and guidance provided to the procuring entities.
13(a)(d)		
Lack of court rulings on public procurement	Substantiative low-risk gap	Consider undertaking a critical study of the reasons behind the lack of court rulings on public procurement, including the stakeholder's views on the operation of the appeals system.

Indicator 14. The country has ethics and anti-corruption measures in place

This indicator assesses i) the nature and scope of anti-corruption provisions in the procurement system and ii) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.



- Synthesis of the indicator

The assessment reveals that the country's legal framework comprehensively addresses fraud, corruption, and prohibited practices, aligning with relevant international conventions. The Public Procurement Law (PPL) extensively outlines prohibited practices encompassing corruption, fraudulent activities, competition-restricting behaviors, and other ethically questionable acts. Civil servants and those involved in procurement are mandated to act impartially, in the public interest, and in line with PPL objectives. The law imposes obligations on individuals and entities related to the administration, prohibiting engagement in prohibited practices. Enforcement primarily rests with procuring entities, necessitating exclusion, and reporting of violations. Notably, impediments to participation are in place for those convicted of certain crimes. Despite clear reporting obligations, systematic implementation and follow-up are lacking, and statistical and analytical treatment of information is deficient. A suspension and debarment system exists, managed by SNCP, based on reported breaches and contract terminations. While AGO statistics indicate increased investigations, limited transparency in court decisions hampers rule of law and effective policymaking. In conclusion, the legal and institutional framework for corruption prevention and detection in the public procurement sector is deemed appropriate, but challenges in implementation, reporting, and transparency persist.

The assessment also reveals a multifaceted landscape. On one hand, the Practical Guide on Prevention and Management of Risk of Corruption and Related Infringements in Public Contracts offers valuable insights into corruption prevention and risk management strategies, including case studies and a model plan. However, there's a notable absence of data regarding the adoption of Corruption Prevention Plans by public procuring entities. The deficiency in statistical analysis and the lack of transparency in publishing reports and decisions hinder supervisory and control bodies, impeding effective prevention and deterrence of offenses. Despite the Guide's emphasis on corruption risk management, it overlooks the potential of e-GP as a powerful tool. Furthermore, civil society engagement faces significant challenges, limiting its impact on improving procurement integrity. While an anonymous whistleblowing mechanism exists, it remains to be seen whether civil society truly contributes to enhancing procurement integrity. The Competition Authority has made strides in combatting collusion and has a forthcoming leniency and whistleblower scheme, while the Attorney General's Office handles corruption and fraud investigations. Presidential Decree nr. 319/2018 introduced crucial regulations on asset declaration and ethical conduct, though information on beneficial ownership remains elusive.

- **Findings**

Angolan law provides exhaustive coverage of the definitions of fraud, corruption and other prohibited practices that generally follow the most relevant international conventions⁹⁴ in the field of prevention and combat to corruption.

In the field of public procurement, the PPL contains an exhaustive enumeration of prohibited practices. These include corrupt and fraudulent practices as well as practices that restrict competition. The PPL also adds as prohibited practices other criminal practices, such as threats to persons or entities, with the aim of coercing them to participate or not, in public procurement procedures and any other ethically or socially reprehensible practices. The Criminal Code typifies

⁹⁴ Angola ratified the United Nations Convention against Corruption in 2006 and the African Union Convention on Preventing and Combating Corruption in 2017.



several crimes with particular relevancy to public procurement e.g.: fraud, fraud on goods, forgery of document, undue receipt of advantage, active and passive corruption of an official, coercion.

The PPL contains provisions that are explicitly intended to guide the Conduct of Civil Servants providing that employees and agents of the procuring entities involved in the planning, preparation or carrying out of public procurement procedures or in the execution of public contracts, as well as the members of the Evaluation Committees, must carry out their functions in an impartial manner, act in the public interest and in accordance with the objectives, rules and procedures determined in the PPL and avoid conflicts of interest and the practice, participation or support of fraudulent or other acts which may be qualified as crimes of active or passive corruption. In addition, the **Law on Public Probity**⁹⁵ contains definitions of the individual responsibilities, accountability, and penalties for government employees (Conduct of civil servants). But also, the **natural and legal persons** that relate to the Administration have specific duties of conduct described in the PPL which explicitly imposes on them an obligation not to engage in any of the above-mentioned prohibited practices. The concrete enforcement of these prohibition rules is naturally left, in the first instance, to the procuring entities which, on becoming aware of one of them, must exclude the proposal submitted by the alleged infringing party notifying it of the exact reasons for the exclusion and Inform SNCP of the illegal practice committed and the exclusion operated. Without prejudice to other civil, administrative or criminal proceedings that may take place, interested parties who engage in any of the practices provided for in this article may also be **prevented from participating, for a period of one to three years**, in other public procurement procedures and are subject to the payment of a fine, to be fixed taking into account the seriousness of the offence, the degree of guilt of the offender, the damages caused to the public interest, the repeated character of the transgression and the economic and financial situation of the offender. Also of particular importance is the regime of **impediments to participation** provided for in Article 56 of the PPL according to which natural and legal persons cannot be accepted to participate in public procurement procedures nor integrate any candidate or competitors joint venture, in case they have been convicted by a final and unappealable sentence, for a crime affecting their professional honour, if, in the meantime, their rehabilitation has not occurred, in the case of natural persons or, in the case of legal persons, the holders of their governing bodies of administration, direction or management have been convicted of those crimes, and they are in effective functions until the sanction is complied with.

The law does not require the inclusion of content relating to prohibited practices in the **procurement documents**. The standard procurement documents do not include provisions on prohibited practices.

The principle of probity imposes a special obligation for public entities (as well as private entities and citizens in general) to **report suspicions or indications of fraud, corruption, or other prohibited practices**, for example those that prevent or reduce competition such as collusion. The participants in the public procurement market have the duty to report to the legally competent entities, namely the Attorney's General Office (AGO) and SNCP, the facts that they have knowledge of in the exercise of their functions and which may constitute civil, administrative, or criminal offences. Although the obligation for contracting authorities to report alleged prohibited practices is clear in the law, **there is no evidence that this system is systematically applied** and reports are consistently followed up by law enforcement authorities mainly because (i) the organs

⁹⁵ Approved by Law No. 3/2010, of 29 March.



of supervision and control of the public procurement system do not treat the information statistically, or do not make it known, by areas or sectors of activity of the public administration, which would allow the easy identification of infractions that have been caused or have had an impact on public procurement procedures and the execution of public contracts and (ii) they do not publish audit and inspection reports and in the case where they do publish activity reports, including audit reports, the statistical and analytical treatment of the information is not satisfactory (e.g.: IGAE 2020 Report). A positive example regarding the statistical and analytical treatment of information is the SNCP Report on Auditing function, although the most recent one published is for 2019). Furthermore, since Courts do not publish case law, it is not possible to have an overview of the types and seriousness of offences, their perpetrators, the penalties imposed, and the damage suffered.

The PPL (Article 57) provides for a suspension and debarment system. The procuring entities send a detailed report to the SNCP annually or whenever necessary and requested, indicating the Contractors, suppliers of goods or service providers, natural or legal persons who have committed **a serious or repeated breach of contractual obligations which has resulted in the early termination of the contract or the application of fines exceeding 20% of the value of the contract**. After evaluating the seriousness of the facts as reported by the procuring entities, the SNCP draws up a **list of the natural or legal persons who have breached contracts** under the terms above mentioned and publishes it through the Public Procurement Portal and the Registry of State Suppliers. Repeated withdrawal of a proposal within the period established for its maintenance, including any automatic renewal, constitutes an aggravating circumstance for inclusion in the list provided for in this article. After repairing the damage caused to the Contracting Public Entity, the SNCP may remove the company from the list of infringing companies, provided that the repair is through return of the amounts or full provision of the services whose non-compliance motivated its inclusion in the list of defaulter companies and application of a fine foreseen in the Law.

Statistical data gathered by the Attorney's General Office (AGO) reveal a **growth in the volume of cases under investigation**⁹⁶ between 2018 and 2021 with only a decrease in the 2020 financial year.

The table below shows the evolution of **Criminal proceedings** in connection with economic-financial and related crime:

Criminal proceedings in connection with economic-financial and related crime			
YEAR	Cases under investigation	Referred to the Judge	Convictions
2017	0	0	0
2018	431	36	0
2019	663	157	10
2020	524	39	9
2021	728	98	7
Total	2346	330	26

⁹⁶ The "investigation" is the procedural stage following the preliminary enquiry in the criminal process.



Source: Attorney's General Office

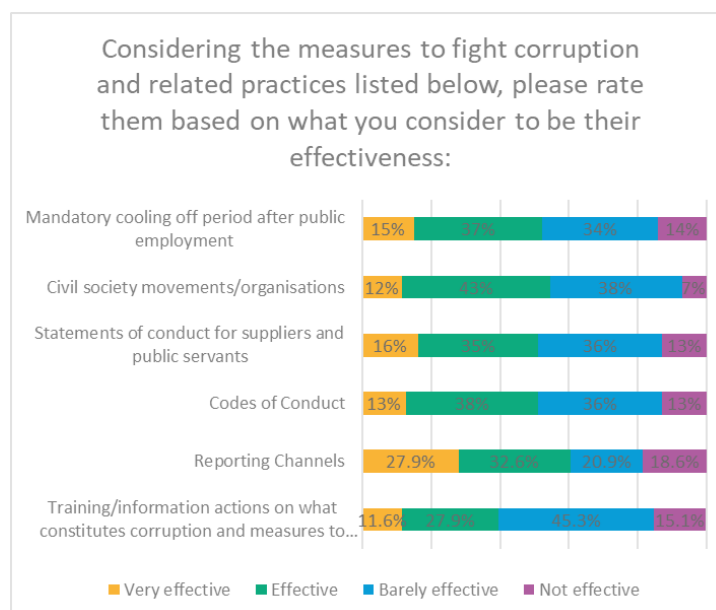
Also, at the level of **Preliminary Inquiries**, the volume of AGO's investigation activities shows a positive trend, especially the rate of completion in 2021, which doubled compared with the previous year:

Preliminary inquiry proceedings for economic-financial and related crimes		
YEAR	Cases under investigation	Completed cases
2017	10	1
2018	82	32
2019	207	37
2020	269	19
2021	563	88
Total	1131	177

Source: Attorney's General Office

Data referring to the criminal investigation, prosecution and judgement made available by AGO should be disaggregated by type of crime(s) together with the information about which cases relate to offences committed in the field of public procurement and penalties applied, if any. This data should also enable to calculate the average length of preliminary enquiries and the subsequent criminal proceedings. It is noted that court decisions in criminal cases, as well as appeals, are not published⁹⁷, which is a serious shortcoming from the point of view of the rule of law, in addition to not contributing to crime prevention (dissuasion through publicity of the processes and penalties imposed) or to an evidence-based evaluation of the system, which is an essential requirement for adequate and efficient policymaking. One of the most transversal weaknesses of the system, i.e., the lack of statistical information published in a place or medium that is easily accessible by the stakeholders of public procurement and by the general public/civil society is also present in this area and hampers a meaningful analysis of the overall compliance with the law, regulations, and relevant policies.

The framework - legal and institutional framework - that is mobilised for the prevention, detection, and penalisation of corruption in the public sector is adequate.



⁹⁷ At the very least, the decisions of the courts of appeal where case law is made, should be published.



There is a Practical Guide on Prevention and Management of Risk of Corruption and Related Infringements in Public Contracts which contains the essential information on Corruption and Related Infringements, Prevention and Risk Management of Corruption and Related Infringements, Implementation and Monitoring Strategy, Case Studies and a Model Plan for Prevention and Management of Risks of Corruption and Related Infringements in Public Procurement. On the negative side, there is no information on how many public procuring entities have adopted a Corruption Prevention Plan.

The lack of an adequate statistical treatment of the activity and the lack of publication of reports and decisions are structural deficiencies that affect most of the supervisory and control bodies, as well as those whose mission is the prevention and repression of crime, including the AGO and the Courts. The lack of publicity of the contents of audits, investigations and sentencing decisions makes the prevention of offences more difficult, thus losing an interesting dissuasive effect.

It is worth highlighting the Practical Guide on Risk Management of Corruption and Related Infractions in Public Procurement, part of the so-called integrated strategy for the moralisation of public procurement. Recommendations to procuring entities include the drafting and evaluation of the Corruption Risk Management Plans, the streamlining of management methods and elimination of outdated ones, the promotion of regular audits, the promotion among the employees or workers of a culture of legality, responsibility and strict observance of ethical rules, training, and capacity-building of its employees, namely in what concerns identifying and denouncing corruption situations. SNCP must ensure the publication in its statistical and information instruments, as well as on the Public Procurement Portal, of the results inherent to the fulfilment of the measures inserted in the Prevention Plans. So far this has not happened. The Guide lacks mentioning and promoting the use of e-GP as one of the most effective and efficient measures for preventing corruption and other prohibited practices.

There is no evidence on special integrity training programmes being offered and the procurement workforce regularly participates in this training.

Contact and engagement with civil society organizations proved to be an enormous challenge for the evaluation team. Unsuccessful attempts were made to obtain lists of CSOs from different stakeholders. An attempt was made to distribute the prepared questionnaire to a list of about 50 CSOs that collaborated in some way with AfDB. This attempt also proved unsuccessful. Finally, through Transparency International in Portugal, it was possible to come into contact with representatives of two CSOs who provided some statements. They were unanimous in identifying the lack of organisations dedicated/focusing on matters of public procurement. There are organizations with a broader scope that, with limitations, seek to intervene. It was also conveyed that some of the "control" is done on social networks, where the information circulating is not always complete and/or reliable.

The **conditions are not favourable for the participation of CSOs** and there is no evidence that civil society contributes to shape and improve integrity of public procurement.

An **anonymous whistleblowing mechanism** is available on the Attorneys General's Office website (<https://www.pgr.ao/denucias>). For the **protection of all whistle-blowers**, a set of procedural guarantees are conferred that safeguard moral and physical integrity. Right to anonymity, the right to judicial protection against the reported entities (hierarchical superior or other body with effective power over the whistle-blower), not to be subject to reprisals if the identity of the whistle-blower is disclosed.



The Competition Authority, despite being a recent established body (3 years of activity), has been developing work in the area of public procurement, and this is one of the areas of reference of its plan of activities. In this context, a **Guide to Combat Collusion in Public Procurement** was developed jointly with the SNCP, and a promotional campaign was also undertaken. Up to the time of the conversation (in January 2022), no complaints of restrictive practices had been received. The Competition Authority is also working on a **leniency and whistle-blower scheme**. In relation to corruption and/or fraud practices, the competence for investigation lies with the Attorney General's Office (AGO), which has follow-up mechanisms for all complaints in place.

Article 1 of the Presidential Decree nr. 319/2018, of 31 of December, approves the Regulation on the Declaration of Assets and Income, the Declaration of Interests and the Declaration of Impartiality, Confidentiality and Independence in the Formation and Execution of Public Procurement. Also, the Guide on Ethics and Conduct in Public Contracting, the whistleblowing Guide for Reporting Signs of Corruption in Public Contracting and the Practical Guide on the Prevention and Management of Risks of Corruption and Corruption and Related Infringements in Public Contracts were approved by the same decree.

Additionally, the Public Probity Law is also in force.

Both legal texts have a general scope of application.

The **Declaration of Assets and Income** includes the income of civil servants, administrative agents, contracted staff, and employees of public procuring entities, as well as their investments, assets and substantial gifts or benefits from which a conflict of interest may arise in relation to the formation and execution of public procurement contracts. The Declaration must be updated every two years and deposited with the Attorney General, who is its trustee. During the year 2021, the Attorney General's Office received 521 Asset Declarations from the different organs of the State which, added to those already deposited between 2017 and 2020, make up a cumulative total of 3611 (data reported to January 2022).

Following the approval of Presidential Decree nr. 319/2018, of 31 of December, an intensive outreach programme was carried out. Other specific actions have been carried out.

Information on beneficial ownership is not provided by contractors.

- **Gaps**

Substantive Gaps

14(b)(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents. There is no specific mention in the laws and regulations on the mandatory inclusion of provisions on prohibited practices procurement documents.

14(b)(b) Procurement and contract documents include provisions on fraud, corruption, and other prohibited practices, as specified in the legal/regulatory framework. Procurement documents do not include provisions on prohibited practices.

14(c)(b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities. The organs of supervision and control of the public procurement system do not treat the information statistically, or do not make it known, by areas or sectors of activity of the public administration which would allow the easy identification of infractions that have been caused or have had an impact on public procurement procedures and the execution of public contracts. The same bodies do not publish audit and inspection reports



and in the case where they do publish activity reports, including audit reports, the statistical and analytical treatment of the information is not satisfactory (e.g.: IGAE 2020 Report).

14(d)(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually. Lack of an adequate statistical treatment of the activity and the lack of publication of reports and decisions are structural deficiencies that affect most of the supervisory and control bodies, as well as those whose mission is the prevention and repression of crime, including the AGO and the Courts.

14(d)(e) Training programmes. There is no evidence of training programmes being offered.

14(e)(a) There are strong and credible civil society organisations that exercise social audit and control. There are no CSOs engaged in social auditing and control of public procurement.

14(e)(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government. There is a lack of trained, empowered CSOs to carry out the necessary external control work.

14(e)(c) There is evidence that civil society contributes to shape and improve integrity of public procurement. There is no evidence that civil society contributes to shape and improve integrity of public procurement.

14(e)(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g.: through internal compliance measures. Information is not collected in the supplier registration process.

14(g)(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle. Information on beneficial ownership is not provided by contractors. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Minor Gaps

14(a)(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials. The definition of conflict of interest is clear in the legislation, but there is no reference to a cooling-off period.

14(c)(c) There is a system for suspension/debarment that ensures due process and is consistently applied. Further clarity and consistency on the procedural aspects related to the application of sanctions is needed. The reasons that determine the existence of minimum but express procedural rules in the case of article 9 (for situations related to the practice of corruption, fraud, restrictive practices of competition and other criminal practices) are the same that justify the insertion of identical provisions in the case of application of other sanctions, namely those mentioned in article 437 of the PPL.

14(c)(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties. The statistical information published by the AGO does not meet the minimum requirements of disaggregation and specificity in relation to public procurement and can therefore only be of limited use in analyzing the causes of non-compliance, recommending measures to improve the compliance rate in the future and in policymaking.



14(d)(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle. There is no information on how many public procuring entities have adopted a Prevention Plan.

14(d)(d) Special measures are in place for the detection and prevention of corruption associated with procurement. The Guide provides that the SNCP must ensure the publication in its statistical and information instruments, as well as on the Public Procurement Portal, of the results inherent to the fulfilment of the measures inserted in the Prevention Plans. So far this has not happened. The Guide lacks mentioning and promoting the use of e-GP as one of the most effective and efficient measures for preventing corruption and other prohibited practices.

- **Recommendations**

To address Substantive Gaps

14(b)(a) and 14(b)(b) Procurement documents should be reviewed to include explicit provisions on prohibited practices.

14(c)(b) Inspection/audit bodies should issue and make reports available to provide evidence that the sanctions and enforcement system is in force.

14(d)(c) The relevant contents of audits, investigations and court decisions on practices related to corruption and fraud should be widely publicised.

14(d)(e) Integrity training programmes should be developed and included in the curricula of the procurement workforce.

14(e)(a) and 14(e)(b) Civil Society Organizations should be funded, and Open Contracting Data Standards adopted to foster strong and credible social audit and control.

14(e)(c) The Government should seek involvement of the Civil Society to shape and improve integrity of public procurement.

14(e)(d) The Government should collect information and evidence on the existence of internal controls of the registered companies to support integrity and ethical behaviour in public procurement.

14(g)(e) Provisions regarding beneficial ownership should be included in the public procurement legal framework.

To address Minor Gaps

14(a)(c) A cooling-off period for civil servants should be considered to avoid conflicts of interest.

14(c)(c) Ensure that suspension/debarment is consistently applied. Add to Article 437 the procedural regime to be followed in the case of application of these sanctions, reproducing, at least, the equivalent content of Article 9 (4) to (7) inclusive.

14(c)(d) Statistical judiciary information should be published to provide evidence that laws on fraud, corruption and other prohibited practices are being enforced.

14(d)(b) The adoption of corruption prevention plans should be monitored as part of the effort to identify corruption risks.



14(d)(d) The monitoring of the practical application of the Practical Guide on "Risk management of corruption and related infractions in public procurement" should be done by the SNCP.

Summary of substantive gaps and recommendations of Indicator 14

Substantive gap	Risk classification and red flags	Recommendations
14(b)(a) 14(b)(b)		
Procurement documents do not include provisions on prohibited practices.	Substantive medium-risk gap	Procurement documents should be reviewed to include explicit provisions on prohibited practices.
14(c)(b)		
The organs of supervision and control of the public procurement system do not treat the information statistically, or do not make it known.	Substantive medium-risk gap	Inspection/audit bodies should issue and make reports available to provide evidence that the sanctions and enforcement system is in force.
14(d)(c)		
The lack of publicity of the contents of audits, investigations and sentencing decisions makes the prevention of offences more difficult, thus losing an interesting dissuasive effect..	Substantive medium-risk gap	The relevant contents of audits, investigations and court decisions on practices related to corruption and fraud should be widely publicised
14(d)(e)		
There is no evidence of training programmes being offered.	Substantiative high-risk gap	Develop integrity training programmes.
14(e)(a)		
There are no CSOs engaged in social audit and control of public procurement.	Substantiative medium-risk gap	Development partners should create specific programmes to fund initiatives aimed at building the capacity of CSOs to monitor the quality of public spending. The option to use technological tools based on standards (OCDs) is essential. Membership of the Open Contracting Partnership, which is provided for in the 2018-2022 PECPA, should be launched.
14(e)(b)		
There is a lack of trained, empowered CSOs to carry out the necessary external control work.	Substantiative medium-risk gap	Same as above.
14(e)(c)		



Substantive gap	Risk classification and red flags	Recommendations
There is no evidence that civil society contributes to shape and improve integrity of public procurement	Substantiative low-risk gap	The GoA should seek the involvement of CSOs and Academia in public policymaking processes and changes to the regulatory and legal framework of public procurement.
14(e)(d)		
Information is not collected in the supplier registration process.	Substantive low-risk gap	Collect information and evidence on the existence of internal control measures of the registered companies.
14(g)(e)		
Information on financial disclosure and beneficial ownership is not provided by contractors.	Red Flag	Provisions regarding beneficial ownership should be included in the public procurement legal framework.



4. Consolidated Recommendations

The consolidated recommendations are presented at the end of each indicator and included in the executive summary as a summary by pillar.

The assessment of Angola's procurement system highlights several key areas where improvements are needed to enhance the effectiveness, transparency, and integrity of the system. The recommendations outlined below provide a comprehensive approach to addressing the identified gaps and fostering positive change within the procurement framework.

Legal, Regulatory and Policy Framework

To address substantive gaps in Angola's procurement system, it is imperative to establish specific provisions or rules for the participation of State-Owned Enterprises (SOEs) in public procurement. In addition, the inclusion of quality assessment provisions for consulting services at the proposal evaluation stage is essential. The transparency of the appeals process must be ensured by publishing applications and decisions on the Public Procurement (PP) Portal, accompanied by consistent Key Performance Indicators (KPIs) to monitor litigation trends. The formulation of norms governing the safekeeping of records, documents, and electronic data should be undertaken by the National Public Procurement Service (SNCP). Furthermore, to foster sustainable public procurement, the development of a comprehensive policy/strategy is urgently needed. This policy should encompass implementation plans, systems, and tools to effectively operationalize and monitor the application of sustainable practices.

To address minor gaps, emphasis should be placed on enhancing the accessibility of existing laws, regulations, and policies through online publication in machine-readable formats. The practicality of opportunity publication timelines must be monitored by the SNCP, guaranteeing sufficient time for bidders. Vigilance on barriers to participation in public procurement is crucial, with a focus on their economic implications, with a view to repealing inefficient provisions if necessary. Strengthening the legal framework on lifecycle costing methodologies and ensuring non-disclosure of sensitive commercial and industrial protected information contained in proposals should be considered. Efficient and fair dispute resolution processes should be expanded, including recourse to arbitration during the pre-award stage (for works contracts) and pre-and post-award stages (goods and services contracts).

Institutional Framework and Management Capacity

To address substantive gaps, the enforcement of specialized procurement functions within procuring entities is vital, supported by robust capacity-building programs. The existing e-procurement system should be improved, harnessing the Open Contracting Data Standard (OCDS) to enhance accessibility and transparency. Procurement should be recognized as a profession through targeted training, qualifications definition, and competency frameworks.

To address minor gaps, strategies for public procurement planning should be well-established, integrating with the Annual Programming of the Public Investment Programme. Closer integration of e-GP and IFMIS systems is recommended, ensuring a seamless feedback mechanism for budget execution. Clarity in invoice processing and payment authorization procedures should be achieved, alongside a control mechanism within IFMIS. Strengthening the SNCP as an Independent Administrative Authority, revising sector strategies, and promoting capacity-building for both the public and private sectors are essential steps.



Public Procurement Operations and Market Practices

To address substantive gaps, proactive procurement strategies should be identified using market research guidelines and e-GP's Procurement Planning module. Sustainability criteria must align with the forthcoming SPP strategy. Enhanced multi-stage procedure utilization, standardized procurement documents, and strengthened Procuring Units are essential for effective governance. Transparent contract award notice publication and sustainable considerations should be enforced. Full deployment of the e-GP solution, encompassing contract management and payment processes, is key for streamlined selection and award processes.

To address minor gaps, precision in contract establishment and description is paramount for successful outcomes. Protection of industrial secrecy should be integrated into document classification, while performance incentives should be embedded in standard documents and contracts. Engagement with the private sector and its capacity-building must be encouraged through dialogue and training programs. Competitive private-sector participation can be maximized through e-GP system utilization.

Accountability, Integrity, and Transparency of the Public Procurement System

To address substantial gaps, meaningful civil society engagement should be promoted through public consultations during procurement policy changes, and training programs should be developed. Full adoption of e-procurement and Open Contracting Data Standards, coupled with public consultations, ensures transparency and participation. Annual Audit Reports should encompass recommendations for comprehensive monitoring, and integrity-focused training should be integrated into the procurement workforce's curriculum.

To address minor gaps, comprehensive publication of audit reports, integrated monitoring mechanisms, and cooling-off periods for civil servants are critical steps. Transparent dissemination of inspection/audit reports and enforcement mechanisms will foster accountability. The promotion of prevention plans, awareness campaigns, and dissemination of relevant audit findings and court decisions is imperative.

By incorporating these recommendations across all pillars, Angola's procurement system can undergo a transformative enhancement, fostering transparency, accountability, and efficient utilization of resources.



5. Strategic Planning

Based on the suggestions outlined in this evaluation, both in a broad sense and with specific focus on areas requiring enhancement, SNCP can establish a comprehensive action plan. The outcomes and advice resulting from this assessment are anticipated to play a role in shaping future procurement reforms or system development undertaken by the GoA. However, the order in which the proposed enhancements should be executed to address substantial gaps is at the discretion of the GoA.

The findings of this evaluation are anticipated to provide an opportunity for the GoA and collaborating development partners to explore potential methods of supporting the proposed action plan. In the table below, the Assessment Team has condensed a recommended timeline for execution strategies, with the government retaining the authority to make decisions. The strategy should be practical, in harmony with other reform endeavors, striking a balance among various viewpoints, and encompassing a mix of immediately achievable goals and medium- and long-term undertakings. Consequently, the table below prioritizes actions over time as Short Term (ST), Medium Term (MT), and Long Term (LT).

Proposed action	Timeline	Responsible institutions
<i>Legislative, Regulatory, and Policy Framework</i>		
<p>Legislative amendments (production of draft legislative acts and provisions)</p> <p><u>Organic law of the SNCP:</u></p> <ul style="list-style-type: none"> ▪ Amendment of the SNCP organic law to grant it the statute of an Independent Administrative Authority (required to fulfil the typical duties of a regulatory authority). <p>To add/amend to/in the PPL:</p> <ul style="list-style-type: none"> ▪ Provisions to limit or establish the rules for SOE participation. ▪ Provisions regarding the evaluation of proposals for consulting services. ▪ Provisions for safekeeping of records, documents, and electronic data. ▪ Provisions to establish the legal concept of life cycle costing and specify the methodologies to calculate it. ▪ Provision to ensure non-disclosure of legally protected information in the proposals/bids (commercial and industrial secrecy). ▪ Provisions to extend the possibility of recourse to arbitration to pre-contractual stages (all types of contracts) and to the implementation stage (goods and services contracts). ▪ Provision(s) to establish a cooling-off period for civil servants 	ST	SNCP – MINFIN
Studies on specific performance-related aspects	MT	SNCP



<p><u>Conduct specific studies on:</u></p> <ul style="list-style-type: none"> ▪ The current use of existing procurement documents / templates (rate of use, rate of incorporation of changes, most frequent changes, litigation related to formal issues deriving from the model documents, etc.) following the findings of which it must be decided whether additional explicit legal provisions establishing the scope for customization of procurement documents allowed to procuring entities is needed. ▪ The possibility of imposing an obligation to include explicit references to prohibited practices, and even the insertion of self-declarations of abstention from illegal behavior on the part of competitors, should also be considered in this study (and could be implemented at both a legal and regulatory level). ▪ The Standard contract conditions. Existing contracts data should be collected and treated to enable the calculation of the following KPIs: (i) percentage of contracts drafted by simply filling in the blanks in the models; (ii) percentage of contracts in which "non-standard clauses" were introduced; (iii) percentage of contracts that did not follow the existing templates at all; (iv) percentage of disputes occurring in each of the situations described, a) before the start and b) during the execution of the contract. The added value of using some FIDIC contract standard clauses should be assessed (for possible use in more complex engineering and infrastructure projects). ▪ The barriers to participation in the national public procurement market by foreign companies, especially in terms of its economic impact, to eventually repeal or amend the legal provision in force. 		
<p>Enhancement of disclosure of information/publications</p> <ul style="list-style-type: none"> ▪ Publish all public procurement relevant laws, regulations, and policies online in a machine-readable format. ▪ Publish all procurement-related appeal applications and Court rulings (e.g., by the Administrative Chambers of the Provincial Court and the Supreme Court, the Court of Auditors, and the Constitutional Court). 	ST	SNCP-MINFIN-COURTS
<p>National Sustainable Public Procurement (SPP) Strategy</p> <p>The adoption and implementation of a National SPP strategy should be included as a Strategic Goal in the next multi-annual strategic plan for public procurement.</p>	ST	SNCP



SNCP will draft a National SPP Strategy with a roadmap and action plan containing specific, measurable, achievable, relevant, and time-bound (SMART) goals.		
<i>Institutional Framework and Management Capacity</i>		
▪ To grant SNCP the statute of an Independent Administrative Authority (see above legislative change of SNCP organic law needed)	ST	SNCP - MINFIN
▪ Feasibility study for implementing a transversal, cross-sector <u>central purchasing agency</u> , with a view to centralizing procurement of the main categories of works, goods, and services (top spenders) of common use within the public administration.	ST	SNCP
▪ Fully deploy the e-GP system (identification of gaps and development of an Action Plan including capacity building and change management components	ST	SNCP
▪ Adopt the Open Contracting Data Standard (OCDS)	ST	SNCP
▪ Promote an effective operationalization of the Procurement Units (“UCPs”)	ST	SNCP and Procuring Entities
▪ Implement a private sector-oriented capacity building programme.	LT	SNCP
▪ Conduct a study and legislative pack to allow for (i) the recognition of procurement as a profession, (ii) establish required qualifications (iii) develop a competences framework through a tailored training scheme and (iv) a staff performance appraisal model.	LT	SNCP and ENAPP
<i>Public Procurement Operations and Market Practices</i>		
Develop market research capacity and enhance procurement planning through the deployment of the e-GP	ST	SNCP
Promote engagement with Civil Society and take measures to promote transparency and competition	MT	SNCP and Procuring Entities
Conduct market analysis within the major spending sectors, aiming to enhance competition, sustainability, and innovation.	MT	SNCP and major spending sectors
<i>Accountability, Integrity, and Transparency of Public Procurement System</i>		
Develop training programs targeting civil society organizations and including content on procurement monitoring.	MT	SNCP – CSOs Representatives
Develop Integrity training programs targeting the public procurement workforce.	MT	SNCP
Setup of a web-based public monitoring mechanism to monitor and inform about (i) the adoption of corruption prevention plans by the procuring entities, (ii) relevant contents of audits, investigations and court decisions on practices related to corruption and fraud, (iii) practical application of the Practical Guide on "Risk management of corruption and related infractions in public procurement"	ST	SNCP – Attorney General Office – Court of Auditors – Min Justice



Undertake a critical study of the current system of hierarchical review and appeal, including the viability of creating an independent review body that is not involved or potentially involved with procurement transactions.	MT	SNCP
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6. Validation

Chapter 1 of the Report provides a chronology on all consultations and validation till November 10, 2022, when a second stakeholder validation workshop was organized. Before the stakeholder validation workshop, several consultations were held with SNCP and the Assessment Steering Committee, including in virtual mission meetings. In this mission and implementation -cum -validation mission, the Assessment Team presented the findings to key stakeholders and their feedback obtained and incorporated into the draft matrix and sent to SNCP/GoA in February 2023, followed by Draft Assessment Report including Executive Summary, Consolidated Recommendation and Action Plan on September 18, 2023. The validation workshop has broadly validated the assessment findings and recommended reform actions to address remaining challenges for the improvement of the quality and performance of the country's public procurement system. The revised report has also benefited from feedback and guidance from an African Development Bank internal quality assurance review. All the details on consultations are covered in Annex in Volume III of the Assessment Report. The following table provides the summary:

#	Description	Planned/Actual date
1	Semi Virtual Implementation-cum-validation Mission	27 July – 1 August 2022
2	Implementation-cum-Validation Mission (in person)	7 – 11 November 2022
3	Stakeholder Validation Workshop (in person)	9 November 2022
4	Draft Assessment Matrix (Volume II), in Portuguese sent to African Development Bank for first review	20 September 2022
5	Draft Assessment Matrix (Volume II), in Portuguese sent to SNCP and African Development Bank for second review	20 February 2023
6	SLA Mission to study the health sector	22 – 26 May 2023
7	Comments on the Matrix (in Portuguese) sent by SNCP/GoA	20 April 2023
8	Stakeholder dissemination)/SLA launch workshop (in person)	24 May 2023
9	Draft Assessment Report (Volume I) Assessment Matrix (Volume II), Draft SLA (Volume III), Draft SLA Matrix (Volume IV) and Annexes, in English, sent to SNCP/GoA for review	18 September 2022
10	Draft Assessment Report (Volume I) Assessment Matrix (Volume II), Draft SLA (Volume III), Draft SLA Matrix (Volume IV) and Annexes, in English, sent for peer-review to the African Development Bank	18 September 2022
11	Comments on Draft Report by peer reviewers from the African Development Bank	October 2023
12	Comments on the Draft Report from SNCP/GoA	October 2023
15	Revised Draft MAPS Report submitted to the Secretariat	November 2023
17	Certification by MAPS Secretariat	April 2024
18	Dissemination/ Publication of Final MAPS Report	Second Quarter 2024



Annexes/Appendices

Volume II – Indicators Matrix

Volume III – Health Sector Level Assessment Report

Volume IV – Health Sector Level Assessment Matrix

Volume V – Annexes

- Concept Note
- Questionnaire and Data Collection Form





MAPS

Methodology for Assessing
Procurement Systems

Indicator Matrix

ASSESSMENT OF REPUBLIC OF ANGOLA
PROCUREMENT SYSTEM

[NOVEMBER DE 2023]



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Pillar I. Legal, Regulatory, and Policy Framework

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

Sub-indicator 1(a) Scope of application and coverage of the legal and regulatory framework

The legal and regulatory body of norms complies with the following conditions:

Assessment criterion 1(a)(a):

Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.

Conclusion: No gap

Red flag: No

Qualitative analysis

Angola's legal system is well structured and the hierarchy of laws, as defined by the Constitution, is as follows:

- **Constitution of the Republic of Angola (CRA)**. According to Article 6(1) of the CRA the Constitution is the supreme law of the Republic of Angola. Article 6(3) states the principle of constitutionality by prescribing that "Laws, treaties and other acts of the State, local organs of power and public entities in general are only valid if they conform to the Constitution". The current Constitution represents the culmination of the constitutional transition process that began in 1991, with the approval by the People's Assembly, of Law nr. 12/1991 that enshrined multi-party democracy, guarantees of the fundamental rights and freedoms of citizens and the market economy system, through later changes deepened by the Constitutional Revision Law nr. 23/1992. The current Constitution was seen and approved by the Constituent Assembly on 21 of January of 2010 and, following the Constitutional Court Judgement nr. 111/2010, of 30 of January, came into effect on 3 February 2010.

- **Laws:** (i) Organic laws are the normative acts that regulate the internal organization and other relevant aspects of institutional character, such as, with interest for public procurement, the statute of the holders of sovereign and local government bodies [Article 164 (d)], the bases of the system of organization and functioning of local government [Article 164 (f)], and the organization of the courts and the statute of the judicial and prosecutorial magistrates [Art 164, (h)]; (ii) Basic laws are the normative acts that regulate the general bases of the organization of national defense [Article 164(i)] and the general bases of the organization, operation and discipline of the Angolan Armed Forces, public security forces and intelligence services [Article 164(j)] the bases for the regime and scope of the civil service, including the guarantees for the public administration, the statute of civil servants and civil liability of the public administration, the bases for the statute of public companies and public institutes [Article 165 (a) and (b)]; (iii) Laws, the other normative acts dealing with matters within the legislative competence of the National Assembly that do not have to take any other form, the most important example of which is Law nr. 41/2020, of 23 of December - Public Contracts Law (PPL).

- **Presidential Legislative Decrees** are normative acts issued to establish the organic structure and composition of the executive power as well as legislative acts authorized by the National Assembly; [Article 120, (e) and (i)].

- **Provisional Presidential Legislative Decrees** are normative acts when urgent and relevant reasons impose this form of protection of the public interest. Once issued, they are immediately submitted to the National Assembly, which may convert them into law, with or without amendments, or reject them. Provisional Presidential Legislative Decrees have the force of law [Article 126 (1) and (2)].

As far as **International Law** is concerned, Article 13 of the CRA prescribes that general or common international law received under the terms of the Constitution shall form an integral part of the Angolan legal system. International treaties and agreements duly approved or ratified shall come into force in the Angolan legal system after they have been officially published and have entered into force in the international legal system and for as long as they are internationally binding on the Angolan state.

Powers (to bind the Angolan state) in the area of conventional international law (in the form of the Vienna Convention on the Law of Treaties) are distributed between the President of the Republic and the National Assembly. Thus, it falls to the President of the Republic to sign and ratify, as appropriate, after approval, treaties, conventions, agreements and other international instruments (Article 121 (c) of the CRA), as well as to ensure compliance with laws and international agreements and treaties (Article 108 (5) of the CRA). The National Assembly shall be responsible for approving, for ratification and accession of the treaties, conventions, agreements and other international instruments relating to matters within its legislative competence, as well as treaties relative to the participation of Angola in international organisations, the rectification of borders, friendship, cooperation, defence and military affairs, and the withdrawal from treaties, conventions, agreements and other international instruments (Article 161(k) and (j) of the CRA).

Primacy is given to the Constitution under the terms of Article 6, under the heading "Supremacy of the Constitution and legality", "the Constitution is the supreme law of the Republic of Angola", and Paragraph 3 adds that "laws, treaties and other acts of the state, local government bodies and public entities, in general, are only valid if they conform to the Constitution". Raul Araújo and Elisa Rangel consider that "the norms of International Law, as long as they are approved by the constitutionally competent bodies, become part of the Angolan legal system, in a hierarchical position right after the constitutional norms and above the ordinary norms".

