



# ASSESSMENT OF KAZAKHSTAN'S PUBLIC PROCUREMENT SYSTEM

2019

**Annex 1 & Annex 2**  
**Final Indicators Matrices**

## Pillar I - Legal, Regulatory, and Policy Framework

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
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	The legal and regulatory body of norms complies with the following conditions: (a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	<p>(a) The main laws and regulations that regulate the public procurement in Kazakhstan are well recorded and organized in a hierarchical order. Article 3 of the PPL states that the following, among others, are the key components of the country's public procurement and regulatory framework:</p> <ul style="list-style-type: none"> <li>• Constitution of the Republic of Kazakhstan dated August 30, 1995 as amended on March 10, 2017;</li> <li>• Civil Code dated December 27, 1994 as amended on January 1, 2018;</li> <li>• Public Procurement Law (PPL) dated December 4, 2015 as amended on December 26, 2018;</li> <li>• The Ministry of Finance defined as the Procurement Regulatory Authority by the Decree of Government of Kazakhstan (No.387 dated April 24, 2008);Public Procurement Regulations No. 648 dated December 11, 2015 as amended on December 29, 2018 by the Ministry of Finance.</li> </ul>		Criterion met.		Uniformity and universality of the legal framework coverage contribute to predictability and savings in the operation of the procurement system. In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible. In this respect, consideration should be given to international practices which show that entities like the National Bank, and/or legal entities or undertakings established

		<p>b) It covers goods, works and services, including consulting services for all procurement using public funds.</p>	<p>Article 3 of the PPL also states that if an international treaty is ratified by the Republic of Kazakhstan which stipulates other rules than those stipulated in PPL, the rules of international treaty shall be applied</p> <p>(b) It clearly covers goods, works and services but the consultancy/advisory services are not well defined in terms of methods and procedures. Procurement carried out by State Owned Enterprises (SOEs), including national management holdings, national holdings, national management companies, national companies, legal entities affiliated bodies and national bank and legal entities 50 and more percent of voting rights (stakes in authorized capital) which are owned by the national banks etc. are not subject to the PPL (Article 1.6 of the Law).</p> <p>The amendments to the PPL on December 26, 2018 introduced provision that procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member, is not subject to the PPL (Article 1.9 of the Law). Furthermore, Article 1.4 of the PPL excludes the procurement of state tasks. These tasks are defined as an order to legal</p>		<p>Criterion not met</p> <p>The scope of the public procurement legal framework is quite limited, as it does not cover all procurement of goods, works and services (including consulting services) using public funds. The amendment of the PPL issued in December 26, 2018 added another exclusion to the scope procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member, is not subject to the PPL (Article 1.9 of the Law).</p>	<p>for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework.</p> <p>To better inform such future reforms, the Government should undertake a comprehensive study taking stock of the existing procurement rules applied by each of the excluded entity, the performance of these entities and whether they actually achieve value for money while ensuring transparency and fair competition.</p>
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		<p>(c) PPPs, including concessions, are regulated</p>	<p>entities with state participation in the authorized capital for the implementation of budget investments projects and other tasks aimed at ensuring social and economic stability, and/or social and cultural development of the state. The state tasks are estimated approximately US\$1 billion for 2018.</p> <p>(c) PPPs are regulated by the law on PPPs dated October 31, 2015. The Commercial Code, which became effective on January 1, 2016, also includes a chapter on PPPs. The link to the PPP Law is <a href="http://kzppp.kz/en/">http://kzppp.kz/en/</a>. In addition, the law on concessions dated July 7, 2006 stipulates legal conditions for concessions and regulates social relations arising from the conclusion, execution and termination of concession agreements.</p>		<p>The total government expenditure is US\$ 23.81 billion. 63% of this amount are governed by separate set of rules and regulations such as procurement conducted by the National Welfare Fund SK (including its national managing companies and national companies (most SOEs)), National Bank and others. The consultancy/ advisory services are not well defined in the PPL.</p> <p>Criterion met.</p>		
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		(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	(d) All the laws, regulations and other legal documents are available free of charge at the web-portal <a href="https://www.goszakup.gov.kz/">https://www.goszakup.gov.kz/</a>		Criterion met		
	1(b) Procurement methods	The legal framework meets the following conditions: (a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	(a) Article 13 of the PPL unambiguously describes the procurement methods as follows: 1) tender (open, pre-qualification tender, two-stage tender); 2) auctions; 3) request for quotations; 4) single source; and 5) commodity exchange (a) The conditions for the use of all procurement methods except for open tender are included in Articles 30 (two-stage tendering); 32 (auctions) 37 (request for quotations), 42 (commodity exchange), 39 (single source). According to Article 32, the auction method can be used only for goods. The Public Procurement Regulations further define procedures for each method.		Partially met  The PPL does not provide for the associated conditions for the use of open tender. As a result, the procuring entity can opt for a less competitive method, especially for goods, which may affect the extent to which value for money can be achieved in public procurement. Furthermore. It is noted that not all methods are not spelled out in an adequate hierarchical level from competitive to less competitive methods		Consider amending the legal framework to ensure that the permissible procurement methods provide proportionality and fit-for-purpose to achieve better value for money and substantial gains in service delivery through : (i) making open tender a default method, (ii) more clearly specifying the conditions for the use of each procurement method, (iii) reducing the circumstances for the use of Single Source method, (iv) to clarify the procedures applicable to the selection of the firms and individuals taking into consideration the specificity of the consultancy/advisory services, and (v)

		<p>(b) 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.</p> <p>(c) Fractioning of contracts to limit competition is prohibited.</p> <p>(d) Appropriate standards for competitive procedures are specified.</p>	<p>(b) The prescribed procurement methods include competitive and less competitive procedures. However, while for the procurement of works estimated to cost above the threshold provided in Article 37 (for request for quotations), open tender has to be used, for goods above the threshold provided in Article 37 (for request for quotations), the customer (procuring entity) has two options: open tender or auction. Furthermore, there is a large number of conditions (50) for the use of Single Source method (Article 39). Recent amendments to the PPL has introduced changes require repeated bidding (tender and auction) becomes obligatory if the initial bidding was failed.</p> <p>(c) Article 37.3 of the PPL prohibits fractioning.</p> <p>(d) The standards for open tender procedures are described in the PPL and the regulations. They are found substantially in accordance with international standards.</p>		<p>Partially met.</p> <p>Given that the customer has the option of choosing either open tender or auctions (especially for goods) and the large number of single source criteria, the public procurement system may not be leading to the achievement of value for money.</p> <p>No procedures for selection of firms and individuals.</p> <p>Criterion met</p> <p>Criterion met</p>		introducing Framework Agreements.
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	1(c) Advertising rules and time limits	<p>The legal framework meets the following conditions:</p> <p>(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)).</p> <p>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond</p>	<p>(a) The PPL requires all public procurement opportunities to be published in the web-portal <a href="https://www.goszakup.gov.kz/">https://www.goszakup.gov.kz/</a>.</p> <p>(b) The PPL defines number of days for the customer to publish procurement opportunities including procurement plans and tender notices. The timeframes are as follows:</p> <ul style="list-style-type: none"> <li>• Procurement plan = 5 working days after approval of the plan (Article 5.3);</li> <li>• Open tender = The deadline for submitting tender applications by the potential suppliers shall be at least fifteen calendar days upon publication of the protocol of preliminary discussion of the draft tender documentation and</li> </ul>		<p>Criterion met</p> <p>Partially met. For large and complex goods and works contracts the minimum allowed 15 days for initial bidding and 5 days for repeated bidding may not be sufficient for bidders to prepare quality and responsive bids.</p>		<p>Consider allowing adequate time for bidders to properly prepare bids for large value complex contracts.</p>
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		<p>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.</p> <p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet</p>	<p>the text of the approved tender documentation. (Article 22)</p> <ul style="list-style-type: none"> <li>• Auctions = Minimum 15 calendar days. after publication of the protocol of preliminary discussion of the draft auction documentation and the approved auction documentation. (Clause 284 of the Regulation)</li> <li>• Repeated bidding (open tender and auction) = 5 calendar days, according to the PPL amendments on December 26, 2018</li> <li>• Request for Quotations = Minimum 5 working days prior to the submission of quotations(Article 29 Of the Regulation)</li> </ul> <p>The bid submission time can be extended in case of the participation of international firms defined by Article 9 of the PPL or to address relevant clarifications from bidders.</p> <p>(c) Publication of open tenders is available at no cost in the public procurement web-portal and E-Procurement is used by all procuring entities with open access to procurement opportunities by all prospective bidders.</p>		Criterion met		
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		<p>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).</p> <p>(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.</p>	<p>(d) The published information of public procurement contains detailed information for potential bidders. The PPL also add the requirement for potential bidders to comment on the draft tender documents.</p>		Criterion met		
	1(d) Rules on participation	<p>The legal framework meets the following conditions:</p> <p>(a) It</p>	<p>(a) All bidders who have the requisite legal, technical and financial capacity can participate in tenders (Article 9 of PPL).</p>		Criterion met		

		<p>establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.</p> <p>(b) It ensures that there are no barriers to participation in the public procurement market.</p>	<p>(b) There are no restrictions on participation in a tender process because of nationality. However, international potential bidders are required to establish physical presence in Kazakhstan and to obtain a digital signature certificate. According to the Minister of Finance Order No. 692 On Approval of the Rules for Using the Public Procurement web-portal dated December 28, 2015 and the Rules of the web-portal Potential bidders must obtain in accordance with the established procedure certificates (public and private keys) of the electronic digital signature in the National Certifying Center of the Republic of Kazakhstan, or in the certifying centers of the member states of the Eurasian Economic Union in order to work on a web-portal and (or) participate in</p>		<p>Criterion not met</p> <p>Requirements to obtain the digital signature for foreign bidders to be able to use the web portal requires, among other conditions, to obtain a certificate of the digital signature which needs a preliminary registration in Kazakhstan tax authority which requires physical presence.</p> <p>The requirement introduced by a recent amendment to the PPL has introduced another provision which mandates the</p>		<p>Introduce procedures [including revisions to the Law on e-Document and Digital Signature] to enable potential international bidders to obtain digital signature certificate from wherever they are located. This could include adoption of the approach already followed by SK e-procurement system which allows foreign bidders to receive a digital signature remotely without coming to Kazakhstan by contacting a local private third company that issues digital signatures.</p> <p>Consider introducing procedures that allow the adoption of electronic document bank</p>
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		<p>(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.</p>	<p>electronic public procurement. The new amendments to the PPL on December 26, 2018 added another limitation which is the provision of a bank guarantee as a bid security only in the form of an electronic document bank guarantee. Considering that the web portal is integrated only with Kazakhstan banks, foreign suppliers are limited in the possibility of providing bank guarantees issued by foreign banks (Article 25.3.2 of PPL).</p> <p>(c) Article 12.4 of the PPL provides for a bad faith register of suppliers maintained by the Single Organizer (MoF). The reasons for which a bidder can be placed in this register are: (i) winning a tender/auction on the basis of false information; (ii) avoidance of signing a contract by a selected supplier; and (iii) non-performance or improper performance of a contract. For any of the violations mentioned above, a supplier can be included in this register for 24 months. For items (i) and (iii) above, the period of disqualification starts from the date of entry into force of a court decision; and for item (ii) this period begins from the</p>		<p>submission of a bank guarantee as a bid security only in the form of an electronic document bank guarantee. Considering that the web portal is integrated only with Kazakhstan banks, foreign suppliers are limited in the possibility of providing bank guarantees issued by foreign banks.</p> <p>Criterion met.</p>		<p>guarantees as bid security issued by foreign banks.</p>
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		<p>(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.</p> <p>(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.</p>	<p>date on which the Authorized Body (MoF) made the decision for disqualification.</p> <p>(d) The PPL does not provide explicit rules governing the participation of public companies. SOEs and private companies are equally eligible to participate in the bidding which promote fair competition.</p> <p>(e) The procurement web-portal is accessible to all potential suppliers, and the qualification criteria to participate in the public procurement is defined in the PPL (Article 9). Article 9 uses the following criteria to qualify potential bidders: (i) legal/civil capacity; (ii) solvency; (iii) not subject to bankruptcy or liquidation; (iv) has sufficient materials, equipment and labor resources to fulfil the contract; and (v) work experience. Potential suppliers from outside Kazakhstan are subject to the same qualification criteria.</p>		<p>Criterion not met.</p> <p>In the absence of the rules governing participants of SOEs in procurement may not lead to fair competition because of SOEs being in a favourable position</p> <p>Criterion met.</p>		<p>Introduce the necessary rules so that both private sector firms and SOEs bid for government tender on the same level playing field and to encourage competition</p>
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			<u>3 steps to assess each sub-indicator</u>				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	1(e) Procurement documentation and specifications	<p>The legal framework meets the following conditions:</p> <p>(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.</p> <p>(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.</p>	<p>(a) The PPL defines a minimum, exhaustive list of documents that constitute the tender documents. Article 21 includes detail of a tender documentation</p> <p>(b) Article 21.2.2. describes technical specification with an indication of required functional, technical, qualitative and operational characteristics of the purchased goods, works and services. In such a case, the technical specification shall not contradict the requirements established by the legislation of the Republic of Kazakhstan on technical regulation. The standard tender documentation including the</p>		<p>Criterion met</p> <p>Criterion partially met</p>		For standard procurable items specifications can be developed in a same manner as for the procurement for light and furniture industry

		<p>(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.</p>	<p>technical specifications for the light and furniture industry were approved by the Order of the Ministry of Investment and Development of Kazakhstan No. 41 dated January 19, 2018.</p> <p>(c) As per the PPL, technical specification is further regulated in the Law of the Republic of Kazakhstan dated November 9, 2004 No. 603-II "On Technical Regulation" (as amended on January 1, 2018) that requires recognition of standards that are equivalent when neutral specifications are not available. The specifications do not refer to any brand names, or catalogues numbers or names of manufacturers.</p>		<p>Criterion met</p>		
		<p>(d) 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</p>	<p>(d) PPL Article 22 governs preliminary discussion of draft tender document. In addition, as per the</p>		<p>Criterion partially met</p> <p>Preliminary discussion of draft tender document is a good practice as part of early</p>		<p>Consider clarifying how comments on</p>

		the clarification to all potential bidders (in writing)	PPL, the bidders are allowed to request clarifications and the procuring entities are required to respond in a timely manner.		engagement with bidders/suppliers to take the market constraints and feedback into consideration for achieving fair level of competition and VfM. However, it is not apparent how comments on draft specification is useful for items of repeated use.		draft specification could done for items of repeated use.
	1(f) Evaluation and award criteria	<p>The legal framework mandates that:</p> <p>(a) 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,</p>	<p>(a) The evaluation criteria are clearly defined by Chapter 2.7 of Article 21 of the PPL and by <u>para 152-1 of the Rules of Public Procurement</u>. Also, a description of all evaluation criteria is contained in paragraphs 43-52 of the Standard Form for Tender Documentation (Appendix 4 of the Rules of Public Procurement).</p> <p>Article 27.9 the bid prices are automatically opened by the public procurement web portal based on the results of evaluation of the tender applications and verification of their compliance with the qualification criteria and tender documentation requirements.</p>		<p>Criterion partially met</p> <p>The evaluation criteria are based on price and non-price items and appear to be objective. However, the evaluation method based on discount on the bid prices for additional qualifications, etc., and the manner evaluation of bids is carried out do not appear to be consistent with international evaluation practices.</p>		<p>Introduce weighted evaluation methodologies based on price and non-price criteria and on quality and price combination; revise the relevant provisions of the PPL and the PPR to bring clarity on various aspects of evaluation of bids including, confidentiality.</p>

		<p>(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.</p>	<p>(b) Para 152-1 of the Rules of Public Procurement requires that in order to identify a tendered that offers better quality goods, works and services, the procurement organizer shall include the following criteria in the tender documents:</p> <ul style="list-style-type: none"> <li>• experience in the market of goods, works and services that are the subject of carrying out public procurement;</li> <li>• a document confirming the voluntary certification of the offered goods;</li> <li>• a certified system (certified systems) of quality management; a document confirming voluntary certification of goods made of secondary raw materials obtained from waste products on the territory of the Republic of Kazakhstan;</li> <li>• a certified system (certified systems) of management of the environmental management;</li> <li>• functional, technical, quality and operational characteristics of goods</li> </ul>		<p>Criterion partially met</p> <p>The main criterion for evaluation is the price and non-price attributes, social, economic and environmental aspects and risks assessment are taken into account as discounts to evaluated price. Price discounts approach is used. No combined weighted evaluation of quality and cost is applied.</p>		
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			<p>and services and (or) the costs for operation, maintenance and repair of the purchased goods. Para 152-1 provides list of possible evaluation criteria. Paragraphs 154 - 166 of the Rules of Public Procurement provide details and percentage for each of the above mentioned evaluation criteria.</p> <p>As part of the PPL amendments dated December 26, 2018 Anti-Dumping Measures (Article 26) is not allowed, with the exception of procurement of services (other than engineering).</p>				
		<p>(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined</p> <p>(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.</p>	<p>(c ) The evaluation process for consulting services is not defined and used in the PPL and concerned regulations.</p> <p>(d) The evaluation criteria are disclosed through the tender documents to the participants. As discussed in (a) above, the evaluation criteria for</p>		<p>Criterion not met</p> <p>There are no specific provisions and procedures for consulting services in the PPL and Regulations and hence no provisions for assessment of the quality and technical capacity.</p> <p>Criterion partially met</p>		

		<p>(e) 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.</p>	<p>open tenders is based on discounts from bid price to determine the winner.</p> <p>(e) PPL Article 5.9 governs the confidentiality of tender prices before the electronic summing up the results of the procurement process. However, participants in a tender can see each other's bids after three working days after preliminary admission report is published on the web-portal.</p>		<p>Criterion partially met</p> <p>Participants in a tender can see each other's bids after three working days after preliminary admission report is published on the web-portal.</p>		
	1(g) Submissio, receipt, and opening of tenders	<p>The legal framework provides for the following provisions:</p> <p>(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.</p> <p>(b) Records of proceedings for bid openings are retained and available for review.</p> <p>(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.</p>	<p>(a) The opening of tenders takes place on the web-portal immediately after the closing date of bid submission.</p> <p>(b) Record of bid opening is available in the web-portal</p> <p>(c) As part of the amendments to the PPL on December 26, 2018 Article 5.9 governs the confidentiality aspect of a procurement activity however bids</p>		<p>Criterion met</p> <p>Criterion met</p> <p>Criterion partially met</p> <p>Amendments to the PPL introduced in December 26, 2018 stipulates the bids submitted are disclosed to participating bidders who submitted a bid security after</p>		<p>Potential bidders for each tender should be asked to identify their proprietary information</p> <p>A system should be in place that protects the information provided by the bidder that is of proprietary nature, or commercially or financially sensitive</p>