In the case of fundamental rights, the constitutional legislator seems to have been more far reaching in providing (in Article 26 of the CRA) that the fundamental rights established in the Constitution do not exclude any others contained in the applicable laws and rules of international law and that the constitutional and legal precepts relating to fundamental rights must be interpreted and integrated in

Pillar I. Legal, Regulatory, and Policy Framework

accordance with the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and international treaties on the subject, ratified by the Republic of Angola. In this case, international law takes precedence, even if only as a tool for interpreting other (national) norms.

The legal instruments that specifically regulate **public procurement** and **public contracts** are available in the Public Procurement Portal (<https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica>).

Gap analysis

Recommendations

Assessment criterion 1(a)(b):

It covers goods, works and services, including consulting services for all procurement using public funds.

Conclusion: No gap

Red flag: No

Qualitative analysis

The systematic distribution of the law's content, confirmed by the provisions specifically included in it, immediately reveals the Angolan legislator's concern with covering the broadest possible scope of public procurement.

Public Contracts Law 2020 (PPL)		
Stage	Systematic distribution of content in the law	
Public procurement general principles, key definitions	Title I	General provisions
Contract life cycle (From formation to implementation)	Title II	Types and Choice of Procedures (Methods) ¹
	Title III	Contract formation
	Title IV	Central Purchasing
	Title V	Performance of Public Works Contracts
	Title VI	Performance of Goods and Services Contracts
	Title VII	Public works and services concessions
Sanctions for non-compliance by bidders, candidates, or awardees	Title VIII	Penalties
Others	Title IX	Final and transitional provisions

The PPL applies to the formation and execution of public works contracts, lease or purchase of movable assets and acquisition of services entered into by a Procuring Entity. Incidentally, Article 5 of the PPL, in its definition of a services procurement contract, immediately includes consulting services: "d) Acquisition of Services - a contract whereby a Procuring Entity obtains a certain result from manual or intellectual work or consulting services, against payment of a price;". Some regulations contain special provisions when the object of the contract is the provision of consulting services, namely: Article 29 (c) of the PPL (choice of simplified procurement procedure for the formation of service procurement contracts); Article 45 (2) of the PPL (Types of parts - terms of reference) but there is no special procedure for this type of contract.

Gap analysis

Recommendations

Assessment criterion 1(a)(c):

PPPs, including concessions, are regulated.

Conclusion: No gap

¹ The meaning of the word "Procedure" and the expression "Procurement Procedure" in Angolan public procurement law is equivalent to the concept of "Procurement Method".

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Red flag: No

Qualitative analysis

Article 5 of the PPL offers the relevant definitions on: "f) **Public Domain Exploitation Concession** - contract by which the public partner transfers to a private party the management of goods of the public domain whose enjoyment and risks run on its account and, undertakes to provide benefits to interested parties; g) **Public Works Concession** - contract by which the contractor, the concessionaire, commits itself before a Procuring Entity, the grantor, to the execution or the conception and execution of a public works, in exchange for the exploration of that works, for a determined period of time and, if so stipulated, the right to the payment of a price; h) **Public Service Concession** - contract by which the co-contractor, the concessionaire, undertakes before a Procuring Entity, the grantor, to manage, on its own behalf and under its responsibility, a public service activity, for a certain period of time, being remunerated directly by the grantor or through the total or part of the activity granted; q) **Public-Private Partnership** - legal relationship constituted by a contract or a union of contracts, through which legal persons or private entities, designated as private partners, commit themselves, on a long term basis, before a public partner, for a consideration, to ensure the development of an activity tending to the satisfaction of a collective need in which the responsibility for the financing, investment, exploitation and associated risks incubate, in whole or in part, to the private partner;".

On the **applicability of the PPL** to these contracts, "Article 2(b) - **Scope of application** - stands out, stating that: 1. This Law shall apply (...) to the formation and execution of administrative concession contracts, namely concessions of public works, public services, exploitation of public domain and to the formation of contracts whose materialization is carried out through Public-Private Partnership;". Of great relevance, as regards the choice of the type of procedure Article 24 (5) of the PPL provides, that "In public procurement procedures tending to the execution of a concession contract the Public Tender or the Restricted Tender ("*Concurso Limitado por Prévia Qualificação*") must be adopted, regardless of the base value of the estimated investment". Title VII of the PPL Concessions of public works and public services (Articles 405 to 427) was introduced by the 2020 revision (Law nr. 41/2020, of 23 of December).

The **Law on Public Private Partnerships** (Law nr. 11/2019, of 14 May) states [Art. 14 (1)] that the choice of procedure for the formation of a Public Private Partnership contract must comply with the regime provided for in the Public Contracts Law and this law also governs the competence and functioning of the jury of the procedure [Art. 15 (3)].

Gap analysis

Recommendations

Assessment criterion 1(a)(d):

Current laws, regulations and policies are published and easily accessible to the public at no cost.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Legislation (primary and secondary): specific legislation on public procurement is accessible free of charge through the portal of the National Public Procurement Service (SNCP) <https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica>. However, access to legislation in general - published in the Official Journal ("*Diário da República*") - is difficult: (i) access to the paper version of the Journal is paid. The price of single issues varies according to their size (number of pages) and annual subscriptions cost: (i) The three series AOA: 1,675,106.04; The 1st series AOA: 989,156.67; The 2nd series AOA: 517,892.39 and the 3rd series AOA: 411,003.68. (ii) Online access to the Official Journal is not available through the Official Press single portal which is inaccessible <http://www.impresanacional.gov.ao/index.php?id=124> (iii) the overwhelming majority of legal texts published online - on the Jurisnet portal and specialized portals such as the SNCP - are stored as images, which causes enormous difficulties in their visualization and handling, particularly by legal professionals.

Policies: The Angolan Public Procurement Strategic Plan 2018-2022 (PECPA 2018-2022) is available on the Public Procurement Portal (PP Portal): <https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4x/mjev/~edisp/minfin1212819.pdf>

Gap analysis

In general, access to legislation is hampered by the fees charged for the printed edition of the Official Journal and the unavailability of its online version. Specifically with regard to public procurement legislation, it is noted that this is replicated on the MINFIN (17 files) and SNCP (20 files) websites, and the list of legal texts does not coincide. In addition, the versions presented are scanned documents in image format, which makes it difficult to consult them. Working with public procurement legislation is cumbersome.

Pillar I. Legal, Regulatory, and Policy Framework

Recommendations

- Make the online version of the Official Journal available on a National Printing House portal, with particular emphasis on the 1st and 3rd Series;
- Making legal texts available on the National Printing House Portal and in PP Portal in easily editable files (which will facilitate the work of legal operators, public Procuring Entities and interested parties and competitors).

Sub-indicator 1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criterion 1(b)(a):

Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.

Conclusion: No gap

Red flag: No

Qualitative analysis

Title II of the PPL (Types and Choice of procurement methods) comprises the necessary rules on the definition of the available methods and the legal requirements or conditions that must be met in order to choose each method of the PPL. The enumeration of the procurement methods is exhaustive, and it is not possible for the Procuring Entities (PEs) to use any other method or variant other than those foreseen in the law. With particular interest, Article 33 of the PPL (Decision for choice of procedure/ method), provides that: "1. The decision to choose the procurement method to be adopted in concrete shall rest with the authority competent for the decision to contract. 2. The decision referred to in the preceding paragraph shall always be reasoned, even if by reference to studies or reports that have been carried out for this purpose."

The choice is made (i) on the basis of the value of the contract [Article 23 (1) of the PPL], which is considered to be the standard choice criterion, or (ii) on the basis of material criteria (Articles 27 to 31 PPL).

The fixing of the contract value is fundamental for all situations that do not fall into any "material situation" that determines by itself the method to be adopted. As in the previous law (PPL of 2016), the estimated value of the contract is calculated in function of the economic value of all the goods, services or works which are the subject matter of the contract to be entered into and, when a lower value has not been fixed in the specifications, the base price corresponds to the lowest of the following values: a) the maximum value (threshold) of the contract that can be formed through the selected procurement method or b) the limit of the competence, fixed by law or by delegation of power, of the contracting authority to authorize the expenditure inherent to the contract to be entered into.

The PPL introduced two new norms in Article 23 with the purpose of making the fixing of the value more reliable: (i) the new paragraph 5 states that "The fixing of the estimated value of the contract must be based on objective criteria, using, principally, the reference prices of the service to be rendered or of the good to be supplied, practiced in the Republic of Angola, in order to guarantee transparency and to enhance competition;" and (ii) "In the event that there are no prices in the country for the service to be rendered or the good to be supplied, the fixing of the contract value may be based on the average unit costs of services of the same type, based on the costs practiced in the domestic and international market."

It should be noted that these criteria for fixing the estimated value of the contract must be taken into account in the preparation of the Annual Procurement Plan referred to in Article 442 of the PPL.

The Development of a Reference Price Database was foreseen in Strategic Objective (SO) 3.5 of the PECPA 2018-2022. Although its implementation was scheduled to be completed by 2019, so far, this has not happened, and therefore the provision of Article 23 (5) of the PPL cannot be complied with.

Gap analysis

Recommendations

Suggestion for improvement

A Reference Price Database, already foreseen in the PPL, should be developed in connection with the generalization of the use of e-GP. The use of e-GP-generated information (award price, price revisions, type of goods, services and works awarded, delivery place, etc.) is necessary to guarantee the provision of real-time information collected at affordable administrative costs (nearly zero if the necessary integration with e-GP platform is guaranteed). The data should be fed into the database without the interference of human action - automatic feed from the e-GP platform – and made public through an "online Public Contracts Price Index".

Assessment criterion 1(b)(b):

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The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPL states in Article 22 (1) that "(...) Public Contracting Authorities shall adopt one of the following procurement methods:

- a) Open Tender ("Concurso Público");
- b) Limited Tender ("Concurso Limitado por Prévia Qualificação");
- c) Restricted Tender ("Concurso Limitado por Convite");
- d) Direct award ("Contratação Simplificada");
- e) Electronic Dynamic Purchasing Systems ("Procedimento Dinâmico Electrónico");
- f) Emergency Procurement ("Procedimento de Contratação Emergencial").

GPA equivalent	Angola	Thresholds (AOA)	Minimum time limits*	Legal base
Open tendering	Open Tender (Concurso Público)	None	20 – 120 days	
	Limited Tender (Concurso Limitado por Prévia Qualificação)	None	Request for participation: deadline freely set by the PEs Proposal: 20 – 120 days	Request for participation: Art 125 PPL Proposal: Art 132 (2) (f); Art 65 of the PPL
	Electronic Dynamic Purchasing Systems (Procedimento de Aquisição Dinâmico Electrónico) ²	None	4 hours (up to 18.000.000 AOA) 3 days (up to 72.000.000 AOA) 10 days (up to 182.000.000 AOA)	Art 150 (1) of the PPL Art 150 (2) of the PPL Art 150 (3) of the PPL
Selective tendering	Restricted Tender (Concurso Limitado por Convite)	Up to 182,000,000.00 AOA	6 days	Art 136 (3) (d); 138 of the PPL
Limited tendering	Direct Award (Contratação Simplificada)	Up to 18,000,000.00 AOA	n.a.	Art 142 (2) (d)
	Emergency Procurement (Contratação Emergencial)	None	n.a.	Art 148 of the PPL

Article 24 (1), with the wording of the PPL, provides that it is "... mandatory the adoption of the Public Tender or the Limited Tender, regardless of the estimated value of the contract, except as provided in the following numbers." Due to the way it is written, the norm allows to consider that those methods are the "default methods". Paragraphs 2 to 4 of the same Article state the thresholds relating to the use of Restricted Tender, Direct Award and Electronic Dynamic Procedure. nr. 5 determines that concession contracts (all because the law does not distinguish according to the type of concession) are formed through Public Tender or Limited Tender.

Gap analysis

² Minimum of 4 hours when the estimated contract value is equal to or less than AOA 18 000 000.00, a minimum of 3 days when the estimated contract value is less than AOA 72 000 000,00 and a minimum of 10 days after publication when the estimated contract value is equal to or greater than AOA 182 000 000.00.

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Recommendations
Assessment criterion 1(b)(c): Fractioning of contracts to limit competition is prohibited.
Conclusion: No gap
Red flag: No
Qualitative analysis The expenditure to be considered in the contract formation "(...)" is the total cost with the execution of the respective contract, even if the price has to be liquidated and paid in instalments in accordance with the respective contractual clauses or with the applicable legal and regulatory provisions. The fractioning of expenditure with the intention of defrauding the rule of the unity of expenditure is prohibited. (Article 39 PPL).
Gap analysis
Recommendations
Assessment criterion 1(b)(d): Appropriate standards for competitive procedures are specified.
Conclusion: No gap
Red flag: No
Qualitative analysis From a " <i>law on the books</i> " perspective, the Angolan legislator has established, since the 2016 PPL, a model that privileges the use of the most competitive methods, which are the open tender and the restricted tender, framed in the WTO-GPA concepts of "open tendering" and "selective tendering", respectively. It does so by making the recourse to other methods (necessarily more restrictive and less competitive than those above) dependent on the verification of one of the following criteria (i) contract value (maximum thresholds for the choice of less competitive methods) and (ii) the so-called "material criterion", that is, concrete situations which, independently of the estimated value of the contract to be formed, authorise recourse to methods less competitive than open tendering and limited tender.
Gap analysis
Recommendations
Sub-indicator 1(c) Advertising rules and time limits The legal framework meets the following conditions:
Assessment criterion 1(c)(a): The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).
Conclusion: No gap
Red flag: No
Qualitative analysis – In the Open Tender : Article 67 (Tender notice) 1. The tender notice must be published in the Official Journal, Series III (OJ III), and in the Public Procurement (PP) Portal, prepared in conformity with the model in Annex IV of the Law, as well as in a newspaper with mass-circulation and the publicity of the tender can also be given through the posting of notices at the headquarters of the Entities of the Local Administration. It should be noted that the publication of the notice is compulsory in the OJ III, in the PP Portal and in a newspaper with large circulation and optional through the posting of notices. The publication of the notice in a mass-circulation newspaper in the country may only include the summary of the most important elements contained in the aforementioned Annex IV, provided the date of dispatch for publication in the Official Journal, address or, where applicable, the website or electronic platform of the Procuring Entity where the tender documents are available is indicated. Whenever, under the terms of Article 54, the participation of foreign natural or legal persons is admitted, the notice must also be replicated in a medium that demonstrably targets the international market.

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– In the **Limited Tender**: Article 117 (Notice), the notice is published in the OJIII and the PP Portal, prepared in conformity with the model in Annex VI of the PPL, as well as in a newspaper with mass circulation in the country, and can also be advertised through the posting of notices at the headquarters of the Local Administration Entities. The provisions of Article 67 (2) to (4) (on the Open Tender) apply to the Limited Tender.

How to deal with the lack of publication of the notice?

According to Article 448 (Subsidiary law), "In all matters that are not regulated in this Law, the remaining rules of administrative law shall be applied on a subsidiary basis and, in the absence of these, those of civil law. - Article 76 of the Rules of Procedure and Administrative Activity (NPAA), so this violation of express rule should imply the nullity of the procedure and of the contract that may be formed under those conditions."

Gap analysis

Recommendations

Assessment criterion 1(c)(b):

Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

General rules and open tender

Article 65 of the PPL, which by its systematic insertion can be considered to contain general rules on establishing timelines, states that the Procuring Entity establishes, in the notice and in the tender document or in the invitation, the date and time in which the deadline for presentation of bids ends, which must take into account the time necessary for its preparation, in function of the nature, characteristics, volume and complexity of the deliverables that constitute the subject matter of the contract to be signed. The Article states that the time limit for the presentation of bids shall be fixed reasonably, between twenty and one hundred and twenty days, in order to allow for its adequate preparation and effective competition. Although the interest in providing adequate time for the preparation of good bids makes it advisable to grant more extended deadlines rather than shorter ones, the possibility offered by the general regime of reaching one hundred and twenty (120) days - one-third of the annual budget execution period - seems exaggerated, especially if we also take into account another important principle of public procurement, i.e. the efficiency and the timely pursuit of the public interest. The practical application of this rule should be monitored in order to conclude whether it needs a legislative revision.

It is important to mention, on the positive side, that Article 51 of the PPL forbids that the rendering of clarifications, at the request of the competitors or at the initiative of the procuring entity, as well as the rectification of elements or data contained in the tender documents at the initiative of the procuring entity, exceeds the end of the second third of the deadline for the presentation of applications or bids, determining [(Article 51(3))] that the deadline set for the presentation of the applications or bids, depending on the case, must be extended, at least, by a period equivalent to the delay verified, if such occurs.

Limited Tender

Article 65 of the PPL is inserted in Chapter I (Common Provisions) of Title III (Formation of the contract). Therefore, it is inferred that it applies to all procurement methods unless a particular provision overrides it. The difficulty of interpretation arises from not stating, in the specific regulations for the restricted procedure (Chapter III of Title III), the deadline for submission of Requests for participation and the deadline for Submission of bids (by qualified candidates). Article 125 (Deadline for presentation of requests for participation) states that the Procuring Entity shall establish, in the notice and in the program for the procurement, the date and time of the deadline for presentation of requests for participation, which takes into account the time necessary for their preparation, depending on the technical and financial capacity requirements. Here the legislator, contrary to what it does in other methods, does not set any minimum or maximum time limit and attributes to the procuring entity a discretionary power limited only by the enunciation of a general principle, according to which, in setting the concrete deadline it must take into account the time necessary in light of the requirements demanded. In the absence of jurisprudence on public procurement in the country, the **concrete setting of** time limits for the submission of applications must be monitored with special attention and, in the event that the prevailing practice of imposing tight deadlines is verified, the recommended legislative revision should proceed with greater urgency.

Restricted Tender

Article 138 of the PPL determines that "the deadline for the presentation of the proposals cannot be less than six days from the date the invitation was sent."

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Article 139 (1) provides that “the clarifications and rectifications provided for in Article 51 may be made up to the day before the deadline for submission of tenders.” Article 139(2) states that “if this deadline is not met, the deadline for submission of bids must be extended by the same amount of time as the delay.”

Direct Award

Article 142 (1) of the PPL determines that “the sending of the invitation to bid shall be done through any written means and shall be registered in the Public Procurement Portal”. Article 142 (2) (d) establishes that “the invitation to present the proposal may only indicate the deadline date and time for the presentation of the bids, freely defined by the Procuring Entity;”

Emergency Procurement

Article 5 (m) and (n) of the PPL offer the following legal definitions:

"Emergency Contracting - public procurement procedure in which the Procuring Entity requests a natural or legal person to submit a proposal or invoice to address unforeseeable situations objectively qualified as emergencies, under the terms of this Law;" and PPL "Simplified Procurement - a public procurement procedure in which the Procuring Entity invites a natural or legal person to submit a proposal;".

Although the direct award and emergency procurement are autonomous, both in the (exhaustive) enumeration of Article 22(1), and in the heading of Chapter V (Direct Award and the Emergency Procurement) of Title III (Formation of the contract), Article 141 (Applicable regime) has a reductive wording since it omits the emergency procedure: "The Direct Award is governed, with the necessary adaptations, by the provisions that regulate the Restricted Tender in everything that is not incompatible with the provisions of the following articles. ". Nevertheless, taking into account the wording of the heading and body of Article 142 (Invitation), it seems to be accepted that 2(d) applies to both procedures mentioned in the heading of Chapter V, Title III and, therefore, to the emergency procurement.

GPA equivalent	Angola	Thresholds (AOA)	Minimum time limits*	Legal base
Open tendering	Open Tender (Concurso Público)	None	20 – 120 days	
	Limited Tender (Concurso Limitado por Prévia Qualificação)	None	Request for participation: deadline freely set by the PEs Proposal: 20 – 120 days	Request for participation: Art 125 of the PPL Proposal: Art 132 (2) (f); Art 65 of the PPL
	Electronic Dynamic Purchasing Systems (Procedimento de Aquisição Dinâmico Electrónico) 3	None	4 hours (up to 18.000.000 AOA) 3 days (up to 72.000.000 AOA) 10 days (up to 182.000.000 AOA)	Art 150 (1) of the PPL Art 150 (2) of the PPL Art 150 (3) of the PPL
Selective tendering	Restricted Tender (Concurso Limitado por Convite)	Up to 182,000,000.00 AOA	6 days	Art 136 (3) (d); 138 of the PPL
Limited tendering	Direct Award (Contratação Simplificada)	Up to 18,000,000.00 AOA	n.a.	Art 142 (2) (d)
	Emergency Procurement (Contratação Emergencial)	None	n.a.	Art 148 of the PPL

3 Minimum of 4 hours when the estimated contract value is equal to or less than AOA 18 000 000.00, a minimum of 3 days when the estimated contract value is less than AOA 72 000 000,00 and a minimum of 10 days after publication when the estimated contract value is equal to or greater than AOA 182 000 000.00.

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Gap analysis

Open Tender: the maximum time limit for submitting bids seems exaggerated. Nevertheless, this particular aspect should be monitored - with a relevant statistical series of at least two years on the average time limits set by PEs in this type of procedure and per estimated contract value - in order to assess the need for reformulation by amending the wording of Article 65(2) of the PPL.

(i) The formulation of the time limits applicable to the limited tender can be improved since the PPL is silent in the case of the deadline for the submission of applications. After monitoring this type of procedure - with a relevant statistical series of at least two years on the average time limits set by the PE in this type of procedure and per estimated value of the contract - the improvement of the wording should be considered by introducing legal time limits as stated for other methods. Note that the problem does not arise in relation to the time limit for presenting the bid in the limited tender procedure with prior qualification because, in this case, the legislator refers to Article 65 of the PPL.

(ii) There is no extension of time limits when an international bid is solicited.

Recommendations

i) and (ii): depending on the monitoring of the practical implementation for at least two years, consideration should be given to reviewing the relevant legal provisions [Article 62(2) of the CLP regarding time limits for submission of bids and Article 125 of the CLP regarding the deadline for submission of applications].

(iii) It does not seem justified a legislative change that would impose different deadlines in cases where foreign bidders may participate. However, in a system that accommodates domestic preferences and rules to promote national business, training PEs and increasing their sensitivity to issues related to international public procurement and competition is desirable. Instructions may be issued to encourage the adoption of more extended deadlines when the acquisition in question benefits from the participation of foreign bidders.

Assessment criterion 1(c)(c):

Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g., technological barriers).

Conclusion: No gap

Red flag: No

Qualitative analysis

The notice of the Open Tender must be published in the Official Journal, Series III, and on the Public Procurement Portal, prepared in accordance with the model in Annex IV of PPL, as well as in a newspaper with mass circulation in the country and the tender may also be advertised through the posting of notices at the headquarters of the Entities of the local government [Article 67 (1)] "The publication of the notice in a newspaper with mass circulation in the country may include only the summary of the most important elements contained in the annexes referred to in the previous number, provided the date of dispatch for publication in the Official Gazette is indicated. The elements referred to in the previous number must include the address or, when applicable, the website or electronic platform of the Procuring Entity where the procurement documents are available."

With particular importance concerning the opening of public markets to the exterior, Article 67(4) determines that "when the participation of foreign natural persons or legal entities is admitted, the announcement is, also, replicated in media which, demonstrably, carry the information to international markets."

Gap analysis

Recommendations

Suggestion for improvement

- Make the online version of the Official Journal available on a National Printing House Portal, with particular emphasis on the 1st and 3rd Series.

Assessment criterion 1(c)(d):

The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Conclusion: No gap

Red flag: No

Qualitative analysis

Articles 67 and 117 of the PPL define, with great rigor and extension, the mandatory content of the notices in the public tender (Annex IV of the PPL) and in the limited tender by prior qualification (Annex VI of the PPL) providing the information typically considered key for interested parties to decide to acquire the bidding documents (in which all the details must be made available).

The publication of the notice in a wide circulation newspaper in the country may include only the summary of the most important elements included in the annexes referred to in the previous number, provided that the date of dispatch for publication in the Official

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Journal is indicated. Among these elements, the address or, when applicable, the website or electronic platform of the Procuring Entity where the bidding documents are available must be included.

Gap analysis

Recommendations

Sub-indicator 1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criterion 1(d)(a):

It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions

Conclusion: No gap

Red flag: No

Qualitative analysis

The rules for participation set out in Section V of the PPL include provisions that protect or seek to favor domestic suppliers and domestic production (which constitute barriers to international trade) but are, in respect of Impediments (Article 56 PPL), disqualification for previous non-compliance (Article 57 PPL) and professional qualifications (Article 58 PPL) balanced and non-discriminatory.

Gap analysis

Recommendations

Assessment criterion 1(d)(b):

It ensures that there are no barriers to participation in the public procurement market.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

With regard to suppliers who are subject to Angolan law - natural and legal persons - the participation rules contained in the PPL are open and inclusive (see previous sub-indicator 1(d)(a), especially if the openness of participation is analyzed by assessing the extent of the impediments, a matter in which the Angolan system seems aligned with international practice.

Question: does Article 53 (Promotion of Angolan business) of the PPL apply when only foreign companies participate, or at least one? And when only Angolan companies bid? Does positive discrimination favoring MSMEs (micro, small and medium-sized enterprises) not operate when all are national?

The interpretative difficulty may stem from the fact that with regard to MSMEs, Article 53 of the PPL is designed for the situation where at least one foreign company participates in the procedure. The question then becomes, which provisions of the PPL offer preferential treatment to Angolan-law MSMEs when competing with other Angolan-law companies that are not MSMEs? Only Article 59(11) seeks to facilitate access for MSMEs (when not competing with foreign competitors) by exceptionally permitting the award of bids without the MSME submitting proof of its tax situation with the Angolan State, drawing attention to two important aspects:

- The first is that only the tax situation, and not the social security contribution situation, is covered by this rule;
- The second, perhaps more worrying, is that the legislator does not provide any criteria for assessing this regime's exceptionality and leaves excessive room for maneuvers (discretionary power) to the Procuring Entity.

Provisions regarding support for MSMEs are provided in the Law for the Promotion of National Entrepreneurship (Law nr. 14/2003 of 18 of July) and in the Law for Micro, Small and Medium Enterprises (Law nr. 30/2011 of 13 of September).

In public procurement procedures, Procuring Entities must:

- Set aside 25% of their budget to contract with Micro, Small and Medium Enterprises (MSMEs).
- Establish that Large Companies are obliged to subcontract MSMEs for at least 10% of the total amount in services contracts and 25% in works contracts.

What this law does not say is how these set asides are to be achieved either by improving the wording of Article 53 of the PPL or by adding, in the PPL, norms designed to promote the achievement of this objective of economic promotion (after the competent studies on the current situation have been carried out to understand if the set asides really have the potential to increase the participation of

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MSMEs in public markets or, if this can be considered a critical provision to be maintained if the principle of promoting competition (which is no less important), is considered.

- When foreign economic operators are involved, the PPL includes regulations designed to (i) protect and benefit Angolan companies and goods produced in the Southern African region, COMESA and SADC (Article 53 PPL) and (ii) to condition and restrict foreign companies' access to the national public market (Article 54 PPL). There are therefore barriers to international public procurement - international trade - to the extent that the access of foreign economic operators to national public market opportunities may face a relative disadvantage compared to national economic operators and/or local products (domestic preference): Its main features are as follows:

The bidding documents may contain rules aimed at promoting preferential contracting of national individuals or legal entities that are Micro, Small and Medium-Sized Enterprises (MSMEs) under the Angolan law:

At the negotiation phase, the bidding documents may establish rules of preference in the access to this phase for national competitors; In the awarding: (i) When the award criterion is the lowest price, a margin of preference can be established for the prices proposed by national competitors, up to 10% of the price proposed by foreign competitors; (ii) When the award criterion is that of the most economically advantageous tender, an increase of the global score attributed to the proposals of national competitors can be established up to 10% of that score.

With regard to the protection of national production and when the most economically advantageous tender criterion is adopted, the bidding documents may provide for the awarding of more scoring points to goods produced, extracted or harvested in Angola. In contracts where subcontracting occurs, they may impose that a minimum percentage of the value of the subcontracted services be reserved for national individuals or companies. Preferences assigned through the award criterion (lowest price: 10% of price; most economically advantageous tender: 10% in scoring points) and domestic production (local content), preferences may also be established in favour of bids from competitors who are nationals of or based in States belonging to the Common Market of Southern and Eastern Africa - COMESA or Southern African Development Community - SADC, or for goods produced, extracted or cultivated in those States.

Another explicit legal barrier is enshrined in Article 54 of the PPL. According to this rule, foreign natural or legal persons may only apply or submit proposals:

- in procurement procedures where the estimated value equals or exceeds that set out in Annex III of the PPL
AOA 500.000.00 for public works contracts
AOA 182.000.000 for goods and services contracts
- in Direct Award procedures, when this method is adopted for material reasons
- when, because of the technical nature of the services to be provided under the contract, it is reasonably foreseeable that no national natural or legal person can adequately perform the contract, and finally,
- in design contests, unless the Procuring Entity expressly restricts such participation in the Terms of Reference.

Foreign natural or legal persons are understood to be those not covered by the scope of application of the Law on the Promotion of National Entrepreneurship.

The Table below shows the distribution of suppliers registered in the Suppliers Portal, by size and nationality (in March 2022):

	Micro	Small	Medium	Large	Without information on size	Total
Foreign	25	42	29	49	71	216
National	847	1019	488	188	463	3005
Total	872	1061	517	237	534	3221

In the same vein as the aforementioned rules that seek to establish barriers to the access of foreign operators and/or products to the Angolan public market, Article 180 of the PPL also includes, among the guiding principles for the activity of the central purchasing bodies, preference for the acquisition of goods and services that promote the protection of national industry (...)

Gap analysis

When foreign economic operators are involved, the PPL includes regulations designed to (i) protect and benefit Angolan companies and goods produced in the Southern African region, COMESA and SADC (Art 53 PPL) and (ii) to condition and restrict foreign companies' access to the national public market (Art 54 PPL). There are therefore barriers to international public procurement – part of the international trade - to the extent that the access of foreign suppliers to national public market opportunities may face a relative disadvantage compared to national suppliers and/or local products (domestic preference).

Recommendations

A specific fact based study should be conducted by the Government to assess the economic impact of this barrier and, depending on the result, suggest the repeal of this legal provision (in case the barrier has no added value to the national economy and the country's public procurement system) or its modification in order to reduce the room discretion allowed to Procuring Entities by detailing the key terms and conditions governing the use of this protection measure e.g. definition of "locally produced goods and services", nationality of physical persons, maximum preference rate and how it is calculated in the framework of the award criterion/evaluation model, etc.

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The provisions of domestic and regional preference may be applied on a fit-for-purpose basis based on market conditions, as opposed to a one-size-fits-all approach. Such provisions shall not unduly undermine the core considerations of economy, efficiency, effectiveness, and equity and shall be informed by the National SPP strategy recommended under sub-indicator 3(a)(a).

In addition, Capacity Building programmes should include Training Modules on International Public Procurement and Sustainable Procurement.

Assessment criterion 1(d)(c):

It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The matter of eligibility is, at least in part, marked by the sanctioning regime, which may result in important restrictions to the participation in a certain procedure [situation that is evaluated by the Evaluation Committee and decided by the procuring entity in case of verification of impediment that determines the exclusion of a proposal that has been submitted by a competitor who is impeded as provided in Article 81 (1) (b)] or to the participation in any procedure for the duration of the sanction (in the cases foreseen in Article 9 (1) and 437 (1) (a) (b) of the PPL).

In the case provided for in Article 437 PPL the law does not refer to any procedural rule applicable, so it would be advisable to add this matter to the legal provision in force, thus avoiding the use of analogical application (to avoid in the field of sanctions).

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Systematic area in the PCL	Conduct / Offence	Layout	Sanction	(due) Processes
Ethics in contract formation (conduct of interested parties)	Practices: - corrupt - fraudulent - restrictive of competition - criminal - other ethically or socially reprehensible practices	Article 9 (1 – 2), PCL	Impediment to participate in public procurement procedures between 1 and 3 years	Article 9 (3 – 7), PCL
Rules for participation – Impediments and List of non-compliant companies	- serious or repeated breach of contractual obligations resulting in early termination of the contract - application of fines corresponding to more than 20% of the value of the contract in which the procedure	Articles 56 (1) (f) and 57, PCL	Impediment to participation in an ongoing public procurement procedure	Silent Note: given the gap in the law, and bearing in mind the risks of analogical in the domain of sanctions (which is evident in the situation underlying Art 9/3), the addition of an identical rule to Art 9/3 with a view to expressly regulating the process for imposing the sanction should be considered
Sanctioning regime (Impediment of participation due to breach of contract)	- breach of contract that has given rise in the last three years to the application of penalties that have reached the maximum applicable values; - a breach of contract that has resulted in two terminations of contract for breach of contract in the last three years	Article 437 (1) (a) (b), PCL	Impediment to participate in public procurement procedures for up to 1 (one) year	Silent Note: given the gap in the law, and bearing in mind the risks of analogical in the domain of sanctions (which is evident in the situation underlying Art 9/3), the addition of an identical rule to Art 9/3 with a view to expressly regulating the

According to Article 56 of the PPL, an interested party may not be a candidate or bidder, or be a member of any candidates' or bidders' consortium if:

- (a) is the object of a boycott by international and regional organizations of which Angola is a member;
- (b) is in a state of insolvency or bankruptcy, declared by a court decision, in the process of or are undergoing liquidation, dissolution or cessation of activity, subject to any preventive means of liquidation of assets or in any similar situation;
- (c) has been convicted of a crime affecting their professional conduct by a sentence that has the force of res judicata, if, in the meantime, their rehabilitation has not taken place, in the case of individuals or, in the case of legal persons, the members of their administrative, management or directorate bodies have been convicted of those crimes and they are in office until the sentence is enforced
- (d) has been subject to an administrative penalty for serious professional misconduct if, in the meantime, their rehabilitation has not occurred, in the case of natural persons or, in the case of legal persons, where such an administrative penalty has been imposed, the members of their administrative, management or directorate bodies, and they are in office until the completion of the penalty imposed on them;
- (e) have, in any capacity, directly or indirectly, provided advisory or technical support in the preparation and elaboration of the parts of the procedure, susceptible to distort the normal conditions of competition;

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(f) They are on the list drawn up by the SNCP referred to in the following article.

The so-called self-cleaning provided for in Article 56 of the PPL

The candidate or bidder that is in one of the situations referred to in subparagraphs c), d) and f) above - which does not apply to subparagraphs a), b) and e) - may prove that the measures taken by him are sufficient to demonstrate his suitability for the execution of the contract and the non-affectedness of the interests justifying those impediments, notwithstanding the abstract existence of a cause for exclusion, namely through:

- Demonstration that he/she has compensated or taken measures to compensate any damage caused by the criminal offence or misconduct;
- Full clarification of the facts and circumstances through active co-operation with the competent authorities;
- Adoption of technical, organizational and personnel measures that are sufficiently concrete and appropriate to avoid further criminal offences or misconduct.

Based on the elements referred to in the previous number, as well as the seriousness and specific circumstances of the infraction or misconduct committed, the Contracting Public Entity may take the decision not to consider the impediment as relevant, with the exception of final and conclusive judicial decisions.

The list of non-compliant companies

The regime of control and sanction of prior contractual non-compliance mentioned in Article 56(1)(f) is developed in Article 57 (List of non-compliant companies). The Procuring Entities shall send to the SNCP, annually or whenever necessary and requested, a detailed report indicating the Contractors, suppliers of goods or service providers, natural or legal persons who have committed a serious or repeated breach of contractual obligations that has resulted in early termination of the contract or the imposition of fines in excess of 20% of the value of the contract.

Article 56(2): After assessing the seriousness of the facts in the reports sent by the Procuring Entities, the SNCP draws up a list of natural or legal persons who have committed the situation in the preceding paragraph and publishes it on the PP Portal. SNCP is responsible for keeping the list referred to in the previous number up-to-date and remove any natural or legal person from it three years after their inclusion. The list above shall also include the natural or legal persons on which the sanction foreseen in Article 9(3) has been applied during the entire duration of the sanction. Repeated withdrawal of the proposal within the time limit set for its maintenance, including any automatic renewal, shall constitute an aggravating circumstance for inclusion in the list provided for in this article.

Article 56(6): After repairing the damage caused to the Procuring Entity, SNCP may remove the company from the list of defaulters, provided that the repair is through the refunding of the amounts or full provision of the services whose non-compliance motivated its inclusion on the list of defaulters and application of the fine provided for in this Law.

It should be stressed that SNCP may, under the terms of Article 437 of the PPL apply the sanction of prohibition of participation in public procurement procedures for one year to entities that are in any of the following situations: (a) Breach of contract that has given rise, in the last three years, to the application of sanctions that have reached the maximum applicable amounts; (b) Breach of contract that has been the subject of two sanctioning resolutions in the last three years based on the definitive breach of the contract due to a fact attributable to the co-contractor, in either of the situations of termination of the contract by the Employer or the grantor. Recidivism - whereby the economic operator attempts to participate in a procedure even though he is aware of the impediment - constitutes a very serious offence (Article 439 PPL).

The (due) process set forth by article 9 PPL

3. Without prejudice to other procedures, whether civil, administrative or criminal, to which it may give rise, interested parties who incur in any of the practices provided for in this article - corruption, fraud, practices restricting competition and criminal practices - may also be impeded from participating, for a period of one to three years, in other public procurement procedures and subject to the payment of a fine, based on the following criteria:

- (a) Gravity of the offence;
- b) Degree of culpability of the offender;
- c) Damage caused to the public interest;
- d) Recurrent nature of the transgression
- e) Economic and financial situation of the offender.

4. The application of the sanction provided for in nr. 3 above shall be preceded by a prior hearing of the alleged breaching party, which should be notified to present the factual grounds for ascertaining the material truth within eight days.

5. The instruction and decision of the processes of application of the impediment foreseen in the previous number, as well as the promotion of the inclusion of the sanctioned entity in the list referred to in number 2 of article 57, falls under the competence of the Body responsible for the Regulation and Supervision of Public Procurement (SNCP).

6. The decision by the Authority responsible for the Regulation and Supervision of Public Procurement may be challenged in Court.

Gap analysis

Further clarity and consistency on the procedural aspects related to the application of sanctions is needed. The reasons that determine the existence of minimum but express procedural rules in the case of article 9 (for situations related to the practice of corruption, fraud, restrictive practices of competition and other criminal practices) are the same that justify the insertion of identical provisions in the case of application of other sanctions, namely those mentioned in article 437 of the PPL.

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Recommendations

Add to Article 437 the procedural regime to be followed in the case of application of these sanctions, reproducing, at least, the equivalent content of Article 9 (4) to (7) inclusive.

Assessment criterion 1(d)(d):

It establishes rules for the participation of state-owned enterprises that promote fair competition.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There are no specific provisions in the PPL, nor in any other legislative act, regulating the terms and conditions for SOEs to participate in the public procurement market as bidders.

Legal provisions that discipline or limit state-owned enterprise (SOE) participation as bidders in public procurement processes offer several benefits, including promoting fair competition by preventing undue advantages, avoiding conflicts of interest and self-dealing, fostering private sector development, enhancing transparency and accountability, ensuring efficient resource allocation, holding bidders accountable for performance, and attracting foreign investment, ultimately contributing to a more efficient, transparent, and equitable procurement process while safeguarding public resources and encouraging economic growth.

Gap analysis

There are no specific provisions in the PPL, nor in any other legislative act, regulating the terms and conditions for SOEs to participate in the public procurement market as bidders.

Recommendations

Specific provisions need to be enacted to limit or establish the rules for the participation of SOEs.

Assessment criterion 1(d)(e):

It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.

Conclusion: No gap

Red flag: No

Qualitative analysis

The formulation of the rules of participation/eligibility of Section V of the PPL (Articles 53 to 58) is not, with the exception of barriers to foreign trade and protection of the MSME, restrictive and seems adequate to guarantee that suppliers participating in public procurement procedures(i) are not debarred nor excluded from participating and (ii) hold the appropriate professional qualifications in cases where the execution of contracts requires, under the law, a particular professional qualification. In the Limited Tender, specifically regulated in Articles 115 to 133 of the PPL, the following are worthy of note: (i) the requirement that the minimum technical capacity to be established in the tender program be adequate to the subject matter of the contract to be entered into, describing situations, qualities, characteristics or other factual elements relating to the candidates, particularly with respect to curricular experience, human, technical, functional or other resources, organizational capacity or environmental management.