		<p>(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.</p>	<p>submitted are disclosed for other bidders who submitted the bids security after three working days after preliminary admission report is published on the web-portal.</p> <p>(d) PPL Article 5.12 and PPR governs confidentiality of price offers of potential suppliers. Annex 21 Standard Contract on public procurement Article 3 Parties obligations para 4) states that the Supplier shall not disclose the content of the technical documentation provided by the Customer or other persons on the Customer's behalf without prior written consent of the Customer, with the exception of the personnel involved by the Supplier to the performance hereof.</p>		<p>three working days once the preliminary admission report is published on the web-portal. This may be a breach of confidentiality as there is no provision in PPL that protects information provided by the bidder that is of proprietary nature, or commercially and financially sensitive</p> <p>Criterion partially met</p>		
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		<p>e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.</p>	<p>This information shall be provided to such personnel on a confidential basis and to the extent it is necessary to fulfill the obligations</p> <p>(e) The modality of all tender submission is through the web portal</p>				
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	1(h) Right to challenge and appeal	<p>The legal framework provides for the following:</p> <p>(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.</p> <p>(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.</p>	<p>(a) The PPL includes the provision on the right of tender participant to appeal decision and actions taken by the procuring entity (Article 47).</p> <p>(b) The Committee on State Internal Audit under the Ministry of Finance, the Authorized Body is responsible for the review and settlement of the complaints. Procurement Committee is a structural entity under MoF, but it is not Authorized body, responsible for procurement commonly used goods on behalf of public entities (Article 8).</p>		<p>Criterion met.</p> <p>Criterion not met.</p> <p>The IAC is under the same entity (MoF) as the Single Procurement Organizer, and as such, it may be required to review appeals arising from procurement conducted by the Organizer and/or procuring unit under the MoF. This lack of independence may impact the trust among bidders in the review system; The non-appeal functions of IAC may conflict with its appeal function. Specifically, if IAC oversees the ongoing financial control (or compliance audit) of specific procurement transactions, which to some extent makes them part of procurement decisions. Hence, the IAC could not be asked to objectively and impartially review a complaint that may relate to a procurement process which benefitted</p>		<p>Based on international good practice, the complaint review body should not engage in activities which conflict with its other review functions. Therefore, the current arrangements for review of complaints by IAC needs to be revised to ensure a clear level of independence from the MoF.</p>
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		<p>(c) Rules establish the matters that are subject to review.</p> <p>(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.</p> <p>(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.</p>	<p>(c) The Article 47 of PPL describes the appeals mechanism review.</p> <p>(d) In article 47 of PPL, the bidder's appeal against an award decision can be made within 5 working days from the date the bid evaluation report is posted and the duration of the settlement of complaints is 10 working days by the concerned entity.</p> <p>(e) Yes, all the decisions from the settlement of complaints are published and accessible in the public procurement web-portal. Amendments to the PPL on December 26, 2018 provides the possibility to file a complaint through publicly available information systems, in accordance with the requirements with legislation of Kazakhstan of</p>	<p>before from IAC's financial advice and control.</p> <p>Criterion met.</p> <p>Criterion met.</p> <p>Criterion met.</p>		
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		(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	<p>electronic document and digital signature (Article 47.4)</p> <p>(f) As per the article 47 of the PPL, the decision of the authorized body may be appealed (i) to a higher authority (ii) in a court of law.</p>		Criterion met.		
	1(i) Contract management	<p>The legal framework provides for the following:</p> <p>(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,</p>	(a) Contract management functions and responsibilities are not well defined.		<p>Criterion not met.</p> <p>Contract management function remains largely unregulated by the legal and regulatory framework leaving out roles and responsibilities within the procuring entity on aspects such as: monitoring delivery of goods or construction of works, inspection, quality control, supervision of civil works and final acceptance of products, monitoring of contract performance clauses designed to ensure social or environmental standards, review, issuance and publication of contract amendments/variatio</p>		<p>Contract management being the most important phase of the procurement cycle, it is important that contract management functions and responsibilities are clearly defined and enforced. This should be a key feature of the organizational and institutional arrangement of the public procurement function</p>

		<p>(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.</p> <p>(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.</p>	<p>(b) All public procurement documents contain a draft contract that includes contract conditions, including contract amendment.</p> <p>(c) Article 45 of the PPL governs conditions for contract amendments. These conditions promote competition. Standard contract conditions in the Procurement Regulation stipulate that the Customer and the Supplier shall make every effort to resolve any differences or disputes arise out of or in connection with the Contract by means of direct negotiations. If the Customer and the Supplier cannot resolve any dispute by means of such negotiations, any party can request the resolution of it in accordance with the</p>		<p>management, and claims and dispute resolution.</p> <p>Criterion met.</p> <p>Criterion met.</p>		
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		(d) The final outcome of a dispute resolution process is enforceable.	<p>legislation of the Republic of Kazakhstan.</p> <p>(d) Depending on the violation, the relevant legislation, such as civil code, criminal code, administrative, etc. may apply. Court decisions, including those relating to contract disputes, are enforced.</p>		Criterion met.		
	1(j) Electronic Procurement (e-Procurement)	<p>The legal framework meets the following conditions:</p> <p>(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.</p> <p>(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>	<p>(a) PPL Article 13.3 states that "Public procurement is carried out on the public procurement web portal, with the exception of cases provided for by this Law."</p> <p>(b) Full access to the system is provided by:</p> <ul style="list-style-type: none"> <li>Article 2.15 a web portal of public procurement is the information system of the government agency that provides a single access point to e-services of the electronic public procurement.</li> <li>As part of the PPL amendments on</li> </ul>		<p>Criterion met.</p> <p>Criterion met.</p>		

			<p>December 26, 2018</p> <p>Article 17.3 provides paid services for potential suppliers for participation on the web portal. General access to public information on the web portal is free of charge.</p> <ul style="list-style-type: none"> <li>• Article 24.7. Potential suppliers submitting tender application shall, after three working days once the preliminary admission report have been posted , be granted access to consider the tender applications of other potential suppliers.</li> <li>• Privacy and Authentication is handled by PPL Article 2.22) “a public procurement contract is a civil contract concluded through the public procurement web portal between the customer and the supplier, certified by electronic digital signatures with the exception of those cases stipulated by this Law;”</li> </ul>				
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		<p>(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.</p>	<ul style="list-style-type: none"> <li>• PPL handle security of data in accordance of the following provisions:</li> <li>• Article 17.5 “ensure that electronic information resources of entities of the public procurement system, posted on the public procurement web portal, are secured;”</li> <li>• Article 17.6) maintain the information content on the public procurement web portal in accordance with the Public Procurement Rules;</li> <li>• Article 17.7) interact with authorized bodies regarding the integration of the information systems of state bodies, state electronic information resources and information security.</li> </ul> <p>(c) Interested parties: Article 2.15) a web portal of public procurement is the information system of the government agency that provides a single access point to e-services of the</p>		Criterion met.		
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			electronic public procurement;				
	1(k) Norms for safekeeping of records, document	The legal framework provides for the following: (a) A comprehensive list is established of the procurement records and documents related to transactions including contract	(a) The PPL and PPR do not establish list of the procurement records and documents related to transactions including		Criterion partially met  PPL and Regulations do not include any specific provision on procurement and contract		Terms and procedures for keeping procurement documents and contract management documents should be specified/instructed in the

	<p>s and electronic data</p> <p>management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.</p> <p>(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.</p> <p>(c) There are established security protocols to protect records (physical and/or electronic).</p>	<p>contract management.</p> <p>(b) Chapter 10.1 of the Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated September 29, 2017 No 263 "On approval of the List of standard documents resulting from the state and non-governmental organizations activities, indicating the storage period" requires to keep electronic and/or physical documents related to procurement process.</p> <p>(c) Articles 17.5. and 17.7, E-Commerce Center is responsible for protocols to protect electronic records and sources of information. Chapter 10.1 of the Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated</p>		<p>management document retention.</p> <p>Criterion met</p> <p>Criterion met</p>	<p>PPL or PPR, to ensure proper contract management, in addition to overall guidance on terms of the Order of the Minister of Culture and Sports No 263</p>
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			<p>September 29, 2017 No 263 "On approval of the List of standard documents developed as a result of the state and non-governmental organizations activities, indicating the storage period" requires keeping electronic and/or physical documents related to procurement process. Procurement planes with all amendments and standard tender documents – permanently, time period for the other tender documents vary from 3 to 5 years.</p>				
	1(l) Public procurement principles in specialised legislation	<p>The legal and regulatory body of norms complies with the following conditions: (a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.</p>	<p>(a) Public procurement principles apply to all sectors except those on the exception list as stipulated in Article 1 of the PPL.</p>		<p>Criterion partially met</p> <p>There is no evidence that the existing procurement rules applied by each of the exceptions/excluded specific sectors/entities ( SOEs) , the performance of these entities and whether they actually achieve the core public procurement principles including value for money,</p>		<p>Consider undertaking comprehensive study taking stock of the existing procurement rules applied by each of the exceptions/excluded specific sectors/entities ( SOEs) , the performance of these entities and whether they actually</p>

		<p>(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.</p> <p>(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.</p>	<p>(b) The application of public procurement principles in PPP is governed separately. Please refer to <a href="https://www.procurementnet.org/wp-content/uploads/2017/02/Kazakhstan.pdf">https://www.procurementnet.org/wp-content/uploads/2017/02/Kazakhstan.pdf</a></p> <p>(c) Please refer to <a href="https://www.procurementnet.org/wp-content/uploads/2017/02/Kazakhstan.pdf">https://www.procurementnet.org/wp-content/uploads/2017/02/Kazakhstan.pdf</a></p> <p>Also see Indicator 1.1(c) above</p>	<p>transparency and fair competition.</p> <p>Criterion met</p> <p>Criterion met</p>	<p>achieve the core public procurement principles including value for money, transparency and fair competition.</p>
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Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures	(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	<p>Public Procurement Regulations No. 648 dated December 11, 2015 expand on the provisions of the PPL. In addition, the following orders of the Minister of Finance provide additional.</p> <p>Details of the rules of procurement:</p> <ul style="list-style-type: none"> <li>List of goods, works, services of daily and / or weekly needs dated December 23, 2015 No. 677</li> <li>Rules for collecting, summarizing and analyzing reports taking into account information on purchases from domestic producers dated December 28, 2015, No. 693</li> <li>Rules for Using the web-portal and the Rules for the Operation of the web-portal in the Event of Technical Malfunction of the Work of the web-portal dated</li> </ul>		Criterion met		



			<p>December 28, 2015, No. 692</p> <ul style="list-style-type: none"><li>• On the definition of a single operator in the field of electronic public procurement dated December 21, 2015 No. 668</li><li>• List of goods, works, services for which the organization and conduct of public procurement is carried out by a single organizer dated December 21, 2015 No. 669</li><li>• Rules for preparation of the annual report on public procurement dated December 25, 2015 No. 688</li><li>• Rules for the Formation and Maintenance of Registers in Public Procurement dated December 28, 2015, No. 694</li><li>• Rules for retraining and advanced training of employees engaged in public procurement dated December 28, 2015 No. 697</li><li>• List of goods, works, services for which public procurement is carried out in a</li></ul>				
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		<p>(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.</p> <p>(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.</p>	<p>competitive tender with prequalification dated February 29, 2016 No. 91</p> <p>The Law and regulations are clear and accessible and available from the Web Portal → <a href="http://www.goszakup.gov.kz">www.goszakup.gov.kz</a></p> <p>The regulations are updated regularly. Responsibility for maintenance of the regulations assigned to the Single operator, article 17 PPL</p>		<p>Criterion met</p> <p>Criterion met</p>		
	2(b) Model procurement documents for goods, works, and services	<p>(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.</p> <p>(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</p>	<p>Model procurement documents and contracts for goods, works and services, including consulting services are stipulated as part of tender documentation in the PPR.</p> <p>Standard and mandatory set of clauses or templates that reflect the legal framework for goods and works and services are</p>		<p>Criterion met</p> <p>Criterion met</p>		

		competitive tendering/bidding.	included in the tender documentation in the PPR				
		(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	The documents are kept up to date. Responsibility for preparation and updating module procurement documents assigned to the Authorized body, article 16 PPL		Criterion met		
	2(c) Standard contract conditions	(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	The PPR includes standard tender documentation for the most common types of contracts including a draft contract with standard contract conditions		Criterion met		
		(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The content of the standard contract conditions is consistent with internationally accepted practice		Criterion met		
		(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The PPR includes standard tender documentation including a draft contract with standard contract conditions		Criterion met		
	2(d) User's	(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the	The user instruction and manual are available for		Criterion met		

	guide or manual for procuring entities	correct implementation of procurement regulations and laws.	customer (procurement units), suppliers (tender participants), and procurement organizer. Link → <a href="https://wiki.goszakup.gov.kz/pages/viewpage.action?pageId=327702">https://wiki.goszakup.gov.kz/pages/viewpage.action?pageId=327702</a>				
		(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	The user instructions are well maintained by the Single operator of Kazakhstan (Article 17)		Criterion met		
3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.	3(a) Sustainable Public Procurement (SPP)	(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	The concept of Sustainable Public Procurement (SSP) taking into account the social, economic and environmental aspect as per the SDG 12.7 is not clearly mentioned in the policy / strategy documents and the PPL.		Criterion partially met  The concept of Sustainable Public Procurement (SSP) taking into account the social, economic and environmental aspects as per the SDG 12.7 is not clearly mentioned in the policy / strategy documents and the PPL, including for complex procurement use of Life Cycle		Consider building in the legal framework adequate sustainability criteria and requirements to ensure value for money throughout the procurement cycle including use of Life-Cycle costing principles and introduction of ESHS criteria in evaluation of complex facilities.

		<p>(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.</p> <p>(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>(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.</p>	Same answer to (b), (c), and (d) below		<p>costing principles in evaluation, incorporation of Environmental, Social, Health and Safety aspects as part of Employer's requirements and use of energy efficient equipment a factor in responsiveness of technical bids.</p> <p>Criterion partially met</p> <p>Criterion partially met</p> <p>Criterion partially met</p>		
	3(b) Obligations deriving from international agreements	<p>Public procurement-related obligations deriving from binding international agreements are:</p> <p>(a) clearly established</p> <p>(b) consistently adopted in laws and regulations and reflected in procurement policies.</p>	and (b) PPL Article 3.2 states that if an international treaty ratified by the Republic of Kazakhstan stipulates other rules than those stipulated in this Law, the rules of the international treaty shall be applied.		Criterion met		

			Also, according to the amendments to the PPL on December 26, 2018 procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member, is not subject to the PPL (Article 1.9 of the Law).				
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## Pillar II. Institutional Framework and Management Capacity

			<u>3 steps to assess each sub-indicator</u>				
<u>Indicator</u>	<u>Sub-indicator</u>	<u>Assessment criteria</u>	<u>Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	<u>Step 2: Quantitative analysis</u>	<u>Step 3: Gap analysis / conclusions (describing any substantial gaps)</u>	<u>Potential red-flag</u>	<u>Initial input for recommendations</u>
4. The public procurement system is mainstreamed and well-integrated into the public financial management system	4(a) Procurement planning and the budget cycle	The legal and regulatory framework, financial procedures and systems provide for the following: (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	(a) In accordance with Article 5 of the PPL, Annual Procurement Plan is prepared based on relevant budget. The customer (procuring entity) prepares its annual procurement plan in two stages: a preliminary procurement plan upon receipt (by October every year) of information about indicative annual budget allocation and then the final procurement plan upon receipt of final budget allocation approval (by January every year). The annual public procurement plan is approved (refined) by the customer within ten days from the date a relevant		Criterion partially met  The procuring entity prepares its annual procurement plan (PP) in two stages: a preliminary PP based on an indicative annual budget notification, and (ii) final PP based on notification of final budget allocation. The PPL provides for the possibility for tenders to be launched without budget allocation approval for the case of two-stage tender procedure. It is not clear when the procuring entity receives budget allocation approval for such contracts. Even if the budget is		It is a good practice to launch tenders only for contracts on the preliminary or final procurement plans, including for two-stage tender.  Enhance the feedback mechanism reporting to fully report on completion of major contracts including details on payments and other aspects of execution such as time and cost overruns

		<p>(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</p>	<p>budget (development plan) has been approved (refined.) The annual procurement plan contains full detail on identification code, nomenclature of goods, works and services, methods and deadlines for carrying out public procurement and other details on delivery including any participation by certain categories of potential suppliers (example needs of disabled) as per Article 51 of PPL. Appendix 1 of the Regulation contains detailed format for Preliminary Annual Plan for Goods, Works and services</p> <p>(b) Budget funds are committed to cover the contract amount according to needs as per Article 5. 4 3) and Article 5.10. 2). However as per Article 5. 6, the customer shall have the right to adopt a</p>		<p>allocated after stage one has been completed, some bidders may decide to not participate as they may not want to spend resources on tenders without any firm budget commitment. This practice is not in keeping with the international procurement practice that requires that no unfunded tenders are launched.</p> <p>Criterion partially met</p>		
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		<p>performed within the budget period).</p> <p>(c) A feedback mechanism reporting on budget execution is in place, regarding the completion of major contracts.</p>	<p>decision on implementation of public procurement before the relevant budget is approved only in case of conducting public procurement by way of tender with the use of two-phase approach</p> <p>(c) There is a feedback mechanism reporting on the republican budget execution in place as Government and the Accounts Committees reports on republican budget execution are to be presented and approved by the Parliament. However, regarding the availability of feedback mechanism on major contracts' budgets execution, the assessment has concluded that although there is a partial form of reporting on the contract pre-award procurement stages, publicly available on</p>		<p>Criterion partially met</p> <p>There is no specific feedback mechanism that report fully on completion of major contracts including details on payments</p>		
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			procurement portal, and the contracts are registered in treasury system and their payments are properly tracked by the system, there is no specific feedback mechanism that report fully on completion of major contracts including details on payments.				
	4(b) Financial procedures and the procurement cycle	The legal and regulatory framework, financial procedures and systems should ensure that: (a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	(a) According to Article 5. 7 purchase of goods, works and services not provided for by the approved (revised) annual public procurement plan (preliminary annual public procurement plan) is prohibited, <u>with exception of</u> some cases of single source (clauses (4), (9), (31), (32) and (35) of the Article 39.3) and Special Procedure (Article 50) which relate primarily to cases involving emergency recovery, national security, or state secrets. Also, the web portal has a		Criterion met.		