The express prohibition [(Article 120 (2)] of the Procuring Entity establishing any minimum technical capacity requirements that prove to be discriminatory or capable of preventing, restricting or distorting competition must be emphasized. This is a matter that must be specifically monitored with a statistical analysis covering at least two years of practice.

In the Dynamic Electronic Purchasing System, the interested parties are considered eligible to participate in the procedure if they are duly Registered or Certified in the Public Procurement Portal as being a supplier of the State (Article 149 of the PPL).

In the Design Contests⁴, and when the Limited Tender is chosen (it can also be done through Open Tender), the minimum requisites of technical capacity must be adequate to the nature of the conception works intended and must be fixed in a non-discriminatory way. The terms of reference detail the specific professional qualifications that the competitors must hold, if applicable.

⁴ Design Contest is a special procedure (placed in the PLC Chapter that deals with "Special procurement rules) that allows the Procuring Entity to select one or more design works, conceived in the fields of art, land use, urban planning, architecture, civil engineering or data processing. The Design Contest follows the procedure of Public Tender or Limited Tender.

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Gap analysis
Recommendations
Sub-indicator 1(e) Procurement documentation and specifications The legal framework meets the following conditions:
Assessment criterion 1(e)(a): It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.
Conclusion: No gap
Red flag: No
Qualitative analysis The PPL lists in its Article 45 the bidding documents required for each procedure/method: <ul style="list-style-type: none">– Open Tender — the notice, tender programme and specifications;– Limited Tender — the notice, tender programme, specifications and invitation to tender;– Restricted Tender — the invitation to tender and specifications;– Direct Award — the invitation to tender and specifications;– Electronic Dynamic Purchasing System — the notice.– Emergency Procurement — the emergency request. <p>When the subject matter of the contract is the Acquisition of <u>Consulting Services</u>, as well as in the case of tendering for design works, the tender programme and the tender documents are replaced by the Terms of Reference.</p> <p>In case of divergence, the provisions of the tender program take precedence over any non-compliant provisions contained in the notice or the invitation in the Limited Tender.</p> <p>The definition and requirements of each bidding document are set out in the following provisions:</p> <ul style="list-style-type: none">– Notice (Article 67) and the Tender Programme (Article 46) for the Open Tender;– Specifications (Article 47) - The Presidential Decree nr. 201/2016, of 27 of September, approved the standard Specifications (“Caderno de Encargos”), and assigned the SNCP the obligation to keep them up to date and available on the PP Portal, whichever is the case;– Invitation to tender (Article 48);– Notice - Article 117 of the PPL and Article 67 (2) to (4) of the PPL for the Limited Tender;– Invitation to Tender (Article 132) for the Limited tender. <p>The rule on consultation and provision of bidding documents (Article 69 of the PPL) is worthy of note: The bidding documents must be available for consultation by interested parties at the procuring entity's premises as indicated in the notice, during the respective working hours and until the end of the period set for the presentation of bids, and also on the electronic platform of the Procuring Entity, when this is used in the bidding procedure.</p> <p>The supply of the bidding documents may be free of charge or paid for. Under the terms of Article 69 (6) of the PPL the maximum fees to be charged by the procuring entities for the supply and downloading of the bidding documents are set by a normative act of the President of the Republic - currently, Presidential Decree nr. 196/2016, of 23 of September.</p> <p>The Procuring Entity must use the criterion of the estimated value of the contract and the cost of preparing the bidding documents. The fee should be set in an amount up to 0,05% of the estimated value of the contract and must not exceed the value corresponding to AOA: 250,000.00 (two hundred and fifty thousand kwanzas). The fee for acquiring the bidding documents is published in the tender notices.</p>
Gap analysis
Recommendations
Assessment criterion 1(e)(b): It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.

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Conclusion: No gap
Red flag: No
Qualitative analysis <p>The PPL sets out in great detail the way in which technical specifications should be formulated, starting with Article 50 (1) of PPL which establishes that they must be included in the terms of reference and be stated in such a way as to allow competitors to participate under equal conditions and to promote competition. Although the expression "functional specifications" is not used in the law, these can be considered covered by the wording of Article 50 (2), according to which the technical specifications define the characteristics required of a product, namely the levels of quality or use, safety, dimensions, including the requirements applicable to the product in terms of terminology, symbols, tests and test methods, packaging, marking and labelling and which allow a material, a product or a good to be objectively characterized in a manner corresponding to the use for which it is intended by the Procuring Entity.</p> <p>Corroborating this understanding, according to which functional specifications may be introduced, are the provisions of Article 388 of the PPL, which is contained in a Chapter on Specific Provisions relating to contracts for the acquisition of movable goods and according to which "The contract for the Acquisition of Movable Goods may have as its object the Acquisition of Movable Goods already existing or of goods to be manufactured or adapted at a time subsequent to the conclusion of the contract, in accordance with the characteristics, specifications and technical, <u>functional</u> or other requirements set by the Procuring Entity in the specifications".</p> <p>Technical specifications can be defined by reference to national or foreign standards. They are defined by reference to national technical specifications related to the design and use of products, where these exist, or "other documents", in particular, and in order of preference, national standards transposing already accepted international standards, other national standards or internal technical approval conditions, or any other standard.</p> <p>Without prejudice to the provisions of paragraphs (1) and (2)(d) of Article 53 of the PPL [local content - see above indicator 1(d)(b)], it is not permitted to include technical specifications that mention products of a given manufacturer or provenance or mention particular manufacturing processes whose effect is to favor or eliminate certain companies or products, and it is also prohibited to use brands, patents, or types of brand, or to indicate a particular origin or production, except when it is impossible to describe the specifications, in which case it is permitted to use those, accompanied by the expression "or equivalent".</p>
Gap analysis
Recommendations
Assessment criterion 1(e)(c): <p>It requires recognition of standards that are equivalent, when neutral specifications are not available.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis <p>Refer to 1 (e) (b).</p>
Gap analysis
Recommendations
Assessment criterion 1(e)(d): <p>Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing).</p>
Conclusion: No gap
Red flag: No
Qualitative analysis <p>Clarifications necessary for the good understanding and interpretation of the bidding documents must be requested by the interested parties, in writing, by the end of the first third of the deadline fixed for the presentation of proposals or bids and must be provided in writing by the end of the second third of the same deadline. The competent body for the contracting decision can also, on its own</p>

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initiative, until the end of the second third of the timeline set for the presentation of proposals or bids, correct the elements or data contained in the bidding documents until the end of the second third of the timeline set for the presentation of proposals or bids. When the clarifications or rectifications are communicated after the deadline established for this purpose, the deadline set for the presentation of the applications or the bids, depending on the case, must be extended by at least the same period of time as the delay. The clarifications and rectifications must be immediately added to the bidding documents that are available for consultation and, when in use, made available on the electronic platform of the Procuring Entity, and all interested parties who have acquired or downloaded them must be promptly notified of that fact.

The clarifications and rectifications become an integral part of the bidding documents, prevailing over them in case of divergence. (Article 51 of the PPL).

Gap analysis

Recommendations

Sub-indicator 1(f) Evaluation and award criteria The legal framework mandates that:

Assessment criterion 1(f)(a):

The legal framework mandates that the evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.

Conclusion: No gap

Red flag: No

Qualitative analysis

- The award criteria are objective because the factors and sub-factors that densify the criterion of the most economically advantageous tender must relate to the subject matter of the contract. Also, Article 82 (3) of the PPL determines that the factors and possible sub-factors which reflect the criterion of the most economically advantageous proposal cannot directly or indirectly refer to situations, qualities, characteristics or other factual elements relative to the competitors, with the exception of the provisions relative to "local content" and "domestic preference" of Article 53 (2)(c) to (e).
- The award criteria shall be specified in the bidding documents. In Open Tender, they must be set out in the Tender Programme: PPL Article 68 (1)(m) and (p); in Limited Tender, they must be set out in the Tender Programme and the Invitation: Article 118 (1)(f) and (i) and Article 136 (3) (h) and (i).
- In accordance with Art 82 (1) of the PPL, the bids for which there are no grounds for exclusion are evaluated according to (and only according to) the award criteria established in the bidding documents. Therefore, the award decision is made (and can only be made) exclusively on the basis of the award criteria set out in the bidding documents.
- On the "lowest price" criterion and its "demonisation": the choice of this award criterion does not necessarily mean that non-price aspects, for example, factors related to quality or environmental or social sustainability, cannot be considered. In this case, these (non-price) aspects should be included in the technical specifications and not be subject to scoring. These are evaluated based on pass/fail criteria. Therefore, rather than demanding a greater demand from the letter of the law, it is worthwhile continuing to work, through training programmes, with the Procuring Entities and the organisations representing companies, to promote the use of the criterion of the most economically advantageous tender and also the insertion of some aspects related to quality and environmental and social aspects at the level of the technical specifications (not submitted to competition).

Notes on the 2020 reform (vis-à-vis the 2016 PPL):

The current PPL Article 82(2)(a) succeeds Article 84(2)(a) of the 2016 PPL. While the latter referred to "The most economically advantageous tender, which may take into account, among other factors (...) the degree of impact on public health, social welfare or the environment", the current wording reproduces *expressis verbis* article 75(2)(d) of the Portuguese Public Procurement Code in the version that resulted from the amendment introduced by DL nr. 111-B/2017, of 31 of August, which transposed Directive 2014/24/EU of the European Parliament and of the Council on public procurement: "d) Environmental or social sustainability of the way the contract is executed, namely in terms of transport time and making the product or service available, especially in the case of perishable products, the designation of origin or geographical indication, in the case of certified products, (...)

The Angolan legislator did not include express rules from which the concept of "evaluation factors and sub-factors" could be extracted, which are the elements of evaluation that densify the evaluation criteria. It must be borne in mind that the model followed - Portuguese and European public procurement law - regulates these matters in detail intending to limit the Procuring Entities' room for manoeuvre.

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Article 82 (Evaluation of bids and award criteria) of the PPL:

1. The bids for which there are no causes for exclusion shall be evaluated according to the awarding criteria established in the bidding program.

2. The awarding criteria may be:

(a) the most economically advantageous tender, which may take into account, objective factors such as:

i. Quality, namely technical value, accessibility, conception for all users, social, environmental and innovative characteristics and supply conditions;

ii. After-sales service and technical assistance and delivery conditions, namely the delivery date, the delivery process or execution and the time for providing assistance;

iii. Environmental or social sustainability of the way the contract is executed, namely in what concerns the time of transport and availability of the product or service, especially in the case of perishable products, and the denomination of origin or geographical indication, in the case of certified products;

iv. Number of new jobs to be created by the end of the contract.

b) The one with the lowest price.

3. Without harming the provisions in paragraphs c) to e) of nr. 2 of article 53, the factors and eventual sub-factors that materialize the criterion of the most economically advantageous proposal cannot refer, directly or indirectly, to situations, qualities, characteristics or other factual elements relative to the competitors.

Gap analysis

Recommendations

Assessment criterion 1(f)(b):

The legal framework allows the use of price and non-price attributes and/or the consideration of life cycle cost as appropriate to ensure objective and value-for-money decisions.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

There is no reference in the PPL to "*life cycle cost*" (as in Directive 2014/24/EU of the European Parliament and of the Council on Public Procurement and in the Portuguese Public Procurement Code [see Articles 49(2) and 75 (4),(5), (7) and (8)]).

In the absence of an express legal provision, can a Procuring Entity use "life cycle cost" as an evaluation factor in the framework of the most economically advantageous tender? The answer is: **yes**, but it incurs risks related to (i) insufficient detail on proposal evaluation models - evaluation factors and sub-factors - and (ii) the absence of a framework that guarantees a non-discriminatory application. See, by way of example, the regulation of the matter made by the Portuguese Public Contracts Code (2017): "7 - Where cost is calculated on a life-cycle basis, the tender evaluation model may cover costs incurred or not incurred by the contracting authority, such as: (a) costs related to the procurement itself; (b) usage costs, such as consumption of energy, consumables and other resources; (c) maintenance and technical assistance costs; (d) end-of-life costs, such as collection and recycling costs; (e) costs that are allocated to environmental externalities linked to the good, service or work during its life cycle, provided that its monetary value can be determined and confirmed, which may include the cost of greenhouse gas emissions and other pollutant emissions, as well as other climate change mitigation costs. 8 - When the tender specifications submit to the competition the life cycle costs of the object of the contract to be signed, the procedure programme or invitation must indicate the methodology that will be used to calculate them. 9 - The methodology referred to in the previous number, when applied for calculating the costs referred to in paragraph 7(e), must also be based on rules that are objectively verifiable and non-discriminatory, allowing for the data to be supplied by the competitors to be obtained by them through reasonable effort.

Similar rules are required in Angolan public procurement law to make the use of life cycle costing safe to use.

Gap

analysis

The lack of a specific legal regime setting the conditions and requirements for using the LFC method may induce discriminatory and competition-reducing practices. **There is a significant gap in the legal system regarding the regulation and oversight of use of life cycle costing in public procurement. A Red Flag is assigned because addressing this gap requires a legislative amendment.**

Recommendations

A comprehensive and detailed set of legal provisions regarding the life cycle costing should be added, to regulate its use in public procurement and **safeguard** fair and wide competition. **Such set of legal provisions should cover** but not limited to the following topics: (i) establishing transparency requirements for the calculation and reporting of life cycle costs; (ii) defining standard methodologies to ensure consistency in cost calculation; (iii) incorporating environmental impact assessments, including factors like energy consumption and waste generation; (iv) considering the social impacts, such as labour practices and community effects; (v) ensuring regulatory compliance with safety, environmental, and labour laws; (vi) clarifying cost allocation and responsibility, especially

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in shared or transferred ownership scenarios; (vii) providing guidelines or incentives for sustainable practices to reduce environmental impact and overall costs; (viii) setting up regular audit and review mechanisms for adherence to life cycle costing principles; (ix) outlining dispute resolution mechanisms related to life cycle costing; and (x) including provisions for responsible end-of-life management, such as disposal, recycling, or repurposing of materials.

Assessment criterion 1(f)(c):

The legal framework mandates that quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There are no specific provisions regarding the assessment of technical capacity in the formation of consultancy service contracts.

Gap analysis

There are no specific provisions regarding the assessment of technical capacity in the formation of consultancy service contracts.

Recommendations

Provisions regarding the evaluation of proposals for consulting services should be included at the first opportunity.

Assessment criterion 1(f)(d):

The legal framework mandates that the way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.

Conclusion: No gap

Red flag: No

Qualitative analysis

Yes, the bidding documents, namely the Programme (in the public tender and in the selective tender), must establish the award criteria and the respective factors and sub-factors to be applied.

Gap analysis

Recommendations

Assessment criterion 1(f)(e):

The legal framework mandates that during the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

Conclusion: No gap

Red flag: No

Qualitative analysis

The officials and agents of the Procuring Entity involved in the planning, preparation or execution of public procurement procedures or in the execution of public contracts, as well as the members of the Evaluation Commission, (Article 8 (f) of the PPL) must maintain secrecy, treating as confidential all information obtained within the scope of the procedure of which they become aware, except as otherwise provided by law.

On a different level, the Evaluation Commission can ask the bidders any clarifications about the proposals that it considers necessary for its analysis and evaluation and these clarifications, when given, need to be notified to all the competitors (see Article 80 of the PPL).

Gap analysis

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Recommendations
Sub-indicator 1(g) Submission, receipt, and opening of tenders The legal framework provides for the following provisions:
Assessment criterion 1(g)(a): Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.
Conclusion: No gap
Red flag: No
Qualitative analysis In accordance with Article 70 of the PPL, immediately following the expiration of the deadline for submission of bids, the Evaluation Committee proceeds, in a public session, to the opening of the envelopes referred to in Article 63 or, in the event the Procuring Entity has chosen electronic receipt of the bids, to their decryption, downloading and opening as referred to in Article 64. For justified reasons, the public session of the bid opening can take place within ten days after the one indicated previously, on a date determined by the Procuring Entity. The alteration of the date of the public act must be immediately communicated to all interested parties who purchased the bidding documents and published by the means that the Procuring Entity deems most appropriate, and a copy of the act of the decision for the alteration must also be attached to the documents.
Gap analysis
Recommendations
Assessment criterion 1(g)(b): Records of proceedings for bid openings are retained and available for review.
Conclusion: No gap
Red flag: No
Qualitative analysis Minutes of the public session proceedings are signed by all the effective members of the Evaluation Committee and may also be signed by the bidders, or their representatives present in the session [Art 70 (6)]. The guarantees for the competitors are assured through the possibility of a hierarchical appeal of the Evaluation Commission's deliberations about the complaints made during the public session. The interested party can appeal to the holder of the competent Ministerial Department, when the contract is to be celebrated by the State or to the maximum body of the Procuring Entity, in the remaining cases. It has to be filed within five days counted from the date of the delivery of the minutes of the bids opening session. (Article 78 of the PPL).
Gap analysis
Recommendations
Assessment criterion 1(g)(c): Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.
Conclusion: No gap
Red flag: No
Qualitative analysis Both paper and electronic tenders have clear provisions regarding the security and inviolability of tenders before the deadline for opening them.
<u>Paper-based bids</u>

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If the Contracting Public Entity chooses to submit proposals on paper, the documents that constitute the proposal must be presented in an opaque and closed envelope on the front of which must be written the word "Proposal" and the name or denomination of the competitor. In this envelope a duplicate of each of the documents that constitute the proposal must be included. In the case of the presentation of variant proposals, each one must be presented in an opaque, closed and sealed envelope, on whose face must be written "Variant Proposal" and the name or denomination of the competitor. These envelopes must, in turn, be kept in another opaque, closed and sealed envelope, on the face of which the name of the procedure is identified. (Article 63 of the PPL).

Proposals in electronic format

The Procuring Entity may impose, under the terms established in Article 132 (2) (e), that the proposals be presented in an electronic platform, as long as it guarantees that they can only be opened after the deadline for their presentation. (...). The terms for the submission and receipt of bids shall be defined by a specific normative act of the President of the Republic. (Article 64 of the PPL)

Gap analysis

Recommendations

Assessment criterion 1(g)(d):

The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

As far as secrecy and confidentiality at the contract execution phase is concerned, Article 355 of the PPL stipulates a duty of secrecy in both directions, that is, not only of the sensitive information of the co-contractor but also of the procuring entity itself. This is clear from its wording: "The Procuring Entity and the co-contractor shall keep secret any matter subject to secrecy, under the law, to which they have access in the execution of the contract. Also within the framework of the execution of the contract and in relation to the technical supervision powers held by the procuring entity, the law expressly provides for the guarantee of respect for professional or commercial secrets and other legally protected information: Article 366(2) provides that "Without prejudice to the guarantee of professional or commercial secrecy and the regime applicable to other information protected by law, the supervision is limited to aspects that immediately relate to the manner of execution of the contract, and may be carried out, namely, by means of inspection of premises, equipment, documentation, computer records and accounting, by means of measurements of the state of progress of the works or requests for information".

There is, however, no express provision on the guarantee of confidentiality and non-disclosure of business secrets and other legally protected information of the tenderer or the proposal submitted by the tenderer (at the tender submission and evaluation stages). The PPL can be improved with the addition of this mention to the classification of documents and information of the proposals like "for reasons of commercial, industrial, military or other secrecy, the interested parties may request, until the end of the first third of the period set for the submission of the proposals, the classification, in accordance with the law, of documents which constitute the proposal, for the purposes of restricting or limiting access to them to the extent strictly necessary (...)".

Gap analysis

There is no express provision on the guarantee of confidentiality and non-disclosure of business and industrial secrets and other legally protected information related to the tenderer or the goods or services described in the proposal submitted by the tenderer as a legitimate exception to the rule of full disclosure that derives from the principle of transparency. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Recommendations

Add a provision to the PPL mentioning the classification of documents and information in the proposals e.g.: "...for reasons of commercial, industrial, military or other secrecy, the interested parties may request, until the end of the first third of the period fixed for the submission of the proposals, the classification, in accordance with the law, of documents which constitute the proposal, for the purposes of restricting or limiting access to them to the extent strictly necessary (...)".

Assessment criterion 1(g)(e):

The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.

Conclusion: No gap

Red flag: No

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Qualitative	analysis
There are two modalities for the delivery of proposals: on paper, according to the regime foreseen in Article 63 of the PPL, and in electronic form as foreseen in Article 64 of the PPL.	
Gap analysis	
Recommendations	
Sub-indicator 1(h) Right to challenge and appeal The legal framework provides for the following:	
Assessment criterion 1(h)(a):	
Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	
Conclusion: No gap	
Red flag: No	
Qualitative analysis In Chapter IV (Administrative Challenges) of Title I (Articles 14 to 21), the PPL provides for administrative challenges of any acts undertaken in the context of the formation and execution of public contracts (which may harm the legally protected interests of individuals) and determines that decisions rendered on administrative challenges are subject to judicial review (Article 21 of the PPL). The lodging of a challenge has no suspensive effect, except at the stages of the qualification decision, the electronic auction, the negotiation, the award decision, and the conclusion of the contract, if the decision has not yet been taken or the time limit has not yet expired. The law also provides for complaints, hierarchical appeals, and the so-called improper hierarchical appeals (in the case of appeals, it is mandatory that the decision be communicated to SNCP).	
<u>Applicable law</u> O Article 14 of the PPL states that "the administrative challenge of acts practised in the scope of the formation and execution of public contracts is governed by this chapter and, subsidiarily, by the provisions of the Rules of Administrative Procedure".	
<u>Acts which may be challenged</u> Any acts performed by the Procuring Entity within the scope of the procedures covered by this Law which may harm the legally protected interests of private parties are susceptible to administrative challenge. [Article 15(1)(2)], including the possibility of directly challenging any bidding document. The complaints lodged in the bids opening session, as well as the hierarchical appeals lodged against the decisions of the Evaluation Committee deciding on those complaints, are "mandatory" insofar as lodging is a necessary prerequisite for recourse to the courts. The remaining administrative appeals are optional. [Article 15(3)(4)].	
<u>Deadline for challenges</u> With the exception of challenges filed in the public bids opening session, administrative challenges must be filed within five days counted from the notification of the act to be challenged unless another deadline is stipulated in the Law (Article 16 of the PPL) and shall not, as a rule, have suspensive effect. However, while they are pending a decision, the procuring entity may not proceed with the qualification decision or with an electronic auction, negotiation, award decision or execution of the contract (Article 18(2) of the PPL).	
<u>Decision on challenges</u> Administrative challenges must be decided within five days of the date they are filed, and any silence is equivalent to acceptance, which is a special rule compared to the general rule of tacit acceptance set out in Article 58 of the Rules of Procedure and Administrative Activity and increases the pressure on the procuring entity for a timely decision. Where there is a hearing of counter-interested parties, the deadline for the decision is counted from the end of the deadline set for that hearing. [Article 20(1)(2) PPL]. Article 20(3)(4) has established a sanctioning mechanism that inspires concern. The law provides:	
"(...) 3. The interested entities that, in <u>bad faith</u> , resort to administrative challenges, rendering any phase of the procedure inoperative, shall be impeded from participating in any public procurement procedure for a period of <u>up to three years, to be determined in accordance with, namely, the seriousness of their conduct, the estimated value of the contract and the damages caused.</u> 4. The competence to conduct and decide the processes of application of the debarment foreseen in the previous number is of the <u>Body responsible for the Regulation and Supervision of Public Procurement.</u> " (SNCP).	
Although there is still no practical experience of applying these provisions, it is important to point out that we are in the field of constitutional guarantees for citizens and companies to challenge unfavorable decisions, and it is highly unlikely that the practical situations that occur in public procurement, and the way in which they are alleged by interested parties and their representatives, could constitute situations of "bad faith". Furthermore, this power is attributed to an entity that despite having some material regulatory	

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powers (e.g., sanctioning powers) does not even have the status of an Independent Administrative Entity. The sensitivity of the matter requires, within the framework of the Angolan public procurement system, a different solution, perhaps chosen from among two alternatives: (i) revocation of the provision or (ii) if there is legitimate motivation and full proof that the situation that is intended to be regulated in this manner affects the performance of the system in a critical manner, the granting of such power to the judicial system (i.e., the courts).

Furthermore, as administrative appeals do not have a suspensive effect, it is difficult to see how a challenge, even if brought with the implicit or explicit aim of attacking the legality of the procedure, can be such as to render the procedure or a stage thereof inoperative or cause any harm. In such situations, it would seem that a mere dismissal would be sufficient.

PPL, in its Article 3, the PPL includes the "principle of good faith" and, although it rightly starts by stating that "the general principles arising from the Constitution must be respected", it does not detail on how the principle applies in this context. We must therefore bear in mind that both Article 200 of the CRA, which grants citizens the "right to be heard by the Public Administration in administrative processes that may affect their legally protected rights and interests" and Article 100 of the Rules of Procedure and Administrative Activity which states that "individuals have the right to request the revocation or modification of administrative acts, under the terms laid down in this law", do so without an a priori relatively intimidating conditioning.

Decisions made on administrative appeals are subject to judicial review in accordance with the law (Article 21 PPL).

Other legal acts relevant to the review of decisions are:

- Law nr. 2/1994, of 14 of January, which approves the Law on the Challenges to Administrative Acts (LIAA)
- Decree-Law nr. 16-A/1995, of 15 of December, which approves [the Law of] Rules of Procedure and Administrative Activity (LNPA)
- Decree-Law nr.4-A/1996, of 5 of April, that regulates the Administrative Procedure (RPCA)
- Law nr. 8/1996, of 19 of April, on the Suspension Administrative Act (LSEAA)

Gap analysis

Recommendations

Assessment criterion 1(h)(b):

Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.

Conclusion: No gap

Red flag: No

Qualitative analysis

Taking into account the tradition of the Angolan legal system, as well as the existence of mechanisms for reviewing decisions - (i) before the body that made the decision (ii) by appeal to their hierarchical superior in the case of rejection by the latter (iii) and to the courts both through appeals described in (i) and (ii) or directly - there is no need to introduce yet another body whose added value is not apparent.

Guide Enactment of the UNCITRAL ML:

Chapter VIII of the Model Law contains the provisions aimed at ensuring an effective challenge mechanism, and enacting States are encouraged to incorporate all the provisions of the Chapter to the extent that their legal system so permits. They comprise a general right to challenge (and to appeal a decision in a challenge proceeding), an optional request to the procuring entity to reconsider a decision taken in the procurement process; a review by an independent body; and/or an application to the court. However, the Model Law does not impose a specific structure on the system. (...) legislation for challenge procedures needs to be drafted in a manner consistent with the legal tradition in the enacting State concerned.

*In general terms, an effective mechanism involves *the possibility of intervention without delay; *the power to suspend or cancel the procurement proceedings and to prevent in normal circumstances the entry into force of a procurement contract while the dispute remains outstanding; *the power to implement other interim measures, such as giving restraint orders and imposing financial sanctions for non-compliance; *the power to award damages if intervention is no longer possible (e.g. in some jurisdictions, after the contract is awarded); and the ability to proceed swiftly within a reasonably short period of time, which should be measured in terms of days and weeks in the normal course. The mechanism, in order to be effective, must include, at least, one body to hear a challenge as a first step and a further body to hear an appeal as a second step.*

first alternative, an application for reconsideration may be presented to the procuring entity itself under article 66, provided that the procurement contract is yet to be awarded.

second alternative is for an independent, third-party review of the decision or action of the procuring entity

third alternative is an application to a competent court.

As to the body to hear the appeal, enacting States may limit such applications to the court, or may provide that they can be submitted to the independent body, or both, to reflect the legal system in the State concerned.

Where a system of effective and efficient court review is already present, there may be little benefit in introducing a new independent body. There may be equally little benefit in promoting procurement specialization in the courts if there is a well-functioning alternative forum.

Gap analysis

See comment below in 13(a)(c)

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Recommendations
Assessment criterion 1(h)(c): Rules establish the matters that are subject to review.
Conclusion: No gap
Red flag: No
Qualitative analysis Article 15 of PPL states that any acts performed by the Procuring Entity in the framework of the procedures covered by this Law, which may harm the legally protected interests of their addressees are subject to administrative challenge.
Gap analysis
Recommendations
Assessment criterion 1(h)(d): Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.
Conclusion: No gap
Red flag: No
Qualitative analysis According to Art 16 of the PPL (Time limit for administrative appeals), administrative appeals must be filed <u>within 5 days from the date of notification of the act to be challenged</u> unless another time limit is stipulated in the present Law, and they shall be <u>decided within 5 days</u> from the date of their filing [Article 20 (1)]. Where there is a hearing of counter-interested parties, the time limit for the decision shall run from the end of the time limit set for that hearing [Article 20 (2)]. Administrative appeals have no suspensive effect (Article 18 PPL). Article 21 of the PPL provides that decisions rendered on administrative appeals may be reviewed under the terms of the law (in particular, Law nr. 2/1994). Judicial review of decisions taken on administrative challenges regarding pre-contractual related issues must be filed within 60 days counted from the notification of the challenged decision to the addressees. There are no administrative courts in Angola. The Civil and Administrative Chamber of the Provincial Court or the Civil, Administrative, Tax and Customs Chamber of the Supreme Court have jurisdiction, depending on public body that has issued the contested act, and are competent to rule the appeals. All acts of the procuring entities, and not only the award decision, are subject to judicial review. As a rule, judicial appeals do not have a suspensive effect, although procedural law allows requesting this in an autonomous application processed in an appendix. There is no time limit for the court to rule..
Gap analysis
Recommendations
Assessment criterion 1(h)(e): Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Applications for appeal and decisions are <u>not</u> published in easily accessible places and within specified time frames. As with other procedural information, there is no culture of publicising the applications or the decisions of administrative appeals. As far as judicial litigation is concerned, no national authority consulted could indicate any case of which it was aware. The causes of such a low formal (processed) litigation deserve to be investigated and monitored by the regulatory body.

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In 2021, SNCP received:

- 4 (four) complaints, which focused on issues such as the application of award criteria, and
- 56 (fifty-six) objections, which had a greater impact on Preliminary Reports.

Source: Angolan Public Procurement Annual Report, 2021

<https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4z/mjy3/~edisp/minfin3267045.pdf>

In 2020, a total of 25 (twenty-five) complaints and objections were received by SNCP, with greater incidence on those relating to preliminary reports of the procedures, as well as on contracts without procedures.

Source: Angolan Public Procurement Annual Report, 2020

<https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4x/ndy2/~edisp/minfin1466972.pdf>

Gap analysis

Applications for appeal and decisions are not published in easily accessible places and within specified time frames.

Recommendations

Establish a consistent set of specific Key Performance Indicators (KPI) designed to monitor litigation (or the lack of) in public procurement (yearly time series should become available to track trends as well as comparison with (i) other areas of administrative litigation and (ii) with litigation in the national legal system in general.

- Publish applications for appeal and decisions in the PP Portal.
- Design a training programme for lawyers and judges on administrative and judicial challenges in public procurement.
- This training should include the dissemination of commented models/templates of administrative impugnations, and judicial appeals meant to support legal practitioners (there is mention of these models on the SNCP portal, but no documents are made available there)
- Treat statistical information on administrative appeals and judicial reviews with technical, legal, and statistical rigour, distinguishing (i) the type of process used, (ii) the cause of the request - allegation by the interested party, (iii) the date of lodging and conclusion with notification to the appellant (iv) the final result - the ruling.
- Building of a dedicated database for jurisprudence (administrative appeals, judicial appeals, and arbitration awards) compatible with the open government data and open legal data standards.

Assessment criterion 1(h)(f):

Decisions by the independent appeals body can be subject to higher-level review (judicial review).

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no independent appeals body because that is not the tradition of the Angolan legal system, nor of the system that is its main source of influence, the Portuguese. Recourse to the courts does not depend on the prior requirement of an administrative challenge - either directly to the entity that issued the act to be challenged or after the hierarchical appeal lodged following a rejection by the challenged entity. **Therefore, recourse to the courts can be immediate** when (i) challenging **the original administrative act adopted by the procuring entity and considered harmful by the aggrieved party) or used in response to (ii) the rejection of the challenge submitted to the procuring entity itself - the author of the administrative act - or (iii) the decision taken within the hierarchical recourse when it has reached top of the hierarchy.**

Gap analysis

Please see comment to 13(a)(f)

Recommendations

Sub-indicator 1(i)

Contract management

The legal framework provides for the following:

Assessment criterion 1(i)(a):

Functions for undertaking contract management are defined and responsibilities are clearly assigned.

Conclusion: No gap

Red flag: No

Pillar I. Legal, Regulatory, and Policy Framework

<p>Qualitative analysis</p> <p>Presidential Decree nr. 88/2018, of 6 of April, provided for the creation of Public Procurement Units (PPU) within the Procuring Entities and established the role of the Project or Contract Manager. It has also approved the PPU Regulation which establishes the rules of organization and operation of the PPU and the rules applicable to the activity of the Project or Contract Manager. Article 23 of such Regulation clearly defines the responsibilities of the Project or Contract Manager.</p>
<p>Gap analysis</p>
<p>Recommendations</p> <p><i>Suggestion for improvement</i></p> <p>The path to professionalisation should be sought through the creation of a specific career for the procurement function with regulated access conditions.</p>
<p>Assessment criterion 1(i)(b):</p> <p>Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The contract amendments are regulated in the PPL in four ways, 1) by establishing limits for changing the amount of authorized expenditure, setting a maximum of 15% of the limit of the initial competence, forcing a new authorization of expenditure if this maximum is exceeded, which should then obey the established approval thresholds and consider the total value of the expenditure (the limit established by Article 40 of the Annual Rules for Implementation of the General State Budget should also be observed); 2) the Non-Compliance and Modification of Works Contracts (Article 285 and 288); 3) Objective Modification of the Contract for the Lease and Acquisition of Goods and Services Acquisition (Article 367, 368 and 369); and 4) Modifications to the Public Works and Public Services Concessions Contract (Article 418).</p> <p>The conditions for contract amendments are not only defined and ensure economy, but also do not limit competition while ensuring the financial rebalancing of the contract.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 1(i)(c):</p> <p>There are efficient and fair processes to resolve disputes promptly during the performance of the contract.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The PPL 2016 already provided in its Articles 328 to 338 for alternative dispute resolution mechanisms, including conciliation and arbitration. This was based on only two pleadings (petition and statement), limiting the process to written form and admitting only two witnesses for each fact alleged. Art 337 referred all other aspects of the process to the Law on Voluntary Arbitration. Based on this background, the 2020 legislator intended to regulate the essence of the process in Article 341, while maintaining all the mechanism applicable only to the contractual phase and public works contracts, thus continuing to leave out the entire pre-contractual phase and the contracts for the acquisition of goods and services. The legislator opted to prefer institutionalized arbitration centers as follows from the text of Article 341(2): <i>“When choosing to submit disputes to arbitration, the Procuring Entity obligatorily provides:</i></p> <p><i>(a) the need for the acceptance, by the co-contractor, of the jurisdiction of an institutionalized arbitration center for the resolution of any disputes relating to the contract, in accordance with the model foreseen in Annex VIII, to be included in the specifications and in the contract;</i></p> <p><i>b) The manner of constitution of the tribunal and the procedural regime to be applied, by reference to the rules of the regulations of the competent institutionalized arbitration center, in accordance with the model provided for in Annex VIII.”</i> Paragraph 3 of the Article lists the exceptional situations in which it is possible to have recourse to arbitral tribunals not integrated in institutionalized centers: (a) when, in view of the high complexity of the legal or technical issues involved, the high economic value of the issues to be resolved, or the non-existence of an institutionalised arbitration centre competent in the matter, it is advisable to submit possible disputes to the jurisdiction of an arbitral tribunal not integrated in an institutionalised arbitration centre; (b) when it is demonstrated that the use of an institutionalised arbitration centre would result in a more lengthy resolution of the dispute; (c) when it is demonstrated that the use of an institutionalised arbitration centre would result in higher costs for the Procuring Entities.</p>

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It should be emphasized that in disputes where questions of legality are disputed, arbitrators shall decide strictly according to established law, and may not pronounce on the convenience or appropriateness of administrative action, nor rule according to equity. [Art 341 (5)].

The arbitration procedure, regulated by Article 342 of the PPL, is simplified, maintaining the configuration of 2016: a) There are only two pleadings: the petition and the defense; b) Only two witnesses may be indicated for each fact contained in the questionnaire; c) The discussion is to be held in writing.

Once the decision has been issued and notified to the parties, the process is handed over to SNCP, where it is filed. It is the responsibility of this authority to decide all matters relating to the terms of its implementation by the administrative entities, without prejudice to the jurisdiction of the courts to enforce the Contractor's obligations, and a copy of the decision of the arbitration court shall be sent to the competent judge for the purposes of enforcement proceedings.

The Centre for Extrajudicial Dispute Resolution (CREL), created by Executive Decree nr. 230/2014, of 27 of June, is a "service" provided by the National Directorate for Extrajudicial Dispute Resolution, of the Ministry of Justice and Human Rights and its operation is regulated by Executive Decree nr. 244/2014, of 4 of July. The fees applied for the provision of services are set out in the Joint Executive Decree 259/16, of 17 June.

Tabela de taxas do serviço de arbitragem a que se refere o artigo 11.º

Tabela de Honorários e Emolumentos de Arbitragem		
Valor do litígio em Kz	Honorários de cada Arbitro	Encargos Administrativos
até 5.000.000	250.000,00	250.000,00
5.000.001 a 10.000.000	250.000,00+3,50% do que exceder 5.000.000,00	250.000,00+2,25% do que exceder 5.000.000,00
10.000.001 a 25.000.000	425.000,00+2,50% do que exceder 10.000.000,00	362.500,00+2,00% do que exceder 10.000.000,00
25.000.001 a 50.000.000	800.000,00+1,25% do que exceder 25.000.000,00	662.500,00+0,6% do que exceder 25.000.000,00
50.000.001 a 100.000.000	1.112.500,00+0,8% do que exceder 50.000.000,00	812.500,00+0,3% do que exceder 50.000.000,00
100.000.001 a 250.000.000	1.512.500,00+0,7% do que exceder 100.000.000,00	962.500,00+0,125% do que exceder 100.000.000,00
250.000.001 a 500.000.000	2.562.500,00+0,5% do que exceder 250.000.000,00	1.150.000,00+0,1% do que exceder 250.000.000,00
500.000.001 a 1.000.000.000	3.812.500,00+0,25% do que exceder 500.000.000,00	1.400.000,00+0,06% do que exceder 500.000.000,00
1.000.000.001 a 2.000.000.000	5.062.500,00+0,15% do que exceder 1.000.000.000,00	1.700.000,00+0,05% do que exceder 1.000.000.000,00
2.000.000.001 a 4.000.000.000	6.562.500,00+0,09% do que exceder 2.000.000.000,00	2.200.000,00+0,04% do que exceder 2.000.000.000,00
4.000.000.001 a 8.000.000.000	8.362.500,00+0,075% do que exceder 4.000.000.000,00	3.000.000,00+0,03% do que exceder 4.000.000.000,00
8.000.000.001 a 12.000.000.000	11.362.500,00+0,05% do que exceder 8.000.000.000,00	4.200.000,00+0,02% do que exceder 8.000.000.000,00
> 12.000.000.000	13.362.500,00	5.000.000,00

Angola acceded to the New York Convention in March 2017. (<https://www.newyorkconvention.org/list-of-contracting-states>) PECPA 2018-2022 included as a Strategic Objective to develop an Alternative Dispute Resolution methodology by 2019, which didn't happen.

Gap analysis

Recourse to arbitration is not available during contract implementation phase in the case of contracts for the acquisition of goods and services.

Recommendations

Extend the possibility of recourse to arbitration to the pre-contractual phase (works contracts);

- Extend the possibility of recourse to arbitration to disputes relating to contracts for the acquisition of goods and services (pre-contractual and implementation phases)

Assessment criterion 1(i)(d):

The final outcome of a dispute resolution process is enforceable.

Conclusion: No gap

Red flag: No

Qualitative analysis

According to Article 342 (2) of the PPL " (...) a copy of the arbitral tribunal's decision must be sent to the competent judge for the purposes of enforcement proceedings." therefore the law provides for the possibility of judicial enforcement of arbitration awards.