		<p>(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders. *</p>	<p>built-in mechanism to ensure the availability of funds</p> <p>(b) The related regulations and procedures on payments are followed and publicly available to all potential bidders</p>		<p>Criterion partially met</p>		
		<p>// Minimum indicator // *</p> <p>Quantitative indicator to substantiate assessment of sub-indicator 4(b)</p> <p>Assessment criterion (b):</p> <ul style="list-style-type: none"> <li>- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).</li> </ul> <p>Source: PFM systems.</p>		<p>The public procurement portal contains some information on the process of payment under contracts. However, this information was not enough to obtain full and accurate data about the delay in payment for each specific transaction. The Treasury and other state bodies also don't monitor the delay in</p>	<p>Web-portal does not provide data on payments delays</p>		<p>Data on time period between invoice and actual payment of each transaction should be monitored by specifically responsible body and publicly available on the web-portal</p>

				payments from the moment of issuing the invoices.			
5. The country has an institution in charge of the normative/regulatory function	5(a) Status and legal basis of the normative/regulatory institution function	(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.	<p>The Ministry of Finance (MoF) is the Authorized Body, as described in 1(a) (a). Articles 16 and 18 of PPL specify the normative, regulatory and control functions of the Authorized Body. Under the administrative and financial control of the Authorised body, the methodology function is assigned to the Public Procurement Legislation Department, Control function to the Internal Audit Committee.</p> <p>Technical support of the web-portal was assigned to the Single operator and Centralized public procurement was assigned to the Single Organizers (Article 17 and 8 PPL)</p>		Criterion met.		

	5(b) Responsibilities of the normative/regulatory function	<p>(b)The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:</p> <p>(a) providing advice to procuring entities</p> <p>(b) drafting procurement policies</p> <p>(c) proposing changes/drafting amendments to the legal and regulatory framework</p> <p>(d) monitoring public procurement</p>	<p>The core functions of normative/regulatory (a-i) are with Authorized Body (namely Public Procurement Legislation Department) and clearly defined in the Article 16. Authorized body through the E-Commerce Center is entrusted responsibilities on managing online platform (k) Article 17 as follows:</p> <p>(a) Providing advice to procuring entities;</p> <p>(b) Drafting procurement policies and</p> <p>(c) Proposing changes/drafting amendments to legal and regulatory framework. This function is carried out by Department of Public Procurement Legislation.</p> <p>(d) The Authorized Body, through the E-Commerce Center, which manages the web portal, carries out monitoring of public procurement (Article 19 of PPL.</p> <p>(e) and (f) web-portal also provides the</p>		<p>Criterion partially met.</p> <p>There is no developed system for training and professionalization of the procurement function</p>		To consider developing a Road map for certification and professionalization of the procurement function
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		<p>(e) providing procurement information</p> <p>(f) managing statistical databases</p> <p>(g) preparing reports on procurement to other parts of government</p> <p>(h) developing and supporting implementation of initiatives for improvements of the public procurement system</p>	<p>required procurement information and manages statistical databases. The E-Commerce Center is also responsible for designing and managing centralized online platforms and e-procurement system</p> <p>(g) Based on the results of public procurement monitoring, the authorized body shall submit an annual public procurement report to the Executive Office of the President of the RK and the Government of the Republic (Article 19.3).</p> <p>(h) The Public Procurement Legislation Department is responsible for developing and supporting implementation of initiatives for improvement of the</p>				
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		<p>(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement</p> <p>(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and</p>	<p>public procurement system.</p> <p>(i) The Authorized Body pursuant to Article 16.8 approves rules for retraining and advanced training of employees engaged in public procurement. The recent amendments to the PPL on December 26, 2018 Article 16.11-2, the Authorized body develops and approves methodological recommendations on public procurement issues. E-Commerce Center is a tool for providing trainings and capacity building programmes</p> <p>(j) There is no assigned function for integrity training or professionalization of procurement.</p> <p>There is no developed system for training and professional</p>				
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		<p>certification schemes for the profession)</p> <p>(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate.</p>	<p>education in procurement.</p> <p>(k) Authorized body through the E-Commerce Center is also responsible for designing and managing centralized online platforms and e-procurement system</p>				
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			<u>3 steps to assess each sub-indicator</u>				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	5(c) Organisation, funding, staffing, and level of independence and authority	(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.	(a) Normative/regulatory function assigned to the of Public Procurement Legislation Department (PPLD) at the level of departmental director. The PPLD has the core responsibly of		Criterion met		GoK to enforce further the status and independence of PPLD as normative and regulatory body and to not restrict its independency from any authority while discharging its duties including supporting the professionalization of the procurement function.

		<p>(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.</p> <p>(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.</p>	<p>the normative and regulatory function Director is appointed by and report to the Minister of Finance.</p> <p>Single operator is responsible for managing online platform .</p> <p>(b) PPLD financing of the department comes through the MoF allocation of the republican budget. MoF allocates proper financing for the Single operator. In addition, amendments to the PPL on December 26, 2018 introduce fees for participation on the web portal</p> <p>(c) PPLD, E--Commerce Centre JSC are appeared to be properly staffed.</p>		<p>Criterion partially met.</p> <p>The level of independence of the normative and regulatory unit appears not to be fully tenable and raises issues about of impartiality and transparency in discharging the procurement normative and regulatory functions.</p> <p>Criterion met</p>		
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	5(d) Avoiding conflict of interest	(a) The normative/regulatory institution has a system in place to avoid conflicts of interest. *	<p>The PPLD which has the core responsibly of the normative and regulatory function is appointed by and reports to the Minister of Finance. Also, the financing of the department comes through the MoF allocation of the republican budget.</p> <p>Given PPLD's positioning at the same administrative reporting hierarchy level of MoF organigram as the other three units of the Authorised Body (IAC, E-Commerce Centre, and SPPO), the level of independence of the normative and regulatory unit appears not to adequately established and raises issues about the impartiality and transparency in discharging the procurement normative and regulatory functions. Furthermore, there is no evidence of the presence of any system to avoid conflict of interest within PPLD.</p>		<p>Criterion partially met.</p> <p>The level of independence of the normative/regulatory units is not adequately established by the PPL.</p>		GoK to consider strengthening and consolidating the normative and regulatory functions into PPLD with the appropriate level of independence.
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			Internal Audit Committee as part of MoF (the Authorized Body) carries out functions of both control over compliance to legislation as also resolution of complaints. In addition, the Single Organizers of Procurement which carries out procurement above a financial threshold or for those agencies who lack capacity.				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d)</p> <p>Assessment criterion (a):</p> <ul style="list-style-type: none"> <li>- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses).</li> </ul> <p>Source: Survey.</p>		Based on the results of Survey there is a perception that the normative/regulatory institution is free from Conflict of Interest or Col situation is minor (in 72 % of response). However 40% of respondents believe that conflict of interest relates to unclear separation of			

				<p>duties between institutions, 18% of respondent believe that such Col is due to unclear competencies of officials and 40% of respondents relate Col to the situations that an official position is used improperly for private advantage and improper personal gains or official's family or other personal relations (these are integrity related issues as well and discussed further under Indicator 14)</p>			
6. Procuring entities and their	6(a) Definition, responsi	<p>The legal framework provides for the following:</p> <p>(a) Procuring entities are clearly defined.</p>	(a) Article 7 of PPL defines procedure for organizer of public procurement.		Criterion met		

mandates are clearly defined	bilities and formal powers of procurin g entities	<p>(b) Responsibilities and competencies of procuring entities are clearly defined.</p> <p>(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary</p>	<p>(b) The customer directly or through its structural sub-division responsible for carrying out the procedures for organization and conducting of public procurement can act as the organizer of public procurement. The administrator of the budget program may act as the organizer of public procurement for the state institution or state-owned enterprises or legal entity, fifty percent or more of voting shares which are owned by the state have the right to act as organizer of procurement.</p> <p>(c) The customer directly or through its structural subdivision responsible for carrying out the procedures for the</p>		<p>Criterion met</p> <p>Criterion met.</p>		
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		<p>management structure, capacity and capability. *</p> <p>(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.</p> <p>(e) Accountability for decisions is precisely defined.</p>	<p>organization and conducting of public procurement can act as the organizer of public procurement. The customer shall have the right to determine the state institution subordinated to the customer as an organizer of public procurement</p> <p>(d) Decision making authority on each procurement process is delegated to the lowest competent unit within the procuring entity authorized by the Order of the head of procuring entity</p> <p>(e) Procurement framework stipulates accountability for procuring entity. Accountability for decisions is precisely defined for each procuring entity in its By-</p>		<p>Criterion met</p> <p>Criterion met</p>		
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			<p>Laws, for procurement unit in the internal regulation of the procuring entity, and for each person involved in the job description.</p> <p>In case of administrative review of procurement decisions Article 16.5 and 16.6 of PPL empowers Authorized Body to reverse decision of public procurement organizer, single public procurement organizer, customers and tender committee which are adopted in violation of legislation before entering into contract which shifts accountability from procuring entity to Authorized Body</p>				
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		<p>// Minimum indicator // *</p> <p>Quantitative indicator to substantiate assessment of sub-indicator 6(a)</p> <p>Assessment criterion (c):</p> <ul style="list-style-type: none"> <li>- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).</li> </ul> <p>Source:</p> <p>Normative/regulatory function.</p>		<p>Procuring entities with a designated, specialised procurement function in 2017 is 95% of total number of procuring entities</p> <p>The indicator supports the finding that the procurement function is well organised in Kazakhstan as the PPL requires in Article 7.2</p> <p>Source:</p> <p>Procurement web-portal, MoF</p>			
	6(b) Centralized procurement body	(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	(a) Recent amendments to the PPL on December 26, 2018 Article 8 of PPL allows for centralized procurement and describes public procurement procedures carried out by the Single Public Procurement Organizers for the purposes of carrying out		<p>Criterion partially met</p> <p>No centralized procurement in terms of framework agreement or specialized procurement. The</p>		An evaluation of the performance of SPPO could help GoK to consider the benefits of establishing a standalone centralised procurement body in charge of consolidated procurement, framework agreement or specialised procurement.

		<p>(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:</p> <ul style="list-style-type: none"> <li>• Legal status, funding, responsibilities and decision-making powers are clearly defined.</li> <li>• Accountability for decisions is precisely defined.</li> <li>• The body and the head</li> </ul>	<p>unified and consolidated public procurement. Recent amendments to the PPL also extended centralized procurable items with the distribution of the responsibilities to the regional level. However, this centralized procurement is still very limited to a small number of procurable items. MoF Order No 1127 dated December 29, 2018 approves 3 Lists of items for centralised procurement at the republican level (18 items), regional level (7) and local level (7). Moreover, the framework agreement approach is not applied to these lists of items</p> <p>(b) The procedure for Appointment of the Organizer or Single Organizers defined in Article 8 PPL and detailed in Section 3 of Public Procurement Regulation.</p>		<p>Single Organizers (Committee for Public Procurement and regional Single organizers) is responsible for carrying out unified public procurement on behalf of the customer for a limited list of procurable items.</p> <p>Criterion met</p>		
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		<p>of the body have a high-level and authoritative standing in government.</p> <p>(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.</p>	<p>(c) There is no Central Procurement body but there are Single Organizers of Procurement under Authorized Body works as described under 6(a) above.</p>		<p>Criterion partially met.</p>		
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			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
7. Public procurement is embedded in an effective information system	7(a) Publication of public procurement information supported by information technology	<p>The country has a system that meets the following requirements:</p> <p>(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>(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>(a) The web portal on the internet is a media of wide circulation. More readily available than a newspaper. This dedicated web-portal I (web site) which is relevant, timely and complete. The web-portal is helpful to interested parties to understand the procurement process and requirements to monitor outcomes, results and performance. The web site is <a href="https://goszakup.gov.kz/">https://goszakup.gov.kz/</a></p> <p>(b) Yes, there is an integrated information system which is centralized provides up-to-date information and is easily accessible to all interested parties. Recent amendments to the PPL on December 26, 2018 introduces fees for participation in electronic public procurement on the web portal from January 1, 2019 at the Single operator approved tariff level. There is no cost for procurement entities register and use the system. The system is also integrated with many other systems for interoperability, include the Tax system, licensing system, commercial</p>		<p>Criterion partially met</p> <p>The web-portal does not publish information about the actual date of payment for the relevant invoices.</p> <p>Criterion met.</p>		Ensure the publication of payment dates by integrating with the information system E-Treasury and commercial banks.

		<p>(c) The information system provides for the publication of: *</p> <ul style="list-style-type: none"> <li>• procurement plans</li> <li>• 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</li> <li>• linkages to rules and regulations and other information relevant for promoting competition and transparency.</li> </ul>	<p>banking systems, debarment system, justice system and court decision system.</p> <p>There is an inherent cost for foreign companies who do not participate in the tenders because they have legal representation in Kazakhstan enable to get the electronic digital signature.</p> <p>(c) PROCUREMENT PLANS: According to the law, unclassified (non-military) procurement plans are published within 5 working days after their approval on the web site. Therefore, all procurement plans are published, 100%. The procurement plans are published on the main page of the web-portal and can be viewed by anyone. The procurement plan is published at the beginning of the procuring year, before those tenders are initiated. It should be noted that procurement plans are currently approved offline.</p> <p>INFORMATION RELATED TO SPECIFIC PROCUREMENTS: e-Procurement system publishes the advertisements and the procurement method, type of procurement (goods/works/services), organizer of the procurement and the address of the procurement entity. Additionally, it should be noted that the bidding document, draft contracts and technical specifications are published. Furthermore, the clarifications are published. The e-procurement system publishes contract awards and contract</p>		<p>Criterion partially met.</p>		
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			<p>implementation information, including the amendments, final payment for executed contracts and appeals decisions. The preliminary evaluation report is public. The final minutes of the evaluation report is also published. The details of the contract are published, include winner and procurement entity and the signed contract. Additionally, amendments are published. Invoices are published on the web-portal (e.g. <a href="https://www.goszakup.gov.kz/ru/egzc/contract/cpublic/akts/6447996">https://www.goszakup.gov.kz/ru/egzc/contract/cpublic/akts/6447996</a>). However, information on the actual date of payment for the relevant invoices is not published. The publishing of appeals started as of January 1, 2018. There is the ability to filter your search for appeals decisions and register complaints here: <a href="https://goszakup.gov.kz/ru/registry/complaint">https://goszakup.gov.kz/ru/registry/complaint</a>. LINKAGES TO RULES: Yes, the web-portal provides linkages to rules and regulations as there are links to the PPL and the PPR on the web-portal. Furthermore, the rules and regulations are programmed into the system to provide validation for user input. For example, for the single source procurement the list of possible justifications by law is listed in the system. Updates to the system are regularly made reflect changes to the rules and regulations.</p>				
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		<p>(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).</p>	<p>(d) Comprehensive information is published on the web-portal in each phase of the procurement process, including the full set of tender documents, evaluation reports, full contract documents including technical specification and implementation details which is in accordance with legal and regulatory framework.</p>		Criterion met		
		<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p>	<p>(e) The information is published in an open and structure machine-readable format, using identifies and classifications. In fact, the e-procurement system of Kazakhstan publishes their data in partial Open Contracting Data Standard format in JSON files on their web site. <a href="https://goszakup.gov.kz/ru/developer/ows">https://goszakup.gov.kz/ru/developer/ows</a>. However, current version of the Open Contracting Data Standard excluded report visualization option. 8 out of 40 statistical forms have been developed, and the remaining forms will be developed.</p>		Criterion met		
		<p>(f) Responsibility for the management and operation of the system is clearly defined.</p>	<p>(f) The eCommerce Center has clear responsibility for the management and operation of the system. It is regulated by article 17 in the PPL.</p>				

		<p>// Minimum indicator //</p> <p>Quantitative indicators to substantiate assessment of sub-indicator 7(a)</p> <p>Assessment criterion (c):</p> <ul style="list-style-type: none"><li>• procurement plans published (in % of total number of required procurement plans)</li><li>• key procurement information published along the procurement cycle (in % of total number of contracts) :</li><li>• invitation to bid (in % of total number of contracts)</li><li>• contract awards (purpose, supplier, value, variations/amendments)</li><li>• details related to contract implementation (milestones, completion and payment)</li><li>• annual procurement statistics</li><li>• appeals decisions posted within the time frames specified in the law (in %).</li></ul> <p>Source: Centralised online</p>		<p>Assessment criteria (c):</p> <ul style="list-style-type: none"><li>• As for the year 2018, the percentage the procurement plans published is 100% of the total number of required procurement plans. This indicator supports further the finding that the web-portal also provides full, timely and accessible</li></ul>			



		<p>portal.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a)</p> <p>Assessment criterion (e):</p> <ul style="list-style-type: none"> <li>- Share of procurement information and data published in open data formats (in %).</li> </ul> <p>Source: Centralised online portal.</p>		<p>information on all procurement plans</p> <ul style="list-style-type: none"> <li>• The information system provides all key information on specific procurement for 100% of contracts. It is to mention, that the web-portal includes in its structure information for payments, however this information is not currently accessible for public for all contracts</li> <li>• Based on the data for</li> </ul>			
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				<p>last 3 years, the web-portal has published 100% of invitations to bids out of total number of contracts</p> <ul style="list-style-type: none"><li>• For 2017 the web-portal provides 100% of the contract award information for all published contracts</li><li>• Web-portal provides most of details related to contract implementation (milestones and completion ) for 2017. It is to mention,</li></ul>			
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				<p>that the web-portal includes in its structure information for payments, however the information on the actual date of payment for the relevant invoices is not published.</p> <ul style="list-style-type: none"><li>• Annual procurement statistics for procurement plans and contracts are published for 2017 and available aggregated in real time with free accesses in</li></ul>			
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				<p>visual format on the web-portal. However, the detailed Annual Report on public procurement, prescribed under the Article 19 PPL) is not publicly available.</p> <ul style="list-style-type: none"><li>• Appeals system launched on the web-portal in January 2018 and captures 100% of the appeals decision with the timeframe specified in the PPL.</li></ul>			
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				<div>7(a) Assessment criterion (e):<ul style="list-style-type: none"><li>• 100% data in the e- procurement web- portal is published in open data format, as it supports OCDS.</li></ul>Source: Procurement web-portal, MoF</div>			
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			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	7(b) Use of e-Procurement	<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</p> <p>(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.</p> <p>(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.</p> <p>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market</p>	<p>(a) e-procurement (through the procurement web portal) is widely used in the country at all levels of government, including national, regional, sub-regional and municipal levels.</p> <p>(b) eCC does training for government offices. For example, for the MoF they train 100 staff during 2017. There are video instructions and manuals and technical support.</p> <p>(c) eCC does training for procurement staff of procurement entities. There are video instructions and manuals and technical documents for procurement staff and external users to guide through the procurement process on the web-portal.</p> <p>(d) Most of the vendors who participate are SMEs. Previously the Tax system captured characteristics of vendors and there was the ability to view if a vendor was an SME. So two years ago when this</p>		<p>Criterion met</p> <p>Criterion met</p> <p>Criterion met.</p> <p>Criterion met</p>		

		<p>increasingly dominated by digital technology.*</p> <p>(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.</p>	<p>information was captured, it was noted that 98% of the vendors participating were SMEs. Currently, there isn't a flag in the system for SMEs and the Tax system no longer captures this information, therefore there no data for 2016 and 2017 on SME participation.</p> <p>(e) Not Applicable as there is an e-procurement system which is used 100% of the time for all procurement transactions.</p>		Criterion met		
		<p>// Minimum indicator // *</p> <p>Quantitative indicators to substantiate assessment of sub-indicator 7(b)</p> <p>Assessment criterion (a): uptake of e-Procurement</p> <ul style="list-style-type: none"> <li>- number of e-Procurement procedures in % of total number of procedures</li> <li>- value of e-Procurement procedures in % of total value of procedures</li> </ul> <p>Source: e-Procurement system.</p> <p>* Recommended quantitative indicators to substantiate assessment</p>		<p><u>In accordance with Article 43.4 of the PPL, some contracts are concluded outside the web-portal without the use of electronic procedures.</u></p> <p>Since statistics on the number and amount of public procurement procedures outside the</p>			

		<p>of sub-indicator 7(b) Assessment criterion (d):</p> <ul style="list-style-type: none"> <li>- bids submitted online (in %)</li> <li>- bids submitted online by micro, small and medium-sized enterprises (in %)</li> </ul> <p>Source: e-Procurement system.</p>		<p>web-portal are not published, the share of electronic procedures in the total volume of public procurement procedures is not possible. Source: e-Procurement system.</p> <p>7(b) Assessment criterion (d):</p> <p>As per the PPL bids submitted online is 100%. Bids submitted online by micro, small and medium-sized enterprises currently is estimated at 98% of the total bids. Source: e-Procurement system, MoF</p>			
	7(c) Strategie	(a) A system is in operation for collecting	(a) The e-procurement system in operation collects data on		Criterion met		



	s to manage procure ment data	<p>data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.</p> <p>(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.</p> <p>(c) The reliability of the information is high (verified by audits).</p>	<p>procurement of goods, works and services, including consulting services. Please note, archiving functionality has not been introduced, therefore all the data for all transactions are in the e-procurement system. The volume 88 Terabytes is the capacity of the database. Contracts will be stored for 75 years.</p> <p>(b) E-Procurement System can provide information to the MoF, including information on the annual report and the ability. Please note, these reports for the MoF are not made public, but are used to create annual reports which are public. (Please note that there is an EBRD project for Data Analytics which will make data analytics public.)</p> <p>(c) ECC has two types of security. The first is physical, there are two data centers (one main data center and one back data center). The second type of security is Organizational type of security, the database is oracle the solution is open source. State technical service under National Security Committee conduct quarterly security vulnerability tests of the e-procurement. Updates and tests of the system are made every three years by the NSC for the gustation of the e-procurement system, so they meet the standards of Kazakhstan information security.</p>		<p>Criterion met</p> <p>Criterion met</p>		
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		<p>(d) Analysis of information is routinely carried out, published and fed back into the system. *</p>	<p>Please note that prices of potential bidders are encrypted by special software.</p> <p>An external audit was performed 2016. The eCC realizes that external audits should done yearly, but time and cost are a factor. Again, the last external audit was in 2016, before the gustation three-year test before the NSC. This should be updated and some qualitative analyses can be added once the final result of the independent review of the system (the ongoing 3rd party review of the system by ADB) is available</p> <p>(d) As per PPL Article 19 monitoring system is required annual monitoring and submission to the Government of Kazakhstan. However, this information is not public on the web-portal. Also, initial data on contracts number and value for the analysis is available on the web-portal in a real time.</p>		Criterion partially met		
		<p>// Minimum indicator // *</p> <p>Quantitative indicators to substantiate assessment of sub-indicator 7(c)</p> <p>Assessment criterion (d):</p> <ul style="list-style-type: none"> <li>• total number and value of contracts</li> <li>• public procurement as a share of government</li> </ul>		Out of total number of contracts, items inclusive (4,179,961) value of contracts is KZT			

		<p>expenditure and as share of GDP</p> <ul style="list-style-type: none"> <li>• total value of contracts awarded through competitive methods in the most recent fiscal year.</li> </ul> <p>Source: Normative/regulatory function/E-Procurement system.</p>		<p>2,874.9mln. KZT including VAT.</p> <p>In 2017 public procurement share of government expenditure (KZT12.5 Trillion) is 23%. Public procurement share in GDP (KZT53 Trillion) is 5.5%.</p> <p>According to the Annual report available on the web-portal, total value of contracts awarded through competitive methods in 2017 fiscal year is KZT 744.8mln (equivalent US\$2,285mln., where the exchange rate 1USD=326KZT)</p>			
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				<ul style="list-style-type: none"><li>• Source: e-Procurement system, MoF, Statistics Agency</li></ul>			
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			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
8. The public procurement system has a strong capacity to develop and improve	8(a) Training, advice and assistance	There are systems in place that provide for: (a) substantive permanent training programmes of suitable quality and content for the needs of the system.	(a) There is no evidence of a substantive permanent training program. One of key training providers in the country, Finance Academy, only has three modules related to public procurement out of 165 modules that mostly on audit and financial management. The mission was informed that there was not enough demand that justify the extensive training program on public procurement. The e-commerce provided training for over 20,000 participants over 500 hours of training per year. However, e-commerce only provides one subject: theory and workshop on the use of the web portal.		<p>Criterion partially met</p> <p>There is a gap in public procurement training and certification for key actors. Most training provided is on the techniques of the web portal</p> <p>There is no recognition system to the function of public procurement in the Government system</p> <p>Lack of an overall strategy for sustainable mechanism for</p>		<p>GoK to consider preparing a “skill gap inventory” and a training need analysis. The results of these exercises could be used in designing, developing and delivering training programs with adequate content and frequency suitable for public and private stakeholders. In addition, to ensure that only qualified and skilled staff work on procurement, a testing and certified /accreditation system is necessary. Share MOOC modules of public procurement with the methodology unit of MoF</p> <p>Encourage MoF to develop sustainable procurement capacity building and professionalization of the procurement function training mechanism with the possibility of partnership with local higher education institutions.</p>

		<p>(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.</p> <p>(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.</p> <p>(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.</p>	<p>(b) Due to lack of a programmatic training on public procurement, there is no evidence of a routine evaluation and adjustment of training program.</p> <p>(c) The Authorized body and e-commerce provides advisory service and help desk focusing on the use of the web portal</p> <p>(d) There is no evidence of a well-integrated strategy in developing the capacity of key actors. The system is automated</p>		<p>building public procurement capacity and professionalization of the procurement function.</p> <p>Criterion partially met</p> <p>Criterion met.</p> <p>Criterion partially met.</p>		
	8(b) Recognition of procurement as a profession	<p>The country's public service recognises procurement as a profession:</p> <p>(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.</p>	<p>(a) There is no evidence of a recognition of procurement function in the government system. Staff of the procurement units have various background, but mostly legal</p>		<p>Criterion partially met</p> <p>There is no tie-up with any institution for regular professional training on procurement</p>		See above

		<p>(c) Appointments and promotion are competitive and based on qualifications and professional certification.</p> <p>(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.</p>	<p>(b) There is no clear professional certification</p> <p>(c) There is no evidence of a substantive permanent training program on public procurement</p>		<p>and contracts management</p> <p>There is no certification program with a professional body /institution including on e-Procurement.</p> <p>Criterion partially met.</p> <p>Criterion partially met</p>		
	8(c) Monitoring performance to improve the system	<p>(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.</p> <p>(b) The information is used to support strategic policy making on procurement.</p> <p>(c) Strategic plans, including results frameworks, are in place and used to improve the system.</p>	<p>(a) Since there are no systematic and sustainable training programs, there is no evidence of a training performance measurement system.</p> <p>(b) No evidence</p> <p>(c) No evidence</p> <p>(d) Not clear</p>		<p>Criteria a-c partially met.</p> <p>There is no performance measurement system to focus on qualitative and quantitative aspect</p>		Need to introduce a performance measurement system based on indicators that, that focuses on both quantitative and qualitative aspects.

		(d) Responsibilities are clearly defined.					
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Pillar III. Public Procurement Operations and Market Practices

			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
9. Public procurement practices achieve stated objectives	9(a) Planning	(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	(a) Procuring entities determine and analyze their needs for goods, works and services beginning in the first half of the previous year and prepare their annual budget proposals as part of the planning and budgeting process for the next fiscal year (Article 5). However, there is no specific provisions in PPL and Regulation or any manual or guidance note that provide guidance on how to carry out market research. In practice this is usually limited to obtaining prices directly from suppliers and using historical unit prices from past contracts and from price databases maintained by the		Criterion partially met.  The current PPL and regulation do not provide for a structured approach to procurement planning to inform the best methodology to approach the market and select optimal procurement methods that support achievement of optimal procurement outcomes.  The assessment has concluded that generally, procuring entities conduct some		Improving further the quality and performance of Kazakhstan public procurement system would require adoption of more upfront strategic approach including proper and systematic market analysis to inform optimal procurement strategies and planning. This market analysis should guide adopting Single Source in exceptional cases and not through an extensive listing of exclusions in PPL.  Strengthening the strategic role, the country public procurement system and improving its quality and performance would

			<p>Ministry of Finance on the web-portal. There is no formal requirement by the PPL to undertake any analysis for the identification of optimal strategic approaches for needs assessment and identification of optimal procurement approaches. <i>However, it is worth mentioning that in its article 22, the PPL provides for a mandatory preliminary public discussion, by way of the web portal, of the draft tender documentation by potential suppliers and publication on the web portal of the minutes of preliminary discussion of the draft tender documentation. This best practice is to be praised as it allows for “early-engagement” with potential market/suppliers to seek their feedbacks on the draft tender documents in terms of scope, technical specifications,</i></p>		<p>form of needs analysis but on the basis of no proper and systematic market study or analysis. No detailed guidance /manual to provide instructions to procurement entity on practical application of need assessments and its linkage to market research. Inadequate and non-systematic market research for procurement may not help achieve value for money, fit for purpose and overall efficiency. This gap is substantial and has been supported by the quantitative assessment of indicator 9(b)(j) which has revealed that 32% only of all processes under open tender lead to contract</p>		<p>require further consideration for sustainable procurement including the integration of sustainability criteria throughout the whole procurement cycle from identification of needs, definitions of specifications to contract administration.</p>
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			<i>evaluation criteria, and qualification requirements. The objective is to adjust the procurement approach to the actual market and ensure better chance for fair level of competition and achievement of value for money.</i>		<p>award. This situation has resulted in tolerating poor procurement planning and acquisition of goods, works and services that may not yield optimum competitive, and efficient, and value for money outcomes. This situation gets worsened due to provision of Article 5 clause 9 that permit purchasing without a procurement plan for cases of two-stage bidding.</p> <p>There is no sustainable public procurement policy in the country that integrate country specific sustainability criteria throughout the whole procurement cycle from</p>		
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		<p>(b) The requirements and desired outcomes of contracts are clearly defined.</p>	<p>(b) Annual budget proposals (See above) discuss program objectives, identify needs in terms of goods, works and services and their purpose for the programs. For large value and complex projects, feasibility studies are carried out, which, among</p>	<p>identification of needs, definitions of specifications to contract administration. Few sustainability related criteria are included in the PPR but are very limited and unbalanced and does not include social related aspects of procurement outcomes.</p> <p>Criterion partially met.</p> <p>The introduction of weighting system would allow to differentiate the qualitative criteria in terms of their importance or relevance in</p>		
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			<p>others, identify good, works and services contracts and discuss their outcomes. Fine tuning of these needs takes place when the procuring entity prepares a preliminary procurement or development plan upon receipt (tentatively by October) of information about indicative annual budget allocation and then the final procurement or development plan upon receipt of final budget allocation approval (by January).</p>		<p>meeting the procurement objectives and outcomes of each specific procurement.</p>		
		<p>c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.</p>	<p>(c) There is no sustainable public procurement policy in the country that integrate country specific sustainability criteria throughout the whole procurement cycle from identification of needs, definitions of specifications to</p>		<p>Criterion partially met.</p> <p>Furthermore, the use of a fixed percent discount for bids exceeding the sustainability-related requirements, is not appropriate. Some of the requirements are</p>		

			<p>contract administration. However, Article 21.4 of the PPL refers to the PPR for few but limited criteria that can be considered as sustainability related criteria. Article 5.2 of the PPL requests procuring entities that while planning shall proceed from the priority of acquiring innovative and high-tech goods, works, and services. Also, Article 152-1 of the PPR formulates provisions to guide determination of sustainable criteria:</p> <ul style="list-style-type: none"> <li>• Criteria for the suppliers' qualification to demonstrate <ul style="list-style-type: none"> <li>- voluntary certification of the offered goods in accordance with the legislation of the Republic of Kazakhstan on technical regulation;</li> <li>- certified system (certified systems) of quality management in accordance with the requirements of national standards;</li> <li>- confirming voluntary certification of goods</li> </ul> </li> </ul>		<p>general are not specifically related to the nature of the subject procurement and its outcomes.</p>		
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			<p>made of secondary raw materials obtained from waste products on the territory of the Republic of Kazakhstan;</p> <ul style="list-style-type: none"><li>- certified system (certified systems) of management of the environmental management in accordance with the requirements of national standards and (or) the conformity to the standards of environmentally friendly products in accordance with the legislation of the Republic of Kazakhstan on technical regulation;</li><li>• Functional, technical, quality and operational characteristics of goods and services and (or) life costs cycle (operation, maintenance and repair of the purchased goods);</li></ul> <p>The Regulations provide for a procedure to apply and evaluate above criteria through discounts-based evaluation system used for open tenders (as stipulated in the PPL (Articles 21, 27) and detailed in the Procurement Regulations</p>				
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			<p>(clause 156-166)), which allows, among others, a fixed percent discount for bids exceeding the sustainability-related requirements if specified in the technical specifications.</p> <p>However, there is no sustainability-related criteria for social aspects of the procurement outcomes</p>				
	9(b) Selection and contracting	(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	<p>(a) For complex procurement contracts, the PPL (Articles 13, 30) provides for two stage tender of the situations which includes difficulties to formulate detailed specifications of the goods, works and services and to determine their technical and other characteristics (Article 30 PPL). However, there is no clear procedure in the PPL.</p> <p>According to the amendments to the PPL on December 26, 2018 two stage tender carried out</p>		<p>Criterion partially met.</p> <p>The open tender with prequalification does not provide for a separate prequalification process (notice, applications, and their evaluation) to determine potential bidders having the required qualification, experience, staff and management capacity, financial capacity, etc.). This may, therefore, not</p>		<p>Introduce criteria and procedure for pre-qualification as a separate exercise before tenders are launched for complex and high value contracts.</p> <p>A comprehensive regulatory framework would require development and introduction of separate and complete standard tender documents for the three main goods, works and services as well as for specialized sectoral procurement and with suitable and balanced terms and conditions.</p>



			<p>according to the List of goods, works and services approved by the Authorized body in case of two stage tender. This list is not available. Stage one is used to screen out the bidders who do not comply with the procuring entity's requirements (128 PPR). The PPL also provides for open tender with prequalification, as stipulated in the PPL (Article 31) and detailed in the Procurement Regulations (clauses 184-220). Recent amendments to the PPL on December 26, 2018 Article 2.4-1) stipulates that from July 1, 2019 of the PPL will define Qualification body, approved by the Authorized body, which is responsible for the "prequalification selection" of the "potential suppliers" and maintaining of the List of</p>		<p>help achieve the objective of prequalification which is to prequalify suppliers and contractors for complex and high value contracts to make the procurement process more efficient and effective.</p> <p>Except for the light and furniture industry there are no specific sectoral standard tender documents for specialised/sectoral procurement such as ICT goods, information systems and services.</p> <p>PPL does not provide for any civil society role during the procurement process</p>		<p>Strengthen general confidentiality clauses provisions and introduce appropriate procedures to manage specific confidentiality clauses</p> <p>Improving the quality and performance of the country public procurement system would require further development of sustainability and rated evaluation criteria</p> <p>Include appropriate provisions in the PPL and Regulation that incentivise contractors for better performance.</p>
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			<p>“prequalified suppliers.”</p> <p>In all procurement methods but specifically in open tender bids eligibility, qualifications and experience of a bidder are examined before bid prices are opened and considered. Article 9 of the PPL requires that potential bidders must have legal capacity (firms), Civil capacity (individuals), solvency, not subject to bankruptcy or liquidation proceedings, required relevant materials and labour resources, and work experience. Recent amendments to the PPL on December 26, 2018 has introduced a provision that in case of equal bid prices after discounts, the winner will be identified as the one with the highest tax payments amount in Kazakhstan for the previous four years. This tax payments amount is available</p>		<p>(discussed further in indicator 11)</p> <p>The lack of provisions to safeguard and protect confidentiality of sensitive commercial information submitted by bidders to support their offer is a substantial gap and a serious reputational damage to the public and private sector trust in the ability of the current public procurement system to secure and protect confidentiality of the information of proprietary nature or commercially or financially sensitive contained in the bid.</p> <p>The evaluation system using</p>		
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		<p>(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>through the information system of the state revenue authority (para 172 PPR).</p> <p>(b) A specific standard tender document exists which is separately used in open tenders for each procurement category, goods, works and services. These standard documents are annexed to the Regulations and are used in practice in the web-portal. There are no specialized sectoral standard tender documents.</p>		<p>conditional discount techniques for non-price criteria or additional qualification appears not appropriate compared to the technique of weightage of technical and financial requirements and may not lead to value for money.</p> <p>Criterion partially met.</p> <p>Sustainability conditions should be included as contract conditions</p> <p>Absence of incentives for better contract performance limits contractors their efforts to</p>		
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		<p>(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.</p>	<p>However, for furniture (table, cabinet, coat-hanger, ect) and light industry (kitchenware, gloves, bed sheets, ect) simplified specific tender documents are developed and published on the web-portal as mentioned in 1 (e) (b). Given that the public procurement system is electronic, broad participation of interested bidders is encouraged, especially domestic bidders.</p> <p>(c) The procurement web-portal as currently used allows to select, document procurement methods at the planning stage as well as any modifications and justify at the final stage, especially for the single source, and in accordance with the provisions of the PPL (article 13 and Chapters 4, 5, 6, 7). – In cases involving</p>		<p>required performance.</p> <p>Criterion met.</p>		
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		<p>(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>(e) Throughout the bid evaluation and award process, confidentiality is ensured.</p>	<p>Single Source (Article 43 clause 4) there is no requirement of concluding a public procurement contract through the web-portal.</p> <p>(d) Information on the procedures for bid submission, receipt and opening are all provided in standard procurement documents, integrated to the web-portal. Bid submission, receipt and opening are done automatically/electronically with a high level of transparency. However, civil society's role in bid opening process is almost absent.</p> <p>(e) The electronic procurement system has built-in mechanisms to ensure confidentiality. In open tenders, received and opened bids, after evaluation, are made available to the other</p>		<p>Criterion met.</p> <p>Criterion partially met.</p>		
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			<p>participating bidders. The latter have access to all the content of the bids of their competitors including any sensitive/strategic/technology innovation confidential information. This is not in line with international practice and the corresponding requirement for safeguard of confidential information provided any bidders to support their offer. It was reported during the assessment that this practice has seriously undermined the thrust if the confidentiality of the system and has led to a situation where some bidders will “copy” proposals of their competitors in subsequent similar tender processes.</p>				
		(f) Appropriate techniques are applied, to determine best value for money based on the	(f) The PPL provides for some non- price				