Gap analysis

Recommendations

Sub-indicator 1(j)

Electronic Procurement (e-Procurement)

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The legal framework provides for the following:
<p>Assessment criterion 1(j)(a): The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis The PPL not only allows the use of e-procurement solutions, but also added a new procedure that can only be conducted electronically i.e., the Electronic Dynamic Purchasing System. Article 12(2) of the PPL establishes that the National System for e-Procurement aims to ensure the dematerialization of Public Procurement by carrying out the process of formation and execution of public contracts, through Electronic Platforms, which may be developed and managed by the State. The rules for the operation and management of SNCPE [Article 12 (3)] are defined by Presidential Decree nr. 202/2017, of 6 of September.</p>
Gap analysis
Recommendations
<p>Assessment criterion 1(j)(b): The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis The legal framework establishes SNCPE's rules of interoperability with other State systems, as well as the rules of operation, integrity, and confidentiality of data, containing references to electronic security (ISO/IEC 20000, ISO/IEC 27001, ISO/IEC 27002). Access to SNCPE's platform is subject to registration (free of charge) and the Public Procurement Portal enables to consult certain information, namely Notices, without the need to register/login.</p>
Gap analysis
Recommendations
<p>Assessment criterion 1(j)(c): The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis The legal Framework allows for the Procuring Entities to either use paper-based or electronic tendering. The choice must be informed in the tender notice and tender documents and must be kept accessible during the tendering process.</p>
Gap analysis
Recommendations
<p>Sub-indicator 1(k) Norms for safekeeping of records, documents and electronic data The legal framework provides for the following:</p>

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Assessment criterion 1(k)(a): A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is no specific legislation on the safekeeping of procurement records, documents, and electronic data.
Gap analysis There is no specific legislation on the safekeeping of procurement records, documents, and electronic data. A Red Flag is assigned because addressing this gap requires a legislative amendment.
Recommendations specific legislation on the safekeeping of procurement records, documents and electronic data needs to be enacted. SNCP should take the initiative to devise and draft this legislation in coordination with the Minister of Finance..
Assessment criterion 1(k)(b): There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is no specific legislation on the safekeeping of procurement records, documents, and electronic data.
Gap analysis There is no specific legislation on the safekeeping of procurement records, documents, and electronic data. A Red Flag is assigned because addressing this gap requires a legislative amendment.
Recommendations Same as 1(k)(a).
Assessment criterion 1(k)(c): There are established security protocols to protect records (physical and/or electronic).
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is no specific legislation on the safekeeping of procurement records, documents, and electronic data. Specification with regard to cases handled on the e-GP platform, Article 36 of Presidential Decree nr. 202/2017, of 6 of September provides that the solution must: <i>“a) Comply with archiving norms, standards, and procedures to guarantee digital preservation and interoperability; b) Guarantee the preservation of electronic signatures used in the various procedures c) Implement technological mechanisms for the preservation, storage, indexing and retrieval of archives d) Guarantee that the information regarding each procedure can be exported in standard formats for preservation purposes e) Make available the access records by interested parties, candidates, competitors, adjudicators, and co-contractors, as well as other users of the system f) Make available its archives of access records to the Contracting Public Entity, whenever this is requested and also for the purpose of external audits; g) The archive of information, as well as the operational transparency and exploration reports produced by the Electronic Platform must be filed in the electronic archive platform, generated by the competent organ for the technical management.”</i>

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<p>Gap analysis</p> <ul style="list-style-type: none"> – There is no specific legislation on safekeeping of procurement records, documents, and electronic data. – Specifications with regard to cases handled on the e-GP platform is also needed. <p>A Red Flag is assigned because addressing this gap requires a legislative amendment.</p>
<p>Recommendations</p> <p>Same as 1(k)(a).</p>
<p>Sub-indicator 1(l)</p> <p>Public procurement principles in specialized legislation</p> <p>The legal and regulatory body of norms complies with the following conditions:</p>
<p>Assessment criterion 1(l)(a):</p> <p>Public procurement principles and/or the legal framework apply in any specialized legislation that governs procurement by entities operating in specific sectors, as appropriate.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p>
<p>Gap analysis</p> <p>Specific rules apply to the following sectors:</p> <ul style="list-style-type: none"> - Oil Sector - Presidential Decree nr. 86/2018, of 2 of April (specific public procurement rules apply to the acquisition of goods and services by the concession holder and associated companies); - Mining sector - Mining Code, Law nr. 31/2011, of 23 of September; - Electricity sector - Law nr. 14-A/1996, of 31 of May; - Armed forces – Presidential Decree nr. 289/2014, of 14 of October.
<p>Recommendations</p>
<p>Assessment criterion 1(l)(b):</p> <p>Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Refer to 1 (a) (c)</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 1(l)(c):</p> <p>Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Law on Public-Private Partnerships (Law nr. 11/2019, of 14 of May of 2019), was further regulated by Presidential Decree nr. 316/2019, of 28 of October . The Regulation of the Law on Public-Private Partnerships (PPP) approved by Presidential Decree nr. 316/2019, of 28 of October, establishes the procedures for launching and contracting PPPs, the rules relating to their monitoring and supervision, as well as the competences of the so-called PPP Governing Body (PPPGB).</p>

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PPPGB is made up of the following entities:

- a) Minister of Economy and Planning, Coordinator
- b) Minister of Finance
- c) Secretary of the President of the Republic for Economic Affairs

The PPPGB Coordinator may invite the holder of the sector ministerial department responsible for the area of the project under review.

The Technical Commission (PPPTC) is composed of:

- Ministry of Economy and Planning;
- Ministry of Finance;
- Secretariat for Economic Affairs of the Presidency of the Republic;
- one representative and respective alternate from each of the following bodies:
 - Ministry of Construction and Public Works;
 - Ministry of Energy and Water;
 - Ministry of Transports;
 - Ministry of Health
 - Ministry of Education
 - Ministry of Telecommunications and Information Technology;

The PPPGB Coordinator designates a project team of five or seven members and indicates its chairperson, who may be the Coordinator of the PPPTC.

Approval of the launch of the partnership

The PPPGB shall be responsible for deciding on the approval of the launch of the partnership and the respective conditions, by means of a joint order of the heads of the ministerial departments that are part of it and of the project in question, to be issued within 30 days of submission of the report referred to in Article 9(3).

The decision to contract

The decision to contract is up to:

- (a) the holders of the ministerial departments that are part of the PPPGB and of the project in question, when it is a partnership launched by one of the entities referred to in paragraphs a), c) and d) of article 2, no. 1 of Law nr. 11/2019, of 14 of May, on public-private partnerships;
- b) the local authority, in the case of a partnership entered into by the entity referred to in article 2(1)(b) of Law nr. 11/2019, of 14 of May, on public-private partnerships;

Applicable Procurement method

The choice of method for the formation of the public-private partnership contract must comply with the regime provided for in the Public Procurement Law (Art 14/1 of Law nr. 11/2019)

Evaluation Committee

The Regulation of the Law on PPP also includes a model risk allocation matrix, classified by categories, which should serve as the basis for the allocation of risks assumed by each of the partners in the PPP projects to be implemented. The risk allocation matrix model includes seven categories: (i) demand risk; (ii) land use risk; (iii) project and construction risk; (iv) financial risk; (v) operational risk; (vi) institutional and legal risks; and (vii) political risk.

Gap analysis

Recommendations

Indicator 2. Implementing regulations and tools support the legal framework

Sub-indicator 2(a)

Implementing regulations to define processes and procedures

Assessment criterion 2(a)(a):

There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.

Conclusion: No gap

Red flag: No

Qualitative analysis

There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.

Available regulations:

- Presidential Decree nr. 282/2021, of 1 of December - revision of prices in works contracts

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- Presidential Decree nr. 319/2018, of 31 of December - approves the Declaration of Assets and Income, the Declaration of Interests and the Declaration of Impartiality, Confidentiality and Independence in the Formation and Execution of Public Contracts
- Presidential Decree nr. 88/2018, of 6 of April - Creates the Public Procurement Units (PPU), established the role of Project or Contract Manager and approves the Internal Regulation of the PPU
- Executive Decree nr. 155/2014, of 14 of May - Approves the regulation on the procedures and criteria for confirmation of public works contracts, provision of services and supply of goods, included in the Public Investment Programme, as well as consultancy and technical assistance contracts, under the terms of the expenditure limits set for preventive monitoring in the Law that approves the General State Budget
- Presidential Decree nr. 208/2017, of 22 of September – creates the public procurement units within the local government.
- Presidential Decree 202/17, 6 of September - Creates the e-procurement system (SNCPE) and approves the Regulation on its functioning.
- Presidential Decree nr. 196/2016, of 23 of September – establishes the rules applicable to the setting of fees to be charged for the availability of the bidding documents.
- Presidential Decree nr. 197/2016, of 23 of September – establishes the procedures to be followed in the acquisition or leasing of any rights over immovable assets for the installation and operation of public services or for other purposes of public interest
- Presidential Decree nr. 198/2016, of 26 of September – establishes the rules applicable to the registration and certification of State Contractors, Suppliers of Goods and Service Providers.
- Presidential Decree nr. 199/2016, of 26 of September – establishes the legal regime applicable to the formation and execution of Framework Agreements and defines the categories of goods, services and public works contracts, objects of the referred agreements.
- Presidential Decree nr. 201/2016, of 27 of September – approves the standard terms of reference for public works contracts, for the purchase of goods and for the purchase of services.
- Presidential Decree nr. 316/2019, of 28 of October – regulates the Law on Public-Private Partnerships (PPP).

Gap analysis

Recommendations

Assessment criterion 2(a)(b):

The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

With the exception of the Presidential Decree nr. 202/2017, all the regulations are available in the PP Portal, which should become the most comprehensive source of information (of all types, from legal and regulatory to policy and procedural / transactional related) on public procurement in the country.

Despite this, the gap detected in relation to the publication of court decisions makes the interpretation of the rules very difficult and based almost exclusively on legal scholarship (which since 2016 has seen an increase in attention in relation to public procurement).

Gap analysis

Presidential Decree nr. 202/2017, 6 of September is available in the Ministry of Finance website, but not in the Public Procurement Portal.

Recommendations

Publish the Presidential Decree nr. 202/2017, of 6 of September in the PP Portal.

Publish all public procurement related Court rulings (Administrative Chambers of the Provincial Court and the Supreme Court, the Court of Auditors and the Constitutional Court).

Assessment criterion 2(a)(c):

Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly

Conclusion: No gap

Red flag: No

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Qualitative analysis

Normative powers are clearly distributed under the Constitution, which translates, from a legislative point of view, into the promulgation of laws (e.g., the PPL) by the National Assembly or Presidential Decrees (e.g. the organic statute of SNCP). At the infra-legislative level, regulatory powers are attributed by the Article 11 of the PPL combined with Presidential Decree nr. 162/2015, of 19 of August, to SNCP which is "...responsible for "operation, regulation, supervision, observation, audit and oversight of the public procurement system".

Regulations are kept updated and accessible.

Gap analysis

Recommendations

Sub-indicator 2(b)

Model procurement documents for goods, works and services

Assessment criterion 2(b)(a):

There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.

Conclusion: No gap

Red flag: No

Qualitative analysis

SNCP makes model procurement documents available for the existing procurement methods. Template notices, debriefing minutes, notifications, procedural reports, etc. can be consulted and downloaded in editable formats from the [SNCP standard procurement documents section](#).

As far as the Procurement documents PPL are concerned, the Presidential Decree 201/16, 27 of September, approved, under the then Public Contracts Law of 2016 the models for public works, services, and goods procurement contracts. According to Article 2 of this Presidential Decree, it is SNCP's responsibility, in its capacity as the entity responsible for the regulation and supervision of public procurement, **to update** and publish on the public procurement portal the tender documents for the procedures of formation of works, goods and services contracts. It was based on this enabling provision that SNCP revised and updated these documents after the entry into force of the new PPL (2020), which provides in Article 47(2) that "the tender documents relating to the most frequent categories of contracts are approved through a specific act of the President of the Republic **or his delegate**. Although it would have been preferable to maintain the same hierarchical and formal level of the primary legal source - a specific normative act of the President of the Republic - it is understood that the act of delegation on the basis of which the SNCP proceeded with the update is the aforementioned Presidential Decree nr. 201/2016 (Article 2).

Gap analysis

Recommendations

Assessment criterion 2(b)(b):

At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Both PPLs (of 2016 and 2020) and Presidential Decree nr. 201/2016 are silent as to the mandatory nature of the model documents. Therefore, they do not define the room for customisation of procuring entities nor the consequences of introducing changes or even not using the models at all. Since from a material point of view, other formulations of procurement documents, including the contracts, may also be compatible with the rules and regulations in force, the law should be clear and unequivocally establish the regime for the use of models. The legal basis for requiring their use (at all) or even scrutinising changes introduced by procuring entities has a weak legal basis today. As to model contracts in particular, both PPLs (of 2016 and 2020) are completely silent, so, as far as these are concerned, the room for manoeuvre of procuring entities is greater.

Gap analysis

Both PPLs (of 2016 and 2020) and Presidential Decree nr. 201/2016 are silent as to the mandatory nature of the model documents. A Red Flag is assigned because addressing this gap requires a legislative amendment.

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<p>Recommendations</p> <p>An explicit legal provision establishing the scope for customisation of model contracts allowed to procuring entities should be added to the PPL, following a specific study on the current use of existing models (rate of use, rate of incorporation of changes, most frequent changes, litigation related to formal issues deriving from the model documents, etc.). The possibility of obliging the inclusion of explicit mentions of prohibited practices, and even the insertion of self-declarations of abstention from illicit behaviour on the part of competitors, should be considered in that study (and could be implemented at both a legal and regulatory level). This last aspect is related to indicator 14 (b).</p>
<p>Assessment criterion 2(b)(c):</p> <p>The documents are kept up to date, with responsibility for preparation and updating clearly assigned.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>PPL Regarding the tender documents referred to in Article 47 of the PPL, the responsibility for their update is with SNCP [see above 2(b)(a)].</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p style="text-align: center;">Sub-indicator 2(c) Standard contract conditions used</p>
<p>Assessment criterion 2(c)(a):</p> <p>There are standard contract conditions for the most common types of contracts, and their use is mandatory.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Refer to 2 (b) (a). In addition, the following is important to understand the notion of “contract” and its role in the Angolan public procurement law:</p> <p>According to Article 108 (1) of the PPL, the contract must contain, under penalty of nullity, the following: (a) the identification of the parties and their respective representatives, as well as the title in which they intervene; (b) the indication of the act of awarding and of the act of approval of the draft contract; (c) the description of the subject matter of the contract; (d) the contractual price; (e) the period of performance of the main services which are the subject matter of the contract; (f) the reference to the deposit provided or to be provided by the contractor when required under Article 99. And the following documents are always part of the contract, by the automatic effect of Article 108(2) and regardless of the will of the Parties: a) The clarifications and rectifications relating to the specifications; b) The specifications; c) The awarded proposal; d) The clarifications on the awarded proposal provided by the adjudicator.</p> <p>It should be noted, therefore, that the notion of "contract" in Angolan public procurement law covers much more than the document called "contract", which is made and signed only at the final stage of the bidding process (after award). As it follows from that Article 108(2) the contract is the collection of the documents mentioned, the last of which is called the "contract" and is even the least important according to the rule of precedence in case of divergence of contents between the various documents. In case of divergence between the documents referred to in paragraph 2, the precedence is determined by the order in which they are listed in that paragraph and in case of divergence between the documents referred to in Paragraph 2 and the clauses of the contract, the former shall prevail. [Article 108 (5), (6)].</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 2(c)(b):</p> <p>The content of the standard contract conditions is generally consistent with internationally accepted practice.</p>
<p>Conclusion: Minor gap</p>

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Red flag: No
<p>Qualitative analysis From the analysis made of the model contracts - after being updated by SNCP in light of the new PPL 2020 (as described above in 2 [b] (a) and (b)] - their content is compliant with the PPL.</p> <p>However, this does not mean that the existing models cannot be improved, especially concerning contracts for complex works (infrastructures of all types and great economic and social value), namely by incorporating typical clauses that have been tested in numerous countries, such as the FIDIC Conditions of Contract for Buildings and Engineering works designed by the Employer.</p>
<p>Gap analysis Existing models can be improved, especially with regard to contracts for complex works.</p>
<p>Recommendations SNCP to review and enhance the available templates. Existing contracts data should be collected and treated to enable the calculation of the following KPIs: (i) percentage of contracts drafted by simply filling in the blanks in the models; (ii) percentage of contracts in which "non-standard clauses" were introduced; (iii) percentage of contracts that did not follow the existing templates at all; (iv) percentage of disputes occurring in each of the situations described, a) before the start and b) during the execution of the contract. Realistically, to make this approach and analysis meaningful, collecting and processing this data during a minimally representative statistical series would be necessary. The added value of using some FIDIC contract standard clauses should be assessed (for possible use in more complex engineering and infrastructure projects) in the framework of the procurement documents review, update, and enhancement ((which should be a permanent task for the SNCP, not only when there is a legislative change with a direct impact on documents, but also as a result of the above-mentioned study and the calculation of the relative KPIs)</p>
<p>Assessment criterion 2(c)(c): Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis Model contracts are available on the PP Portal.</p>
Gap analysis
Recommendations
<p>Sub-indicator 2(d) User's guide or manual for procuring entities</p>
<p>Assessment criterion 2(d)(a): There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis A comprehensive procurement manual covering the entire procurement cycle is regularly updated and available at https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4z/mdc3/~edisp/minfin3077056.pdf. The latest version was issued in March 2022 (4th edition).</p>
Gap analysis
Recommendations
<p>Assessment criterion 2(d)(b): Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.</p>

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Conclusion: No gap
Red flag: No
Qualitative analysis The latest version was issued in March 2022 (4 th edition). The previous version was issued in March 2019 still under the previous public procurement law . SNCP is responsible for keeping the manual updated.
Gap analysis
Recommendations

Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

Sub-indicator 3(a) Sustainable Public Procurement (SPP)
Assessment criterion 3(a)(a): The country has a policy/strategy in place to implement SPP in support of broader national policy objectives
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Despite the fact that sustainability is described as one of the general principles of the PPL and the economic operators should “ <i>observe the principles and rules of corporate governance, namely regular reporting, organised accounting, internal control systems and social, labour and environmental accountability.</i> ” and that Article 82 (2) (a) (iii) allow for the use of environmental or social sustainability related evaluation factors within the Most Economically Advantageous Tender (MEAT) award criterion, there is no policy nor strategy in place to implement SPP. Preparatory work aiming at the development of a National SPP strategy is underway but with limited or no results.
Gap analysis Currently, there is no policy /strategy in place to implement SPP, no implementation plan or systems and tools to operationalize, facilitate and monitor the application of SPP.
Recommendations The adoption and implementation of a National SPP strategy should be included as a Strategic Goal in the next multi-annual strategic plan for public procurement. SNCP should draft a National SPP Strategy with a roadmap and action plan containing specific, measurable, achievable, relevant, and time-bound (SMART) goals.
Assessment criterion 3(a)(b): The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis As indicator 3(a)(a)
Gap analysis As indicator 3(a)(a)
Recommendations As indicator 3(a)(a)

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<p>Assessment criterion 3(a)(c): The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis As indicator 3(a)(a)</p>
<p>Gap analysis As indicator 3(a)(a)</p>
<p>Recommendations As indicator 3(a)(a)</p>
<p>Assessment criterion 3(a)(d): The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis As indicator 3(a)(a)</p>
<p>Gap analysis As indicator 3(a)(a)</p>
<p>Recommendations As indicator 3(a)(a)</p>
<p style="text-align: center;">Sub-indicator 3(b) Obligations deriving from international agreements Public procurement-related obligations deriving from binding international agreements are:</p>
<p>Assessment criterion 3(b)(a): Clearly established</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The obligations related to public procurement arising from binding international agreements are clearly established and are reflected in national procurement laws and regulations.</p> <ul style="list-style-type: none"> - Article 53(3) of the PPL: preference rules also established in favor of bidders who are nationals of, or are based in, member states of the Southern African Common Market, COMESA or SADC or are based in such territories, or in favor of goods produced, extracted or cultivated in such states. - Article 56 (1) (a) of the PPL on Impediments: "Entities may not be candidates or competitors, or be part of any candidate or competitors' consortium, if they are the object of a boycott by international and regional organizations to which Angola is a party, in particular the United Nations (UN), the International Monetary Fund (IMF), the United Nations Security Council (UNSC) and the United Nations Security Council Organization (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the African Union (AU), the Southern African Development Community (SADC), and the United Nations (UN) Development Community (SADC), the Central African Economic Community (CEAC) and the African Development Bank (AfDB).
<p>Gap analysis</p>
<p>Recommendations</p>

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Assessment criterion 3(b)(b): Consistently adopted in laws and regulations and reflected in procurement policies.
Conclusion: No gap
Red flag: No
Qualitative analysis Refer to 3 (b) (a)
Gap analysis
Recommendations

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Indicator 4. The public procurement system is mainstreamed and well-integrated into the public financial management system

Sub-indicator 4(a) Procurement planning and the budget cycle
The legal and regulatory framework, financial procedures and systems provide for the following:
Assessment criterion 4(a)(a): Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The PPL has a specific provision on the creation and publication of Annual Procurement Plans, which is complemented by a provision in the Budget Execution Law that requires these plans to be published within 15 days of the publication of the Law approving the State Budget. In 2022, with a universe of 593 Procuring Entities, 518 Annual Procurement Plans were published, representing an 87% coverage. The Annual Procurement Plan is prepared in parallel with the Budget, and publication of the Annual Procurement Plan is mandatory 30 days after publication of the Budget. This shows that the Annual Procurement Plan is drawn up after the Budget and not to feed the Budget. Additionally, from the sample analysis, only 40% on average of the procedures were foreseen in the Entity's Annual Procurement Plan. In the cases where there was a Plan, only 17% were updated. Taking into consideration only the procedures processed in the e-procurement system, the percentage of procedures included in the Annual Procurement Plan falls to 26%, with no record of any having been updated. Based on the PEFA 2022 draft report, Angola has scored D on the PI - 11. PUBLIC INVESTMENT MANAGEMENT, which is the indicator that measures <i>"the extent to which the government conducts economic appraisals, selects, projects the costs, and monitors the implementation of public investment projects, with emphasis on the largest and most significant projects"</i> . The score is largely justified by the lack of evidence regarding cost, impact, and benefits analysis.
Gap analysis Based on the sample cases, a significant number of cases had no procurement plan nor evidence of market research.
Recommendations SNCP to ensure through the e-procurement system and public procurement portal the enforcement of publication of procurement plans. Include in the Schedule for the Preparation and Approval of the Annual Programming of the Public Investment Programme (Article 23 of the Presidential Decree nr. 31/2010, of 13 of April) provisions on the preparation and/or updating of the Annual Procurement Planning for each project.
Assessment criterion 4(a)(b): Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).
Conclusion: No gap
Red flag: No
Qualitative analysis The rules of budgetary execution and the Framework Law of the State Budget determine that any Budgetary Unit can assume no expenditure without the respective expense being duly and previously committed.
Gap analysis
Recommendations
Assessment criterion 4(a)(c):

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A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The National Project Portfolio, managed by the Public Investment Directorate (DNIP) of the Ministry of Finance (MINFIN), is divided into Sectorial Portfolio and Provincial Portfolio, managed by each Sector/Provincial Government. According to the Presidential Decree nr. 31/2010, of 13 of April, the National Project Portfolio can be reviewed every two years, considering any changes in the Provincial, Sector or National policy priorities and is subject to a monitoring process which consists in a quarterly report on the financial and physical execution of the contracts by the Sectors and Provincial Governments and on a monthly report on the financial execution of the contracts performed by the Public Investment Directorate of MINFIN. The financial progress of each Project is recorded in the information system that supports PFM. However, the physical execution tracking of each project is based on the reports provided by the beneficiaries.

SNCP is currently piloting a web-based information system "SGC – Sistema de Gestão de Contratos", integrated with the e-GP and IFMIS, that will allow for a full cycle contract management, from procurement planning to payment.

Gap analysis

There are integration gaps between the e-GP and IFMIS that should be addressed. These gaps hamper the monitoring and evaluation capabilities, besides other consequences.

Recommendations

e-GP (SNCPE) and IFMIS (SIGFE) to be enhanced for a better integration.
Full deployment of SNCPE/SGC.

Sub-indicator 4(b)

Financial procedures and the procurement cycle

The legal and regulatory framework, financial procedures and systems should ensure that:

Assessment criterion 4(b)(a):

No solicitation of tenders/proposals takes place without certification of the availability of funds.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 30 (1) (b) of the State Budget Framework Law (approved by Law nr. 15/2010, of 14 of July determines that any Budget Unit can undertake no expenditure without the previous budget allocation to ensure funds availability. Furthermore, the same Law prescribes that " Expenditure, the commencement of works, the conclusion of administrative contracts or the requisition of goods shall not be carried out without prior appropriation [(Article 31 (2))] and that "Failure to comply with the provisions of the previous paragraph shall not generate any payment obligation for the State and shall subject the authority that carried out the act to the applicable disciplinary, civil or criminal sanctions as appropriate [Article 31 (3)].

Article 32 (1) of the PPL, states that procurement procedures begin with the decision to procure (in legal terms, the "decision to contract"), which can only be taken when the appropriation is entered into the budget (beginning of Article 32(2)), "except where the notice, invitation or programme of the procedure states that the award of a contract shall be subject to the approval of the relevant budget entry" (Article 32(2)).

Gap analysis

Recommendations

Assessment criterion 4(b)(b):

The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*

Conclusion: Substantive gap

Red flag: No

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Qualitative analysis

the PPL stipulates 30 days as a rule in terms of payment deadline [Article 360 (1)], allowing for an increase up to 60 days, if clearly stated in the contract [Article 360 (2) and (3)].

The contract templates available on the PP Portal include a provision stating that “the payment period after receiving the invoices must not exceed that stipulated in the legislation (90 days)”, which corresponds to the period after which unpaid invoices are considered “in arrears” (Article 14 (3) and (4)) by the Presidential Decree nr. 73/2022, of 1st of April, Rules for the implementation of the General State Budget.

The payment of invoices to suppliers is however affected by the rules in force for the approval of withdrawal orders (“*ordens de saque*”), whose final validation is in most cases, and by virtue of the thresholds set, made by the Minister of Finance. This excessive concentration of powers may, on occasion, lead to delays in payments.

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):

- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).

Source: PFM systems.

In the survey launched by the Assessment Team, 60.5% of the economic operators considered that the (contractual) payment clauses are not fair.

85% of respondents in the private sector survey stated that delays in the payment of invoices occurs "often" or "almost always".

Gap analysis

The national regulations/ procedures for processing of invoices and authorisation of payments are not clear to potential bidders. The information contained in the IFMIS reveals full compliance with the legislation with regard to the punctual payment of invoices. However, an analysis of the 2021 data reveals multiple situations, of processes that are in principle subject to public procurement rules, in which the issuing of the commitment is separated from the confirmation of the payment by a few days, which suggests that the existing record in the IFMIS may not be accurate. Associated with this fact, information shared by the SNCP shows that although the majority of invoices are paid on time, cases have been detected where the payment period exceeded the 90 days prescribed by law.

Recommendations

- Greater clarity should be sought in determining the maximum time limit for payment of invoices to suppliers.
- Delegation of the necessary authority for approval of withdrawal orders to the National Treasury Director should be sought, as the current segregation of duties and approval process in place already ensures the necessary oversight.
- IFMIS should include control mechanisms to ensure that the time recording of financial movements is accurate.

Indicator 5. The country has an institution in charge of the normative/regulatory function

Sub-indicator 5(a)

Status and legal basis of the normative/regulatory institution function

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criterion 5(a)(a):

The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The National Public Procurement Service (SNCP) is nominated as the national authority on procurement.

The PPL provides, in its Article 11, that the operation, regulation, oversight, auditing and supervision of the public procurement system are assured by the Body responsible for the Regulation and Supervision of Public Procurement and adds that the rules on the organisation, activity and functioning of such body are defined in a specific normative act of the President of the Republic. The body is the National Public Procurement Service (Serviço Nacional da Contratação Pública - SNCP) and its organic statute/law was approved by Presidential Decree nr. 162/2015.

SNCP is an administrative public law institute entity (body with legal personality and capacity and qualified as a public institute of the Administrative or Social Sector. It is endowed with administrative and financial autonomy and its own assets and its key functions include the support to the government in matters of definition and implementation of policies and practices relating to public procurement, the supervision, auditing and monitoring of public procurement processes in collaboration with the competent bodies, the enactment of regulations and instructions to standardize public procurement procedures and the ruling of administrative challenges presented by candidates or bidders.

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The key **supervisory functions** (Article 6 of Presidential Decree nr. 162/2015), of SNCP comprise the monitoring of compliance with the public procurement laws and regulations by the Procuring Entities, candidates, and bidders, as well as with the specific rules concerning the functioning and management of the state e-procurement platform. In case SNCP finds that the rules or principles of public procurement are being violated in a procurement procedure it can order the suspension of the procedure in order to promote the elimination of flaws, illegalities and irregularities inherent in the process of contract formation (Art 440 (3) of the PPL).

The **supervisory and regulatory attributions** (Article 8 of Presidential Decree nr. 162/2015), encompass the supervision of the public procurement market operation, the proposal of legislative enhancements deemed necessary, the production of standard bidding documents as well as the other documents of compulsory use for the public procurement procedures.

Finally, the SNCP also performs **auditing functions** (Article 7 of Presidential Decree nr. 162/2015), including internal and external audits on electronic platforms, Procuring Entities and public procurement procedures launched by the Procuring Entities.

In summary, the powers described above are well formulated, but for their application to be effective - and respected by the procuring entities, bidders, and contractors - the SNCP must be given the status of an independent administrative authority which is the status consistent with the performance of the typical functions of a regulatory authority.

In the framework of the improvement of the institutional and legal framework of the SNCP, the opportunity should also be taken to introduce a clarification on the Article 440 (3) of the PPL which, due to the wording adopted and its systematic insertion (in the chapter dedicated to final and transitory provisions) causes difficulties of interpretation in relation to Chapter V of Book I on Administrative Challenges.

Gap analysis

The nature and organic statute of the SNCP is inadequate for the full exercise of the typical powers of a regulatory authority. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Recommendations

- The organic law of the SNCP (Presidential Decree nr. 162/2015) needs to be revised in order to grant SNCP the statute of an Independent Administrative Authority.

Sub-indicator 5(b)

Responsibilities of the normative/regulatory function

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

Assessment criterion 5(b)(a):

providing advice to procuring entities

Conclusion: No gap

Red flag: No

Qualitative analysis

In the exercise of its competences, SNCP supports, assists, and cooperates, as the case may be, and whenever requested with any entity that requests its collaboration. (Art 5 (2) (f) of Presidential Decree nr. 162/2015).

In 2020, the SNCP issued 139 (one hundred and thirty-nine) opinions, mainly covering issues relating to (i) request for updating contract prices; (ii) expression of interest for project financing; (iii) request for credits, acknowledgement of debt; (iv) request for authorisation to open a procedure; (v) analysis of the term of contracts and (vi) regularisation of certain contracts.

In 2021, the SNCP issued 355 (three hundred and fifty-five) opinions covering mainly the following topics: (i) Financial Economic Rebalancing of Contracts, (ii) Unilateral Termination of Contracts by Contracting Public Entities (EPC) and (iii) Analysis of tender documents.

There has been a significant increase in the total number of opinions issued by the SNCP, and a change regarding the most consulted topics.

Gap analysis

Recommendations

Suggestion for improvement

The observation and collection of information should be systematized in accordance with KPIs developed for analysis of demand for these services provided by the SNCP in order to make (i) comparative trend analyses and (ii) development of analysis of the results and association with the causes of the trend and (iii) evaluation of beneficiary satisfaction - PEs that require opinions.

Assessment criterion 5(b)(b):

drafting procurement policies

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Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>SNCP is charged with the function of supporting the Executive in defining and implementing public procurement policies and practices [(Art 5 (1) (a) of the Presidential Decree nr. 162/2015]</p>
Gap analysis
Recommendations
Assessment criterion 5(b)(c): proposing changes/drafting amendments to the legal and regulatory framework
Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>SNCP develops relevant activity both in the preparation of rules, regulations, and instructions to standardize public procurement processes [(Article 5 (1) (e) of the Presidential Decree nr. 162/2015] - which corresponds to the typical regulatory power of regulatory bodies - and to support the Executive in the definition and implementation of policies and practices relating to public procurement [(Article 5 (1) (a)], in which it is possible to frame the duty power to propose measures of a legislative nature.</p> <p>This has been the practice, with the leadership of the preparatory works of the PPL approved by Law nr. 41/2020 being cited, due to its central importance for the system. By its own initiative or consulted if another body initiates the process, SNCP is the central body in relation to the legislative and regulatory production of the system. It should be noted that this does not mean that it has legislative powers; it only means that it is the body that has among its main missions to ensure that laws and regulations are adequate and, when necessary, are reviewed by the entities with competence for that purpose.</p>
Gap analysis
Recommendations
Assessment criterion 5(b)(d): monitoring public procurement
Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>SNCP is formally recognized as a "public procurement observatory, through the stimulation of the adoption of the best practices and the improvement of the public procurement procedures;". Understandably, those who observe and assess the system's performance, including its legal framework, have a special obligation to initiate its improvement, when necessary.</p>
Gap analysis
Recommendations
Assessment criterion 5(b)(e): providing procurement information
Conclusion: No gap
Red flag: No

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Qualitative analysis

As part of its information function, the SNCP is responsible for:

- Supporting the development and administration of the Public Procurement Portal, proposing the technical and compliance solutions it considers most appropriate and efficient;
- Publishing on the Public Procurement Portal, in an openly available area, the relevant information, under the terms of the applicable legislation;
- Publishing on the Public Procurement Portal, in the public access area, the information it considers relevant, namely the legislation on public procurement and its updates, studies, memorandums and studies on public procurement, standard forms, standard technical sheets, standard bidding documents and other standard documents, instructions, guidelines and reports that do not contain classified information or that are not intended to be made available only in the reserved access area;
- Ensuring that Procuring Entities publish in the appropriate and authorized places and media the information related to public procurement procedures, in accordance with the legislation in force.

By exercising its information publishing duties, SNCP must systematically process the information mandatorily made available by the procurement entities or collected by itself and stored in the respective area of the Public Procurement Portal, such as:

- Management reports containing indicators on reference prices for the type or types of contracts, execution times with reference to them or data on compliance and non-compliance with tender documents and contracts;
- Lists of suppliers, service providers and contractors existing in the market;
- Lists of suppliers, service providers and contractors suspended or barred from participating in public procurement procedures;
- Lists of contracts awarded and their successful tenderers;
- Lists of prices awarded and prices actually paid, following the works carried out.

Gap analysis

Recommendations

Assessment criterion 5(b)(f):
managing statistical databases

Conclusion: No gap

Red flag: No

Qualitative analysis

Refer to 5 (b) (e)

Gap analysis

Recommendations

Assessment criterion 5(b)(g):
preparing reports on procurement to other parts of government

Conclusion: No gap

Red flag: No

Qualitative analysis

SNCP publishes the following Reports:

- Annual Report of the Angolan Public Procurement
- Public Procurement Statistical Bulletin
- Annual Audit Report
- Register of collection of guarantees in public procurement procedures

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Gap analysis
Recommendations
Assessment criterion 5(b)(h): developing and supporting implementation of initiatives for improvements of the public procurement system
Conclusion: No gap
Red flag: No
Qualitative analysis See above 5 (b)(c)
Gap analysis
Recommendations
Assessment criterion 5(b)(i): providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement
Conclusion: Minor gap
Red flag: No
Qualitative analysis SNCP has limited capacity to fulfill its obligations of providing the training to all that demand it, especially in the remotest provinces.
Gap analysis
Recommendations Prepare other organizations to supplement SNCP's capabilities.
Assessment criterion 5(b)(j): supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)
Conclusion: No gap
Red flag: No
Qualitative analysis SNCP has published the following tools and guidance: <ul style="list-style-type: none"> - Good Practice Guide on Combating Collusion in Public Procurement (2018) - Practical Guide for the prevention and risk management of corruption and related offences in public procurement (2019) - Primer on Ethics and Conduct in public procurement (2019) - Practical Manual on Public Procurement (2022) - Checklist of public procurement procedures for Public Contracting Authorities (2022)
Gap analysis
Recommendations <i>Suggestion for improvement</i> SNCP should promote training and the recognition of the public procurer as a profession by providing job descriptions, qualifications, and competences frameworks.
Assessment criterion 5(b)(k): designing and managing centralised online platforms and other e-Procurement systems, as appropriate

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Conclusion: No gap
Red flag: No
Qualitative analysis See 8(b) (a) and 9 (b) (c)
Gap analysis
Recommendations
Sub-indicator 5(c) Organisation, funding, staffing, and level of independence and authority
Assessment criterion 5(c)(a): The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis The powers granted to the SNCP correspond to the typical regulatory powers/function. However, SNCP lacks the nature of independent administrative authority which prevents it to act as a true regulatory authority.
Gap analysis The nature and organic statute of SNCP is inadequate for the full exercise of the typical powers of a regulatory authority. A Red Flag is assigned because addressing this gap requires a legislative amendment. See 5(a)(a) above.
Recommendations The organic statute of the SNCP (Presidential Decree nr. 162/2015) needs to be revised in order to grant SNCP the statute of an Independent Administrative Authority.
Assessment criterion 5(c)(b): Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.
Conclusion: No gap
Red flag: No
Qualitative analysis SNCP is a public law entity, has the nature of a Public Institute of the Administrative or Social Sector, has legal personality and capacity, and administrative and financial autonomy and its own assets. The organic statute of SNCP provides in its Art 32 (revenue) that without prejudice to the budgetary allocations that it receives for the exercise of its activities, in exchange for the acts practised by the SNCP and the services rendered by it, fees may be due by the receivers of any acts or facts practised by the SNCP, foreseen by law or regulation, provided that the respective levy is authorised. In addition to other revenues foreseen by law, the following shall constitute revenues for the SNCP: a) The proceeds of the fees charged in consideration of services rendered; b) The proceeds from the sale or assignment, for any purpose, of rights forming part of its assets c) The revenues arising from the financial investment of its resources; d) The contributions, subsidies and grants received from the State.
Gap analysis
Recommendations <i>Suggestion for improvement</i>

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To increase the transparency of its operation, the accounts of SNCP should be published in the corporate area of the public procurement portal.

Assessment criterion 5(c)(c):

The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities.

Conclusion: No gap

Red flag: No

Qualitative analysis

The SNCP staff plan (Annex I of Presidential Decree nr. 162/2015) provides for a total of 81 staff members, 75 of which are currently employed leaving room for a possible increase of activity. The organic statute is quite detailed and seems adequate to the exercise of the functions that have been attributed to SNCP (which will benefit from the statute of Independent Administrative Entity more at the external level of relationship with the PEs and other control organs than at the level of internal operating conditions that may be considered critical factors for its performance.

The Internal Rules cover the following areas:

INTERNAL RULES
 CHAPTER I General Provisions
 CHAPTER II Tasks
 Article 5 (Tasks)
 Article 6 (Supervision)
 Article 7 (Auditing)
 Article 8 (Supervision and Regulation)
 Article 9 (Recommendation)
 Article 10 (Promotion)
 Article 11 (Information)
 Article 12 (Sanction)
 CHAPTER III Organizational Structure
 SECTION I Organization
 Article 13 (Organs and Services)
 SECTION II Governing Board
 SECTION III Chief Executive Officer
 SECTION IV Supervisory Board
 SECTION V Support Services
 SECTION VI Executive Services
 SECTION VII Local Services
 CHAPTER IV Financial and Asset Management
 CHAPTER V Staff and Remuneration Scheme

Gap analysis

Recommendations

Sub-indicator 5(d) Avoiding conflict of interest

Assessment criterion 5(d)(a):

The normative/regulatory institution has a system in place to avoid conflicts of interest.*

Conclusion: No gap

Red flag: No

Presidential Decree nr. 312/2018, - approved the requirement for the Declaration of Assets and Income, the Declaration of Interests and the Declaration of Impartiality, Confidentiality and Independence in the Formation and Execution of Public Contracts.

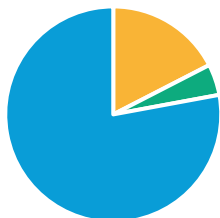
Article 8 of PPL (Conduct of Public Officials)

Article 8 (1) and (5) of the PPL: The officials and agents of the Procuring Entity involved in the planning, preparation or performance of public procurement procedures or the execution of public contracts, as well as the members of the Evaluation Commission, shall annually, in the manner prescribed by a specific normative act of the President of the Republic, declare their income and that of their

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household members, as well as their investments, assets and substantial gifts or benefits from which a conflict of interest may result in relation to their duties.

Are there conflicts of interest related to public procurement in SNCP, IGAE or Court of Auditors?



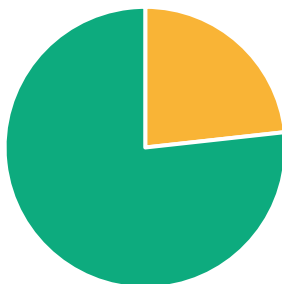
■ Yes, recurrent ■ Yes, rare ■ Not to my knowledge

Are there conflicts of interest in public procurement operations promoted by Procuring Entities?



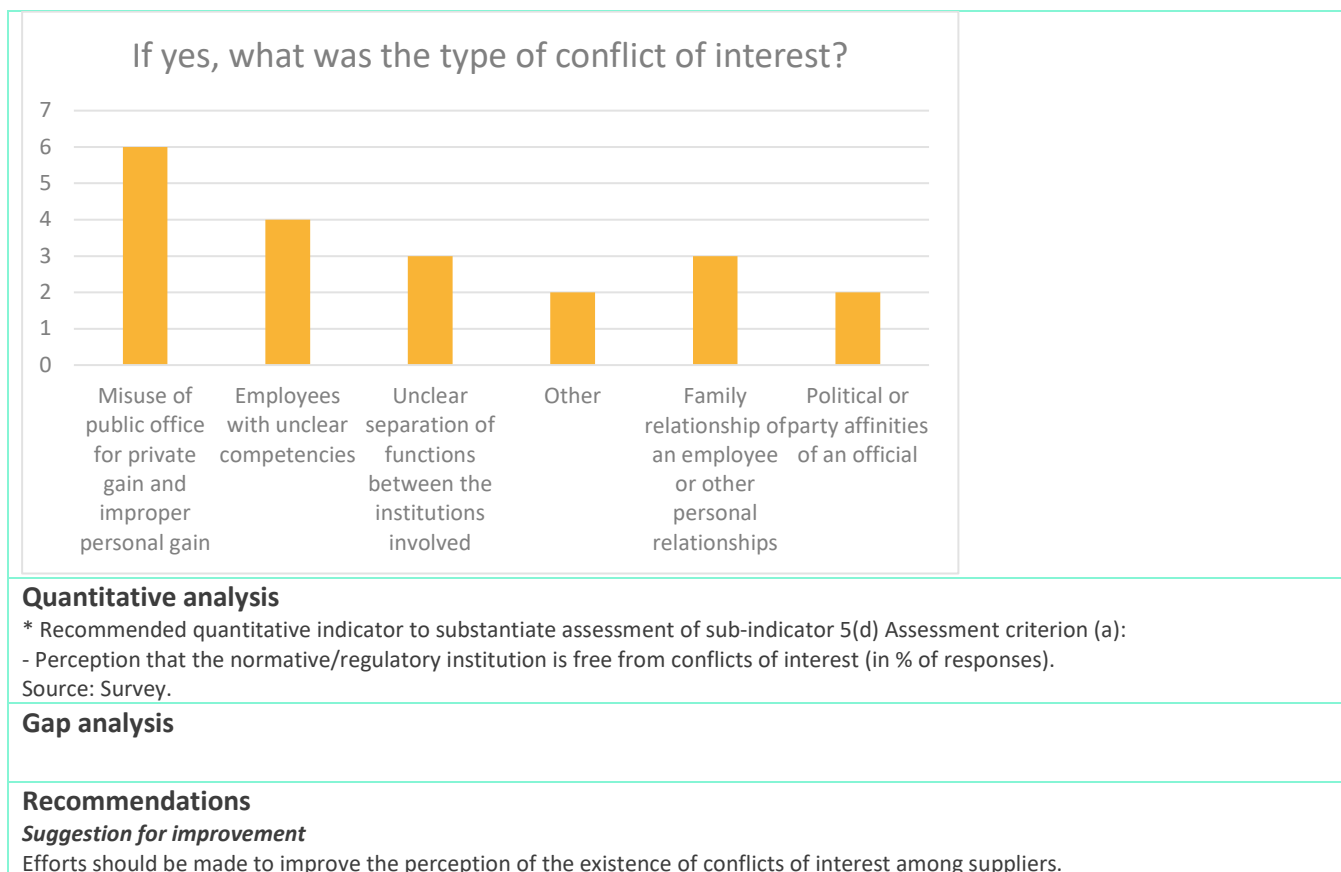
■ Yes, recurrent ■ Yes, rare ■ Not to my knowledge

In the context of Angolan public procurement, have you ever experienced a situation where the SNCP, IGAE or the Court of Auditors?



■ Yes ■ No

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Indicator 6. Procuring entities and their mandates are clearly defined

Sub-indicator 6(a) Definition, responsibilities and formal powers of procuring entities The legal framework provides for the following:	
Assessment criterion 6(a)(a): Procuring entities are clearly defined.	
Conclusion: No gap	
Red flag: No	
Qualitative analysis	
Entity	Legal framework
President of the Republic	Under Art. 120(d) of the Constitution of the Republic of Angola (CRA), "The President of the Republic, as holder of the Executive Power, has the following powers: d) to direct the services and the activity of the State's direct, civil and military administrations, to supervise the indirect administration, and to exercise jurisdiction over autonomous administration;" It must be borne in mind that, according to the Angolan constitutional framework (Article 108(1) of the CRA), the powers of the President of the Republic are threefold inasmuch as he "is the Head of State, the holder of Executive Power, and the Commander-in-Chief of the Armed Forces".
Entities of Central and Local State Administration	The organization and functioning of the auxiliary bodies of the President of the Republic are governed by Presidential Legislative Decree 8/2019, of 19 of June

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National Assembly	The National Assembly is a sovereign organ (Article 105 of the CRA) and "is the Parliament of the Republic of Angola" (Article 141, Paragraph 1 of the CRA) exercising political and legislative powers (Article 161 of the CRA), including the approval of the General Budget of the State (Article 161, e), the law on public contracts (Article 161, b) and Article 165, Paragraph 2 of the CRA), with powers of control and supervision (Article 162 of the CRA), with particular emphasis on "receiving and analyzing the General Account of the State, as well as other public institutions that the law requires it to oversee, which may be accompanied by the report and opinion of the Court of Auditors, (...)" and, finally, powers in relation to other organs (Article 163 of the CRA)
Courts	The Courts are organs of sovereignty (Article 105 of the CRA), with the Court of Auditors (Article 182 of the CRA), whose Organic Law was approved by Law nr. 13/2010, of 9 of July, and amended by Law nr. 19/2019, of 14 of August, standing out for its importance in the framework of prior, concomitant, and successive supervision of public contracts.
Attorney General's Office	The Organic Law of the Attorney General's Office was approved by Law nr. 22/2012, of 14 of August.
Independent Administrative Entities	The Law on Independent Administrative Entities was approved by the Law nr. 27/20 21, of 25 of October. According to Article 2 (1), Independent Administrative Bodies are non-territorial entities that, regardless of their designation and not integrated in other bodies of the Public Administration, pursue their attributions with organic, functional, and technical autonomy, without being subject to the direction, supervision or administrative tutelage of the Executive Branch. (2) The Independent Administrative Bodies shall have administrative and financial autonomy, as well as attributions and competences in matters of regulation of economic, social, and administrative activity (...) and of promotion and defense of competition in the public and private sectors.
Local authorities	The legal regime of local authorities is set out in Article 217 (1) of the CRA and in the Organic Law on the Organisation and Functioning of Local Authorities, approved by Law nr. 27/2019, of 25 of September.
Public institutes	The Legal Regime of Public Institutes was approved in the Presidential Decree nr. 2/2020, of 19 of February
Public funds	According to Article 4, (d) of Presidential Legislative Decree nr. 2/2020, of 19 of February, public funds are a form of public institute when they are " <i>autonomous public assets, endowed with legal personality, administrative, financial and patrimonial autonomy specifically created to pursue certain public purposes of an economic nature, namely in the fields of fostering economic and social development, maintenance and conservation of infrastructure and economic stabilization.</i> " Public funds, unlike public foundations, are integrated in the General Budget of the State.
Public associations	The legal regime of public associations is set out in the Basic Law on Public Associations, approved by Law nr. 13/2012, of 13 of January
Public Companies and Companies with Public Shareholding, as defined in law	The Basic Law of the Public Enterprise Sector, approved by Law nr. 11/2013, of 7 of September, does not offer a definition or a general concept of public company, but provides in Article 3 that public companies are those that, by law, are expressly qualified as such. Paragraph 2 adds that the capital of these companies is held entirely by the State. As for the companies with a public sector shareholding, the same law prescribes in its Article 4 that "they are commercial companies created under the Commercial Companies Law, in which the State directly, or through other public entities, exerts isolated or jointly a dominant influence by virtue of any of the following circumstances: a) Holding all or most of the capital or voting rights; b) Right to appoint or dismiss the majority of the members of the administrative or supervisory bodies". Public Companies and Mixed Public Shareholding Companies that do not benefit from operational subsidies or any operations with funds from the State Budget are excluded from the application of the PPL.
Entities governed by public law	An Entity governed by public law is any legal person that, regardless of its public or private nature, pursues public interests without any commercial or industrial character and that in its pursuit is controlled or financed by the Angolan State from the General State Budget.

Gap analysis

Recommendations

Assessment criterion 6(a)(b):

Responsibilities and competences of procuring entities are clearly defined.

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Conclusion: No gap						
Red flag: No						
Qualitative analysis All actors intervening in Angolan public procurement market – supply side, demand side and regulatory function - have their responsibilities and competences defined by law. In the case of procuring entities (demand side) the level of definition is the highest possible and comprises two fundamental areas: <ul style="list-style-type: none"> - Definition of the attributions and competences of the entity in general, hierarchical dependence or tutelage relationship or regime of independence and internal organisation (the more general aspects derive from Administrative Law and the more specific ones are, when necessary, the subject of organic laws (e.g. SNCP, which constitutes the body responsible for the regulation and supervision of public procurement, is specifically regulated by the respective organic law, approved by Presidential Decree nr. 162/2015); - Definition of the specific powers and duties applicable to its intervention in public procurement (contained in the PPL and complementary regulations). 						
Gap analysis						
Recommendations						
Assessment criterion 6(a)(c): establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*						
Conclusion: Substantive gap						
Red flag: No						
Qualitative analysis Presidential Decree nr. 88/2018, of 6 of April - Created the Public Procurement Units (PPU), established the role of Project or Contract Manager and approved the Internal Regulation of the PPU. Article 29 provides that the organic statutes of the Procuring Entities shall be harmonised with the Decree.						
Quantitative analysis // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialized procurement function (in % of total number of procuring entities). Source: Normative/regulatory function. There are currently 142 Public Procurement Units created and fully operational, out of a universe of almost 593 Procuring Entities.						
Gap analysis There are currently 142 Public Procurement Units created and fully operational, out of a universe of almost 593 Procuring Entities.						
Recommendations - Efforts should be made to ensure a higher number of functional/operational PPUs, since that will enhance the procurement function. - The creation of a dedicated area for public procurement in each Procuring Entity "by decree" does not by itself result in the application of best practices. SNCP should continue its capacity-building efforts and encourage the use of more agile means, specifically the e-GP.						
Assessment criterion 6(a)(d): Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.						
Conclusion: Substantive gap						
Red flag: Yes						
Qualitative analysis Article 24 of the PPL determines the rules for the choice of procurement method depending on the value of the contract. These rules provide for the delegation of powers according to risk.						
Competent bodies	Thresholds (in AOA) are set out in the Annual Implementation Rules of the State Budget for each fiscal year					
	Up to 1 000 million	Up to 1 750 million	Up to 2 000 million	Up to 2 500 million	Up to 3 000 million	above 3 000 million

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Holder of the Executive Branch (President of the Republic)	✓	✓	✓	✓	✓	✓
Vice-President of the Republic	✓	✓	✓	✓	✓	✗
Ministers of State	✓	✓	✓	✓	✗	✗
Ministers and Provincial Governors	✓	✓	✓	✗	✗	✗
Municipal Administrators	✓	✓	✗	✗	✗	✗
Other Bodies of Central State Administration and SOEs	✓	✗	✗	✗	✗	✗
Managers of Budgetary Units of Local Government Bodies of the State	✓	✗	✗	✗	✗	✗

Gap analysis

Delegation of authority does not adequately reflect the risk reflected in the value of the contract to be formed. A Red Flag is assigned because addressing this gap requires a legislative amendment.

Recommendations

Consider revising the competence thresholds according to the estimated value of the contract in order to increase the autonomy, as well as the responsibility, of the lower levels of competence. This is usually done through the Budget Execution Law.

Assessment criterion 6(a)(e):

Accountability for decisions is precisely defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPL precisely defines the accountability for decisions.

Article 32 (Decision to contract)

- Public procurement procedures begin with the decision to contract, taken by the competent body to authorize the expenditure inherent to the contract to be signed.
- The Procuring Entity can only take the decision to contract when the amount is included in its budget, unless it is stated in the announcement, invitation, or procedure plan that the awarding is dependent on the approval of the corresponding budget entry.
- The decision to contract must be communicated by the Procuring Entity to the Authority responsible for the Regulation and Supervision of Public Procurement, based on the model in Annex II of this Law.

Article 33 (Decision to choose the procurement method)

- The decision to choose the public procurement method to be adopted is the responsibility of the competent body for the decision to contract.
- The decision referred to in the previous number is always justified, even if by reference to studies or reports that have been carried out for this purpose.

Article 34 (Delegation of powers)

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1. Without prejudice to the provisions of Section 44(2), the power to perform any acts provided for in this Law may be delegated or subdelegated.

2. The termination or cancelation of contracts entered into under the terms of the preceding paragraph shall not require a new authorization by the delegating body, unless otherwise expressly indicated.

Article 36 (Competence to commit expenditure)

1. The competence for authorizing the expenditure inherent to the formation and execution of contracts covered by the scope of application of this Law shall be determined in a specific normative act of the President of the Republic.

2. Exceptions to the previous number are the sovereign bodies, local authorities, independent administrative entities, whose competence to authorize expenditure shall be defined under the terms of the respective Organic Laws or Statutes.

Article 38 (Competence to authorize expenditure in cases of Simplified Contracting procedures adopted according to material criteria and within the scope of the Emergency Procurement)

The competency to authorize the expenditure inherent in the formation and execution of contracts concluded following Simplified Contracting procedures adopted according to objective criteria and the Emergency Contracting procedure shall be determined in a specific normative act of the President of the Republic and the bodies referred to in paragraph 2 of Article 36

Article 86 (Sequence of the procedure)

1. Where the bidding document does not provide for the adoption of a negotiation phase or an electronic auction, the entity competent for the contracting decision shall consider the content and conclusions of the final report for the purpose of awarding the contract, and the provisions of Article 96 et seq. shall apply.

2. When the contract document provides for the adoption of a negotiation phase or an electronic auction, the entity competent for the contracting decision shall consider the content and conclusions of the final report for the purpose of its selection for negotiation or auction in accordance with Article 87 et seq. or Article 90 et seq. respectively.

Article 131 (Qualification decision)

1. The entity competent for the contracting decision shall publish the content and conclusions of the final report for the purposes of qualifying the candidates. 2. The decision on qualification shall be notified to all the candidates, and the provisions of Articles 14 et seq. shall apply.

Gap analysis

Recommendations

Sub-indicator 6(b) Centralized procurement body

Assessment criterion 6(b)(a):

The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The country has created two specialized central purchasing bodies, CECOMA for the health sector and SIMPORTEX for the defence sector. A central purchasing body to cover the more relevant transversal categories of works, goods and services is not available.

CECOMA (Centre for Purchasing and Supply of Medicines and Medical Supplies), is a public institution responsible for developing the system for the acquisition, distribution, and maintenance of medical and non-medical for the National Health Service that has been created by the Presidential Decree nr. 269/2014 of 22 September. According to Article 1 (2) CECOMA is a public institute in pertaining to the administrative sector, endowed with legal personality and capacity, and administrative, financial, and patrimonial autonomy. According to the same law (Article 6) CECOMA has the following duties:

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- a) Acquire, distribute, and maintain medical and non-medical supplies, in coordination with the National Directorate for Medicines and Equipment and the Ministry of Health's Studies, Planning and Statistics Office;
- b) To gather all the needs for medicines and medical equipment of all the institutions of the National Health Service in order to purchase them by public tender, with the exception of small orders for vital and emergency products;
- c) Collaborate with the various public health programmes and institutions in defining the needs for medicines and medical supplies;
- d) Purchasing medicines under common international or generic names;
- e) Preparing and launching public tenders for the purchase of medicines and medical and non-medical supplies;
- f) Ensure that laboratory tests are carried out on medicines of dubious quality before they are distributed;
- g) Requiring manufacturers to provide proof of compliance with internationally accepted standards for guaranteeing the quality of the products to be purchased;
- h) Coordinating and guiding the activities of the entire public medicines storage network, with a view to implementing the conditions and standards of good practice in the storage of medicines and medical equipment;
- i) Ensuring the maintenance, storage and distribution of medicines and medical supplies;
- j) Ensuring the storage and management of donations at the central level of the Ministry of Health;
- k) Ensuring the administrative, financial, asset and technical functionality of the regional depots;
- l) Ensuring the regular supervision and monitoring of medicines and medical supplies storage services;
- m) Ensuring the supply of standardised tools for managing medicines and medical supplies;
- n) Carrying out other duties established by law or determined by higher authorities.

SIMPORTEX is a public company with legal personality with administrative, patrimonial, and financial autonomy, as provided by Decree nr. 110/2018, of 26 of April.

Its corporate purpose includes:

- 1- The exercise of all trade acts, including those of import and export not prohibited by law and in exclusivity regime the supply of technical-materials, as well as those of any other means and goods to carry out and implement military programming, in accordance with the needs and priorities defined by the Ministry of National Defense and the Veterans of the Fatherland;
- 2- The exercise of complementary or accessory activities which have affinity with the corporate purpose, as defined in its Organic Statute, namely, to carry out and execute public investment programmes with the authorisation and supervision of the Guardianship Body (Ministry of National Defence and Homeland Veterans).

The use of framework agreements is not a regular practice.

Gap analysis

A central purchasing body to cover the more relevant transversal categories of works, goods and services is not available.

Recommendations

The GoA should launch a feasibility study for the implementation of a transversal central procurement entity, with a view to centralizing procurement of the main categories of works, goods, and services (top spenders), making use of special procurement instruments, such as framework agreements, and information technologies, such as the e-GP.

Assessment criterion 6(b)(b):

In case a centralized procurement body exists, the legal and regulatory framework provides for the following:

- Legal status, funding, responsibilities, and decision-making powers are clearly defined.
- Accountability for decisions is precisely defined.
- The body and the head of the body have a high-level and authoritative standing in government.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Even though in practical terms the GoA does not operate a centralized procurement function to consolidate procurement, nor make use of tools to increase the efficiency (like framework agreements), except for the 2 examples stated in 6 (b) (a), the PPL does enable the use of such mechanisms and tools as seen in the provisions of PPL below.

TITLE IV

CHAPTER I

General Provisions

ARTICLE 178

(Purchasing Centres)

1. The Contracting Public Entities may set up Purchasing Centres to centralise the contracting of public works contracts, the leasing and Acquisition of Movable Goods and the Acquisition of Services.
2. The entities referred to in the previous number may also set up Purchasing Centres exclusively intended for a specific sector of activity.

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3. The form of constitution, organisation and operation of the Purchasing Centres are defined in a specific normative act of the President of the Republic.

ARTICLE 179

(Main activities of the Purchasing Centers)

1. The Purchasing Centers are intended, namely, to:

- a) Adjudicate proposals for the execution of public works contracts, the supply of movable property and the Acquisition of Services, at the request and on behalf of the Contracting Public Entities;
- b) Lease or acquire goods or acquire services intended for Public Procuring Entities, namely in order to promote the grouping of orders;
- c) Sign Framework Agreements designated public procurement contracts, which have as their subject matter the subsequent signing of contracts (call-offs) for public works, goods or services.

2. For the purposes of carrying out the activities provided for in the preceding paragraph, the Purchasing Centers are subject to the provisions of this Law.

3. In the cases provided for in subparagraphs a) and b) of paragraph 1, the expenses inherent in the formation procedure of each contract to be signed are the responsibility of the Beneficiary Public Contracting Entity, unless expressly provided otherwise.

ARTICLE 180

(Guiding principles)

In the conduct of their activities, in addition to respecting the rules on training and execution of public contracts, the Purchasing Centers are also guided by the following principles:

- a) Segregation of contracting, purchasing and payment functions;
- b) Use of electronic purchasing tools with electronic catalog and automated ordering features;
- c) Adoption of electronic purchasing practices based on the action of highly qualified negotiators and specialists, with a view to reducing costs;
- d) Preference for the acquisition of goods and services that promote the protection of national industry and the environment;
- e) Promotion of competition.

CHAPTER II

Constitution and Management of Purchasing Centres

ARTICLE 181

(Constitutive Acts)

1. The constitutive acts of Public Purchasing Centres regulate, namely, the following matters:

- a) Objective scope, namely the activities to be developed, the type or types of contracts covered and, if applicable, identification of the sector of activity for which it is intended;
- b) Subjective scope, namely the covered entities by centralisation;
- c) Mandatory or optional nature of the use of the Purchase Central by the covered entities.

2. The constitutive acts of Purchasing Centres may also provide criteria for remuneration of services provided, namely in contractual relations with third parties who are not covered entities, considering the appropriate performance indicators, such as the volume of purchases or savings generated.

3. The State can create General Purchasing Centres or intended only for a specific sector of activity and designed to satisfy special and differentiated needs.

ARTICLE 182

(Feasibility and economic-financial rationality)

The creation of Purchasing Centres is always preceded by a study that focuses on the need, economic and financial feasibility, and advantages,

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namely from the perspective of quality and efficiency gains, of the creation of Purchase Central, as well as its compliance with the applicable legal regime.

ARTICLE 183

(Third party management)

1. The management entities of Purchasing Centers may assign the management of some of its activities to a third party, regardless of its public or private nature if this is expressly provided in the respective constitutive acts.

2. The third party referred to in the previous number must offer guarantees of suitability, technical qualification, and adequate financial capacity to the management activities of the concerned Purchase Central.

3. The formation and execution of the management contracts provided for in paragraph 1 in this article, are subject to this Law.

ARTICLE 184

(Management contracts with third parties)

The management contract entered for the purposes set out in the previous article is reduced to writing and regulates, namely, the following matters:

- a) Services specifically covered by the object of the management contract;
- b) Guarantee of continuity and quality in the execution of the services by the third party;
- c) Definition of ancillary activities that the third party may pursue and their terms;
- d) Third party compensation criteria and payment method;
- e) Duration of contract.

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<p>Gap analysis Refer to 6 (b) (a)</p>
<p>Recommendations Refer to 6 (b) (a)</p>
<p>Assessment criterion 6(b)(c): The centralised procurement body’s internal organisation and staffing are sufficient and consistent with its responsibilities.</p>
<p>Conclusion: Choose an item.</p>
<p>Red flag: Choose an item.</p>
<p>Qualitative analysis Not assessed, as not applicable.</p>
<p>Gap analysis</p>
<p>Recommendations</p>

Indicator 7. Public procurement is embedded in an effective information system

<p style="text-align: center;">Sub-indicator 7(a) Publication of public procurement information supported by information technology The country has a system that meets the following requirements:</p>
<p>Assessment criterion 7(a)(a): Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis There is no evidence of bidding notices for electronic procurement being published in wide circulation media. Monitoring of outcomes, results and performance is extremely limited.</p>
<p>Gap analysis Public procurement information is not easily accessible. The Introduction of e-procurement has had a positive impact, but its coverage is still very limited. A Red Flag is assigned because the absence of accessible procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.</p>
<p>Recommendations The enhancement of the existing e-procurement system is recommended. An independent review of the systems functionalities is required to identify potential gaps and to draft an action plan to ensure coverage of the full procurement process. Independent audit/review of the system security features is required to provide for the required trust on the tool and to identify potential vulnerabilities. The use of Open Contracting Data Standard (OCDS) is recommended to make data available and easily accessible for all stakeholders.</p>
<p>Assessment criterion 7(a)(b): There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.</p>
<p>Conclusion: Substantive gap</p>

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<p>Red flag: Yes</p>
<p>Qualitative analysis</p> <p>There is an e-Procurement system (SNCPE) in use since 2018. It covers the pre-awarding phase (e-procurement planning, e-publication, e-tendering, e-reverse auction, e-evaluation/e-awarding), post-awarding phase (contract management) and supporting features (e-registration, supplier management). Since it was implemented, 65 contracts were awarded using the system (37 under the new Electronic Dynamic System, created under the new PPL, and in force since 2021).</p> <p>Access to the system by the Civil Servants requires a SIGFE account and follows a smooth procedure.</p> <p>Suppliers' registration is free of charge and provides access to the full details of the bidding processes and allows suppliers to bid. During the registration process, some of the suppliers' information is automatically obtained as the system is integrated with public data bases (e.g. Tax Authority).</p> <p>There is also a Public Procurement Portal that serves as an access point to all the procurement related information.</p> <p>The published information is not following any data standard (e.g.: Open Contracting Data Standards).</p>
<p>Gap analysis</p> <p>The use of the system has been residual since its launch and does not cover the whole of procurement. According to testimonies gathered from EPCs and economic operators, this may be due to difficulties in use or poor reliability.</p> <p>This gap is given a Red Flag because the absence of accessible procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.</p>
<p>Recommendations</p> <p>Same as the recommendation in 7 (a) (a).</p>
<p>Assessment criterion 7(a)(c):</p> <p>The information system provides for the publication of: *</p> <ul style="list-style-type: none">• procurement plans• information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions• linkages to rules and regulations and other information relevant for promoting competition and transparency.
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis</p> <p>The e-procurement system provides for the publication of:</p> <p>a. procurement plans:</p> <ul style="list-style-type: none">- 518 Annual Procurement Plans (2021), which represents an increase of 68% when comparing with 2020, were published on the Public Procurement Portugal, of a universe of a total of 593 procurement entities. <p>b. information related to specific procurements:</p> <ul style="list-style-type: none">- process ID, procuring entity details, issuing date and deadline for proposal submission, scope of the contract, estimated value, procurement method – if open – and bidding notice is widely available. After registration/login, additional information is accessible, namely the bidding documents. Contract awards and contract implementation are not available. <p>c. linkages to rules and regulations:</p> <ul style="list-style-type: none">- a repository of rules and regulations is available <p>https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/legislacao/contratacao-publica, as well as links to other sources.</p> <p>Some limited statistics are published by SNCP (https://compraspublicas.minfin.gov.ao/ComprasPublicas/#!/documentacao/institucional/publicacoes).</p> <p>However, the information is incomplete, not precise and may lead to incorrect conclusions.</p>
<p>Quantitative analysis</p> <p>// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):</p> <ul style="list-style-type: none">• procurement plans published (in % of total number of required procurement plans)• key procurement information published along the procurement cycle (in % of total number of contracts):• invitation to bid (in % of total number of contracts)• contract awards (purpose, supplier, value, variations/amendments)• details related to contract implementation (milestones, completion and payment)

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- annual procurement statistics
 - appeals decisions posted within the time frames specified in the law (in %).
- Source: Centralised online portal.

- 518 Annual Procurement Plans (2021), which represents an increase of 68% when comparing with 2020, were published on the Public Procurement Portal, of a universe of a total of 593 procurement entities.

The remaining indicators cannot be calculated with the information collected, which is not very credible, as the SNCP itself admits in its statistical reports.

Gap analysis

Available information doesn't cover the entire procurement total expenditure addressed through public contracts and does not provide access to contract award and implementation data.

A Red Flag is assigned because the lack of information on opportunities can significantly limit competition. On the other hand, the lack of reliable statistics and information on awards and addenda prevents stakeholders from monitoring results. The absence of information on appeals prevents continuous improvement of the system. The lack of a single source for accessing rules and regulations makes the system more confusing or less clear. Taken together, these gaps prevent public procurement from achieving its objectives.

Recommendations

Same as 7(a)(a).

Assessment criterion 7(a)(d):

In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

As is, the SNCP system does not support the achievement of the criterion, since registration is necessary to access a full set of bidding documents, though eventually subject to the payment of a fee. Evaluation reports are available to bidders of specific procurements.

Gap analysis

Same as 7(a)(c)

Recommendations

Same as 7(a)(a).

Assessment criterion 7(a)(e):

Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Information is not published under an open data standard.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e):

- Share of procurement information and data published in open data formats (in %).

Source: Centralised online portal.

Gap analysis

Information is not published under an open data standard.

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<p>Recommendations Same as 7(a)(a)</p>
<p>Assessment criterion 7(a)(f): Responsibility for the management and operation of the system is clearly defined.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The Presidential Decree nr. 202/2017, of 6 of September, establishes in its Article 12 that the supervisory body of the e-Procurement solution (software) is the Ministry of Telecommunication and Information Technologies and Media (MINTTICS). In Article 13, the system's (processes) regulatory and supervisory power is attributed to SNCP. Article 14 states that the Public Assets Directorate, under MINFIN, has the operational management of the suppliers' registry, catalogue management and aggregation of needs. Finally, the technical and functional development role is mandated to MINFIN's ICT Institute (SETIC-FP).</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p style="text-align: center;">Sub-indicator 7(b) Use of e-Procurement</p>
<p>Assessment criterion 7(b)(a): E-procurement is widely used or progressively implemented in the country at all levels of government.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis Please refer to 7 (a) (b) above. The system is used by approx. 1% of the Procuring Entities. 79 e-Procurement procedures, from which 65 were awarded, corresponding to AOA 332.5 billion.</p>
<p>Quantitative analysis // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system. The system is used by approx. 1% of the Procuring Entities. 79 e-Procurement procedures, from which 65 were awarded, corresponding to AOA 332.5 billion.</p>
<p>Gap analysis The system is used by approx. 1% of the Procuring Entities. 79 e-Procurement procedures, from which 65 were awarded, corresponding to AOA 332.5 billion. A Red Flag is assigned to this gap because the lack of internal capacity at the GoA for the roll-out of e-GP is evident.</p>
<p>Recommendations Same as 7 (a) (a).</p>
<p>Assessment criterion 7(b)(b): Government officials have the capacity to plan, develop and manage e-Procurement systems.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis In 2017, an Order signed by the Minister of Finance established a working group to design, plan, develop and implement an e-procurement solution. The working group had a board and a technical committee, with representatives from MINFIN, the Ministry of Telecommunications, Technology and Media and the Ministry of Health, and was advised by external experts. The SNCPE is a fully</p>

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customized solution developed with the support of an outsourced IT expert who is also responsible for the development and maintenance of SIGFE, the Integrated Financial Management Information System (IFMIS). Despite the risks and limitations of a customized solution, the SNCPE is now fully operational and functional, despite some gaps, especially due to the absence of a standardized approach to procurement data (OCDS) or the lack of coverage of the post-contractual phase.

Gap analysis

There is a lack of internal capacity to plan, develop and manage the deployment of the e-procurement solution.

Recommendations

Same as 7(a)(a). The government should seek external expert advice for the identification of gaps and development of an action plan to widely implement e-procurement in the country.

Assessment criterion 7(b)(c):

Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Since the implementation of SNCPE, 554 civil servants⁵ have been trained to use the e-procurement system. Despite this, the number of processes managed through the system is still very limited.

Gap analysis

Despite the number of civil servants trained, SNCP support is still needed when procuring entities run processes using the e-GP solution.

Recommendations

The action plan for expanding the use of e-procurement should consider an extensive change management programme including capacity building.

Assessment criterion 7(b)(d):

Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Procurements made through the e-Procurement system got an average of 11 bids, which is considerably higher than the average number of bids received in the paper-based procurements in the analysed samples (6.5 bids).

In the private sector survey, 70% of the respondents confirmed that were aware of the existence of an e-Procurement solution. In addition, 77.9% of the respondents considered the increase of competition would be one of the benefits of the introduction of e-Procurement, while 74.4% said that it removes some participation barriers to MSMEs.

Quantitative analysis

* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):

- bids submitted online (in %)
- bids submitted online by micro, small and medium-sized enterprises (in %)

Source: e-Procurement system.

See above.

Gap analysis

The use of e-GP is still very limited.

Recommendations

Same as 7 (a) (a).

Assessment criterion 7(b)(e):

If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

⁵ There are approx. 400 000 civil servants. The number of civil servants working in public procurement is however unknown.

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Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.
Gap analysis
Recommendations
Sub-indicator 7(c) Strategies to manage procurement data
Assessment criterion 7(c)(a): A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Data collection is mainly a manual process that, even with supporting provisions in PPL and other decrees/regulations, is not effective. SNCP keeps an Excel file where it stores all the tender notices that it becomes aware of, either because some (few) entities comply with the PPL's provisions of informing, or because SNCP's team is monitoring national newspapers daily looking for tender notices. The same Excel file is used to store award notices and other information. Such process is not effective as can be seen in Indicator 5 above.
Gap analysis Data collection is mainly a manual process that, even with supporting provisions in PPL and other decrees/regulations, is not effective. A Red Flag is assigned because the absence of a reliable system for collecting data is a factor that hinders the necessary monitoring of procurement, making it impossible to implement fact-based reforms.
Recommendations Same as 7 (a) (a)
Assessment criterion 7(c)(b): The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis While the e-Procurement system offers limited analytic capabilities, it does not cover the entire cycle, being limited to the pre-award and award phases. The Post-award phase is still missing. In what concerns to traditional paper-based procurement, due to the reduced compliance with publication requirements, the available information does not allow the performance of any effective and reliable analysis of data.
Gap analysis While the e-Procurement system offers limited analytic capabilities, it does not cover the entire cycle, being limited to the pre-award and award phases. The Post-award phase is still missing.
Recommendations Same as 7 (a) (a)
Assessment criterion 7(c)(c): The reliability of the information is high (verified by audits).
Conclusion: Substantive gap

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Red flag: No
Qualitative analysis Please refer to 7 (c) (a). Audits have not been performed.
Gap analysis Audits to the e-GP solution have not been performed.
Recommendations Same as 7 (a) (a)
Assessment criterion 7(c)(d): Analysis of information is routinely carried out, published and fed back into the system. *
Conclusion: Substantive gap
Red flag: No
Qualitative analysis SNCP regularly issues a semi-annual statistical bulletin (BECPA), an annual report (RACPA) and a monthly statistical bulletin. However, as stated above, the level of accuracy of the provided statistics is very limited and does not cover the entire government procurement related expenditure. Regarding the procurements done through the e-Procurement systems, despite the availability of the data, a very limited note is included in the above-mentioned reports, i.e., Number of tenders conducted through the system. The following data is available for the 2021, 2nd Semester, Edition of BECPA:
<div style="border: 1px solid black; padding: 5px;"> <p>Source: https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4y/nzyz/~edisp/minfin2763456.pdf</p> <p>Total number of bidding processes = 674</p> <p>Total number of awarded processes = 76, resulting in 87 contracts</p> <p>Total value of contracts awarded = AOA 26.83 (AOA million)</p> </div>
Quantitative analysis // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):
<ul style="list-style-type: none"> • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. <p>Source: Normative/regulatory function/E-Procurement system.</p>
Gap analysis The level of accuracy of the provided statistics is very limited and does not cover the entire government procurement expenditure.
Recommendations Same as 7 (a) (a)

Indicator 8. The public procurement system has a strong capacity to develop and improve

Sub-indicator 8(a) Training, advice and assistance There are systems in place that provide for:
Assessment criterion 8(a)(a): Substantive permanent training programmes of suitable quality and content for the needs of the system.
Conclusion: No gap

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Red flag: No
<p>Qualitative analysis SNCP has been investing in training its internal staff, and also the staff assigned to the area of public procurement at the level of Procuring Entities and private sector. In 2020 an agreement was signed with the National School of Administration and Public Policy (ENAPP), which resulted in the creation of the Academy of Public Procurement, open to public entities and private sector. According to the information available on the RACPA, in 2020, and despite the pandemic crisis, 17 training courses were held in areas such as i) project management, ii) operation of the Evaluation Commissions, iii) analysis and evaluation of proposals, iv) procedures in the SNCPE and v) procedures for tender processes. These actions covered more than 700 people, who participated either in person or remotely.</p>
Gap analysis
Recommendations
<p>Suggestion for improvement: Despite the existence of an intensive capacity building plan, in the contact with the procuring entities the need for training was always mentioned, particularly in areas related to the preparation of procedures and evaluation of proposals.</p>
<p>Assessment criterion 8(a)(b): Routine evaluation and periodic adjustment of training programmes based on feedback and need.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis SNCP maintains close contact with the procuring entities and has defined a monitoring calendar for the different sectors, as well as visits to the various provinces. As part of this monitoring, the training needs of those involved in the public procurement process are assessed and adjusted.</p>
Gap analysis
Recommendations
<p>Assessment criterion 8(a)(c): Advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.</p>
Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis Same as 8 (a) (b). The teams that provide the mentioned close contact are available to give guidance to the procuring entities. A specific channel is available for suppliers and the public through a dedicated e-mail. In the private sector survey, when asked if the Government provides suppliers with the necessary support, namely training courses, technical guidelines, helpdesk, and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement, 73% of respondents answered No.</p>
Gap analysis
<p>In the private sector survey, when asked if the Government provides the necessary resources, namely training courses, technical guidelines, helpdesk, and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement, 73% of respondents answered No.</p>
Recommendations
<p>Launch a survey for the private sector to identify needs. Draft and implement a private sector-oriented capacity-building programme.</p>
<p>Assessment criterion 8(a)(d): A strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.</p>
Conclusion: Minor gap

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Red flag: No
Qualitative analysis Same as 8 (a) (c).
Gap analysis Same as 8 (a) (c).
Recommendations Same as 8 (a) (c).
Sub-indicator 8(b) Recognition of procurement as a profession The country's public service recognises procurement as a profession:
Assessment criterion 8(b)(a): Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competences specified.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The professionalization of the public procurement career was part of the strategic objectives outlined in the Angolan Strategic Procurement Plan (PECPA) 2018-2022. However, although steps have been taken in this direction, namely through the creation of the Public Procurement Units (UCPs) and the development of an extensive training programme, the figure of the public procurer is still not recognized as a distinct career, and access to it is does not require any specific qualification/accreditation.
Gap analysis The public purchaser is still not recognized as a distinct career, and access to it is does not require any specific qualification/accreditation.
Recommendations SNCP to promote training and the recognition of procurement as a profession by providing job descriptions, required qualifications and competences framework. SNCP to engage with universities and training institutions to align their curricula to include practical public procurement case studies.
Assessment criterion 8(b)(b): Appointments and promotion are competitive and based on qualifications and professional certification.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Refer to 8(a)(a)
Gap analysis Refer to 8(a)(a)
Recommendations Refer to 8(a)(a)
Assessment criterion 8(b)(c): Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.
Conclusion: Minor gap
Red flag: No

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<p>Qualitative analysis</p> <p>Without a procurement-specific career track, and with staff belonging to different business units with different performance evaluation parameters, consistency cannot be guaranteed. However, procurement-specific training needs are evaluated by SNCP. Staff is regularly evaluated.</p>
<p>Gap analysis</p> <p>Staff is regularly evaluated under different frameworks.</p>
<p>Recommendations</p> <p>Establishment of a procurement specific staff performance evaluation model.</p>
<p>Sub-indicator 8(c) Monitoring performance to improve the system</p>
<p>Assessment criterion 8(c)(a):</p> <p>The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>During the preparation phase of PECPA 2018-2022, a Current State Assessment was prepared by SNCP, which helps the identification of priority areas. PECPA 2018-2022 was developed and has been implemented since. In addition, Development Partners have been supporting the country in its PFM reform. Thus, monitoring of the system performance has been done.</p> <p>In addition, SNCP has consistently been monitoring the public procurement performance and issuing reports that highlight both qualitative and quantitative aspects.</p>
<p>Gap analysis</p>
<p>Recommendations</p> <p>Suggestion for improvement</p> <p>SNCP to develop the multi-year Strategic plan covering 2023 onwards.</p>
<p>Assessment criterion 8(c)(b):</p> <p>The information is used to support strategic policy making on procurement.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The information gathered throughout SNCP's reports and under the Development Partners monitoring processes is used to support strategic policy making. Indeed, SNCP is prepared to use the current MAPS assessment conclusions to support the next 5 years strategic plan for public procurement.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 8(c)(c):</p> <p>Strategic plans, including results frameworks, are in place and used to improve the system.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>

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Qualitative analysis Refer to 8 (c) (a).
Gap analysis
Recommendations
Assessment criterion 8(c)(d): Responsibilities are clearly defined.
Conclusion: No gap
Red flag: No
Qualitative analysis The PECPA 2018-2022 Implementation Matrix clearly identifies the objectives, expected results, priorities, responsibilities, and time horizon.
Gap analysis
Recommendations

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Indicator 9. Public procurement practices achieve stated objectives

Sub-indicator 9(a) Planning
Assessment criterion 9(a)(a): Needs analysis and market research guide a proactive identification of optimal procurement strategies.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is no evidence of significant market research being conducted, even though in 63% of the sample cases contracting authorities claimed to have made an estimation of the contract value based on "market research". The percentage decreases to almost 14% if the bids conducted through the e-GP system are excluded. Also, worth to note that according to the sample, for the bids conducted electronically, market research was conducted in 100% of the cases.
Gap analysis There is no evidence of significant market research being conducted, even though in 63% of the sample cases contracting authorities claimed to have made an estimation of the contract value based on "market research". A Red Flag is assigned to this gap because it is considered that the absence of mechanisms for defining procurement strategies hinders the achievement of public procurement objectives.
Recommendations - Procuring Entities to carry out adequate needs analysis and market research to design the procurement strategy. - Deploy SNCPE's Procurement Planning module and seek enforcement of the existing provisions to ensure full coverage of procurement planning. - Develop guidelines on how to conduct market research.
Assessment criterion 9(a)(b): The requirements and desired outcomes of contracts are clearly defined.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Contract requirements and desired outcomes are usually poorly described in tender documents, although often using "historical information", i.e., copying and pasting from tender documents used in the past, with limited or no updates. Service levels are often not described.
Gap analysis The use of outdated bidding documents may compromise the desired outcomes.
Recommendations Procuring entities to make sure the desired outcomes are properly described and that service levels are defined to achieve the procurement objectives.
Assessment criterion 9(a)(c): Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis A national strategy for sustainable procurement is not yet available. SNCP, together with other stakeholders, are working in a phased manner to achieve this. The first step, a national survey, is underway. In the sample analyzed, the use of sustainability criteria applied in practice was not detected.