		<p>criteria stated in the procurement documents and to award the contract.</p> <p>(g) Contract awards are announced as prescribed.</p>	<p>criteria (Article 21.4). The Regulations (Article 162-166) indicates some techniques to evaluate these no price criteria in the form of conditional discounts in accordance with the criteria provided for in the tender documentation (Articles 153 -166). The bidders whose bids, after bid opening, have been determined to have met, qualification, experience, technical and other requirements as specified in the tender documents, get their prices discounted for offering experience, certificates, etc. additional to the requirements.</p> <p>(g) All contract awards are announced on the web-portal as prescribed in the PPL and Regulations except for contract awards SS procured</p>		<p>Criterion partially met.</p> <p>Criterion partially met.</p>		
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		<p>(h) Contract clauses include sustainability considerations, where appropriate.</p> <p>(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.</p> <p>(j) The selection and award process are carried out effectively, efficiently and in a transparent way. *</p>	<p>under the current legal framework are not announced in the procurement web-portal. As per Article 43 of the PPL, contracts awarded following the single source method situations provided for by Clause 3 of Article 39 and Article 50 are not conducted in the web portal and hence the award decisions are not posted in the web portal.</p> <p>(h) Current Contract conditions do not include any sustainability considerations.</p> <p>(i) Contract conditions do not include incentives for exceeding performance levels but sanctions for poor or non-performance are included.</p> <p>(j) Although not all state public procurement governed by the PPL is conducted through the procurement web-portal, the use of the latter has</p>		<p>Criterion not met.</p> <p>Criterion not met.</p>		
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			<p>contributed to improve transparency and competition. However, the analysis of the assessment of quantitative indicators below reveals some key issues with respect to the performance of the system in terms of effectiveness and efficiency.</p>				
		<p>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):</p> <ul style="list-style-type: none"> <li>- average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used)</li> <li>- average number (and %) of bids that are responsive (for each procurement method used)</li> <li>- share of processes that have been conducted in full compliance with publication requirements (in %)</li> <li>- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)</li> </ul> <p>Source for all: Sample of procurement cases.</p>		<p>Based on the analysis of a sample of 150 contracts (goods, works and services) procured under competitive process:</p> <ul style="list-style-type: none"> <li>• average time to procure goods, works and services is 56 days. This average number compares to relatively satisfactory</li> </ul>	<p>Assessment of quantitative indicators revealed a serious performance issue of the implementation of the current public procurement framework in terms of effectiveness and efficiency of procurement processes following open tender. This is illustrated by the very high ratio (68%) of failed processes which paved the paths for an additional use of non-competitive</p>		<p>Review of the current provisions to address the root cause of identified poor performance of the PPS</p>

				<p>y with international best practice and support achievement of efficiency principal under the PPL mainly due to introduction of e-procurement system.</p> <ul style="list-style-type: none"><li>• average number of bids that are responsive is 3 (50%.)</li><li>• share of processes that have been conducted in full compliance with publication requirements is 100%.</li></ul>	methods such as single source		
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				<ul style="list-style-type: none"><li>• For year of 2017 and out of 206,175 total procurement processes:<ul style="list-style-type: none"><li>- Successfully awarded 66,745 that is 32%</li><li>- Failed 113,462 that is 55%</li><li>- Cancelled – 25,968 that is 13%</li></ul></li></ul> <p>Awarded within defined time frames- 62,765 that is 94%.</p> <p>32% only of all processes under open tender lead to contract award. As</p>			
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				per PPL this allows failed and canceled processes (68%) to apply non-competitive methods such as single source Source: 1. sample of 150 contracts selected from the web-portal, E-Commerce Centre;			
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			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	9(c) Contract management	<p>(a) Contracts are implemented in a timely manner. *</p> <p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*</p> <p>(c) Invoices are examined, time limits for payments comply with good</p>	<p>(a) Supporting analysis of the assessment of qualitative indicator is provided below.</p> <p>(b) The Law on Public Procurement does not regulate contract management in terms of inspection, quality control, job control, except for signing and amendments for contracts. Final acts of acceptance of products requires electronically under the Article 43.26. The role of the expert commission, created for a specific tender in accordance with the PPL, if needed, is limited to the preparation of an expert opinion on the compliance of applications of suppliers of the technical specification.</p> <p>(c) The PPL and Regulations provide for obligation of customer executives verify invoices,</p>		<p>Criteria a) to g) partially met.</p> <p>The current public procurement legislative and regulatory framework has insufficient focus on contract management procedures, tools and performance monitoring indicators. This is a substantial weakness of the current system, and its negative impacts are illustrated in the results of analysis of the assessment of the quantitative indicators below</p> <p>The absence of a system to regularly analyse the procurement data</p>		<p>Moving the country public procurement system to the next level in terms of quality and performance would require the strengthening of the contract management, legal, regulatory, technical and procedural tools, and performance measurement aspects and practises</p> <p>Attainment a better and systematic monitoring and assessment of the performance of the country's public procurement system would require an efficient mechanism public procurement of data collection and analysis on a regular basis to inform GoK on the performance of the system; deciding corrective actions, and share results with all concerned stakeholders , including citizens.</p>

		<p>international practices, and payments are processed as stipulated in the contract.</p> <p>(d) Contract amendments are reviewed, issued and published in a timely manner.*</p>	<p>completion/delivery certificates before submitting them to the Treasury or bank for payments. All contracts of customers who are state institutions must be registered with Treasury. Accordingly, payment invoices for contracts not registered with the Treasury are not available. Some of the stakeholder's interview informed of occurrence of some delays in payments. At the same time, there is no requirement to register contracts for customers who are not state institutions (SOEs) and operated through banks (not Treasury).</p> <p>(d) Article 45 of the PPL provides grounds for contract amendments. Contract management being the responsibility of a customer, the department assigned this responsibility issues contract amendments in accordance with contract provisions. The PPL, however, makes it clear that contract amendments</p>		<p>collected by the web portal and use the results of these analysis for informing different parts of the government especially those responsible for taking mid-course corrective actions is a missed opportunity</p> <p>Involvement of the civil society and citizens positively impact performance of public procurement as these stakeholders can play external oversight role over efficiency and effectiveness of benefits of public private reaching the citizens.</p>		<p>Enhance the involvement of civil society and citizens in public procurement planning, management and monitoring of outcomes</p>
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		<p>(e) Procurement statistics are available, and a system is in place to measure and improve procurement practices.</p>	<p>shall remain within the approved budget allocation for a contract. All amendments to the contracts are published and available on the web-portal in the register of contracts.</p> <p>(e) PPL Article 19 requires authorized body to issue annual public procurement report. In May 2018, the web-portal implemented statistics functionality for web-portal participants, annual procurement plans, contracts and complaints. Also, in the "Reporting" section of the web-portal home page there are statistics of annual plans and statistics of annual volumes of purchases in terms of methods. However, the web-portal does not include and post procurement statistics to the following : (i) procurement of goods, works and services permitted under single source method cases</p>				
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		<p>(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.</p>	<p>provided for by Clause 3 of Article 39 and Article 50 and which are not conducted through the web portal, and (ii) procurement statistics related to the key steps of two stage tendering procedure that are conducted off the e-procurement system. Furthermore, even though the web portal collects procurement statistics, it is not systematically used to measure performance of the public procurement system.</p> <p>(f) The key stakeholders including the procuring entity, supplier, the authorized body, including committee on internal audit, which deals with complaints, have opportunities for direct involvement in public procurement. However, such opportunities are not adequately afforded to and used by civil society and citizens.</p>				
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		(g) The records are complete and accurate, and easily accessible in a single file.*	(g) All procurement records are maintained on the web portal and are secure and accessible to all interested parties. Some procuring entities maintain hard copies of procurement records.				
		<p>// Minimum indicator // *</p> <p>Quantitative indicators to substantiate assessment of sub-indicator 9(c)</p> <p>Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %)</p> <p>Source: Sample of procurement cases*</p> <p>Recommended quantitative indicators to substantiate assessment of sub-indicator 9(c) linked to different assessment criteria above as follows:</p> <ul style="list-style-type: none"> <li>• For assessment criterion (a): time overruns (in %; and average delay in days)</li> </ul>		<p>Based on a sample of 150 contracts (goods, works and services) procured under competitive process:</p> <p>- share of contracts with complete and accurate records and databases is 100%. It is to mention, that the information for payments is not currently accessible for public for all contracts</p> <p>(a) The sample of 150 selected contracts showed the time overrun. Average delay is 61 days for 150 sampled contracts with overruns. This indicator supports the findings on the weakness of contract management procedures and practice. This indicator supports also the findings on</p>	<p>The deficiency of the contract management practice is being assessed as a substantial gap given its impact on obtaining value for money and timely achievement of the procurement objectives and corresponding GoK efficient service delivery goals.</p> <p>This indicator supports the finding that no or insufficient involvement of civil society in the process of procurement planning, procurement process management and monitoring of</p>		

		<ul style="list-style-type: none"> <li>• For assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)</li> <li>• For assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).</li> </ul>		<p>the poor performance of the public procurement system particularly in terms of efficiency and value for money</p> <p>(b) quality-control measures and final acceptance are carried out as stipulated in the contract in 100%. However, the current web-portal does not capture all milestones for contract management stages.</p> <p>(c) invoices for procurement of goods, works and services are paid on time in % of total number of invoices.</p> <p>The assessors faced a limitation of data availability for analysing this indicator. The procurement web-portal does have data on e-invoices submission and the steps of e-invoice management except the actual date of the e-invoice payment. As the</p>	contract managements and outcomes		
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		<ul style="list-style-type: none"><li>• For assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)</li><li>• For assessment criterion (f): percentage of contracts</li></ul>		<p>actual payment is done by the Treasury, appears that the integration of this element between the Treasury and public procurement web portal. The assessors have tried to approach this indicator from based on few contracts within the 150 contracts sample. The indicator on the timely payment of invoices has been assessed to be around 71%.</p> <p>(d) contract amendments are 66.7% out of total number of contracts;</p> <p>Average increase of contract value is 3%. This average is within the commonly recognized satisfactory ratio (15% or less)</p> <p>(e) based on the sample there is no evidence of direct involvement of civil society in</p>			
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		with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.		planning phase; bid/proposal opening; evaluation and contract award, and contract implementation.			
10. The public procurement market is fully functional	10(a) Dialogue and partnerships between public and private sector	(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.*	(a) The Government does encourage open dialogue with the private sector especially through the National chamber of entrepreneurs "Atameken" and industry associations, IT companies, NGOs, etc. Recent amendments to the PPL on December 26, 2018 has introduced a provision which assigned the Authorized body responsible for the integration of the government procurement system with NCE Atameken information system (Article 16.11-1)). It also consults them on changes to the public procurement system, including laws and regulations. Such consultations are done in the form of public hearings. MoF did post		Criteria a ) and b ) partially met.  NCE could strengthen further its role in improving the framework and in ensuring continued capacity building to its members.  A better-informed private sector contributes to the efficiency and effectiveness of a public procurement system. There is room for improvement for partnership with private sector to enhance its capacity to participate in government tenders.		NEC, alone or jointly with MoF, to develop and launch a program of procurement training of private sector contractors and service providers of goods, works and services in availing themselves of government business opportunities through quality participation.

			<p>on its Ministry web site the minutes of the public hearing of the draft amendment to the current PPL and held a public hearing in October 2017. The web site of the Kazakh Parliament has also posted the same project amendment of the PPL under the section project of laws. However, this participation appears to be relatively selective as being based on the Public Council Law which regulates the composition of such public forum and the designation of the professional associations that are authorized to participate in the subject matter dialogue and consultations. Recent amendments to the PPL on December 26, 2018 has introduced a provision that from July 1, 2019 Atameken will participate in development “prequalification suppliers List” (Article 31.2)</p>				
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		<p>(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.</p>	<p>(b) The government has very few programs to build private sector's capacity to participate in public procurement. E-Commerce Centre provides set of trainings, mostly technical. However, NCE Atameken through its headquarters in Astana and branches in all regions organise training seminars and makes its services available to its members via the internet, telephone, etc. All businesses, including foreign ones based in Kazakhstan, requires by law to become a member of the NCE Atameken. NCE Atameken closely collaborates with the government to protect the interests of its members.</p>				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private</p>		<p>Based on Survey Results, it can be concluded that about 54% of responses confirmed that the government does not consults with private sector before making changes in the legislation</p>			

		sector (in % of responses). Source: Survey.		and regulations in procurement  Around 83% responded that in a varying degree the government consults with private sector before making changes in the legislation and regulations in procurement.			
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Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)		
	10(b) Private sector's organisation and access to the public procurement market	(a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts. *	(a) For the last two years the overall number of active private sector companies has not dramatically changed. According to the official statistics currently, there are private sector comprises of about 1.1 million (1.145.994) active companies compared to 1.2 million (1.185.163) in 2016. However, number of active small companies increased by 3.6% in 2017 as against 2016 (208.742 in 2017 and 189.637 in 2016). This shows that the private sector in		Criteria a) and b) partially met.  The findings of the assessment of the quantitative criteria in Pillar I, indicator 1(d)(b) show that 99.7% of procurement participation and contract award went to local market (contractors, suppliers, and consultants. Also, the systemic constraints discussed in Step 1 may be affecting private sector access to procurement market as is evidenced by average number of bid received (2 to 3) per tender, and in higher prices that the GoK might be paying for fulfilling its needs in goods, works and services. However, the assessment shows also that almost 100% of		Remove/resolve the constraints discussed in Step 1.



		<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p>	<p>the form of small companies is growing in Kazakhstan, although not in proportion and quality to the government's needs for goods, works and services as shown by the average number of bids received. Nevertheless, the private sector plays a vital role in meeting government procurement needs.</p> <p>As the results of ongoing GoK efforts, private sector's access to public procurement market has improved particularly through some measures such as streamlined tender procedures and the early engagement with potential market and bidders</p>		<p>procurement opportunities and corresponding contracts went to local private sector firms.</p>		
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			<p>through public discussion of draft tender documents. Nevertheless, the private sector continues to face systemic constraints such as the difficult conditions of access to financing and the lack of the local banking system incentives towards development of SMEs</p> <ul style="list-style-type: none"><li>• The procuring entity's lack of know-how in specifying its needs and Use of old technical standards</li><li>• Budgeted contract prices with a fixed ceiling offered by the procuring entity not consistent with the prevailing market prices</li><li>• Excessive use of the single source method for goods, works and services.</li><li>• In many cases the Government does not allow advance payments under</li></ul>				
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			<p>the contract. However, recent amendments to the PPL on December 26, 2018 has introduced a provision that advance payment is allowed for the contracts with design and estimate documentation up to 30%. The supplier should provide bank guarantee on advance payment amount.</p> <ul style="list-style-type: none"> <li>• The private sector participants have inadequate capacity to prepare good quality bids.</li> </ul>				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> <li>• number of registered suppliers as a share of total number of suppliers in the country (in %)</li> <li>• share of registered suppliers that are</li> </ul>		<p>10(b) (a):</p> <ul style="list-style-type: none"> <li>• number of registered suppliers as a share of total number of suppliers in the country is 50%.</li> <li>• in 2107 share of registered suppliers that are participants and awarded contracts is 40% of total number of registered suppliers.</li> <li>• in 2017 total number of contract that went to domestic firms is 81,040 that is 99.9% of total contracts. The value</li> </ul>	<p>Based on results of survey, need for all procurement through web-portal and one rule, organizer of public procurement to follow rules of timing for every procurement steps, changes to procurement framework difficult to follow by private sector, lack of training from the government,</p>		