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Refer to Indicator 3 (a).
<p>Gap analysis Refer to indicator 3 (a) A Red Flag is assigned because there are no national priorities that contribute to ensure value for money.</p>
<p>Recommendations Refer to indicator 3 (a)</p>
<p>Sub-indicator 9(b) Selection and contracting</p>
<p>Assessment criterion 9(b)(a): Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The use of multi-stage procedures in complex procedures is not a usual practice, representing less than 10% of the sample analysed and, within these, only 30% refer to paper-based procedures. Contracting authorities claim that the multi-stage is complex and long being these the reasons for not using it.</p>
<p>Gap analysis The use of multi-stage procedures is very limited.</p>
<p>Recommendations - SCNP to draft guidelines and provide training to Procuring Entities to allow for an increased use of multi-stage bidding. - Use SNCPE, for the simplicity and guidance provided by the e-GP system, as an enabler.</p>
<p>Assessment criterion 9(b)(b): Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Standard Bidding Documents (SBDs) are available for all procurement methods and types of contracts. Its availability is wide-spread, and PEs tend to use the available SBDs. However, more often than not, those SBDs are misused, as some of the instructions are not followed, namely in what regards to the disclosure of the evaluation model.</p> <p>In the private sector survey, 62% of the respondents consider that the procurement method chosen by PEs is not proportional to the risk and specific value of the contracts.</p> <p>There is an average of 8.76 received bids in 126 sampled cases. This average falls to 6.23 if e-GP cases are excluded from the sample.</p> <p>If the data collected in the private sector survey is considered, it can be noted 73% of the respondents consider that the Government does not "provide the necessary resources, namely training, technical guidelines, and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement". Additionally, 57% of the responses indicate that the evaluation criteria are neither simple nor objective.</p>
<p>Gap analysis To a certain extent, SBDs are misused as, in many cases, the evaluation criteria is not clearly defined.</p>
<p>Recommendations Considering the higher participation rates of the tenders processed through the e-GP system (SNCPE), GoA should consider to fully deploy the e-GP solution.</p> <p>In addition, the SNCP should promote awareness-raising and capacity-building actions to ensure the effective use of the standard documents.</p>

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<p>Assessment criterion 9(b)(c): Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The PPL provides for 6 (six) different procurement methods, although two of those are quite recent, created by the new PPL (Electronic Dynamic Purchasing System and Emergency Procurement). Procurement procedures, in many cases, were presented incomplete and lacking information of evidence of several steps. Despite not being the case in the analysed sample, during several meetings with PEs, the excessive use of restricted methods was mentioned, in many cases under the justification of “emergency”. In fact, the creation of the “Emergency procurement” method is seen as an attempt to somehow regulate the use of “emergency” as a material criterion for the selection of the procurement method. According to the 2021 Annual Procurement Report issued by SNCP (RACPA), and despite the poor quality of the data⁶, there is an apparently reasonable distribution of usage of the different procurement methods, if the number of procedures is considered (37% of open procedures). However, when analysing the contractual amount, open methods represent more than 80%.</p>
<p>Gap analysis As a general note, the Assessment Team identified a major gap in what concerns document management. The files of the procurement processes are not organized and often presented incompletely. That includes the absence of proper reasoning of the decisions taken, from the procurement method selection to the award decision.</p>
<p>Recommendations An effective operationalization of the Procurement Units within each entity, especially among the major spenders, should be promoted, along with the professionalisation of the public procurer's career to improve governance of the procurement function.</p>
<p>Assessment criterion 9(b)(d): Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The available SBDs, whose use is well disseminated, include provisions regarding procedures for bid submission, receipt and opening. However, among the answers to the private sector survey, there are references to the excessive bureaucracy of the processes and the lack of transparency of the evaluation committees throughout their work.</p>
<p>Gap analysis</p>
<p>Recommendations <i>Suggestion for improvement</i> SNCP should seek to learn more deeply the reason for the comments in the private sector survey by launching an extensive survey among participants in public bids to assess the pertinence of the issues raised, as well as drawing up action plans to correct any shortcomings.</p>
<p>Assessment criterion 9(b)(e): Throughout the bid evaluation and award process, confidentiality is ensured.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p>

⁶ “However, the SNCP assessed, of the total procedures registered, a value of around 132 billion kwanzas, corresponding to only 3% of the amount liquidated, which is due to the lack and quality of information provided by the EPCs, as well as the non-mandatory communication of PCPs below 182 million kwanzas.”, in RACPA 2021, page 15.

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Although public procurement is an area where the golden rule is openness and transparency, not only for the benefit of those directly interested in participating and participants (candidates and bidders), but also for the community at large, the PPL contains the following exceptions where the duty of secrecy (confidentiality) is prescribed until the conclusion of the award process:

- the obligation of the civil servants and agents of the Procuring Entity involved in the planning, preparation or carrying out of public procurement procedures or the execution of public contracts, as well as the members of the Evaluation Committee treat as confidential all information obtained in the course of the procedure [Article 8, (1) (f), PPL];
- obligation to keep the minutes and any other information or communications, written or oral, provided by the bidders to the Evaluation Committee during the negotiation phase [Article 88 (6)];
- during the e-auction, the Procuring Entity may not disclose, directly or indirectly, the identity of the competitors participating in it [Article 94, PPL].

Confidentiality is ensured during the process. However, regarding the protection of commercial and industrial secrecy there is a gap in the PPL. Pls refer to 1 (i) (d) above.

Gap analysis

Regarding the protection of commercial and industrial secrecy there is a gap in the PPL. Pls refer to 1 (i) (d) above.

Recommendations

As above in 1 (i) (d):

Add a provision mentioning the classification of documents and information of the proposals e.g.: "...for reasons of commercial, industrial, military or other legally protected secrecy, the interested parties may request, until the end of the first third of the period fixed for the submission of the proposals, the classification, in accordance with the law, of documents which constitute the proposal, for the purposes of restricting or limiting access to them to the extent strictly necessary (...)".

Assessment criterion 9(b)(f):

Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Despite the observance of cases in the samples where the evaluation criterion is clear, objective and aimed at value for money, in other cases analysed such criteria are not well defined, appearing to induce a discretionary decision by the evaluation committee. This analysis is confirmed by the perception of 57% of respondents to the private sector Survey, who consider that the award criteria are neither clear nor objective.

Gap analysis

In some cases, analysed award criteria are not well defined, appearing to induce a discretionary decision by the evaluation committee.

A Red Flag is assigned to this gap because the failure to define appropriate award criteria prevents value for money from being obtained.

Recommendations

SNCP to draft guidelines on how to prepare and apply evaluation models.

Assessment criterion 9(b)(g):

Contract awards are announced as prescribed

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Article 97 (1) prescribes that SNCP should be informed of the award of all the contracts above AOA 182 million for further announcement in the PP Portal.

Generally, PEs do not comply with this provision.

Gap analysis

70% of the processes conducted in the e-GP solution (SNCP) do not comply with the publicity requirements, as the development of the functionality that allows this is not yet completed. In the remaining 30%, a palliative solution of publishing the award through a "news item" on the PP Portal was found.

As for the paper-based processes, in more than 50% of the sample cases the contracts were not announced as prescribed by law.

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<p>A Red Flag is assigned because the non-publication of contract awards and the absence of mechanisms to do so in e-GP prevent proper monitoring of public procurement, which is essential for its improvement.</p>
<p>Recommendations Award notices feature to be developed and deployed on SNCPE/PP Portal.</p>
<p>Assessment criterion 9(b)(h): Contract clauses include sustainability considerations, where appropriate</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Despite the fact that sustainability is described as one of the general principles of the PPL and the economic operators should “observe the principles and rules of corporate governance, namely regular reporting, organised accounting, internal control systems and social, labour and environmental accountability.” and that Article 82 (2) (a) (iii) allow for the use of environmental or social sustainability related evaluation factors within the Most Economically Advantageous Tender (MEAT) award criterion, this is not used in practice.</p>
<p>Gap analysis Sustainability criteria are not used in practice.</p>
<p>Recommendations SNCP should draft a National SPP Strategy with a roadmap and action plan containing specific, measurable, achievable, relevant, and time-bound (SMART) goals.</p>
<p>Assessment criterion 9(b)(i): Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The PPL includes a provision - Article 362 (1) – that states “Except when the nature of the contract or the law does not permit it, the Procuring Entity may award the contractor incentives for early performance of the services object of the contract”. Number (2) determines that those incentives must be expressed in the contract. Despite that, no cases were identified where performance is incentivized through contractual clauses. On the contrary, several cases were identified where penalties for non-compliance were included. There are a considerable number of delays in the implementation of contracts, which may indicate that potential mechanisms in place are not sufficient. For the specific case of Works, Article 291 determines the daily penalties to be applied to the Contractor in case of time-overruns. The maximum penalty is set to 20% of the contract value. Different penalties may be designed by the PE.</p>
<p>Gap analysis There are no clauses to incentive for exceeding defined performance.</p>
<p>Recommendations Standards documents and contracts should be reviewed to provide incentives for performance over specified level, where appropriate.</p>
<p>Assessment criterion 9(b)(j): The selection and award process is carried out effectively, efficiently and in a transparent way*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis Considering the sample analysed, in which it was possible to calculate the number of days elapsed between the notice/invitation and the signature of the contract in 44 procedures, it can be concluded that the timeframe for purchases of goods is less than 2 months (11</p>

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cases). In contrast, the contracting of services takes on average approximately 6 months (14 cases) and the contracting of works takes around 8 months (19 cases).

If the same analysis is made from a procurement method perspective, it can be seen that the average number of days between the notice/invitation and the contract signature, 68 days, in emergency procurement (3 cases) is higher than the 59 days verified in direct award (12 cases). On the other hand, it can be observed that in the Restricted Tender, 7 cases, the time elapsed reaches 198 days, very close to the 227 days verified in the Open Tender (18 cases).

The average number of bids received is higher than 10, in the cases of Open Tender and Electronic Dynamic Purchasing Systems, both competitive methods. However, the information collected does not allow relevant conclusions to be drawn regarding the number of responsive bids, as the available data only had information regarding less than 10% of the cases.

In what concerns the transparency of the procedures, it is verified that in many cases the publication of the notices is not made according to the law. As an example, and according to information gathered from the SNCP, "around 168 Procuring Entities use the Public Procurement portal to publish Notices. Of these approximately 29 EPC (17%) have published Notices." Of particular note is the fact that more than 70% of the procedures processed through the e-GP did not comply with the rules on publicity of the award, as this functionality had not yet been developed in the e-GP.

It was also possible to verify that an award was made in 88% of the procedures, with the award occurring within the deadline initially established in 92% of the cases. This information contrasts with the responses obtained in the private sector survey to the question "indicate whether your company has participated in any bidding process that had to be repeated", where 44% responded positively. The same percentage answered "never" to the question "have you ever participated in a bidding process where the validity of bids was extended".

Quantitative analysis

*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):

- average time to procure goods, works and services
 - number of days between advertisement/solicitation and contract signature (for each procurement method used)
- average number (and %) of bids that are responsive (for each procurement method used)
- share of processes that have been conducted in full compliance with publication requirements (in %)
- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

Source for all: Sample of procurement cases.

Gap analysis

The award of public contracts is not transparent in the sense that the information is not published, nor widely accessible. The lack of transparency justifies the assignment of the Red Flag.

Recommendations

The GoA should consider to fully deploy the e-GP solution to increase effectiveness, efficiency and transparency of the contracts awarded.

Sub-indicator 9(c) Contract management

Assessment criterion 9(c)(a):

Contracts are implemented in a timely manner. *

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The assessment team only obtained data on the timely implementation of only 10% of the contracts from the sample analysed. In the mentioned 10%, no delays were noted. Additional information gathered from SNCP revealed that in general the service contracts are implemented on time. In the case of works contracts, there are some delays, sometimes justified by a "lack of budget to continue the financial execution of the contracts" or "delays in settlement of invoices".

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days).

In the response to the private sector survey, 40% of respondents indicated that they had experienced delays in the full implementation of contracts.

Source: Sample of procurement cases.

Gap analysis

The available information does not allow for a conclusion on the compliance with the criterion or not, due to conflicting information from the different sides of the procurement system (public and private), as well as the lack of data available from the sample collected.

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Recommendations <p>The GoA should make efforts to have a single source of information. Such reliance on a single source of information improves the reliability of data since all entries are made within the same system, which eliminates discrepancies and inconsistencies that often arise from using multiple data sources. The e-GP system also incorporates verification mechanisms to ensure data accuracy and integrity. Additionally, the standardized format of data entry and retrieval in an e-GP system facilitates easier analysis and interpretation of procurement statistics. This standardization is crucial for making informed decisions, policy formulation, and monitoring procurement practices. It also aids in detecting and preventing fraud and corruption by providing transparent and traceable records of all procurement activities.</p> <p>The GoA should consider to fully deploy the e-GP system. The e-GP system should serve as a centralized digital platform that streamlines the procurement process. By consolidating procurement data from various government departments, it provides a comprehensive and unified database. This centralization results in a significant increase in the quantity of available data, as all procurement information, including tenders, bids, and contracts, is uniformly recorded and easily accessible.</p>
Assessment criterion 9(c)(b): <p>Inspection, quality control, supervision of work and final acceptance of products is carried out.*</p>
Conclusion: Substantive gap
Red flag: No
Qualitative analysis <p>The assessment team obtained data regarding inspection, quality control, supervision of work and final acceptance only on 15% of the sample cases. However, during the interviews, the existence of such measures was mentioned by all Procuring Entities.</p>
Quantitative analysis <p><i>Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %).</i></p> <p><i>Source: Sample of procurement cases.</i></p>
Gap analysis <p>The available information was not sufficient for a conclusion.</p>
Recommendations <p>Same as 9(c)(a)</p>
Assessment criterion 9(c)(c): <p>Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.</p>
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis <p>The information contained in the IFMIS reveals full compliance with the legislation with regard to the punctual payment of invoices. However, an analysis of the 2021 data reveals multiple situations, of procedures that are in principle subject to public procurement rules, in which the issuing of the commitment is separated from the confirmation of the payment by only a few days, which suggests that the existing record in the IFMIS may not be accurate. Associated with this fact, information shared by the SNCP shows that although the majority of invoices are paid on time, cases have been detected where the payment period exceeded the 90 days prescribed by law. Finally, it should be noted that almost 85% of respondents in the private sector survey stated that delays in the payment of invoices occurs "often" or "Almost always".</p>
Quantitative analysis <p><i>Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).</i></p> <p><i>Source: Sample of procurement cases.</i></p>
Gap analysis <p>An analysis of the 2021 data reveals multiple situations, of procedures that are in principle subject to public procurement rules, in which the issuing of the commitment is separated from the confirmation of the payment by only a few days, which suggests that the existing record in the IFMIS may not be accurate. Associated with this fact, information shared by the SNCP shows that although the majority of invoices are paid on time, cases have been detected where the payment period exceeded the 90 days prescribed by law. Finally, it</p>

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<p>should be noted that almost 85% of respondents in the private sector survey stated that delays in the payment of invoices occurs "often" or "Almost always".</p> <p>The inconsistency of the information in IFMIS with that communicated by the SNCP and the perception conveyed by economic operators in the survey justify the assignment of the Red Flag.</p>
<p>Recommendations</p> <p>IFMIS should ensure control mechanisms to ensure that the time recording of financial movements is accurate.</p>
<p>Assessment criterion 9(c)(d):</p> <p>Contract amendments are reviewed, issued and published in a timely manner.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>In only 32% of the sample cases was it possible to obtain information on the existence of contract amendments. In these procedures there is no record of timing and publishing of the amendments. However, it was possible to obtain from SNCP that amendments do exist, but they are not usually published. SNCPE's new contract management module, which is currently in the pilot phase, provides for the recording of contract amendments. There are also reports of projects blocked by indication of the Technical Group of Financial Controllers for lack of amendments to contracts.</p>
<p>Quantitative analysis</p> <p><i>Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %).</i></p> <p><i>Source: Sample of procurement cases.</i></p>
<p>Gap analysis</p> <p>The available information does not allow for a different conclusion.</p> <p>According to SNCP contract amendments are not usually published.</p>
<p>Recommendations</p> <p>The GoA should make efforts to have a single source of information.</p> <p>The GoA should consider to fully deploy the e-GP solution.</p>
<p>Assessment criterion 9(c)(e):</p> <p>Procurement statistics are available and a system is in place to measure and improve procurement practices.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis</p> <p>Although SNCP prepares regular statistic documents (see footnote 6, above), it is assumed that those documents lack accuracy and quality due to the fact that SNCP is dependent on the information disclosed by PEs.</p>
<p>Gap analysis</p> <p>The available information does not allow for a different conclusion.</p> <p>This gap is assigned a Red Flag because the absence of accessible procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.</p>
<p>Recommendations</p> <p>The GoA should make efforts to have a single source of information.</p> <p>The GoA should consider to fully deploy the e-GP solution.</p>
<p>Assessment criterion 9(c)(f):</p> <p>Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>In general there is no tradition of involving civil society.</p> <p>However, out of a total of 128 procedures 14 cases were reported where such involvement occurred.</p>

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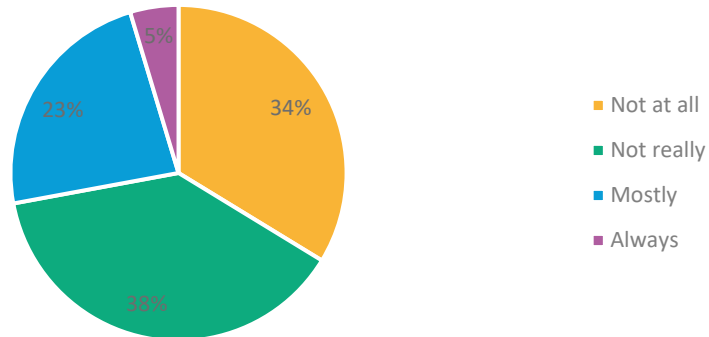
<p>Quantitative analysis <i>Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation)</i></p> <p>Source: Sample of procurement cases.</p>
<p>Gap analysis Only 14 cases out of 128 procedures reported civil society involvement.</p>
<p>Recommendations Civil Society to be involved in the different stages of the procurement process by giving more publicity to the procurement procedures and placing invitations directed to CSOs (civil society organizations in key phases of the procedures.</p>
<p>Assessment criterion 9(c)(g): The records are complete and accurate, and easily accessible in a single file.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis Records are not complete and accessible. During the meetings, PEs mentioned that in many instances the information is spread across different departments.</p>
<p>Quantitative analysis <i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %)</i></p> <p>Source: Sample of procurement cases. Records are not in a single file. None of the 148 sampled cases had complete and accurate files.</p>
<p>Gap analysis Records are not complete and easily accessible. This gap is assigned a Red Flag because the absence of a single file of procurement information can significantly limit competition, preventing the objectives pursued by public procurement from being achieved.</p>
<p>Recommendations The GoA should make efforts to have a single source of information. The GoA should consider to fully deploy the e-GP solution.</p>

Indicator 10. The public procurement market is fully functional

<p align="center">Sub-indicator 10(a) Dialogue and partnerships between public and private sector</p>
<p>Assessment criterion 10(a)(a): The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Despite efforts by SNCP to integrate sectoral associations, namely the Chambers of Engineers and Architects in different procedures, as well as known consultations with business associations in the different processes conducted, the perception of openness of the authorities to the private sector when designing and implementing reforms is not recognised.</p>

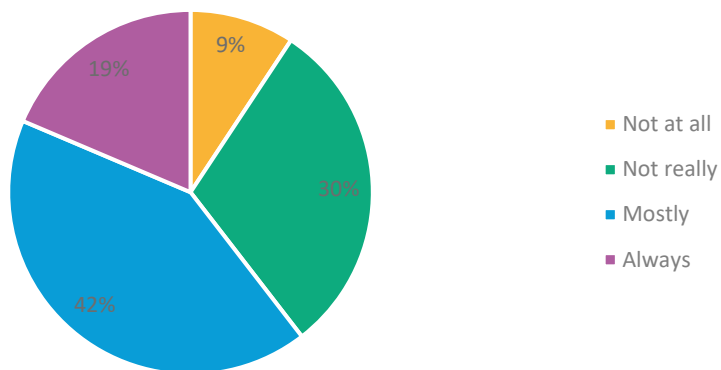
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When changes are made to the legal framework for public procurement, does the Government contact private associations to communicate such changes and obtain their views?

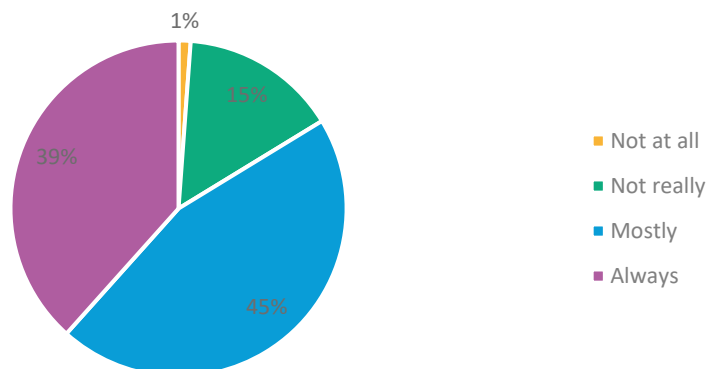


Added to this is the difficulty reported by respondents to the Private Sector Survey in keeping up with the changes introduced.

Do you find it difficult to keep up with changes in the legal framework for public procurement?



Does your company have the necessary resources to keep up with the changes introduced in the legal framework for public procurement?



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Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):
- perception of openness and effectiveness in engaging with the private sector (in % of responses).

Source: Survey.

Gap analysis

Based on the survey, the perception of the private sector is that communication is lacking

Recommendations

SNCP to engage with private sector, especially with MSMEs, to properly communicate changes to the public procurement framework.

Assessment criterion 10(a)(b):

The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

Conclusion: Substantive gap

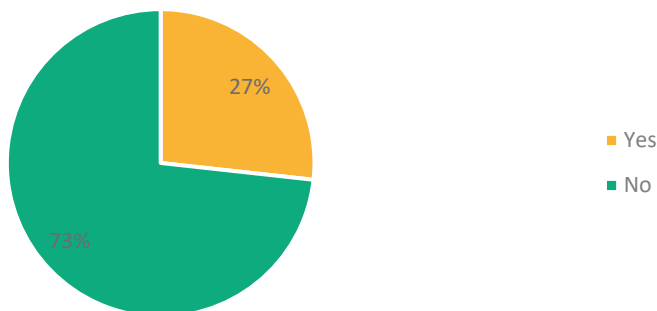
Red flag: No

Qualitative analysis

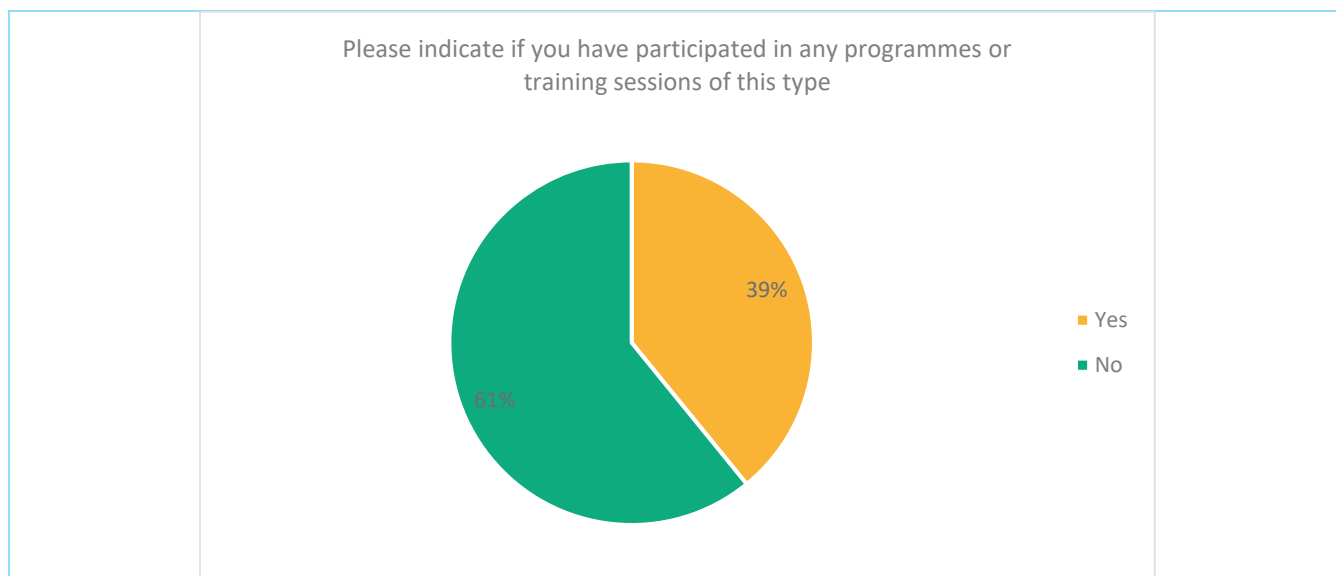
Refer to 8 (a) (a) for information regarding Public Procurement Academy.

In addition to the Public Procurement Academy, SNCP often provides specific e-procurement trainings to suppliers. However, 73% of the respondents to the Private sector survey believe that the existing programmes are not enough, with 61% of the respondents confirming that they had never participated in any training sessions provided by the Government.

Do you think that the Government provides the necessary resources, namely training courses, issuing technical guidelines, establishing help lines and support programmes for companies, especially MSMEs, to keep up with the reforms around public procurement



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Gap analysis

Based on the survey, the perception is that the capacity building programme is not effective to address the private sector needs/concerns.

Recommendations

SNCP to consult with and include the private sector in the capacity building programmes, with content tailored to their needs and concerns.

Sub-indicator 10(b)

Private sector's organisation and access to the public procurement market

Assessment criterion 10(b)(a):

The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

According to statistics⁷, there were 55,957 active registered businesses in Angola in 2019⁸, 5% of which are currently registered in the Public Procurement Portal.

Number of suppliers registered in the Public Procurement Portal., by size and origin:

	Micro	Small	Medium	Big	Without information on size	Total
Foreign	25	42	29	49	71	216
National	847	1019	488	188	463	3005
Total	872	1061	517	237	534	3221

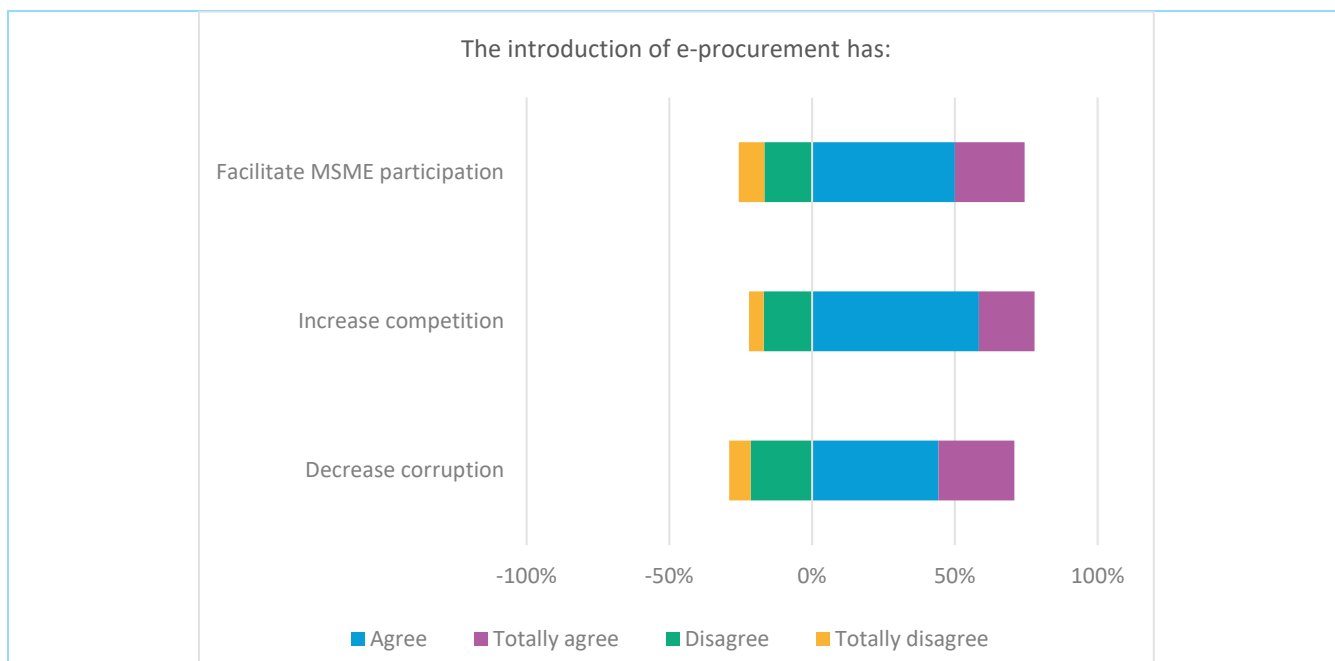
Despite the number of registered businesses in Angola and the number of suppliers registered in the Public Procurement Portal, there is still the perception that the public procurement market is not competitive, and this gap is perceived as the root cause of the high levels of expenditure and low-quality levels.

The introduction of the e-procurement systems is however being perceived, by the private sector, as a game changer, that could provide significant levels of competition and delivering savings (32%, according to the 2020 RACPA's edition).

⁷ <https://www.statista.com/aboutus/>

⁸ <https://www.statista.com/statistics/1177548/registered-enterprises-in-operation-in-angola/>

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Source: Private Sector Survey

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):

- number of registered suppliers as a share of total number of suppliers in the country (in %)
- share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)
- total number and value of contracts awarded to domestic/foreign firms (and in % of total)

Source: E-Procurement system/Supplier Database.

Gap analysis

The available data shows that MSMEs represent the majority of the registered suppliers. However, during discussions with economic operators, several constraints were pointed, namely lack of access to business opportunities. E-procurement is considered to have a very positive impact on competition.

Recommendations

Refer to 7(a)(a).

Assessment criterion 10(b)(b):

There are no major systemic constraints inhibiting private sector access to the public procurement market.

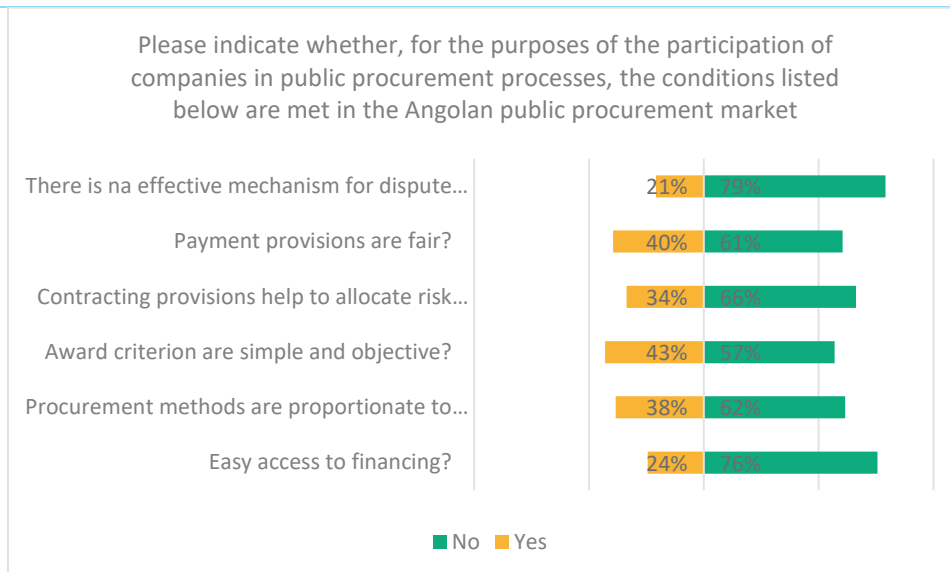
Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is a general negative perception of the market conditions. 79% of the respondents consider that there are no effective mechanisms for dispute resolution and 66% agree that contract provisions don't help to allocate risk fairly, specifically with regard to the execution of the contract.

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Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).

Source: Survey.

Gap analysis

Several constraints are identified by the private sector, as shown by the graphs above.

Recommendations

SNCP to engage with private sector to better identify and qualify the level of constraints, develop and implement an action plan to mitigate them.

Sub-indicator 10(c) Key sectors and sector strategies

Assessment criterion 10(c)(a):

Key sectors associated with the public procurement market are identified by the government.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

According to the assessment key sector strategies are not identified by the government.

Gap analysis

According to the assessment key sector strategies are not identified by the government.

A 14(g)€ is assigned because of the lack of sectoral strategies to promote the achievement of public procurement objectives.

Recommendations

SNCP to work with sectors to draft sector specific strategies.

Launch SLA module of the MAPS assessment for the high expenditure areas of the government, after completion of the Health pilot.

Assessment criterion 10(c)(b):

Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Same as 10 (c) (a)

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Gap analysis Same as 10 (c) (a)
Recommendations Same as 10 (c) (a)

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Sub-indicator 11(a) Enabling environment for public consultation and monitoring
<p>Assessment criterion 11(a)(a): A transparent and consultative process is followed when formulating changes to the public procurement system.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Based on discussions held with representatives from Civil Society (<i>Associação Justiça, Paz e Democracia</i>), when changes to the public procurement system are made there is no consultation with CSOs.</p>
<p>Gap analysis There are no consultations to the civil society.</p>
<p>Recommendations The Government/SNCP to implement public consultations as a practice when promoting procurement policy changes.</p>
<p>Assessment criterion 11(a)(b): Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Refer to 8 (a) (a) for information regarding Public Procurement Academy. There are no specific programmes for capacity building among civil society.</p>
<p>Gap analysis There are no specific programmes for capacity building among civil society.</p>
<p>Recommendations SNCP to include CSOs in the training programmes. Training programmes to include monitoring of public procurement as a key subject.</p>
<p>Assessment criterion 11(a)(c): There is ample evidence that the government takes into account the input, comments and feedback received from civil society.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There is no evidence of the Government taking into account feedback received from civil society.</p>
<p>Gap analysis There is no evidence of Government taking into account feedback received from civil society.</p>

Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

<p>Recommendations Same as 11(a)(a)</p>
<p style="text-align: center;">Sub-indicator 11(b) Adequate and timely access to information by the public</p>
<p>Assessment criterion 11(b)(a): Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The information provided by the reports issued by SNCP has considerable limitations, due to the poor quality of the existing databases. Despite the existence of the Public Procurement Portal, no real time information is available, preventing CSOs participation.</p>
<p>Gap analysis Lack of complete, structured open data.</p>
<p>Recommendations Enhance the adoption of the e-procurement system and adopt Open Contracting Data Standards.</p>
<p style="text-align: center;">Sub-indicator 11(c) Direct engagement of civil society</p>
<p>Assessment criterion 11(c)(a): The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:</p> <ul style="list-style-type: none"> • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring).
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Procurement Plans are supposed to be published in the Public Procurement Portal with an open access. But, as seen in 4 (a) (a) not all are.</p> <p>Article 72 (1) of the PPL allows for the participation of any interested party in the Bid opening session (Open tendering processes). However, only bidders can have an active participation.</p> <p>During the evaluation and contract award phase, only bidders will eventually have access to a debriefing. Award notices are not yet published on the Public Procurement Portal.</p> <p>SNCP is developing the Contract Management Systems (SGC) which will eventually allow for the monitoring of the contract execution phase.</p>
<p>Gap analysis The number of published procurement plans is not representative. Refer to 4 (a) (a). Article 72 (1) of the PPL allows for the participation of any interested party in the Bid opening session (Open tendering processes). However, only bidders can have an active participation.</p> <p>During the evaluation and contract award phase, only bidders will eventually have access to a debriefing. Award notices are not yet published on the Public Procurement Portal.</p>

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SNCP is developing the Contract Management Systems (SGC) which will eventually allow for the monitoring of the contract execution phase.
Recommendations To enhance civil society participation in the planning phase, Government/SNCP need to implement public consultations as a practice when promoting procurement policy changes.
Assessment criterion 11(c)(b): There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis There is no evidence of participation of citizens in procurement processes.
Gap analysis There is no evidence of participation of citizens in procurement processes.
Recommendations Government/SNCP to implement public consultations as a practice when promoting procurement policy changes.