		<p>participants and awarded contracts (in % of total number of registered suppliers)</p> <ul style="list-style-type: none"> <li>total number and value of contracts awarded to domestic/foreign firms (and in % of total)</li> </ul> <p>Source: E-Procurement system/Supplier Database.</p> <p>* 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.</p>		<p>of these awarded contracts is KZT 1,932,768 mln (equivalent of US\$ 6 bln)</p> <p>The total number of contracts awarded to foreign firms is 22 corresponding to 0.1% in number and 0.3 % in value ( KZT 6,194 mln equivalent of US\$ 16 mln).</p> <p>These two indicators support the assessment findings in Pillar I, indicator 1(d)(b) that the requirement of the Public Procurement web-portal for physical presence in Kazakhstan of international potential bidders to obtain digital signature certificate for participation in a tender, contradicts with the PPL provisions on eligibility. Therefore, it restricts competition and does not enable achievement of value for money. Due to constraints faced by foreign bidders in obtaining a digital signature this could be construed as a barrier to participation.</p> <p>Source: procurement web-portal, MoF <a href="https://goszakup.gov.kz/en/registry/supplierereg">https://goszakup.gov.kz/en/registry/supplierereg</a>)</p> <p>10 (b) (b)</p> <p>Based on results of private sector Survey on presence of good market conditions for the private sector to participate in public procurement it can be concluded that about 52% of responses still find that the changes to the procurement framework difficult to follow</p>	<p>division of contracts into lots ( 70% respondents identify that it violates public procurement rules and 80% believe that it is not a fair distribution of risk , non-timely acceptance of goods, Internal Audit Committee not always provides a legitimate and fair response to complaints</p>		
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				<p>95% out of all respondent's experience difficulties in following up on changes in the procurement framework. Notification system should be improved and personalized by industry.</p> <p>Governmental/public information should be freely available for any interested party. Information should not be conditionalized by selected companies which provides support in public procurement to less experienced once</p> <p>More than 53% of responses really have not the resources to keep up with the changes made to the legislative framework</p> <p>58% of responses do not know about any program in training private sector to help in keep pace with procurement reforms</p> <ul style="list-style-type: none"><li>• None of the respondent's comments identified the government as a provider of the training programs on changes in procurement.</li><li>• NCE Atameken and other providers identified as training providers by 33% of the surveyed suppliers.</li><li>• However, almost 70% does not know of any trainings. Why more than 2/3 of the respondents do not know about this opportunity? Lack of advertisement and/or lack of initiative from the private sector. Is it easy to get aware about these trainings? Participation fee, content</li></ul> <p>It can be concluded that more than 70% of responses are not aware about capacity</p>			
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			<p>building programs being run by the government for private contractors and for SMEs</p> <p>30% shows that such programs do exist. However, why 70% does not know? Lack of information/resources/interest from the private sector. This 70% of companies could become more competitive if they get aware and attend capacity building programs for SMEs (Same could be applied for the conclusion above on the training programs on reforms in procurement)</p> <p>About 72% of responses have not ever participated in such a program or training or information session</p> <p>Competitive advantage for those companies which participated</p> <p>According to the answer above, 30% which knows about capacity building programs, but 28% which actually participated. So 2% knows, but does not participate</p> <p>It can be concluded that the condition on the public procurement market is the least (19.7%) that the contracting provisions help to fairly distribute risks (specifically those risks associated with contract performance). The degree of compliance with all other conditions on the public procurement market exceeds 31%, except for the condition of division contracts into lots, which is 59%.</p> <p>Except Risk distribution and Division into lots conditions, by each condition 70% of the respondents identify that such</p>			
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				<p>condition does not met in the public procurement, another word, which believes that the conditions as violates. For the fair risk distribution, the percentage even higher – 80%</p> <p>Regarding What conditions should be improved regarding the conditions in the public procurement market as far as private companies / bidders are concerned?</p> <p>Regarding improving the conditions in public procurement market, the relevant answers on the open text questions are the following:</p> <ul style="list-style-type: none"> <li>• Revise and improve value for money criteria</li> <li>• Introduce responsibility of customers for payment period, incorrect submission of specifications to the web-portal, non-timely acceptance of goods and for late delivery of invoices and signature of acts</li> <li>• Procurement organizer should always follow the rules of timing for every procurement step, including publication on the web-portal</li> <li>• Corruption</li> <li>• Provide an advance payment for manufacturers of domestic goods</li> <li>• All procurement should be carried out through electronic system under one legislation, no procurement under separate laws</li> <li>• Honest distribution of risks associated with the implementation</li> <li>• Transparency</li> </ul>			
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				<ul style="list-style-type: none"> <li>Qualified consideration of complaints. The Internal Audit Committee does not always provide a legitimate and fair response to complaints that higher authorities is required.</li> </ul>			
	10(c) Key sectors and sector strategies	<p>(a) Key sectors associated with the public procurement market are identified by the government.</p> <p>(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.</p>	<p>(a) There is no formally identified key sectors. . A preliminary move towards having identified key sector is being considered such the ICT under AVAS 1000.</p> <p>(b) It appears that risks that placing all the key sectors in Samruk Kazyna poses to sector markets have not been assessed by the government; nor has it assessed the opportunities it would create to require Samruk Kazyna to adopt more procurement competitive procedures and fair access the local qualified private sector players to their procurement</p>		<p>Criteria a) and b ) partially met.</p> <p>In the absence of a risks/opportunities assessment, the GoK may not be informed of the negative impact of the lack of enhanced, quality and performing procurement system of Samruk Kazyna and /or the implication of its exclusion from the application of the PPL.</p> <p>Under the recent amendments to the Law on December 26, 2018 procurement of all SOEs will be regulated by unified rules approved by the Government, SK is excluded form this and will continue to use its internal rules.</p>		<p>Carry out an assessment of risks and lost opportunities for the sector procurement market because of the exclusion of Samruk Kazyna from the PPL.</p>



			opportunities.				
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#### Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
11. Transparency and civil society engagement foster integrity in public procurement	11(a) Enabling environment for public consultation and monitoring	(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	(a) According to the Law on Legal Acts and the Entrepreneurship Code, participation of representatives of the National Chamber of Entrepreneurs of the Republic of Kazakhstan and accredited associations of private business entities is mandatory in the development of normative legal acts affecting the interests of private business entities. Based on interviews with NCE "Atameken" representatives,		Criteria a) to c ) partially met.  PPL, Regulations and related legislation do not provide direct and sufficient level of civil society involvement in public procurement		Capacity building for CSOs and NGOs in monitoring public procurement should be established.  The PPL, Regulations and other related legislation would need to provide for fair level of public oversight and monitoring of Kazakhstan public procurement system functioning

		<p>(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor</p>	<p>the Chamber members had an active role in consultation process. However, interviews with representatives of CSOs and NGOs showed that their participation is minimal. In addition, NCE “Atameken” represents interest of the private sector As mentioned in sub-indicator 10 (a) (a) resent amendments to the PPL on December 26, 2018 instructed from July 1, 2019 Atameken will participate in development “prequalification suppliers List” (Article 31.2)</p> <p>(b) Except for Atameken’s activities, no such programs exist.</p>				<p>and performance. Deep involvement of civil society with public oversight institutions would advance overall social accountability e.g. prior to large scale or environmentally and socially sensitive procurement</p>
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		<p>and improve public procurement.</p> <p>(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.</p>	<p>(c) There is evidence, that Atameken's comments and feedback is taken account. However, no such evidence as regards to CSOs and NGOs.</p>				
	11(b) Adequate and timely access to information by the public	<p>(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>(a) All the documents related to public procurement legislative and regulative framework in Kazakhstan fully and freely available in the web-portal. All stakeholders have adequate and timely information on the procurement process at any stage as described in 7(a). Government procurement plans, tender opportunities, and contract awards are all published on-</p>		<p>Criterion partially met.</p> <p>Specific data research and collection require time and effort.</p> <p>The data on the resolution of complaints does not include the details of the individual complaints results, while the annual statistics provide no breakdown as between goods, services and works (PEFA 2018).</p> <p>Absence of data on overall public procurement expenditure in the country</p>		<p>The E-procurement system's statistical query function could be strengthened to enable research and access to aggregated data which should be based on complete information on public procurement expenditure in the country using public funds</p>

			<p>line. E-procurement system and the web portal provide adequate and timely access to information to the public and potential bidders. However, specific data research and collection require time and effort. PEFA report (2018) also notes that data on resolution of procurement complaints does not include the details of the results individual complaints, while the annual statistics provide no breakdown as between goods, services and works. Further as described under Indicator 7 e-Procurement covers 29% of overall public procurement expenditure</p>				<p>Data on the resolution of complaints could include the details of the results of individual complaints</p>
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	11(c) Direct engage ment of civil society	<p>(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"> <li>• the planning phase (consultation)</li> <li>• bid/proposal opening (observation)</li> <li>• evaluation and contract award (observation), when appropriate, according to local law</li> <li>• contract management and completion (monitoring).</li> </ul>	<p>(a) PPL Article 4 lists transparency and openness as one of the procurement principles.</p> <ul style="list-style-type: none"> <li>• Planning phase – PPL does not provide citizen engagement at the planning stage</li> <li>• Bid/proposal opening – PPL and the Regulations have no specific provision on the opening since opening done automatically and the legislation was revised to reflect electronic nature. Citizens are not involved to the bid/proposal opening procedure, evaluation and contract award as observer. However, PPL art. 28 provides for publishing of tender results on the web portal.</li> <li>• Evaluation and contract award (observation) - PPL and the Regulations have no specific provision on the</li> </ul>		<p>Criteria a) and b) partially met.</p> <p>The PPL and Law “On Public Councils”, does not include specific provisions on control and monitoring over public procurement. Public Councils are also criticised by civil society representatives as being restrictive and non-transparent when it comes to the composition and selection of members.</p> <p>There is scattered evidence of direct participation of citizens in procurement processes through monitoring. Examples include sporadic civil society reports and press items, that provide basic analysis of publicly available information on public procurement.</p> <p>No consultation with public in the planning process e.g. prior to large –scale or environmentally and</p>		<p>The legal/regulatory and policy framework needs to be improved to allow citizens to participate in different phases of a procurement process, as appropriate.</p> <p>Following regulatory changes, e-procurement system needs to be upgraded to allow for direct participation of citizens in procurement processes through consultation, observation and monitoring in particular in planning process prior to large –scale or environmentally and socially</p>
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			<p>observation of the evaluation and contract awards. Citizens are not involved to the evaluation and contract award as observers.</p> <ul style="list-style-type: none"> <li>Contract management and completion (monitoring) – as mentioned in Pillar 1 1(i) the PPL does not provide requirements for contract management.</li> </ul> <p>However, PPL art 22 provides for interested potential bidders hearings for technical specifications to be used and conditions of the forthcoming tenders in the planned tenders. Such hearings however include only potential bidders, no special provision for civil society</p> <p>There is no special provision for civil society engagement in procurement processes. The Law on Public Control was</p>		<p>socially sensitive procurement.</p> <p>Citizen's not officially involved in monitoring of performance and contract completion, for example through the application of innovative techniques such as geotagging or in the context of social audits</p>		<p>sensitive procurement and in application of innovative techniques such as geotagging or in the context of social audits.</p>
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		<p>(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.</p>	<p>originally planned to be developed as part of implementation of the Anticorruption Strategy 2015-2025. It was then replaced by the Law "On Public Councils", which does not include specific provisions on control and monitoring over public procurement. The Agency of Civil Service and Anticorruption implements a Project "Citizens' control", under which a conference "On the Results of Monitoring Public Procurement of Local Government Authorities for Overstating Procurement Prices" was conducted in 2017.</p> <p>(b) There is limited evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring</p>				
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12. The country has effective control audit systems	12(a) Legal framework, organisation and procedures of the control system	The system in the country provides for: (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies.	(a) The country's laws and regulations overall provide for a comprehensive control framework.		Criterion partially met.  Having the functions of External Audit (SAI) and Internal Audit as well as the Financial Control (financial inspection) in a single law ("Law of the Republic of Kazakhstan on State Audit and Financial Control",) to some extent duplicates functions and creates certain lack of clarity between the proper segregation of roles and functions between the external and internal audits as well as financial control (inspection). While the main objective of the external audit (SAI) should be expressing an opinion on the government financial statements, the internal audit is designed to add value and improve organizations' operations (including risk management, control and governance processes).		It is recommended to consider a possibility to gradually move to having separate laws on public sector external and internal audits in compliance with international good practices.
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		<p>(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</p>	<p>(b) The PPL establishes that the compliance with this law is controlled within the powers established by the “Law of the Republic of Kazakhstan on State Audit and Financial Control” of November 12, 2015 #392-V (hereinafter referred to as the Audit Law), according to which the controls are carried out by responsible public external and internal audit and control bodies. Unlike in generally accepted practices, the internal and external public</p>		<p>Unsegregated of roles and functions between the external and internal audits as well as financial control</p> <p>Criterion met.</p>		
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			<p>audits as well as financial controls are covered by a single law.</p> <p>The institutions, policies and procedures as defined in the Law are in place and operational.</p> <p>The Audit Law stipulates that the system of state audit and financial control includes External and Internal audit and control agencies as following: External Audit and Financial Control: (i) Accounts Committee for Control over the Republican Budget Execution (the country's Supreme Audit Institution) as the supreme financial control body (Accounts Committee), (ii) Revision Commissions at local level</p>				
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			<p>(regions and cities), Internal Audit and Financial Control: (iii) authorized body for Public Internal Audit, and (iv) Internal Audit Services (hereinafter referred to as IAs) of central state bodies (e.g. line ministries), local executive bodies of regions and cities.</p> <p>According to the legislation, the authorized body on Internal Audit bears the key responsibility for compliance audit, including compliance with the Public Procurement Law, and for desk/online reviews, that mostly cover compliance with procurement procedures.</p> <p>It should be noted that large portion of</p>				
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			<p>procurement audits are conducted through desk/online review of the web-portal by the staff of the Committee of the Public Internal Audit of the MoF.</p> <p>The authorized body for Public Internal Audit is the Ministry of Finance (the MoF) and is represented by the Department of Methodology of Accounting and Auditing of the MoF, and The Committee of Internal Public Audit of the MoF. The latter (previously known as Financial Control Committee) is responsible for (i) coordination of IAs activities and control over compliance of IAs with the</p>				
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			<p>standards and code of conduct of internal audit and financial controls, (ii) provision of methodological and consultancy supports to IAs; (iii) analysis of IAs reports; and (iv) evaluation of effectiveness of IAs. In addition, it is the only public internal audit body that is authorized to conduct unplanned audits/reviews of complaints received, including procurement related complaints.</p> <p>. The existing control framework overall adequately covers procurement operations, meanwhile it should also be noted that in</p>				
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		(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	<p>practice public procurement audit is conducted as part of the compliance and performance audit but not separately.</p> <p>(c) The internal control/audit mechanisms are in place, including proper reporting to management on compliance, effectiveness and efficiency are in place. The overall basis for internal control system over budget expenditures are established by the Budget Code identifying the controls during budget preparation and execution processes, expenditure classification framework. The Budget Code also outlines the accounting and</p>		Criterion met.		
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			<p>financial reporting systems for public bodies, and specifies the use of Treasury Single Account for budget execution.</p> <p>It should be noted that there are specific internal controls that relate to procurement, including those exercised via authorization and approval mechanisms as well as monitoring via procurement web-portal. As for the internal audit and reporting on that, those on procurement are not separated.</p> <p>It should be noted that while controls exercised are adequate for risk mitigation, those sometimes result in longer</p>				
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		<p>(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>decision-making processes.</p> <p>(d) While the Accounts Committee as the Supreme Audit Institution (SAI) is charged with responsibility to conduct procurement audit as part of the compliance and performance audit, as confirmed by SAI, it is mainly performed by the Committee of Internal Public Audit of the MoF as desk/online review. Decisions on whether to include procurement procedures as part of field compliance and performance audits is taken on the risk-based approach.</p>		<p>Criterion met.</p>		
		<p>(e) review of audit reports provided by the</p>	<p>(e) Audit reports prepared by the</p>		<p>Criterion met.</p>		



		<p>SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)</p>	<p>Accounts Committee are subject to quarterly review by the Parliament in compliance with the article 44 of the Audit Law. Requirements of the Legislature, reflected in the Resolution of the Government on Approval of the Reports of the Government and the Accounts Committee, are mandatory for implementation and have the status of laws.</p>				
		<p>(f) clear mechanisms to ensure that there is follow-up on the respective findings.</p>	<p>(f) Implementation of recommendation s is monitored permanently. In some cases, special meetings of working groups, or so-called “hours with the Government” are conducted.</p>		<p>Criterion met.</p>		

	12(b) Coordination of controls and audits of public procurement	(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	(a) The internal control system over budget expenditures is established by the Budget Code identifying the controls during budget preparation and execution processes, expenditure classification framework.		Criteria a) to d) are met.		

		<p>(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.</p>	<p>Those are also detailed in Rules of the Ministry of Finance on Budget Execution and Cash payments dated December 4, 2014.</p> <p>(b) There are no separate procedures or manual for state procurement audit. The procedures/standards for compliance and performance audits are described for external public audit and financial control in the Rules on External Public Audit and Financial Control and Procedural Standards for External Public Audit and Financial Control approved by the Normative Decrees of the Accounts Committee and Rules for Public</p>				
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		<p>(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are compiled with.*</p>	<p>Internal Audit and Financial Control approved by the Decree of the Government. These documents refer to Financial and Compliance Audits, the Performance audit standards and norms are being developed at the moment.</p> <p>(c) Audit, both internal and external, is conducted based on the List of Entities to be Audited that is prepared on the assessed risks basis annually. Thus, it can be the case that an audit of one and the same entity can be conducted once in several years, unless it is assessed as a risky one. However, the Committee of</p>				
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		(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p>Public Internal Audit of the MoF has the right to conduct unplanned audits/reviews based on claims or orders received.</p> <p>(d) The Law prescribes clearly the reporting lines of internal and external audit. The Internal Audit function is reporting to the Government, while the External Public Audit is reporting to the legislature and the President. The PEFA 2018 suggests a score of “A” for PI-25 on internal controls over non-payroll expenditures.</p>				
		* Recommended quantitative indicator to substantiate		From a strict definition of specialized procurement audits, exclusively compliance			

		<p>assessment of sub-indicator 12(b) Assessment criterion (c):</p> <ul style="list-style-type: none"> <li>- number of specialised procurement audits carried out compared to total number of audits (in %).</li> <li>- share of procurement performance audits carried out (in % of total number of procurement audits).</li> </ul> <p>Source: Ministry of Finance/Supreme Audit Institution.</p>		<p>and performance procurement audit, the ratio is zero (0%)</p> <p>However, considering the regulations requirement, desk reviews by the Internal Audit Committee cover 100% of procurement transactions</p> <p>The report of the Accounts Committee on the Key Results of the Accounts Committee for 2017 were only 1% of files found to be non-compliant (compare to 4.2% in 2016), although the number of audited objects increased by 38 in 2017. The PEFA for Kazakhstan 2018 states that: “the fact that two-thirds of the financial violations found in 2017 had already been subject to recovery confirms that audit findings are respected and acted upon”</p>			
	12(c) Enforcement and follow-up on findings and recommendations	(a) Recommendations are responded to and implemented within the time frames established in the law.*	(a) Rules for Public Audit and Financial Control approved by the Normative Decree of the Accounts Committee of November 30, 2015, #17-NK require that recommendations provided during public audit are mandatory for execution for all state bodies and		Criteria a and b are met.		