Indicator 12. The country has effective control audit systems

Sub-indicator 12(a) Legal framework, organisation and procedures of the control system The system in the country provides for:
Assessment criterion 12(a)(a): laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies
Conclusion: No gap
Red flag: No
Qualitative analysis The control framework is well defined and is legally supported at the appropriate level. The main provisions that legitimise the actions of the control and supervision bodies can be found in the Constitution (for example, the constitutional norms relating to the Court of Auditors) and in the organic laws of each entity. Article 440 (1) of the PPL provides that “public procurement activities shall be subject to the auditing and supervisory mechanisms established by law and, in order to ensure its maximum effectiveness, requires that all Procuring Entities and their employees and agents, as well as other participants in procurement procedures shall, in accordance with the law, promote full cooperation with the auditing, supervisory and inspection bodies of the public sector.” [(Article 440, (2)]. Additionally, the legislator has granted the SNCP the following power: “In the event of non-compliance with the rules and principles of public procurement, the Public Procurement Regulation and Supervisory Body <u>may suspend the course of the procedure</u> , with a view to remedying the vices, irregularities and illegalities inherent in the process of formation of contracts.” This is a questionable choice by the legislator if we bear in mind that (i) even the courts appeals do not, as a rule, have a suspensive effect and that (ii) this is not a mechanism for conflict resolution or appeal by an independent administrative body - which as we know does not fit in the Angolan legal tradition.
The Court of Auditors The Constitution of the Republic of Angola (CRA) defines the Court of Auditors as “the supreme body for monitoring the legality of public finances and judging the accounts that the law subjects to its jurisdiction” (Article 182 of the CRA). This concept highlights the jurisdictional nature of the Court, its hierarchical level as a high court and delimits its powers to matters within its area of expertise.

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Due to its central importance in the context of public procurement, the *a priori control* is the one that takes place before the acts and contracts subject to it can produce material and financial effects. In this sense, the Court's prior approval (*visa*) constitutes a condition of effectiveness.

The *prior review* of the Court of Auditors applies to:

- the contracts of any nature, with a value equal or superior to the one set out in the law that approves the General Annual State Budget, when celebrated by entities subject to its jurisdiction, or in an equivalent norm of the municipal administration;
- the drafts relating to the contracts identified above, when they are to be signed by public deed and the respective costs must be satisfied at the time of their signing; (the notary must attach a copy of the resolution of the Court of Auditors to the respective deed);
- the contracts for external financing to the State, within the scope of public investment projects.

The current thresholds for submission of contracts to prior review and prior approval are set forth by Article 10 of the 2022 State Budget Law, approved by Law nr. 32/2021, of 30 of December:

ARTICLE 10
(*a priori control*)

1. Without prejudice to the powers of the supervisory, control and inspection bodies of the State Administration, *a priori control* shall be exercised by means of the prior approval or Declaration of Conformity issued by the Court of Auditors.
2. The President of the Republic, as Holder of the Executive Power, shall submit to the Court of Auditors, for *a priori control* purposes, the contracts of any nature with a value equal to or higher than Kz 11 000 000 000,00 (Eleven thousand million kwanzas).
3. The Budgetary Units of the Bodies of Central and Local Government and other similar entities shall submit to the Court of Auditors, for the purposes of *a priori control*, the contracts of any nature whatsoever, with a value equal to or higher than Kz 700 000 000,00 (Seven hundred million kwanzas).
4. The contracts that require *a priori control*, under the terms of this Article, shall only become effective after the prior approval or Declaration of Conformity of the Court of Auditors has been obtained or after the expiry of the time limit established in paragraph 6 of Article 8 of Law 13/10, of 9 July, relative to the Organic and Procedural Law of the Court of Auditors, as amended by Law 19/19, of 14 August.
5. Whenever Public Contracting Entities enter into contracts under the delegation of competencies by the President of the Republic, as Holder of the Executive Power, the value limits to be considered for preventive audit purposes are those defined in number 2 of this article, regardless of the body executing the expense.

Contracts subject to prior review (*visa*) shall be deemed to have received the prior approval 30 days after they reach the Court of Auditors unless any missing or additional information is requested, in which case the deadline shall be interrupted until they are submitted. The contracts are legally ineffective until they obtain the respective prior approval (*visa*). In cases where approval is refused, the entities subject to its jurisdiction shall send to the Court, within 15 days, a copy of the annulment of the respective budgetary commitment note, in order to be attached to the process. Contracts subject to prior review shall be submitted to the Court of Auditors within 60 days after their approval.

The following contracts are not subject to prior review:

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- Contracts for the acquisition of arms and military technology for the defense and security forces and contracts for technical assistance for national defence;
- Contracts concluded as a result of Emergency Procurement;
- Contracts that, within the scope of previously targeted public works contracts, result in the execution of extra work or the correction of errors or omissions.

The Court of Audits also performs the so-called **successive control (ex post review)** under which it judges the accounts of entities subject to its jurisdiction and carries out enquiries and audits aimed at assessing the legality and regularity of the execution of expenditures and collection of revenue. This audit also aims to verify whether, in relation to contracts that have been subject to prior review, the corresponding expenses were made with the prior approval of the Court. In addition to compliance audits, the Court of Auditors is also competent to carry out performance audits, and this has become clearer since 2010 with the revision of the Organic Law in 2019 - Law 19/2019, of 14 August, which amends the wording of several sections of Law 13/2010, of 9 July - by stating in Article 9(1) that audits of public contracts must ascertain whether the conditions were the most advantageous for the State, thus clearly opening the door to ascertaining economic efficiency beyond pure formal legality. In 2019, the legislator added to the competences of prior and post review the so-called **concomitant control**, which is carried out through audits, enquiries and investigations regarding:

- Contracts that are not subject to prior review;
- The execution of contracts which have received prior approval;
- Contracts resulting from emergency procurement, or the simplified contracting method based on material criteria;
- Contracts under execution that have been modified in a way that does not imply a change in value that would make them susceptible to prior review.

The National Public Procurement Service (SNCP)

SNCP is the “body responsible for regulation and supervision of public procurement” (as stated in Article 11 of the PPL) and its organic statute has been approved by the Presidential Decree nr. 162/2015.

SNCP is governed by public law, as an entity with legal personality and capacity and qualified as a public institute of the Administrative or Social Sector. It is endowed with administrative and financial autonomy and administers its own assets, and its key functions include the support to the government in matters of definition and implementation of policies and practices relating to public procurement, the supervision, auditing and monitoring of public procurement processes in collaboration with the competent bodies, the enactment of regulations and instructions to standardise public procurement procedures and the ruling of administrative challenges presented by proponents or bidders.

The key **supervisory functions** (Article 6 of PD nr. 162/2015) of SNCP comprise the monitoring of compliance with the public procurement laws and regulations by the Procuring Entities, suppliers, and bidders, including with the specific rules concerning the functioning and management of the state e-Procurement platform. In case the SNCP finds that the rules or principles of public procurement are being violated in a procurement procedure it can order the suspension of the procedure in order to promote the elimination of flaws, illegalities and irregularities inherent in the process of contract formation (Article 440 (3) of the PPL).

The **supervisory and regulatory attributions** (Article 8 of PD nr. 162/2015), encompass the supervision of the public procurement market operations, the proposal of legislative enhancements deemed necessary, the production of standard bidding documents as well as the other documents of compulsory use for the public procurement procedures. Finally, SNCP also performs **auditing functions** (Article 7 of PD nr. 162/2015), including internal and external audits on electronic platforms, Procuring Entities and public procurement procedures launched by the Procuring Entities.

Inspectorate General of the State Administration (IGAE)

“The Inspectorate General of the State Administration (IGAE), is the auxiliary body of the President of the Republic and holder of executive power, responsible for the internal administrative control of the Public Administration, through inspection, auditing, supervision, enquiry and investigation of the activities of all bodies and services of the direct and indirect administration of the State and of the autonomous administrations, with the aim of preventing and detecting fraud, acts of corruption and improbity, irregularities and misconduct by public servants or administrative agents, as well as defending public assets and strengthening integrity and transparency in the management of public assets. **IGAE directs the Public Administration's internal control system** and enjoys administrative, financial, functional and patrimonial autonomy...”. Thus, all public Procuring Entities that are public legal persons are also within IGAE's scope of action. [Article 1 (1) and (2) of the Organic Law of IGAE, approved by Presidential Decree nr. 242/2020]. IGAE operates in hierarchical dependence on the President of the Republic and holder of the Executive Power (Article 4).

Among its specific functions, the following should be highlighted:

- Exercising internal control over the activities of the Public Sector;
- To audit and control the management of the Bodies of the Central and Local Public Administration, Direct and Indirect, Autonomous, (...) and the budget execution of the public administrative entities with financial autonomy which are part of the Public Business Sector, using criteria of legality, economy, efficiency and effectiveness;
- To supervise the entities of the Private and Cooperative Sectors, when they establish financial relations with the State;

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- Audit, inspection and supervision of projects financed by external loans, donors and technical cooperation agreements;
- Assess governance, integrity and risk management in the Public Administration, including in public companies and institutes, as well as in their relationship with the Private Sector;
- Develop mechanisms to prevent corruption, promoting transparency and legality in Public Administration;
- Receive, examine and deal with denunciations, complaints and claims regarding the activities of the Public Administration
- Cooperate with the Court of Auditors, the Attorney General's Office, the criminal investigation bodies and other State bodies, with a view of ensuring the functional and methodological link between the inspection bodies and other control services, in order to guarantee the rationality and complementarity of interventions, safeguarding fundamental and constitutional rights, freedoms and guarantees.

According to the **IGAE Report (2020)**, "for the 2020 financial year, 27 ordinary inspection actions of a general nature have been programmed, aimed at 5 Ministerial Departments, 2 Embassies and Consulates, 2 Public Banks, 12 Public Enterprises and 6 Public Institutes. Due to the pandemic, of the 27 inspection actions planned for 2020, only 2 were carried out. However, 11 extraordinary actions were carried out, being 9 general inspection actions and 2 special debt certification actions (...). With much interest for the area of public procurement, IGAE sustains that *"In general, despite the notorious change in the behaviour of Public Administrators, there still persist in the Public Administration some traces of non-compliances, essentially in the area of documentary justification of expenses or in the application of financial resources, many of which are non-existent, and others, deficient, because they do not comply with the legal requirements for their issue, calling here, by way of example, invoices and similar documents that are presented without the legal requirements."* It continues *"Thus, in the 13 inspection actions (2 ordinary and 11 extraordinary) carried out in 2020, irregularities were essentially recorded related to the absence and deficiency of supporting documents for the realisation of expenses and the use of certain financial resources, a fact that indicates the existence of undue diversion of funds for unrecognised purposes."*

In the segment of the process conventionally known as **"fighting petty corruption"**, IGAE continues to act following the reports, complaints and claims it receives from citizens through free calls made to its Call Center and in other legally possible ways.

During 2020, the IGAE Call Center recorded a total of 53 409 calls, of which 12 898 valid calls (those answered and registered by the operators on duty) and 40 511 invalid calls (those made outside of service hours and registered by the system).

Of the number of valid calls, 674 procedures were recorded, of which 466 resulted in verification procedures and 208 in enquiry procedures, many of which are still being processed.

Indeed, the 466 cases recorded resulted in a number of disciplinary proceedings being instituted.

Important note: no specific information on public procurement is included in the IGAE Activity Report (2020).

Gap analysis

Recommendations

Suggestion for improvement

There is a serious deficit in the publicity of the activities and outcomes of the supervisory and controlling bodies (for example, there is no single audit report published on the website of the Court of Auditors nor on the site of the SNCP, and the same applies to the decisions of the Court of Auditors concerning the granting or refusal of prior approval, which are true court decisions).

Improvements that could be immediately implemented by the Court of Auditors

- publication on its portal (automatically reproduced on the public procurement portal managed by SNCP) of decisions to grant/refuse prior approval (visa), as well as audit reports dealing with matters relating to public procurement.

Improvements that could be immediately implemented by SNCP

- Publication in a section to be created on the public procurement portal of:
(i) audit reports carried out on public Procuring Entities;
(ii) decisions to suspend contracting procedures [(Article 440 (3) of the PPL)];
(iii) opinions and recommendations issued by SNCP in a section to be created for this purpose and with a search engine capable of assisting the search for information by interested parties;

Improvements that could be immediately implemented by IGAE

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- start treating the information contained in the outputs of its activity that is related to public procurement in a specific way which should entail specific reference to the illegalities and irregularities materially related to public procurement detected in its audits, inspections and investigations;

publish on its portal (automatically reproduced in the public procurement portal) all audit reports dealing with matters related to public procurement (publicity must naturally not involve matters being processed through the participation of the Public Prosecutor's Office, in accordance with the criminal procedural law, in secrecy of justice.)

Assessment criterion 12(a)(b):

internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness, and efficiency of procurement operations

Conclusion: No gap

Red flag: No

Qualitative analysis

Responsibilities and reporting lines are defined in the law. Article 440 (1) of the PPL sets the rule according to which public procurement activities are subject to the audit and oversight mechanisms established by law (that is, not only in the PPL itself but in all laws that provide for the exercise of audit functions by a certain entity vested with the power to audit any of the procuring entities).

The following entities are entitled to undertake internal auditing of public entities:

- the SNCP (specialised internal auditor of the public system) audits and supervises the public procurement market, including the compliance of the players' conduct with the law (Articles 11 and 441 (1) of the PPL and Article 7 of the SNCP organic law as approved by Presidential Decree nr. 162/2015);
- the IGAE, undertakes audits in its capacity as internal auditor of the (whole) Public Administration, which may also include aspects related to the management of public finances (budget and account) and public procurement (Presidential Decree nr. 242/2020, Organic Law of IGAE).

SNCP 2019 Audit Report

Despite the small size of public procurement operations audited in one calendar year (2019), the care taken with the organisation of the information and the communication/publicising of the report is noteworthy.

A total of 37 (thirty-seven) contracts¹ and 1852 (one thousand eight hundred and fifty two invoices², broken down as follows:

- (a) EPC I: fourteen (14) contracts and three hundred and seven (307) invoices;
- b) EPC II: 14 (fourteen) contracts and 229 (two hundred and twenty-nine) invoices;
- c) EPC III: 6 (six) contracts and 997 (nine hundred and ninety-seven) invoices;
- d) EPC IV: nothing to report since a specific procedure was audited;
- e) EPC V: 3 (three) contracts and 319 (three hundred and nineteen) invoices.

On a less positive note, the characterization of the sample of contracts by "type of contract (goods, services and works)" is not provided and the size of the sample in terms of value (aggregate and disaggregated) of the contracts audited.

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Fonte: mapa de inconformidades

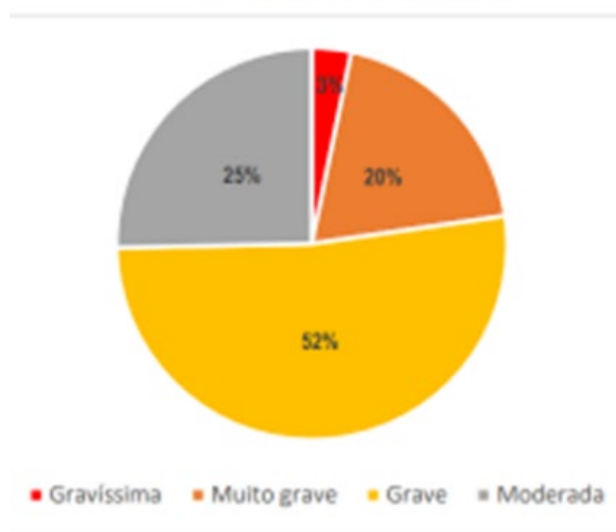
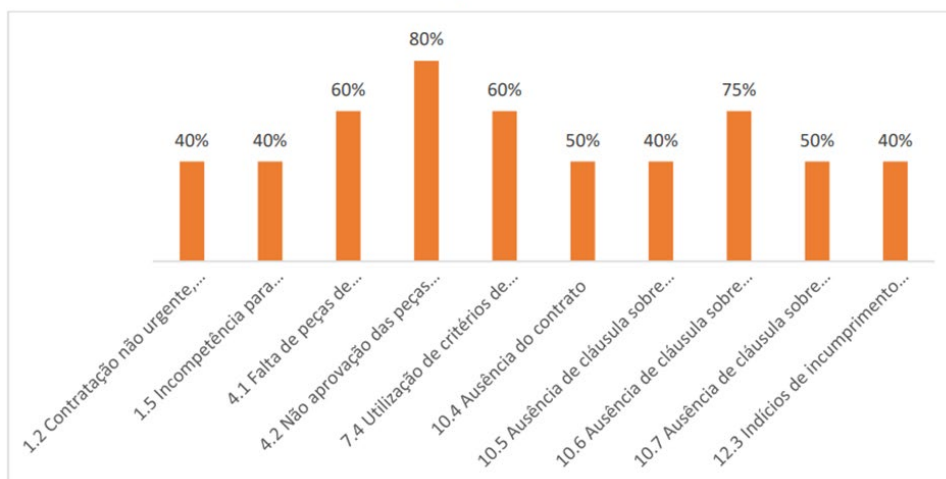


Gráfico 2 – Inconformidades “muito graves” mais verificadas

Fonte: mapa de inconformidades



Gap analysis

Recommendations

Assessment criterion 12(a)(c):

internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation

Conclusion: Minor gap

Red flag: No

Qualitative analysis

There are sufficient internal control mechanisms and there is no evidence that these have a decisive impact on the timing and adequacy of decisions.

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<p>As the system, in general, is very much oriented towards formal legal and formal compliance/conformity of the procedures undertaken for the formation of public contracts, it is desirable that the control and oversight bodies pay more attention and fill gaps in observation and evaluation of: (i) the execution phase of the contracts; (ii) risks, the degree of their likelihood and the issuing of recommendations aimed at their mitigation.</p> <p>These "new dimensions of the control function" should constitute a priority for improving the performance of the SNCP (an entity that should become a truly independent regulatory body).</p>
<p>Gap analysis</p> <p>The control and oversight bodies do not pay enough attention to: (i) the execution phase of the contracts; (ii) risk management, identification of risks, likelihood and mitigation.</p>
<p>Recommendations</p> <p>Control and oversight bodies should include in their scope of activities: (i) the execution phase of the contracts; and (ii) risk management, identification of risks, likelihood, and mitigation measures.</p>
<p>Assessment criterion 12(a)(d): independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Court of Auditors</p> <p>In 2020, 4 (four) audits were carried out in the context of concomitant control, focusing on public procurement procedures, out of the 26 actions (20 programmed and 6 resulting from complaints), making a total of about 27% of the audits carried out (21); Within the scope of successive control, 54 audits of compliance and performance were programmed, and 46 audits were carried out and are still in progress, in which procurement procedures are controlled, meaning that 85% of audits of public procurement procedures can be considered to be compliance audits and the remaining 15% as performance audits; Several recommendations were made at the level of internal control of the accounts and the through the issuance of the Opinion on the General State Account. However, the data on its monitoring is not yet complete (Mar 2022). No audits were conducted on the efficiency of public procurement which is understandable insofar as the competences of the Court of Auditors are more tailored to the control of legality (compliance) of public expenditure rather than on performance. A serious shortcoming is that audit reports, as well as an Annual Audit Report of the Court of Auditors, are not published and accessible by the public and interested stakeholders.</p>
<p>Gap analysis</p> <p>Individual audit reports, as well as the Annual Audit Report of the Court of Auditors, are not published and accessible by the public and interested stakeholders.</p>
<p>Recommendations</p> <p>Audit reports, as well as an Annual Audit Report of the Court of Auditors, should be published in the Court's website and made accessible to the public and interested stakeholders.</p>
<p>Assessment criterion 12(a)(e): review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Court of Auditors (TC), in the exercise of its function of auditing public finances, may formulate recommendations to the National Assembly on matters subject to analysis and the entities that perform them, as provided for in Section 60.3 of Law nr. 13/2010, of 9 of July, as well as present contributions on issues related to judicial organization and propose legislative measures deemed necessary for the performance of its attributions and competences.</p> <p>Among its competences, the issue of the "Opinion of the Court of Auditors on the State General Account (CGE)" is of particular importance. The CGE, by recommendation of the Court of Auditors itself (contained in the report and opinion on the CGE for the financial</p>

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years 2017, 2018 and 2019), now includes a chapter on public procurement. In the case of the CGE 2020, Chapter XIV Public Procurement addresses the main indicators of public procurement during the period under review (<https://www.ucm.minfin.gov.ao/cs/groups/public/documents/document/aw4x/nzq2/~edisp/minfin1746385.pdf>). The State General Account covers the accounts of the Sovereign Bodies, the Central and Local Administration, Public Institutes and Autonomous Funds and Social Security.

In accordance with Article 7 (2), as amended by Law nr. 19/2019 (which amends the Organic Law of the Court of Auditors), the Opinion of the Court of Auditors on the General State Account is sent to the National Assembly with a copy to the President of the Republic, together with an annual report which must contain a summary of the judicial decisions for the economic year in question and proposals for measures to be taken to improve the economic and financial management of the resources of the State and the public sector in general.

The opinion of the Court of Auditors contains technical and legal findings and aims to improve the external control of public finances by the National Assembly. It includes recommendations that result from the Court's findings, in its mission as the body that oversees the legality of public finances.

The State General Account does not include, in the Chapter on "Public Procurement", a specific section on Monitoring and Auditing of the public procurement system containing information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP.

Also with very negative impact, the Opinion of the Court of Auditors on the State General Account is not published on the website of the Court of Auditors, nor on the Public Procurement Portal and the National Assembly.

Excerpt from Opinion 2020:

Budget process– Item 2 of the Opinion

C. 110 and 111] The Budgetary Units (Ous) visited by the TC did not prepare the Annual Procurement Plan, the Summary of Overdue Payments and the Statement of Overdue Invoices, as established in sub-paragraph a) of paragraph 1 of Article 10, in conjunction with paragraphs 5 and 6 of Article 14, both of Presidential Decree nr. 130/2019, of 7 of May: [C. 354 to 361] (i) There is no evidence in the entity's files of the preparation of the Annual Plan for Public Procurement sent by the entity to the Ministry of Finance. (i) The entity's records do not contain proof of the preparation of the Annual Public Procurement Plan, sent to the National Public Procurement Service, as required by Article 14 of Presidential Decree nr. 130/2019 of 7 of May: [C. 354 to 361]. (ii) Authorization and choice of inappropriate and less competitive pre-contractual procedures (simplified contracting) in violation of the Law; (iii) Absence of documentary evidence of the adoption of pre-contractual procedures for contracting the monitoring companies of the various works carried out Public Procurement Plan to the Ministry of Finance, within 20 (twenty) days after the entry into force of the 2019 Budget Proposal, approved by the National Assembly. (v) Execution Contracts for the execution of expenses must be included in the Annual Procurement Plan of each UO and be registered in SIGFE

Gap analysis

The State General Account does not include, in the Chapter on "Public Procurement", any information on Monitoring and Auditing of the system nor even summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP.

Recommendations

The State General Account should include, in the Chapter on "Public Procurement", a specific section on Monitoring and Auditing of the system containing summary information on the main non-conformities identified and the results of the recommendations (follow-up) made by the Court of Auditors, the IGAE and the SNCP;

The Opinion of the Court of Auditors on the State General Account should be published on the website of the Court of Auditors, on the Public Procurement Portal and on the website of the National Assembly.

Assessment criterion 12(a)(f):

clear mechanisms to ensure that there is follow-up on the respective findings.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Audits regarding public procurement follow the "Legal Regime of the Inspection, Auditing and Supervision of the Organs and Services of the Direct and Indirect Administration of the State", approved by Presidential Decree 170/13. In its article 14 (6) it is foreseen that the audited public entities should provide, within 60 days from the receipt of the audit report, information on the measures and decisions adopted as a result of their intervention and may also comment on the effect of the action (for example giving account of some results already verified as a result of recommended changes that have been implemented in practice).

The Annual Audit Report of the SNCP 2021 mentions, among the objectives of the audits carried out, the goal of "Monitoring the implementation of recommendations and other corrective actions by procuring entities in the new procedures to be launched by the audited entities". However, the report fails to (i) give enough relevance to the evaluation of the adoption of previous recommendations (ii) statistically treat: a) the number of recommendations fulfilled vs. total recommendations; b) the average time needed to implement the recommendations.

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It should also be noted that this Annual Audit Report summarizes the statistical information on the audits carried out: number of audits carried out by type (global and partial), as well as a summary of the main non-conformities detected (very useful content that should be present in the reflections on the improvement of the public procurement system).

- 29 (twenty-nine) Partial Audits, relative to the formation and execution of contracts associated with the Integrated Plan for Intervention in Municipalities (PIIM), in the first half of 2021;
- 3 (three) Global Audits, in the 2nd Half of 2021.

Although the sample is very small (eighty-one (81) contracts and two thousand six hundred and one (2601) invoices were subject to analysis in the 32 audits carried out), the classification of the non-conformities detected, by type (according to the phase of the procurement cycle in which the practice or omission occurs) and by degree of seriousness (very serious, serious and medium) is well designed and provides a simple way of identifying the main problems to be resolved.

The types of non-compliance analysed are: 1 - Choice of procedure and competence to authorize the expenditure; 2 - Appointment of the Evaluation Committee; 3 - Communication of the opening of the procedure; 4 - Elaboration, approval and availability of the procurement documents; 5 - Public act of opening and formal analysis of the proposals; 6 - Substantive analysis (content) of the proposals; 7 - Awarding of the contract; 8 - Execution of the contract; 9 - Others (for example, treatment of documents and filing).

It should be noted that the individual Audit Reports are not published, which means that the possibility of using publication as a tool for (i) disseminating information to stakeholders, especially procuring entities and economic operators, on how the supervisory body specialised in public procurement (the SNCP) classifies the conduct and omissions of audited entities in terms of compliance is lost; (ii) preventing non-compliant practices; (iii) assessing the quality of the administration (which is of interest to all stakeholders in public procurement, including civil society).

Gap analysis

The individual Audit Reports are not published, which means that the possibility of using publication as a tool for (i) disseminating information to stakeholders, especially procuring entities and economic operators, on how the supervisory body specialized in public procurement (the SNCP) classifies the conduct and omissions of audited entities in terms of compliance is lost; (ii) preventing non-compliant practices; (iii) assessing the quality of the administration (which is of interest to all stakeholders in public procurement, including civil society).

Publication, and the consequent scrutiny expected from the civil society and private sector, is necessary to make pressure in favor of a timely and effective follow-up on findings and recommended improvements.

Recommendations

- A specific section on "Audits" should be created in the Public Procurement Portal, in which the following should be made available: (i) legislation and regulations on audits and inspections; (ii) SNCP Annual Audit Report; (iii) individual Audit Reports and (iv) follow-up information on the recommendations formulated in previous reports;
- The (final) audit reports - including the position expressed by the auditees in contradictory - art 11 of Presidential Decree 170/13 - must be published in the contracting portal;
- Follow-up information on the concrete compliance with the recommendations contained in previous audit reports must also be published - in a specific section of the Public Procurement Portal;
- The SNCP Annual Audit Report should include a specific chapter on the follow-up of the recommendations issued in the previous annual report (so that the percentage of compliance with the recommendations can be measured)

Sub-indicator 12(b)

Coordination of controls and audits of public procurement

Assessment criterion 12(b)(a):

There are written procedures that state requirements for internal controls, ideally in an internal control manual.

Conclusion: No gap

Red flag: No

Qualitative analysis

There are written procedures that state requirements for internal controls (mandate and scope, audit planning, risk assessment and methodology, hearing of audited entity, reporting) in both the IGAE and SNCP's auditing manuals.

Gap analysis

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Recommendations
Assessment criterion 12(b)(b): There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.
Conclusion: No gap
Red flag: No
Qualitative analysis There are written standards and procedures for conducting procurement audits to facilitate co-ordinated and mutually reinforcing auditing. Both IGAE and SNCP have auditing manuals. Taking into account the specific attributions of IGAE and SNCP the audits conducted by the former may include public financial management (budget and account) and related public procurement aspects (Presidential Decree nr. 242/2020, Organic Law of IGAE). These audits normally address other areas of the public entities' management (compliance and performance), while SNCP's audits are fully focusing on public procurement related aspects. The audit manuals are internal technical guidelines approved by the heads of IGAE and SNCP respectively and must be followed by the auditors of both organisations. Although they are not legislative in nature, they are internal regulations that bind auditors as civil servants.
Gap analysis
Recommendations
Assessment criterion 12(b)(c): There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*
Conclusion: No gap
Red flag: No
Qualitative analysis Internal audits are carried out regularly. IGAE, SNCP and the Court of Auditors follow annual audit plans. In its 2020 activity report, IGAE states that its activity in that year was constrained, although it still carried out 2 of the 27 planned ordinary inspections and 11 extraordinary inspections. As for the Court of Auditors , it carried out 4 (four) audits of public procurement procedures, out of the 26 actions (20 programmed and 6 resulting from complaints), making a total of about 27% of the audits carried out (21). Within the scope of successive control, 54 audits of compliance and performance were programmed, and 46 audits were carried out and are still in progress, in which the control of contracting procedures is carried out, meaning that 85% of audits of public contracting procedures can be considered as compliance audits and the remaining 15% s performance audits . No audits have been conducted on the efficiency of public procurement.
Quantitative analysis <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):</i> - number of specialised procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits).
<i>Source: Ministry of Finance/Supreme Audit Institution.</i>
Gap analysis
Recommendations
Assessment criterion 12(b)(d): Clear and reliable reporting lines to relevant oversight bodies exist.

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Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>Under the general terms of Angolan administrative law, state employees and agents have a duty to report infractions (non-compliance with the law or regulations) to the oversight bodies. The means by which this should be done are defined in the law - the reporting agent reports to the entity that has the competence to act according to the nature of the at or omission reported – when strictly related to public procurement and public administration rules the reporting should be done to the oversight bodies (IGAE and SNCP).</p>
Gap analysis
Recommendations
Sub-indicator 12(c)
Enforcement and follow-up on findings and Recommendations
Assessment criterion 12(c)(a): Recommendations are responded to and implemented within the time frames established in the law.*
Conclusion: Substantive gap
Red flag: No
<p>Qualitative analysis</p> <p>Information on the implementation of audit recommendations (follow-up) is not processed and published (whether or not the recommendation has been fully or partially implemented, by what means, within what timeframe, etc.). And, this information doesn't exist either quantitatively or qualitatively.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit Recommendations implemented within the time frames established in the law (in %).</i></p> <p>Source: Ministry of Finance/Supreme Audit Institution.</p>
Gap analysis The effectiveness of auditing cannot be properly assessed in a system where there is no information about the post-audit stage (follow-up phase).
Recommendations Audit reports should be made public and a proper statistical treatment should be promoted (comprising the information needed to calculate audit KPIs such as the rate of recommendations voluntarily implemented, fully versus partially implemented, average implementation time, etc.).
Assessment criterion 12(c)(b): There are systems in place to follow up on the implementation/enforcement of the audit Recommendations.
Conclusion: Substantive gap
Red flag: No
<p>Qualitative analysis</p> <p>There are no tailor-made follow-up “systems”. Several recommendations made above could, if applied, help enhancing the implementation/enforcement. Pls refer to 12 (a) (f).</p>
Gap analysis There are no tailor-made follow-up “systems”.

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<p>Recommendations Pls refer to 12 (a) (f).</p>																
<p>Sub-indicator 12(d) Qualification and training to conduct procurement audits</p>																
<p>Assessment criterion 12(d)(a): There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p>																
<p>Conclusion: No gap</p>																
<p>Red flag: No</p>																
<p>Qualitative analysis There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.</p> <p>According to the information collected from the Court of Auditions, since 2017 the Training Area monitored the following actions:</p> <ul style="list-style-type: none"> - 1st Edition of the Postgraduate course in Public Finance (ProPALOP-TL ISC Programme) (2016 - 2017) - Post-graduate course in Public Accounting (2020 - 2021) - 2nd Edition of the Post-Graduate course in Public Finance (ProPALOP-TL ISC Programme), starting in 2021 																
<table border="1"> <thead> <tr> <th>Training institution</th> <th>No of trainees</th> </tr> </thead> <tbody> <tr> <td>AFROSAI-E</td> <td>11</td> </tr> <tr> <td>ProPALOP-TL, ISC</td> <td>4</td> </tr> <tr> <td>Tribunal de Contas</td> <td>9</td> </tr> <tr> <td>FDUAN</td> <td>1</td> </tr> <tr> <td>FEUAN</td> <td>1</td> </tr> <tr> <td>Other</td> <td>1</td> </tr> <tr> <td>Total</td> <td>27</td> </tr> </tbody> </table>	Training institution	No of trainees	AFROSAI-E	11	ProPALOP-TL, ISC	4	Tribunal de Contas	9	FDUAN	1	FEUAN	1	Other	1	Total	27
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<p>Quantitative analysis * <i>Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</i> - number of training courses conducted to train internal and external auditors in public procurement audits. - share of auditors trained in public procurement (as % of total number of auditors).</p> <p>Source for all: Ministry of Finance/Supreme Audit Institution.</p>																
<p>Gap analysis</p>																
<p>Recommendations <i>Suggestion for improvement</i> Considering the existence of a high number of projects funded by development partners, the GoA should consider building staff capacity on the procurement rules of these partners.</p>																
<p>Assessment criterion 12(d)(b): The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>																
<p>Conclusion: No gap</p>																
<p>Red flag: No</p>																
<p>Qualitative analysis</p>																

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The selection of auditors is carried out through a public recruitment competition, with a transversal recruitment process, encompassing qualifications outside the legal area, namely in the areas of Economics, Finance and Management, as well as specific areas such as Data Science and IT, and Engineering.
Gap analysis
Recommendations
Assessment criterion 12(d)(c): Auditors are selected in a fair and transparent way and are fully independent.
Conclusion: No gap
Red flag: No
Qualitative analysis Refer to 12 (d)(b).
Gap analysis
Recommendations

Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator 13(a) Process for challenges and appeals
Assessment criterion 13(a)(a): Decisions are rendered on the basis of available evidence submitted by the parties.
Conclusion: No gap
Red flag: No
Qualitative analysis As a matter of principle, decisions, whether administrative or judicial, can only be taken on the basis of evidence produced by the parties. This follows from the general principles of administrative and civil procedural law. In both administrative appeals and judicial and hierarchical appeals it is the (private) party concerned who is responsible for (i) taking the procedural initiative and (ii) producing evidence concerning the alleged facts (principle of <i>burden of proof</i>). Regarding the administrative complaints Article 17 (3) of the PPL provides that “The interested party shall state in the complaint or in the request for hierarchical appeal or the improper hierarchical appeal the grounds for the objection and may attach as proof the documents that are deemed necessary”.
Gap analysis
Recommendations
Assessment criterion 13(a)(b): The first review of the evidence is carried out by the entity specified in the law.
Conclusion: No gap
Red flag: No
Qualitative analysis The competences of the bodies that receive, examine and decide on applications for review of decisions are clearly defined in the law. There are three types of challenge: - administrative complaints to the body which carried out the act considered by the interested party to be illegal or irregular (the same applies to cases of omission - failure to carry out an act considered to be due);

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- hierarchical appeal against decisions on administrative appeals to be lodged with the hierarchical superior of the body which practised the act which is being challenged [Articles 15 (3) and 17 (2) of the PPL];
- contentious appeal to the court (Article 21 of the PPL), in the case of public procurement (Articles 17(b) and 18(b) of the Administrative Acts Impugnation Law (LIAA), approved by Law nr. 2/1994, of 14 of January): (i) to the Civil and Administrative Chamber (regarding acts practiced by organs of the central and local administration of the State and by the governing bodies of legal persons governed by public law); (ii) to the Civil and Administrative Chamber (regarding acts of local organs of the State below Provincial Governor and legal persons and companies managing public services of local scope.
See also note at 13(a)(c) on activities of SNCP acting as an advisory body in the context of some challenges.

Gap analysis

Recommendations

Assessment criterion 13(a)(c):

The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is no single independent appeals body in charge of reviewing decisions (see analysis at 13(a)(b)).

Nevertheless, under Article 17 (5) of the PPL, SNCP became aware of 25 challenges addressed to procuring entities in 2020 and 56 in 2021. Such challenges are dealt by the procuring entities according to the existing review procedures. SNCP is acting as an advisory body, not a review body.

When asked about the enforcement of decisions, SNCP stated that "The SNCP analyses the legality of the decision taken by PEs and proposes the amendment or maintenance of the decision taken. It is difficult to say how many were upheld, but it is recommended that the EPC decision be amended, as it is illegal".

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):

- number of appeals.

Source: Appeals body.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):
number (and percentage) of enforced decisions.

Source: Appeals body.

Gap analysis

SNCP does not issue proper enforceable decisions. Instead, according to their statement, they issue recommendations to the PEs.

Recommendations

Consider undertaking a critical review of the role of SNCP in relation to the appeals and guidance provided to the procuring entities and the enforceability of its recommendations.

It is recommended to undertake a critical study of the current system of hierarchical review and appeal, including the viability of creating a review body which is independent and has no involvement or potential involvement with procurement transactions. In the meantime, introduce short-term/interim measures such as:

- Requiring the publication of applications for hierarchical review and decisions on hierarchical review to enhance transparency and confidence in the system.
- User-friendly guidance, pending the decision on the creation of alternative models for review/appeal, to ensure better clarity as to the process to be followed and issues considered by decision-makers in hierarchical appeal and to enhance the independence of decision-makers in the hierarchical review.

Please also refer to the recommendations under 1(h)(e).

Assessment criterion 13(a)(d):

The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Conclusion: Substantive gap

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<p>Red flag: No</p>
<p>Qualitative analysis The deadlines defined in the law are: - Administrative complaint: five days from the date of notification of the act (Article 16 of the PPL) to complain; five days for decision, counted from the date of submission of the objection or from the expiry of the deadline for hearing counter-interested parties, silence being equivalent to granting [Article 20 (1) (2) of the PPL]; - hierarchical appeal: 30 days from the date of notification of the contested act [Article 13 (1) of the LIAA]. In the special case of hierarchical appeal against the Evaluation Commission's decisions on complaints lodged in the public act are mandatory in nature (that is, they are not directly appealable to the courts) and must be lodged within five days from the date of delivery of the minutes of the public act and are considered granted if five days after their receipt there has been no notification of a decision to the appellant [Article 78 (1) (2) of the PPL]. In this specific case of an appeal concerning the public act there is no obligation for the contracting public entity to inform the SNCP. - Contentious appeal: 60 days from the date of notification of the decision on the complaint or hierarchical appeal.</p> <p>Considering the total time taken to process procedures by type of contract referred to in 9 (b) (j), the time taken for the various types of appeal described above is reasonable.</p>
<p>Gap analysis</p> <p>The more serious problem is the lack of court rulings on public procurement. In considering what could cause the notable scarcity of judicial recourse for resolving disputes related to public procurement in Angola, despite the legal avenues available, one might venture into a realm of speculation based on a limited dataset from a recent survey and observations from other jurisdictions. This speculative approach suggests a complex array of potential barriers that could be influencing this phenomenon.</p> <p>One possible reason for this situation is a widespread lack of awareness among bidders about their legal rights and the specific procedures required to appeal procurement decisions through the judicial system. This hypothesis, while not directly proven, aligns with experiences from other contexts where information asymmetry significantly impedes the effective utilization of legal remedies. Additionally, there is a speculative concern regarding the judiciary's perceived ability to deliver fair and efficient adjudication. Such perceptions, whether they stem from direct experiences or a generalized distrust in institutional processes, might dissuade bidders from seeking judicial intervention due to doubts about achieving favourable outcomes.</p> <p>Furthermore, the financial and reputational considerations associated with litigation are speculated to be significant deterrents. The anticipated costs of litigation—encompassing legal fees, court expenses, and the potential diversion of resources from business operations—are presumed to be discouraging, particularly for small and medium-sized enterprises. The reputational risks, though not empirically documented in the Angolan context, are inferred from dynamics observed in other jurisdictions. The apprehension about being labelled as confrontational or the potential negative publicity from publicly airing disputes could reasonably be expected to influence the decision-making process adversely.</p> <p>In conclusion, what seems to be easy to admit is that there is an enormous potential for systemic reforms concerning the Rule of Law and particularly aimed at improving legal literacy, enhancing the transparency and trustworthiness of the judicial process, and encouraging the use of legal avenues for resolving public procurement disputes in Angola.</p>
<p>Recommendations</p> <p>Consider undertaking a critical study of the reasons behind the lack of court rulings on public procurement, including the stakeholder's views on the operation of the appeals system.</p>
<p>Sub-indicator 13(b) Independence and capacity of the appeals body The appeals body:</p>
<p>Assessment criterion 13(b)(a): is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</p>
<p>Conclusion: Choose an item.</p>
<p>Red flag: Choose an item.</p>
<p>Qualitative analysis Not assessed, as not applicable.</p>
<p>Gap analysis</p>

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Recommendations
Assessment criterion 13(b)(b): does not charge fees that inhibit access by concerned parties
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.
Gap analysis
Recommendations
Assessment criterion 13(b)(c): follows procedures for submission and resolution of complaints that are clearly defined and publicly available
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.
Gap analysis
Recommendations
Assessment criterion 13(b)(d): exercises its legal authority to suspend procurement proceedings and impose remedies
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.
Gap analysis
Recommendations
Assessment criterion 13(b)(e): issues decisions within the time frame specified in the law/regulations*
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.