		<p>(b) There are systems in place to follow up on the</p>	<p>officials, to which they are addressed. Such recommendations are communicated in the form of resolutions and orders, with specified deadlines for implementation.</p> <p>Before issuance, audit recommendations and implementation deadlines are discussed and agreed with an audited entity's representatives. All recommendations are included into so-called "control list" of the public audit bodies to be monitored constantly.</p> <p>(b) In the process of implementing recommendations, an entity is reporting on</p>				
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		implementation/enforcement of the audit recommendations.	<p>appropriate actions taken and supports this by relevant documentation. Provided information is reviewed by the public audit bodies to evaluate quality of implementation based on completeness, reliability and adequacy of information provided. As soon as a recommendation is found to be implemented completely and with due quality, a decision is taken to remove it from the "control list".</p> <p>Periodic reports of the public audit bodies disclosed on their websites include information on % of implementation</p>				
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			of orders and recommendations.				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c)</p> <p>Assessment criterion (a):</p> <ul style="list-style-type: none"> <li>- Share of internal and external audit recommendations implemented within the time frames established in the law (in %).</li> </ul> <p>Source: Ministry of Finance/Supreme Audit Institution.</p>		<p>Over 96% of public external audit recommendations issued in 2017 were implemented timely.</p> <p>The share of internal audit recommendation implementation on procurement was over 92% in 2016 and 2017.</p> <p>Source: PEFA 2018</p>			
	12(d) Qualification and training to conduct procurement audits	(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.*	(a) With the adoption of the Law on State Audit and Financial Control, the Accounts Committee as a Supreme Audit Institution took a step-in development of the Curriculum/Program for certification and training of Public Auditors. This		Criteria a) to c) are met.		

		<p>(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</p>	<p>Program’s modules were initially developed by the Republican State-Owned Enterprise “The Centre for Research of Financial Violations” and later on passed on to the Organization of Education that is authorized to deliver the training and provide certificates. Such Organization is selected on competitive basis and currently it is the Financial Academy.</p> <p>(b) Certification of public auditors takes place in accordance with the Rules of Certification for public auditors approved by the Regulation of the Accounts Committee #22NK of</p>				
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		procurement specialists or consultants.	<p>December 15, 2015. It is conducted in 2 sages: (i) testing of knowledge (certification exams); and (ii) interview. After successful fulfilment of both stages, the National Certification Commission, after interviewing the candidates, may issue one of three types of certificate: (i) Public Auditor of Top category; (ii)Public Auditor; (iii) Public Internal Auditor in one of the audit types: audit of financial statement, compliance or performance audit. There are specific work experience and as educational background requirements for the candidates.</p>				
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		<p>(c) Auditors are selected in a fair and transparent way and are fully independent.</p>	<p>Unlike public internal auditors, who have narrow specialization and are required to pass only the exam related of their specialization, the Public Auditors are required to pass exams for all types of audit (financial, performance and compliance).</p> <p>(c) The structure of the above Commission is approved by the Chairman of the Accounts Committee and comprises of the 7 members under the Chair of the Accounts Committee Head, also includes the Minister of Finance, members of both Chambers of Parliament and representative of the Presidential Administration.</p>				
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			<p>It was noted that no separate module on public procurement, but rather a set of questions on “Law of the Republic of Kazakhstan on Public Procurement” are included into the Compliance Audit module of Certification Exams.</p>				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</p> <ul style="list-style-type: none"> <li>- number of training courses conducted to train internal and external auditors in public procurement audits.</li> </ul> <p>Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-</p>		<p>Public procurement is one of the modules that is included into mandatory certification of public auditors. All auditors should pass those modules to get a certificate. In addition, in compliance with the qualification requirements for civil servants all public auditors have to take trainings, including that in procurement once in 3 years. Since the Law of State Audit and Financial Control was adopted in 2015, majority of public auditors did not take any trainings since certification. On the other hand, it can be said that 100% of public auditors are trained in procurement as procurement is a mandatory module in the certification and qualification improvement module.</p>			

		<p>indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>					
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Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
13. Procurement appeals mechanisms are effective and efficient	13(a) Process for challenges and appeals	<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</p> <p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p>(a) Article 48.1.4) states clearly that the appeal may be supported with documents confirming grounds for complaint. However, the PPL does not provide clear provisions whether appeal decisions are rendered based on the evidence submitted by the parties.</p> <p>(b) The first review of the evidences for appeal is done by the authorized body which is Internal Audit Committee. It is to mention the according to the PPL amendments</p>		<p>Criterion partially met.</p> <p>Insufficient provisions on supporting evidence for complaints decisions</p> <p>The PPL does not define persons eligible to comply, time frame for complaints on other grounds rather than a contract award.</p> <p>Criterion met.</p>		Clear definition of grounds of complaints and the timing would help to avoid unreasonable and out of time complaints

		(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *	<p>to the PPL on December 26, 2018 adds clarity to the timeliness of filing the complaint. Claim should be filed within 5 days from the day when the decision to award the contract have been posted 10 days are allowed for the review as a desk review according to the Law on Audit.</p> <p>(c) Recent amendments to the PPL on December 26, 2018 in case of disagreement with the Authorized body decision the potential supplier may appeal to the higher authority (Article 47.7). As the result of consideration of the appeal the Authorized body</p>		Criterion partially met.		
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		<p>(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.</p>	<p>shall make a decision to either refuse or cancel the results of public procurement. (Article 47.6).</p> <p>(d) PPL stipulate 5 days for file the appeal and 10 business days for the review and answer by the authorised body. Form the interviews follows that this timeframe does not cause the delays in the process. A potential supplier's complaint may be dispatched and then uploaded to the web portal or filed with the authorized body through the publicly available information systems, in accordance with the requirements with legislation of Kazakhstan of</p>		<p>Criterion partially met.</p>		
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			<p>electronic document and digital signature using an electronic digital signature which helps to avoid unduly delay the procurement process. Also, the web-portal automatically renews the term of the contract, in case of absence of the authorized body decision in the period established by law.</p> <p>Recent amendments to the PPL on December 26, 2018 has introduced the provision that stipulates the potential suppliers cannot appeal of the tender documentation if there were no comments under the preliminary discussion as described in Article 22 PPL.</p> <p>Also, according to the amendments to the PPL on December 26,</p>				
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			2018 only supplier who paid a bid security of the tender may file a complaint related to the tender.				
		<p><b>// Minimum indicator</b>  <b>// * Quantitative indicator to substantiate assessment of sub-indicator 13(a)</b>  <b>Assessment criterion (c):</b>  <b>- number of appeals.</b>  <b>Source: Appeals body.</b></p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a)  Assessment criterion (c):  number (and percentage) of enforced decisions.  Source: Appeals body.</p>		<p>13(a) (c)</p> <p>The total number and percentage of the enforced decisions are 4208 and 45.3 respectively between January 1, 2018 and July 3, 2018.</p> <p>Source: web-portal</p>			
	13(b) Independence and capacity of the appeals body	The appeals body: (a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	(a) The Internal Audit Committee (Appeal body) does not involved in any capacity in procurement transactions or in the process		Criterion met.		

		<p>(b) does not charge fees that inhibit access by concerned parties</p>	<p>leading to contract award decisions (Article 16. 5) and 6))</p> <p>(b) Recent amendments to the PPL on December 26, 2018, has introduced that potential suppliers pay fee for the participation, but there is no additional fee for the appeals submission in its handling the appeals the Committee is not charging any fees</p>		<p>Criterion partially met.</p>		
		<p>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p>	<p>(c) The complaints resolution system is established in the PPL and the Regulations and are available to the public (Articles 47 and 48). Web-portal provides Instructions provides a</p>		<p>Criterion met.</p>		

		(d) exercises its legal authority to suspend procurement proceedings and impose remedies	<p>detailed guidance by:</p> <ul style="list-style-type: none"><li>• Suppliers' Manual, namely Filing a complaint (appeal) by the supplier;</li><li>• Instructions for providing answers to a complaint, suspension of the conclusion of a contract (on the basis of a complaint)</li></ul> <p>(d) The authorized body shall, no later than one working day from the date the appeal has been received, send the customer a notification of the conclusion of the public procurement contract being suspended (Article 47.5). The web-portal automatically suspend the tender process for 10 working days from the compliance submission date. Once the</p>		Criterion met.		
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		<p>(e) issues decisions within the time frame specified in the law/regulations*</p>	<p>decision is made the procurement web-portal system automatically cancel the procurement.</p> <p>(e) No, there are instances when the Committee does not issue the decisions within the timeframe. However, the authorised body issues decisions in prescribed time for near 95% of complaints once they assigned to the relevant authorised body by remits.</p>		<p>Criterion partially met.</p>		
		<p>(f) issues decisions that are binding on all parties</p>	<p>(f) The decisions of the authorised body are binding for the parties. The results of consideration of the appeal received the authorized body shall make a decision to</p>		<p>Criterion met.</p>		

		(g) is adequately resourced and staffed to fulfil its functions.	<p>either refuse or cancel the results of public procurement (Article 47.6).</p> <p>(g) The Committee is sufficiently resourced and staffed. This is mainly due adoption of the web-portal for the submission of complaints, issues of decisions and infusibility. However, further capacity enhancement would increase effectiveness of the procurement process</p>		Criterion met.		
		<b>// Minimum indicator</b> <b>// * Quantitative indicator to substantiate assessment of sub-indicator 13(b)</b> <b>Assessment criterion (c):</b>		13 (b) (e) Complaints data January 1, 2018 till June 15, 2018, including: <ul style="list-style-type: none"> <li>Complied with timeframe - 7568</li> <li>Not executed within the time line – 149 (less than 2%)</li> </ul>			

		- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.		<ul style="list-style-type: none"> <li>Not responded with in the time line - 155 (less than 2%)</li> </ul>			
Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
	13(c) Decisions of the appeals body	Procedures governing the decision-making process of the appeals body provide those decisions are: (a) based on information relevant to the case.	(a) As described at 13 (a) (a) above, each claim should contain general information on the appealing and appealed entities, substance on violation(s) of the public procurement legislation. If necessary, the appeal may be attached with documents confirming grounds for it.		Criteria a to d partially met		



		<p>(b) balanced and unbiased in consideration of the relevant information.*</p> <p>(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*</p>	<p>(b) Out of 37% of appealing bidders were captured in the survey, 63% believe that system is trustworthy and fair, 62% believed that appeal decisions are consistent. In support of these data following was stated</p> <p>(c) The authorised body suspends the public procurement contract and based on the results of consideration of the appeal received shall make a decision to either refuse or cancel the results of public procurement. Decision of the authorised body could be</p>				
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		(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*	<p>challenged in the court of Kazakhstan. (Article 47.8).</p> <p>(d) The PPL and the Regulations do not stipulate time limits for the authorised body for publishing the decisions. All claims, including submitted by hands, their status and decisions are published on the web portal and publicly available. The web-portal provides data on considered claims as "Satisfied," "Partially satisfied," and "Denied." Different filters and colour codes are introduced for selection and analysis</p>				
		// Minimum indicator // *Quantitative indicator to		13 (c) (c)	Identified gaps based on survey:		To improve the perception of the public and large bidders

	<p><b>substantiate assessment of sub-indicator 13(c)</b> <b>Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).</b><b>Source: Centralised online portal.*</b> Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) <b>Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).</b> Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).<b>Source: Survey.*</b> Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) <b>Assessment criterion (c): - outcome of appeals (dismissed;</b></p>		<p>Complaints data January 1, 2018 till June 15, 2018, including:</p> <table><tr><th>Status</th><th>Number</th><th>%</th></tr><tr><td>Satisfied:</td><td>3801</td><td>44.46</td></tr><tr><td>-fully</td><td>2191</td><td>57.64</td></tr><tr><td>-partially</td><td>1610</td><td>42.36</td></tr><tr><td>Denied in satisfaction</td><td>3957</td><td>46.29</td></tr><tr><td>Submitted</td><td>176</td><td>2.06</td></tr><tr><td>Under consideration</td><td>615</td><td>7.19</td></tr><tr><td><b>Total:</b></td><td><b>8549</b></td><td><b>100%</b></td></tr></table>	Status	Number	%	Satisfied:	3801	44.46	-fully	2191	57.64	-partially	1610	42.36	Denied in satisfaction	3957	46.29	Submitted	176	2.06	Under consideration	615	7.19	<b>Total:</b>	<b>8549</b>	<b>100%</b>	<p>(a) It can be concluded that about 66% of responses felt the decision of the procurement entity was unfair but they did not believe the appeal system was sufficiently trustworthy to embark in an appeal</p> <p>(b) It can be concluded that almost 84% at different degree are not satisfied with the public procurement appeals system</p> <p>Identified reasons for avoiding to file a complaint based on the survey:</p> <p>(a) The decision-making process on the complaint delays, as a result, there is little time to fulfil contractual obligations</p> <p>(b) Corruption. In advance it was known who is lobbying and who is behind. The state body is always "Right." Decisions are not in a favour</p>	<p>community on the complaints mechanism the Authorised body should take more action.</p> <p>Business Outreach with private sector to develop action plan and act upon the suggestions, and to correct the perception</p>
Status	Number	%																											
Satisfied:	3801	44.46																											
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		decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.			<p>of private companies. All public procurement laws are against an entrepreneur</p> <p>(c) The authorized body does not inspire confidence, as it is guided by opinion and not by normative acts. There is no consistency in the decision-making process, for the same situation two contradictory decisions could be made.</p> <p>(d) The requirements are not clearly spelled out. Risks on the contract are not distributed fairly, the supplier is over liable, while the customer in more comfortable conditions</p> <p>(e) The authorized body does not</p>		
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					<p>have the competent employees to monitor the procurement procedure.</p> <p>On required improvement in the challenge and appeals system the Answers on open text are the following in the Survey:</p> <ul style="list-style-type: none"><li>- Efficiency, fairness and time of appeal system. Simplification of filing complaints procedure and shortening of the time for consideration of complaints. Clarifications on time</li><li>- Responsibility for deliberately appealing, which is not constructive and aimed at delaying the decision-making process</li><li>- Corruption</li><li>- Competence of employees</li><li>- Well established judicial</li></ul>		
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					<p>system. The authorized body should know that the wrong decision would be appealed at judicial level</p> <ul style="list-style-type: none"> <li>- Inform suppliers that such a system exists</li> </ul> <p>(c) Business representative as a member of appeals body</p>		
14. The country has ethics and anticorruption measures in place	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties	The legal/regulatory framework provides for the following: (a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	(a) Kazakhstan has ratified the United Nations Convention against Corruption (May 4, 2008), United Nations Convention against Transnational Organized Crime (June 4, 2008), the Council of Europe Convention on Laundering, Identification, Seizure and Confiscation of the Proceeds from Crime (May 2, 2011). Kazakhstan is also part of the "Istanbul Action Plan to Combat Corruption", a sub-regional mutual assessment program launched within the OECD AntiCorruption Network in 2003. Kazakhstan has made		<p>Criteria a) to c) not met</p> <p>Kazakhstan's anticorruption legislation still needs to be improved to fully meet international standards and comply with recommendations of the 3rd and 4th round of monitoring of the Istanbul Anti-Corruption Plan. The definition of Conflict of Interests is not yet in line with international standards, and mechanisms for implementation of norms and sanctions for violations of rules of conflict of interests need to be</p>		<p>Kazakhstan's anticorruption legislation needs to be brought in compliance with international standards, as recommended by 3rd and 4th rounds of monitoring of the Istanbul Anti-Corruption Plan.</p> <p>PPL needs to include definitions of fraud, corruption and other prohibited practices in procurement.</p> <p>Definitions and provisions concerning conflict of interest need to be broadened in line with the recommendations of the 4<sup>th</sup> round of monitoring of the</p>