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<p>Quantitative analysis <i>Quantitative indicator to substantiate assessment of sub-indicator 13(b) assessment criterion (e):</i> <ul style="list-style-type: none"> • <i>appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i> </p> <p>Source: Appeals body.</p>
Gap analysis
Recommendations
<p>Assessment criterion 13(b)(f): issues decisions that are binding on all parties</p>
Conclusion: Choose an item.
Red flag: Choose an item.
<p>Qualitative analysis Not assessed, as not applicable.</p>
Gap analysis
Recommendations
<p>Assessment criterion 13(b)(g): is adequately resourced and staffed to fulfil its functions.</p>
Conclusion: Choose an item.
Red flag: Choose an item.
<p>Qualitative analysis Not assessed, as not applicable.</p>
Gap analysis
Recommendations
<p style="text-align: center;">Sub-indicator 13(c) Decisions of the appeals body Procedures governing the decision making process of the appeals body provide that decisions are:</p>
<p>Assessment criterion 13(c)(a): based on information relevant to the case.</p>
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis
<p>Gap analysis Not assessed, as not applicable.</p>

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Recommendations
Assessment criterion 13(c)(b): balanced and unbiased in consideration of the relevant information.*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis
Quantitative analysis <i>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):</i> - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses). Source: Survey.
Gap analysis Not assessed, as not applicable..
Recommendations
Assessment criterion 13(c)(c): result in remedies, if required, that are necessary to correcting the implementation of the process or procedures. *
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.
Quantitative analysis <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).</i> Source: Appeals body.
Gap analysis
Recommendations
Assessment criterion 13(c)(d): decisions are published on the centralized government online portal within specified timelines and as stipulated in the law.*
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed, as not applicable.

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<p>Quantitative analysis <i>// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).</i></p> <p>Source: Centralized online portal. *</p>
<p>Gap analysis</p>
<p>Recommendations</p>

Indicator 14. The country has ethics and anticorruption measures in place

<p style="text-align: center;">Sub-indicator 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties</p> <p style="text-align: center;">The legal/regulatory framework provides for the following:</p>
<p>Assessment criterion 14(a)(a): definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The following rules of the PPL refer to prohibited practices: Article 9 of the PPL states that stakeholders in public procurement procedures may not engage in, participate in or support: (a) corrupt practices, such as offering any pecuniary advantages with a view to improperly influencing deliberations or decisions to be taken in the procedure; b) Fraudulent practices, such as intentionally stating false or erroneous facts with the purpose of obtaining favourable deliberations or decisions in contracting procedures or in the execution of a contract; c) Practices that restrict competition, translated into any acts of collusion or simulation between interested parties, at any moment of the procedure, with the purpose of, namely, artificially establishing the prices of the proposal, preventing the participation of other interested parties in the procedure or, in any other way, preventing, distorting or restricting competition; d) Criminal practices, such as threats to people or entities, with the purpose of coercing them to participate or not, in contracting procedures; e) Any other ethically or socially reprehensible practices.</p> <p>The practices referred to in paragraphs a), b) and d) have direct expression in the Penal Code. <u>Criminal Code (Law nr. 38/2020, of 11 of November)</u></p> <p><u>Fraud</u> The Criminal Code (approved by Law nr. 38/2020, of 11 of November) typifies several types of fraud. With potential interest for public procurement, fraud on goods (Article 448 of the Criminal Code) is defined as follows: Whoever, with the intention of harming a third party or enriching himself, manufactures, transforms goods, imports, exports, stores, transports, holds, exhibits for sale, sells, puts into circulation or distributes counterfeit or imitated goods, making them pass off as genuine or unaltered or of a different nature or goods of inferior quality to those attributed to him by the agent, is punished with a prison sentence of up to 2 years or with a fine of up to 240 days, if a more serious penalty is not applicable to him by another penal provision.</p> <p><u>Forgery of a document (Article 251 of the Criminal Code)</u> 1. The following shall be punished with a prison sentence of up to two years or a fine of up to 240 days (a) Preparing a false document by imitating the real one; b) Falsifying or altering a true document; c) Misusing the signature of another person to prepare a false document; (d) falsely stating legally relevant facts in a document or omitting legally relevant facts that should have been stated in the document (d) falsely stating legally relevant facts in a document or omitting legally relevant facts that should have been stated in the document. 2. The penalty shall be imprisonment for between 2 and 6 years if the acts described in the previous subsection a) They concern public documents, certified wills or postal money orders; b) Are committed by a public servant in the exercise of his or her functions.</p>

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3. A public servant who, in the exercise of his or her functions, interposes an act or document in a protocol, register or official book without complying with the legal formalities shall be punished with a penalty of imprisonment from 1 to 5 years.

4. The use of a false or falsified document by a person other than the person who falsified it, for the purposes referred to in paragraph 1, shall be punishable by the same penalty as that applicable to the perpetrator of the respective crime of falsification, reduced by a quarter to its maximum limit

Undue receipt of advantage (Article 357 of the Criminal Code)

1. A public official who, in the exercise of his functions or because of them, by himself or through a third party, with his consent and ratification, requests or accepts, for himself or a third party, a patrimonial or non-patrimonial advantage that is not due to him, shall be punished with a prison sentence of between 1 and 5 years.

2. Whoever, by himself or through an intermediary, with his consent or ratification, offers, gives or promises to an official or to a third party by indication or knowledge of the official, a patrimonial or non-patrimonial advantage that is not due to him, in the exercise of his functions or because of them, shall be punished with imprisonment from 6 months to 3 years or with a fine from 60 to 360 days.

3. The above paragraphs shall not apply to socially appropriate conduct in accordance with customary practice.

Angola signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 29 August 2006.

The offences related to corruption include fraud, collusion, influence peddling, coercion and obstruction, embezzlement, abuse of power, participation in a business transaction, concussion and the arbitrary imposition of contributions.

Active corruption of an official (Art 358 Penal Code)

1. Whoever, by himself or through an intermediary, with his consent or ratification, offers, gives or promises a patrimonial or non-patrimonial advantage to an official or to a person specially obliged to provide a public service, or to a third person with his knowledge, to carry out an act or omission inherent to the duties of his office or function, shall be punished with a prison sentence of up to two years or with a fine of up to 240 days.

2. Where, in the case of the preceding subsection, the act or omission is contrary to the duties of the office or function, the penalty shall be imprisonment for up to three years or a fine of up to 360 days.

3. If the offer, gift or promise of advantage is intended for the commission of a criminal offence, the penalty is 3 to 7 years' imprisonment.

4. If the illicit act referred to in the preceding number is committed, the perpetrator shall be punished with imprisonment for a term of between 3 and 10 years, if a more serious penalty is not applicable under any other criminal law.

5. For the purposes of this Section, offers, gifts or promises made to an employee or to a person especially obliged to provide a public service that are socially appropriate and in accordance with custom and usage shall not be relevant.

6. The perpetrator shall be exempt from punishment whenever he or she withdraws the promise, refuses the offer of advantage or requests its return prior to the commission of the fact.

7. The penalties provided for in the preceding subsections shall be especially reduced when

(a) the agent has committed the fact at the request of the official, directly or through an intermediary

(a) the offender commits the act at the request of the official, directly or through an intermediary

b) The staff member reports the crime within a maximum of 90 days after the act was committed and always before criminal proceedings are initiated;

(c) the staff member specifically assists in obtaining or producing evidence that is decisive for the identification or capture of others responsible.

Passive corruption of an official (Article 359 of the Penal Code)

1. An official who, by himself or through an intermediary with his consent, requests or accepts, for himself or a third party, a patrimonial or non-patrimonial advantage, or the promise thereof, to perform an act or omission inherent to the duties of his office or function, even if prior to that request or acceptance, shall be punished by a term of imprisonment of up to two years or a fine of up to 240 days.

2. Where, in the case of the preceding subsection, the act or omission is contrary to the duties of the office or function, the penalty shall be imprisonment for up to three years or a fine of up to 360 days.

3. If the request, acceptance or promise of an advantage is intended for committing a criminal offence, the penalty shall be imprisonment for a term of between three and seven years.

4. If the illicit act referred to in the previous number is committed, the agent shall be punished with imprisonment from 3 to 10 years, if a more serious penalty is not applicable to him or her under the terms of another penal provision.

5. The penalties provided for in the preceding subsections shall be aggravated by one third, in their maximum and minimum limits, when the perpetrator holds political office.

6. The perpetrator shall be exempt from punishment whenever he or she voluntarily repudiates the offer or promise he or she had accepted, restores the advantage or, in the case of fungible property, its value, prior to the commission of the fact.

7. The penalties provided for in the preceding paragraphs shall be specially mitigated if the civil servant

a) Reports the crime within a maximum period of 90 days after the commission of the act and always before the initiation of criminal proceedings;

b) Specifically assists in obtaining or producing evidence that is decisive for the identification or capture of other agents.

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Coercion (Article 171 of the Penal Code)

1. Whoever, by means of violence or threatens to produce a relevant harm, constrains another person to an action or omission or to support an activity, is punished with imprisonment up to 3 years or a fine of up to 360 days.
2. The evil referred to in the previous number is relevant whenever, in view of the circumstances of the fact, it is appropriate to constrain the threatened person to an action or omission or to support an activity.
3. The penalty established in paragraph 1 is increased by 1/5 of its minimum and maximum limits, if the crime is committed through an information system, under the terms of subparagraph e) of Article 250. 1

Gap analysis

Recommendations

Assessment criterion 14(a)(b):

definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPL contains provisions that explicitly aim at governing the Conduct of Civil Servants (Article 8 PPL). In addition, the Public Probity Law contains definitions of the individual responsibilities, accountability and penalties for government employees.

Article 8 (of PPL)

(Conduct of civil servants)

1. Employees and agents of the Contracting Public Entity involved in the planning, preparation or carrying out of public procurement procedures or in the execution of public contracts, as well as the members of the Evaluation Committee, must:
 - a) Carry out their functions in an impartial manner;
 - b) Act in the public interest and in accordance with the objectives, rules and procedures determined in this Law;
 - c) Avoid conflicts of interest, as well as the appearance of conflicts of interest, in the exercise of their functions;
 - d) Avoid the practice, participation or support of fraudulent or subsumable acts in crimes of active or passive corruption;

In addition, Article 9 of the PPL, describes the required conduct for private firms and individuals.

ARTICLE 9

(Conduct of interested parties)

1. Those interested in public procurement procedures may not get involved, participate or support:
 - a) Corrupt practices, such as offering any equity advantages, with a view to unduly influencing deliberations or decisions to be taken in the procedure;
 - b) Fraudulent practices, such as the intentional declaration of false or erroneous facts, with the aim of obtaining favorable resolutions or decisions in contracting procedures or in the context of the execution of a contract;
 - c) Restrictive practices of competition, translated into any acts of collusion or simulation between interested parties, at any time during the procedure, with a view to, inter alia, artificially establishing the bid prices, preventing the participation of other interested parties in the procedure or, by in any other way, prevent, distort or restrict competition;
 - d) Criminal practices, such as threats to people or entities, with a view to coercing them to participate or otherwise, in hiring procedures;
 - e) Any other ethically or socially objectionable practices.
2. The Contracting Public Entity that is aware of any of the practices provided for in the previous article must:
 - a) Exclude the proposal submitted by the interested party in the contracting procedure, notifying him of the exact reasons for the exclusion;
 - b) Inform the Agency responsible for the Regulation and Supervision of Public Procurement, of the illegal practice committed and the exclusion operated. Without prejudice to other civil, administrative or criminal proceedings that may take place, interested parties who engage in any of the practices provided for in this article may also be prevented from participating, for a period of one to three years, in other public procurement procedures and are subject to the payment of a fine, based on the following criteria.

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3. Without prejudice to other civil, administrative or criminal proceedings that may take place, interested parties who engage in any of the practices provided for in this article may also be prevented from participating, for a period of one to three years, in other public procurement procedures and are subject to the payment of a fine, based on the following criteria:

- a) Seriousness of the offence;
- b) Degree of guilt of the offender;
- c) Damages caused to the public interest;
- d) Repeated character of the transgression;
- e) Economic and financial situation of the offender.

4. The application of the sanction provided for in paragraph 3 must be preceded by a prior hearing, with notification to the concerned party, so that, within eight days, it presents the factual grounds for ascertaining the material truth.

5. The instruction and decision of the proceedings for the application of the impediment provided for in the preceding paragraph, as well as the promotion of the inclusion of the sanctioned entity in the list referred to in Paragraph 2 of Article 57, is the competence of the Body responsible for the Regulation and Supervision of Public Procurement.

6. The decision of the Agency responsible for the Regulation and Supervision of Public Procurement may be appealed to in court.

7. Legal acts or transactions essentially or principally directed, by artificial or fraudulent means and with abuse of legal forms, intended to violate the provisions of this article, are ineffective.

Article 56 of the PPL states the Impediments to participation in public procurement procedures.

ARTICLE 56

(Impediments)

1. Candidates or competitors cannot be accepted or integrate any candidate or competitor association, entities that:

- a) Are the object of a boycott by international and regional organizations of which Angola is a part, namely the United Nations (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the African Union (AU), the Southern African Development Community (SADC), the Central African Economic Community (ECAC) and the African Development Bank (ADB);
- b) Are in a state of insolvency or bankruptcy, declared by court decision, in a phase of liquidation, dissolution or cessation of activity, subject to any preventive means of liquidation of assets or in any similar situation or have the respective process pending;
- c) Have been convicted by a final and unappealable sentence, for a crime affecting their professional honor, if, in the meantime, their rehabilitation has not occurred, in the case of natural persons or, in the case of legal persons, the holders of their governing bodies of administration, direction or management have been convicted of those crimes, and they are in effective functions until the sanction is complied with;**
- d) Have been subject to the application of an administrative penalty for serious professional misconduct, if, in the meantime, their rehabilitation has not occurred, in the case of persons or, in the case of legal persons, have been subject to the application of that administrative sanction, the holders of their administrative, management or management bodies, and these are in effective functions, until compliance with the sanction that was applied to them;
- e) Have, in any capacity, provided, directly or indirectly, advice or technical support in the preparation and preparation of the parts of the procedure, likely to distort the normal conditions of competition;
- f) They are included in the list drawn up by the Agency responsible for the Regulation and Supervision of Public Procurement referred to in the following Article.

2. The candidate or competitor who finds himself in one of the situations referred to in subparagraphs c), d) and f) of paragraph 1 may prove that the measures taken by him are sufficient to demonstrate his suitability for the performance of the contract and not affectation of the interests that justify those impediments, notwithstanding the abstract existence of a cause of exclusion, namely through:

- a) Demonstration that you have compensated or taken measures to compensate for any damages caused by the criminal offence or serious misconduct;
- b) Full clarification of facts and circumstances through active collaboration with competent authorities;
- c) Adoption of technical, organizational and personnel measures that are sufficiently concrete and adequate to avoid other criminal offences or serious misconduct.

3. Based on the elements referred to in the preceding paragraph, as well as the seriousness and specific circumstances of the offence or misconduct, the Contracting Public Entity may decide not to reveal the impediment, with the exception of unappealable court decisions.

Gap analysis

Recommendations

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<p>Assessment criterion 14(a)(c): definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The definition of conflict of interest is clear in the legislation but there is no reference to a cooling-off period.</p>
<p>Gap analysis</p>
<p>Recommendations At the earliest convenience, the GoA should add provisions establishing a cooling-off period for civil servants.</p>
<p>Sub-indicator 14(b) Provisions on prohibited practices in procurement documents</p>
<p>Assessment criterion 14(b)(a): The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There are no specific mentions in the laws and regulations on the mandatory inclusion of provisions on prohibited practices in the procurement documents.</p>
<p>Gap analysis The opportunity of mainstreaming norms or inserting guidelines on the prevention of prohibited practices is not being utilised.</p>
<p>Recommendations Please refer to indicator 2(b) (b)</p>
<p>Assessment criterion 14(b)(b): Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Procurement documents do not include provisions on prohibited practices.</p>
<p>Gap analysis The opportunity to mainstream norms and guidelines for preventing prohibited practices is not being utilized.</p>
<p>Recommendations Procurement documents should be reviewed to include explicit provisions on prohibited practices. Please refer to indicator 2(b) (b).</p>
<p>Sub-indicator 14(c) Effective sanctions and enforcement systems</p>
<p>Assessment criterion 14(c)(a):</p>

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Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.

Conclusion: No gap

Red flag: No

Qualitative analysis

The principle of probity imposes a special obligation for public entities (as well as private entities and citizens in general) to report suspicions or indications of fraud, corruption or other prohibited practices, for example those that prevent or reduce competition such as collusion.

The participants in the public procurement market have the duty to report to the legally competent entities, namely the Attorney General of the Republic, the National Service for Public Procurement and the Contracting Public Entities the facts that they have knowledge of in the exercise of their functions and which may constitute civil, administrative or criminal offences.

The public procurement market players shall be guided by the values of good administration and honesty in the performance of public procurement activity, and shall not solicit or accept, for themselves or for a third party, directly or indirectly any offers, loans, facilities, which may affect the freedom of their action or decision.

Article 9 (1) of the PPL provides that Interested parties in public procurement procedures procurement procedures may not engage in, participate in, or support

- (a) corrupt practices, such as offering any pecuniary advantages with a view to improperly influencing deliberations or decisions to be taken in the to be taken in the procedure;
- b) Fraudulent practices, such as the intentional statement of false or erroneous facts the purpose of obtaining favourable deliberations or decisions in contracting procedures or in the execution of a contract;
- c) Practices that restrict competition, translated into any acts of collusion or simulation between interested at any moment of the procedure, with the purpose of, namely, artificially establishing the artificially set the prices of the proposal, prevent the participation of other interested parties in the procedure or, in any other way, prevent, distort or restrict competition
- d) Criminal practices, such as threats to persons or entities, with the purpose of coercing them to participate or not, in contracting procedures;
- e) Any other ethically or socially responsible practices.

The Contracting Public Entity that has knowledge of any of the practices foreseen in the previous number shall

- a) Exclude the proposal submitted by that interested party in the procurement procedure, notifying him of the exact reasons for the exclusion;
- b) Inform the Body responsible for Regulation and Supervision of Public Procurement, of the illegal practice committed and the exclusion operated.

Conduct of Employees, Administrative Officers, workers and managers of Contracting Public Entities

In the exercise of their functions, in processes of formation and execution of public contracts, public officers, administrative agents or employees and managers of PEs shall (i) act impartially and in accordance with the public interest and (ii) avoid actual or apparent conflicts of interest with a view to benefiting relatives and kin. In this sense, they are prohibited from performing certain acts when involved in the process of formation and execution of public contracts, namely:

- Receiving or benefiting from gifts directly or indirectly or through an intermediary, by natural or legal entities, of Angolan or foreign law;
- Practicing or failing to practice any act with the objective of obtaining any undue payment for oneself or for third parties;
- Receiving or soliciting money from companies to approve or execute projects or programs that benefit them;
- Using money or other credit titles, movable assets belonging to the State and using them for purposes other than those legally permitted;
- To contract the companies of family members or any other company in which they have a personal interest to provide public services;

Award the proposal that does not meet the essential requirements and/or is not advantageous to the procuring entity.

Gap analysis

Recommendations

Assessment criterion 14(c)(b):

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<p>There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Evidence is scarce for the following reasons: - The organs of supervision and control of the public procurement system do not treat the information statistically, or do not make it known, by areas or sectors of activity of the public administration which would allow the easy identification of infractions that have been caused or have had an impact on public procurement procedures and the execution of public contracts; - The same bodies do not publish audit and inspection reports and in the case where they do publish activity reports, including audit reports, the statistical and analytical treatment of the information is not satisfactory (e.g.: IGAE 2020 Report). A positive example regarding the statistical and analytical treatment of information is the SNCP Report on Auditing function, although the most recent one published is for 2019); - Courts do not publish specific case results.</p>
<p>Gap analysis The supervision and control entities of the public procurement system do not treat the information statistically, or do not make it known, by areas or sectors of activity of the public administration which would allow the easy identification of infractions that have been caused or have had an impact on public procurement procedures and the execution of public contracts; - The same bodies do not publish audit and inspection reports and in the case where they do publish activity reports, including audit reports, the statistical and analytical treatment of the information is not satisfactory (e.g.: IGAE 2020 Report).</p>
<p>Recommendations Inspection/audit bodies to issue and make the reports available through publication.</p>
<p>Assessment criterion 14(c)(c): There is a system for suspension/debarment that ensures due process and is consistently applied.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis See above 1 (d) (c) The PPL (Article 57) provides for this system. The Public Contracting Authorities send a detailed report to the SNCP annually or whenever necessary and requested, indicating the Contractors, suppliers of goods or service providers, natural or legal persons who have committed a serious or repeated breach of contractual obligations which has resulted in the early termination of the contract or the application of fines exceeding 20% of the value of the contract. After evaluating the seriousness of the facts contained in the reports sent by the Public Contracting Authorities, the SNCP draws up a list of the natural or legal persons who have committed the situation foreseen in the previous number, and publishes it through the Public Procurement Portal and the Register of State Suppliers, The SNCP is responsible for keeping the list referred to in the previous number up to date, removing any natural or legal person from it three years after their inclusion in it. Repeated withdrawal of a proposal within the period established for its maintenance, including any automatic renewal, constitutes an aggravating circumstance for inclusion in the list provided for in this article. After repairing the damage caused to the Contracting Public Entity, the SNCP may remove the company from the list of infringing companies, provided that the repair is through return of the amounts or full provision of the services whose non-compliance motivated its inclusion in the list of defaulter companies and application of a fine foreseen in the Law.</p>
<p>Gap analysis Same as 1 (d) (c)</p>

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Recommendations

Same as 1 (d) (c)

Assessment criterion 14(c)(d):

There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Information pertaining to investigation, prosecution and convictions is available. Statistical data gathered by the Attorney's General Office (AGO) reveal a growth in the volume of cases under investigation (procedural stage following the preliminary enquiry) between 2018 and 2021 with only a decrease from the previous one in the 2020 financial year.

Criminal proceedings in connection with economic-financial and related crime			
YEAR	Cases under investigation	Referred to the Judge	Convictions
2017	0	0	0
2018	431	36	0
2019	663	157	10
2020	524	39	9
2021	728	98	7
Total	2346	330	26

Source: Attorney's General Office

Also, at the level of Preliminary Inquiries, the volume of AGO's investigation activities shows a positive trend, especially the rate of completion in 2021, which doubled compared with the previous year.

Preliminary inquiry proceedings for economic-financial and related crimes		
YEAR	Cases under investigation	Completed cases
2017	10	1
2018	82	32
2019	207	37
2020	269	19
2021	563	88
Total	1131	177

Source: Attorney's General Office

Despite the positive trend highlighted above, the following weaknesses regarding the available judicial statistical information should be considered:

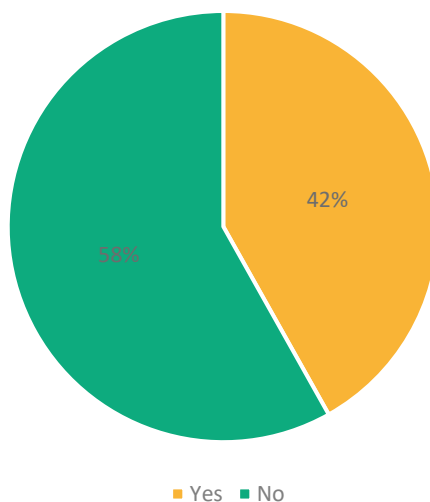
- Data should be disaggregated by type of crime(s) giving rise to preliminary enquiries and criminal proceedings;
- Data should be disaggregated in order to identify, by type of crime, how many were committed in the field of public procurement and penalties applied;
- Data should enable to calculate the average length of preliminary enquiries and criminal proceedings.

Also, with regard to the publication of statistical data, it is noted here the shortcoming that is transversal to the whole system (considering both the bodies specially dedicated to public procurement and the judiciary) - which consists in the fact that the information is not published in a place or medium that is easily accessible by the stakeholders of public procurement and by the general public/civil society.

Finally, it is noted that court decisions in criminal cases, as well as appeals, are not made public, which is a serious shortcoming from the point of view of the rule of law, in addition to not contributing to crime prevention (dissuasion through publicity of the processes and penalties imposed) or to an evidence-based evaluation of the system, which is an essential requirement for adequate and efficient policy making.

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Based on your experience, do you think that companies are expected to offer any kind of gratuities/offers to secure a contract in the public sector?



Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):

- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).

Source: Normative/regulatory function/anti-corruption body.

- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.

Source: Normative/regulatory function/anti-corruption body.

- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).

Source: Survey.

Gap analysis

Although there is evidence that laws on fraud, corruption and other prohibited practices are being enforced in the country, improvement may be required in the availability and processing of data. The following weaknesses regarding the available judicial statistical information should be considered:

- Data should be disaggregated by type of crime(s) giving rise to preliminary enquiries and criminal proceedings;
- Data should be disaggregated in order to identify, by type of crime, how many were committed in the field of public procurement and penalties applied;
- Data should enable to calculate the average length of preliminary enquiries and criminal proceedings.

Also, with regard to the publication of statistical data, it is noted here the shortcoming that is transversal to the whole system (considering both the bodies specially dedicated to public procurement and the judiciary) - which consists in the fact that the information is not published in a place or medium that is easily accessible by the stakeholders of public procurement and by the general public/civil society.

Last but not least, court decisions in criminal cases, as well as appeals, are not made public, which is a serious shortcoming from the point of view of the rule of law, in addition to not contributing to crime prevention (dissuasion through publicity of the processes and penalties imposed) or to an evidence-based evaluation of the system, which is an essential requirement for adequate and efficient policy making.

Recommendations

Statistical information should be enhanced by providing:

- Disaggregated data by type of crime(s) giving rise to preliminary enquiries and criminal proceedings;
- Disaggregated data that allows to identify, by type of crime, how many were committed in the field of public procurement and penalties applied;
- Data that enables to calculate the average length of preliminary enquiries and criminal proceedings.

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All statistical judiciary information should be published in both the Public Procurement Portal and the websites of the Attorney's General Office, the Ministry of Justice and the Courts which have delivered the decisions.

Rulings and decisions on appeals must be published in the abovementioned media.

Sub-indicator 14(d) Anti-corruption framework and integrity training

Assessment criterion 14(d)(a):

The country has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. *

Conclusion: No gap

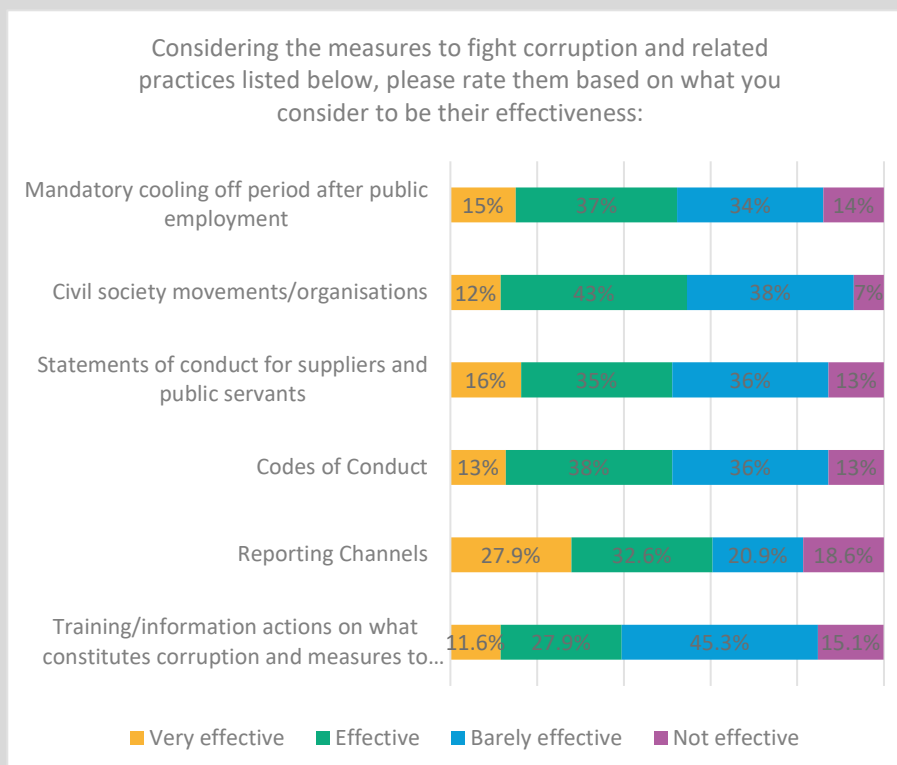
Red flag: No

Qualitative analysis

The framework - legal and institutional framework - that is mobilized for the prevention, detection, and penalization of corruption in the public sector is adequate, involving the appropriate agencies of government with the required and necessary level of responsibility.

Quantitative analysis

**Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):
- percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).*



Source: Survey.

Gap analysis

Recommendations

Assessment criterion 14(d)(b):

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As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>There is a PRACTICAL GUIDE ON PREVENTION AND MANAGEMENT OF RISK OF CORRUPTION AND RELATED INFRINGEMENTS IN PUBLIC CONTRACTS which contains the essential information on Corruption and Related Infringements, Prevention and Risk Management of Corruption and Related Infringements, Implementation and Monitoring Strategy, Case Studies and a Model Plan for Prevention and Management of Risks of Corruption and Related Infringements in Public Procurement.</p>
<p>Gap analysis</p> <p>There is no information on how many and how public procuring entities have adopted a Prevention Plan.</p>
<p>Recommendations</p> <p>Provide the DNPCC of the OPG with the necessary means to (i) statistically process all relevant information in the field of prevention and repression of corruption and related practices, (ii) comprehensively and permanently publicize this information, (iii) publish the activity reports covering the topic of corruption and related activities;</p> <ul style="list-style-type: none"> - The SNCP should, with its own means and following its recommendation to adopt the practices described in the Guide, exhaustively monitor the adoption of Prevention Plans by the contracting public entities; <p>Consider the introduction of a legal obligation for the adoption of prevention plans by all public Procuring Entities, with the provision of disciplinary sanctions for the heads of relapsing entities.</p>
<p>Assessment criterion 14(d)(c):</p> <p>As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.</p>
Conclusion: Substantive gap
Red flag: No
<p>Qualitative analysis</p> <p>The lack of an adequate statistical treatment of the activity and the lack of publication of reports and decisions are structural deficiencies that affect most of the supervisory and control bodies, as well as those whose mission is the prevention and repression of crime, including the OPG and the Courts.</p>
<p>Gap analysis</p> <p>The lack of publicity of the contents of audits, investigations and sentencing decisions makes the prevention of offences more difficult, thus losing an interesting dissuasive effect..</p>
<p>Recommendations</p> <p>The relevant contents of audits, investigations and court decisions on practices related to corruption and fraud should be widely publicised, without prejudice to the rules on secrecy of judicial proceedings where applicable, to promote more effective deterrence than mere "theoretical education" on illicit practices. The aim is to enhance the deterrent effect of penalties and sanctioning measures in general.</p>
<p>Assessment criterion 14(d)(d):</p> <p>Special measures are in place for the detection and prevention of corruption associated with procurement.</p>
Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>It is worth highlighting the Practical Guide on "Risk management of corruption and related infractions in public procurement (part of the so-called integrated strategy for the moralisation of public procurement). The Guide makes the following concrete recommendations to PEs:</p> <ul style="list-style-type: none"> - Drafting and evaluation of the Corruption Risk Management Plans; - Improvement of internal control systems with clear segregation of functions; - De-bureaucratisation of management methods and elimination of outdated ones; - Regular promotion of audits;

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<ul style="list-style-type: none"> - Promotion among the employees or workers of a culture of responsibility and strict observance of ethical rules and Promotion among the employees or workers of the culture of responsibility and strict observance of ethical and deontological rules; - Promotion of awareness among the employees or workers of their duties and prohibitions and prohibitions; - Promoting a culture of legality, clarity and transparency in public procurement procedures promotion of a culture of legality, clarity and transparency in public procurement procedures; - Promoting a culture of legality, clarity and transparency in public procurement procedures complete public information; - Training and capacity-building of its employees or workers, namely with regard to Training and capacity-building of its employees, namely in what concerns identifying and denouncing corruption situations; - Development of management practices and systems that encourage and promote relationships of trust between the of trust between the Administration and the citizens; and Documentary registration of all expenses.
<p>Gap analysis</p> <p>The Guide provides that the SNCP must ensure the publication in its statistical and information instruments, as well as on the Public Procurement Portal, of the results inherent to the fulfilment of the measures inserted in the Prevention Plans. However, this has not happened so far.</p>
<p>Recommendations</p> <p>The monitoring of the practical application of the Guide should be done by the SNCP through a set of KPIs to be designed for this purpose (not many, just the essential ones of the type, how many entities have approved Risk Plans, how many Plans are published).</p>
<p>Assessment criterion 14(d)(e):</p> <p>Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>There is no evidence.</p>
<p>Gap analysis</p> <p>There is no evidence.</p>
<p>Recommendations</p> <p>Develop integrity training programmes.</p>
<p>Sub-indicator 14(e)</p> <p>Stakeholder support to strengthen integrity in procurement</p>
<p>Assessment criterion 14(e)(a):</p> <p>There are strong and credible civil society organisations that exercise social audit and control.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Contact and engagement with civil society organizations proved to be an enormous challenge for the evaluation team. Unsuccessful attempts were made to obtain lists of CSOs from different stakeholders. An attempt was made to distribute the prepared questionnaire to a list of about 50 CSOs that collaborated in some way with AfDB. This attempt also proved unsuccessful. Finally, through Transparency International in Portugal, it was possible to come into contact with representatives of two CSOs who provided some statements.</p> <p>They were unanimous in identifying the lack of organisations dedicated/focused on matters of public procurement. There are organizations with a broader scope that, with limitations, seek to intervene.</p> <p>It was also conveyed that some of the "control" is done on social networks, where the information circulating is not always complete and/or reliable.</p>

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<p>Gap analysis There are no CSOs engaged in social auditing and control of public procurement.</p>
<p>Recommendations Development partners should create specific programmes to fund initiatives aimed at building the capacity of CSOs to monitor the quality of public spending. The option to use technological tools based on standards (OCDSs) is essential. Membership of the Open Contracting Partnership, which is provided for in the 2018-2022 PECPA, should be launched.</p>
<p>Assessment criterion 14(e)(b): There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The conditions are not favorable for the participation of CSOs.</p>
<p>Gap analysis There is a lack of trained, empowered CSOs to carry out the necessary external control work.</p>
<p>Recommendations Refer to 14(e)(a).</p>
<p>Assessment criterion 14(e)(c): There is evidence that civil society contributes to shape and improve integrity of public procurement.*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There is no evidence.</p>
<p>Quantitative analysis <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement.</i></p> <p>Source: Survey/interviews.</p>
<p>Gap analysis There are no contributions from civil society to shape and improve public procurement.</p>
<p>Recommendations The GoA should seek the involvement of CSOs and Academia in public policymaking processes and changes to the regulatory and legal framework of public procurement.</p>
<p>Assessment criterion 14(e)(d): Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</p>
<p>Conclusion: Substantive gap</p>

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Red flag: No
Qualitative analysis There is no evidence.
Quantitative analysis <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %).</i> Source: Supplier database.
Gap analysis Information is not collected in the supplier registration process.
Recommendations Collect information and evidence on the existence of internal control measures of the registered companies.
Sub-indicator 14(f) Secure mechanism for reporting prohibited practices or unethical behaviour
Assessment criterion 14(f)(a): There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.
Conclusion: No gap
Red flag: No
Qualitative analysis An anonymous whistleblowing mechanism is available on the Attorneys General's Office website (https://www.pgr.ao/denuncias).
Gap analysis
Recommendations
Assessment criterion 14(f)(b): There are legal provisions to protect whistle-blowers, and these are considered effective.
Conclusion: No gap
Red flag: No
Qualitative analysis For the protection of all whistle-blowers, a set of procedural guarantees are conferred that safeguard moral and physical integrity. Right to anonymity, the right to judicial protection against the reported entities (hierarchical superior or other body with effective power over the whistle-blower), and the right not to be subject to reprisals if the identity of the whistle-blower is disclosed.
Gap analysis
Recommendations
Assessment criterion 14(f)(c): There is a functioning system that serves to follow up on disclosures.
Conclusion: No gap
Red flag: No

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<p>Qualitative analysis</p> <p>The Competition Authority, despite being a recent established body (3 years of activity), has been developing work in the area of public procurement, and this is one of the areas of reference of its plan of activities. In this context, a Guide to Combat Collusion in Public Procurement was developed jointly with the SNCP, and a promotional campaign was also undertaken. Up to the time of the conversation (in January 2022), no complaints of restrictive practices had been received.</p> <p>The Competition Authority is also working on a leniency and whistle-blower scheme.</p> <p>In relation to corruption and/or fraud practices, the competence for investigation lies with the Attorney General's Office (AGO), which has follow-up mechanisms for all complaints in place.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p style="text-align: center;">Sub-indicator 14(g) Codes of conduct/codes of ethics and financial disclosure rules</p>
<p>Assessment criterion 14(g)(a):</p> <p>There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Article 1 of the Presidential Decree nr. 319/2018, of 31 of December, approves the Regulation on the Declaration of Assets and Income, the Declaration of Interests and the Declaration of Impartiality, Confidentiality and Independence in the Formation and Execution of Public Procurement. Also, the Guide on Ethics and Conduct in Public Contracting, the whistleblowing Guide for Reporting Signs of Corruption in Public Contracting and the Practical Guide on the Prevention and Management of Risks of Corruption and Corruption and Related Infringements in Public Contracts were approved by the same decree.</p> <p>Additionally, the Public Probity Law is also in force.</p> <p>Both legal acts have a general scope of application.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):</i> <i>- share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).</i></p> <p>Source: Normative/regulatory function.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 14(g)(b):</p> <p>The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Declaration of Assets and Income includes the income of civil servants, administrative agents, contracted staff and employees of public Procuring Entities, as well as their investments, assets and substantial gifts or benefits from which a conflict of interest may arise in relation to the formation and execution of public procurement contracts. The Declaration must be updated every two years and deposited with the Attorney General, who is its trustee.</p>

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<p>During the year 2021, the Attorney General's Office received 521 Asset Declarations from the different organs of the State which, added to those already deposited between 2017 and 2020, make up a cumulative total of 3611 (data reported to January 2022).</p>
<p>Quantitative analysis <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).</i></p>
<p>Source: Normative/regulatory function.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 14(g)(c): The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Refer to 14 (g) (a).</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 14(g)(d): Regular training programmes are offered to ensure sustained awareness and implementation of measures.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Following the approval of Presidential Decree nr. 319/2018, of 31 of December, an intensive outreach programme was carried out. SNCP delivers regular training programme which includes modules on code of conduct and ethics.</p>
<p>Gap analysis</p>
<p>Recommendations</p>
<p>Assessment criterion 14(g)(e): Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis Information on beneficial ownership is not provided by contractors. Members of the Evaluation Committee are required to disclose conflict of Interest.</p>
<p>Gap analysis Information on financial disclosure and beneficial ownership is not provided by contractors. A Red Flag is assigned because addressing this gap requires a legislative amendment.</p>

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Recommendations

Provisions regarding beneficial ownership should be included in the public procurement legal framework.