			<p>good progress in bringing national anticorruption legislation in conformity with basic provisions of international anti-corruption agreements. However, there are still several gaps that are discussed in detail in the “gaps” section.</p> <p>The public procurement legal and regulatory framework does not include provisions on anti-corruption measures, except for Article 4 that includes prevention of corrupt practices as one of general principles. There is, however, a separate anti-corruption law (Law No410-V of 18 November 2015) which contains definitions of prohibited practices, conflict of interest, and associated responsibilities, accountabilities and penalties:</p>		<p>strengthened. There is also no mechanism to control enforcement of the post-employment restrictions or a cooling-off period. Restrictions with regard to gifts are scattered among several laws and require additional clarification and awareness raising. Provisions for protection of whistle-blowers need to be strengthened. Anti-Corruption Law fails to regulate properly public relations in the area of countering corruption in the private sector. Public Procurement Law does not include definitions of fraud, corruption and other prohibited practices in procurement, and provisions on anti-corruption measures. There is no provision for the cooling off period for former public officials.</p>	<p>Istanbul Anticorruption Plan.</p> <p>Cooling-off period for former public officials need to be introduced.</p>
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			<p>Corruption - illegal use of official (job related) authorities and related opportunities by persons occupying a responsible public office, persons authorized to perform public functions, persons equated to persons authorized to perform public functions, and officials for the purpose of obtaining or extracting in person or through intermediaries of property (non-property) benefits and benefits for themselves or third parties, as well as bribing these individuals by providing benefits and advantages;</p> <p>Corruption offense - an unlawful guilty act (acts or not acting) with signs of corruption for which administrative or criminal liability is established by law;</p> <p>In addition, Criminal Code (No226-V of 3 July 2014) includes</p>				
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			<p>detailed description of fraud and corruption offences including misappropriation or embezzlement of entrusted property, fraud, different types of economic crimes, misuse of official status, excess of power or duties, unlawful participation in entrepreneurial activity, preventing lawful entrepreneur activities, accepting or offering bribes, official forgery, inaction by the authorities.</p> <p>(Articles 189 (clause 2) of part three), 190 (clause 2) of part three), 216 (clause 4) of part two), 217 (clause 3) of part three), 218 (clause 1) of part three), 234 (clause 1) of part three), 247, 249 (clause 2) of part three), 307 (clause 3) of part three), 361, 362 (clause 3) of part four), 364, 365, 366, 367 , 368, 369, 370, 450, 451 (clause 2) of part two) and 452).</p>				
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		<p>(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.</p>	<p>(b) Criminal Code contains provisions for the individual responsibilities, accountability and penalties for government employees. Thus, misuse of official status is fined from 2,000 MCI to 6,000 MCI or punished by restriction of liberty or imprisonment for a term of two to six years depending on the status of a civil servant. The same act carried out in the interest of a criminal group is punished by an imprisonment of four to eight years. Excess of power or duties is fined from 3,000 MCI to 5,000 MCI or punished by restriction of liberty or imprisonment for a term of three to eight years. Receiving a bribe is punished by a fine of 50 to 80 times bribe value or imprisonment for a term of three to seven years with property confiscation and the revocation of the</p>				
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			<p>lifetime right to hold certain offices or pursue certain activities. Giving a bribe is punished by a fine of 20 to 50 times bribe value or by imprisonment for a term of up to three to fifteen years with or without property confiscation and with the revocation of the lifetime right to hold certain offices or pursue certain activities. The Criminal Code also contains similar provisions for the individual responsibilities, accountability and penalties for commercial and other organizations in Chapter 9.</p> <p>Definition and provisions concerning conflict of interest are stipulated by the Anticorruption Law and Civil Service Law as follows:</p> <p>Conflict of interest - a contradiction between the personal interests</p>				
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		<p>(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.</p>	<p>of persons occupying a responsible public office, persons authorized to perform public functions, persons equated to them, officials and their official powers, in which the personal interests of such persons may lead to improper performance of their official functions.</p> <p>In the situations of a conflict of interest civil servants are prohibited from performing their official functions, should take actions to prevent and resolve conflict of interest situations, and should inform their management in written of a potential or actual conflict of interest situation (Art 15 of the Anticorruption Law and Art 51-52 of the Civil Service Law).</p> <p>(c) There is no provision for the cooling off period for former public officials.</p>				
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	<p>14(b) Provisions on prohibited practices in procurement documents</p>	<p>(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>(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework</p>	<p>(a) Neither PPL nor Anti-corruption specify the mandatory requirement and instructions on how to incorporate provisions on prohibited practices in procurement and contract documents. However, there is only a very limited stipulation in the standard bidding documents/declaration (Appendix 4 to the tender documentation) where the bidder is requested to confirm that (s)he is not in any of conflict of interest situation as defined in in Article 6 of the PPL.</p> <p>(b) The current Procurement and contract documents do not include provisions on fraud, corruption and other prohibited practices. This requirement is not specified in the legal/regulatory framework</p>		<p>Criteria a) and b) not met</p> <p>The legal/regulatory framework does not specify the mandatory requirement for procurement documents to include provisions on anti-corruption.</p> <p>Hence, the current Procurement and contract documents do not include provisions on fraud, corruption and other prohibited practices.</p>		<p>The PPL and standard tender documents should be amended to specify the mandatory requirement for procurement documents to include provisions on anti-corruption.</p>
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Indicator	Sub-indicator		3 steps to assess each sub-indicator				
		Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	14(c) Effective sanctions and enforcement systems	(a) 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.	(a) Procurement legislation does not contain specific provisions obliging procuring entities to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities. There are, however, established procedures for dealing with such cases. Namely, PPL Article 6 states that prohibited practices specified in paras 1 and 2 of Art 6 can be detected at any stage of procurement, and in that case an authorised body, state audit or financial control bodies should inform the procuring entity of the detected case of a prohibited		Criteria a) to d) not met  The register of bad faith suppliers does not include special provisions for corruption and prohibited practices.		A requirement that procuring entities report allegations of fraud, corruption and other prohibited practices to law enforcement authorities needs to be introduced, and a clear procedure is put in place for doing this.  - A system for suspension/debarment on the grounds of corrupted acts need to be established  - Clear system for suspension/debarment based on corruption convictions need to be established and consistently applied  The criteria for bad faith suppliers need to

			<p>practice in 5 working days in written. The PPL Art 27 specifies also that in case of detection of unlawful actions during the ongoing procurement process, the concerned bidder is expelled from the tender process. In the cases when the unlawful action is detected at a contract implementation stage, the contract is subject to suspension until investigation results are issued.</p> <p>Anti-corruption Law also obliges individuals, public associations and other legal entities to report on the facts of committing corruption offenses known to them in the order established by the legislation of the Republic of Kazakhstan (Article 23).</p> <p>State social order on 2016 stipulates that NGOs representatives will record allegation of abuse of power or</p>				include anticorruption provisions
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		<p>(b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.</p>	<p>overstated prices in public procurement</p> <p>(b) Law enforcement authorities follow up reports received from the State Internal Audit Committee regarding the detection of prohibited practices specified in Article 6 of the PPL during the contract implementation stage.</p> <p>The PPL does not include any explicit grounds for debarment on the basis of fraud or corrupted act by the company. The same is for Anti-corruption law.</p> <p>However, in case of identifying as a result of the control measures, violations of the public procurement legislation the MoF sends the entity being under control binding instructions and improvement notice to eliminate violations identified after</p>				
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			<p>conducting an in-house audit; or applies to a court with an action of invalidation of public procurement contracts that have entered into force and have been concluded in violation of the legislation of the Republic of Kazakhstan, except for public procurement contracts, under which the obligations have been properly executed; 3) suspend transactions against codes and accounts of entities being under control, opened with the central budget implementation authority, as well as against bank accounts (except for correspondent accounts) of entities being under control in the manner prescribed by legislative acts of the Republic of Kazakhstan (PPL Chapter 4, Article 18). When identifying as a result of the control measures the fact of actions (or inactions)</p>				
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		<p>(c) There is a system for suspension and /or debarment that ensures due process and is consistently applied.</p>	<p>by the unit under control, that contain the elements of a crime (including corruption), the MoF and bodies for the state audit and financial control shall, within five working days from the date of revealing such fact, provide the information about the commitment of a specified action (or inaction) and the supporting documents of such fact to the law enforcement agencies.</p> <p>(c) The Ministry of Finance runs a black list of companies and individuals, who may be included in it based on fraudulent information provided in the course of procurement procedures, decline of signing public contract upon award or due to poor performance on the signed contracts. The register of bad faith participants of public procurement is compiled based on the</p>				
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		<p>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by</p>	<p>decision of the authorized body to recognize potential suppliers as bad faith participants of public procurement. The suppliers included in the register of unfair participants of public procurement shall not be allowed to participate in public procurement within twenty-four months from the date of entry into force of the court decision on recognition of them as unfair participants of public procurement.</p> <p>The decision to include a potential supplier or a supplier in the register of unfair participants of public procurement may be appealed by them in compliance with the legislation of the Republic of Kazakhstan.</p> <p>(d) Regarding effectiveness of anti-corruption measures percentage of favourable opinions by the public on the effectiveness of</p>				
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		application of stated penalties.*	anticorruption measures is: 62.5%				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):</p> <p>- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred)</p> <p>. Source: Normative/regulatory function/anti-corruption body.</p> <p>- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body.</p>	More than 38% of responses consider that companies are expected to give a gift to secure a contract in the public sector	<p>According to the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, 2,452 corruption offenses were registered in 2017, which is 13% less than in 2016 (2807 in 2016).</p> <p>Of the 1,146 individuals involved in corruption, 828 were transferred to the court, which is 13% more than in 2016. In 2017, 19 heads of central state bodies and their subordinate organizations were exposed, 98 - regional, 152 - city and district bodies</p>			

		<p>- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).</p> <p>Source: Survey.</p>					
	14(d) Anti-corruption framework and integrity training	<p>(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise 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.*</p>	<p>(a) The Legal framework includes: The Anticorruption Law (2015), the Law on Civil Service (2015), the Criminal Code (2014).</p> <p>The policy includes: Anticorruption Strategy (2015-20125), The Action Plan on Anticorruption (2015-2017 and 2018-2021), Annual Anticorruption Report</p> <p>Institutional framework includes:</p> <p>Agency of Civil Service Affairs and Anticorruption responsible for the legislative framework, design and implementation of the anticorruption policy, corruption risks analysis, monitoring of corruption, formation</p>		<p>Criteria a) to d) partially met.</p> <p>Corruption risk analysis is a new mechanism, that has not yet evolved into a systemic measure.</p> <p>(d) no special measures directed at corruption in procurement. These cases are treated as part of general efforts.</p> <p>(e) there are no dedicated training programs on integrity in procurement.</p>		<p>Corruption risk analysis and mitigation should gradually evolve into a systemic measure with public procurement being a regular focus</p> <p>While corruption risk analysis is published, the reports on mitigation of those risks should also be prepared and published online.</p> <p>Anti-corruption framework should include special measures for the detection and prevention of corruption associated behaviour in public procurement</p> <p>Dedicated training program on integrity in</p>

		<p>(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.</p>	<p>of anticorruption culture.</p> <p>Anticorruption Bureau responsible for detection, suppression, disclosure and investigation of corruption criminal offenses</p> <ul style="list-style-type: none"><li>• General Prosecutor's Office –</li><li>• Ethics officers in central and local governmental agencies</li></ul> <p>(b) There is no special mechanism for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle. However, with the adoption of the new Anticorruption Law in 2015, the Agency of Civil Service Affairs and Anticorruption is tasked with performing external risks analysis, including identifying corruption risks in legislation and regulations and</p>				<p>procurement should be developed and conducted on a regular basis.</p>
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			<p>corruption risks in operational activities of public bodies, organizations and quasi-state sector. The first external risk analysis was conducted in 2017 when 16 areas (tax, customs, health, education, etc.) were analysed including public procurement. The risk analysis revealed that most common public procurement related corruption risks are:</p> <ul style="list-style-type: none"><li>• large share of single-source selection;</li><li>• absence of transparency in decision-making by tender commissions (observers or independent experts do not participate in the procurement process);</li><li>• tailoring technical specifications for particular suppliers;</li><li>• elevated prices;</li><li>• equal and easy access to procurement documents by potential bidders is</li></ul>				
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			<p>not provided properly.</p> <p>12 risk mitigation plans were approved based on the risk analysis for different governmental agencies.</p> <p>In 2018, the external analysis will focus on vertical analysis of three public functions: public control and oversight, permits' system, public services.</p> <p>Internal corruption risks analysis is conducted by public bodies, organizations and quasi-state sector, and the synopsis are published on the Agency's website <a href="http://kyzmet.gov.kz/ru/kategorii/analiz-i-minimizaciya-ustranenie-korruptcionnyh-riskov">http://kyzmet.gov.kz/ru/kategorii/analiz-i-minimizaciya-ustranenie-korruptcionnyh-riskov</a></p> <p>In 2017, the Ministry of Education, Ministry of Culture and Sport, Emergency Committee of the Ministry of Interior, Kazagro national management holding</p>				
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		<p>(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.</p>	<p>conducted their internal corruption risks analyses.</p> <p>The results of the risk analyses inform three-year Anticorruption Action Plans.</p> <p>(c) The web-portal “Qamqor” managed by the Committee of Law Statistics and Special Accounts under the General Prosecutors Office provides access to the statistics on corruption-related legal proceedings and convictions. Qamqor.gov.kz The information can be extracted on annual (Form#1) and monthly basis (Form#3). The aggregated statistics is included in the Annual National Anticorruption Report published on the Agency of Civil Service and Anticorruption website <a href="http://kyzmet.gov.kz/sites/default/files/pages/nacdoklad_rus-compressed.pdf">http://kyzmet.gov.kz/sites/default/files/pages/nacdoklad_rus-compressed.pdf</a></p>				
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		<p>(d) Special measures are in place for the detection and prevention of corruption associated with procurement.</p> <p>(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</p>	<p>(d) No special measures directed at corruption in procurement. These cases are treated as part of general efforts.</p> <p>(e) There are no dedicated training programs on integrity in procurement. There are general integrity training programs offered at the university level and the Academy of Public Administration. There is also 2 hours session on integrity in public procurement and procurement in quasi-governmental sector offered as part of a larger course on integrity for the Corp A officials entering the service for the first time. The first training specifically dedicated to the integrity in procurement is planned for July 2018.</p>				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-</p>	<p>Based on results of survey, <i>it can be concluded that percentage of</i></p>	<p><u>EBRD Life in Transition Report 2016</u>: 41 per cent of interviewed Kazakhs think that there was less corruption in 2016 than four years before the survey.</p>			

		<p>indicator 14(d) Assessment criterion (a):</p> <ul style="list-style-type: none"> <li>- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).</li> </ul> <p>Source: Survey.</p>	<p><i>favourable opinions by the public on the effectiveness of anticorruption measures is 62.5%</i></p> <p>Based on results of Survey to enhance effective anti-corruption measures, top three priorities by the respondents were as under:</p> <ul style="list-style-type: none"> <li>• First Priority: <ul style="list-style-type: none"> <li>- Price should not be the only criterion, rather competency, conformity to certain criteria, experience in similar services</li> <li>- Transparency</li> <li>- Raise the salaries of the government officials so that it would not be interesting to take bribes</li> <li>- Clearer division of powers between ministries and departments</li> <li>- Declarations for suppliers to confirm their compliance with</li> </ul> </li> </ul>	<p><u>National Anticorruption Report 2018</u>: Public trust towards state anticorruption policy increased from 52% in 2013 to 57.9% in 2015 and 73.4% in 2017.</p>			
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			<p>anti-corruption rules</p> <ul style="list-style-type: none"><li>- Rule of law and responsibility at all levels</li><li>- One web-portal, one rule</li><li>- Provide information and regular trainings on public procurement and issues related to corruption and how to reduce corruption to private sector</li><li>• Second Priority:<ul style="list-style-type: none"><li>- Conduct training in public procurement for government officials and private sector participants</li><li>- More flexible procurement mechanisms, depends on the type of procurement and amount of contract</li><li>- Eradication of paper workflow</li><li>- Increase quality of tender documentation</li><li>- Wise and responsible attitude of all parties involved in the process</li></ul></li></ul>				
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			<ul style="list-style-type: none"><li>• Third Priority:<ul style="list-style-type: none"><li>- Increase effectiveness of communication with interested organizations about changes in procurement legislation</li><li>- Strong public procurement monitoring</li><li>- Strong enforcement system</li><li>- Increase citizens' awareness</li></ul></li></ul>				
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Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
	14(e) Stakeholder support to strengthen integrity in procurement	(a) There are strong and credible civil society organisations that exercise social audit and control.	(a) There is no civil society organisation with the specific focus on public procurement. Some NGOs to different extent monitor public procurement as part of budget execution processes either in specific sectors or on a subnational basis. Government of Kazakhstan is increasingly creating opportunities for the public to participate in decision-making and monitoring of budget execution, including public procurement. Public Councils are seen as the main instrument for civil society organizations to influence governmental agencies' operations, including development of ministerial and municipal budget		<p>Criteria a) to d) partially met.</p> <p>There are no CSOs specialised in exercising social audit and control. This can be in part due to lack of financing for such activities, in part due to the lack of enabling environment.</p> <p>The Law on Public Councils do not include provisions on the Council's role in procurement</p>		<p>consider social orders and special capacity building activities for CSOs and NGOs for exercising social audit and control.</p> <p>Consider extending the functions of Public Councils to procurement monitoring</p> <p>Encourage suppliers and business association to sign the Anticorruption Charter and in cooperation with Atameken consider increasing the Charter's status</p> <p>Explore opportunities of including anticorruption provisions into the Law on Self-Regulated Organizations</p>

			<p>programs and their implementation. Annual reporting meetings of ministers and heads of subnational/municipal governments, or akims, with the public is another opportunity for the civil society to inquire about the agencies’/akimat’s spending of public resources. National Action Plan on Promoting Interaction between Non-Governmental Organizations and the State for 2016-2020 includes several activities that promote civil society’s active role in anticorruption policy, public monitoring of social projects’ implementation, evaluation of social orders. Civil society can also participate in the legislative drafting process using the “Open Legal Acts”, whereby they can comment on proposed changes to legislative drafts, including those</p>				
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		<p>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>related to the public procurement system. However, these measures have not yet resulted in meaningful role of civil society organisations as third-party monitors. There are still no clear channels for engagement and feedback in procurement processes.</p> <p>(b) There are only fragmented evidences of civil society attempts to shape and improve integrity in public procurement. Although large volume of procurement information is made available to public, NGO representatives have reported to the Assessors that queries of any information beyond the published data are not satisfied in most instances. The results of monitoring are not taken into consideration or for action by state bodies.</p>				
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		<p>(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*</p>	<p>(c) Business associations support integrity and ethical behaviour in public procurement. Thus, NCE “Atameken” established an Anticorruption Council that cooperates with the Agency of Civil Service and Anticorruption and other governmental agencies and quasi-governmental organizations in promoting ethical behaviour and promoting public-private dialogue on anticorruption. On 16 June 2016, NCE Atamaken also adopted the Anticorruption Charter of Entrepreneurs of Kazakhstan which comprises fundamentals and postulates a concept of doing corruption-free business, as well as voluntary commitments aimed at introduction and implementation of additional mechanisms of</p>				
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			<p>prevention of corruption. The Charter is open for signing by all companies and business organizations, as well as profile associations.</p> <p>The Ministry of National Economy also adopted a Model Corporate Governance Code for joint-stock companies with state participation. According to Chapter 2 of the Model Code ("Principles of the Corporate Governance of the Company. Definition and Principles"), corporate governance should build upon fairness, integrity, responsibility, transparency, professionalism, and competency. Underlying the Code are the following fundamentals: division of powers, protection of shareholders' rights and interests, efficient governance of the Company on the part</p>				
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			<p>of its Board of Directors, sustained development, risk management, internal control and audit, corporate conflict and conflict of interest regulation policy, principles of transparency and objectivity in disclosing information about the Company's operation.</p> <p>The Code is non-binding and was sent to all the joint-stock companies with state participation, i.e. a total of some 757 companies and 600 daughter companies. The system of monitoring includes assessment of corporate governance in accordance with the Methodology of Introduction of Corporate Governance Best Principles and Standards and the Annual Report to the Government on the compliance results. In addition, the National Council on Corporate Governance has been</p>				
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		<p>(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</p>	<p>established with a view to formulate proposals for developing and implementing a unified policy in this area and further improving the system of corporate governance in the Republic of Kazakhstan.</p> <p>(d) The Ministry of National Economy has developed the Corporate Governance Code for joint-stock companies with state participation and about 757 companies and 600 daughter companies are join the document</p>				
		<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):</p> <ul style="list-style-type: none"> <li>- number of domestic civil service organisations (CSOs), including national offices of international CSOs) actively providing oversight</li> </ul>	<p>Based on results of Survey, <i>it can be concluded that about 85% of responses are not aware of any CSO actively providing oversight and social control in public procurement. Further, there is</i> negative reputation around public procurement created by Mass Media in public minds.</p>	<p>On 16 June 2016, NCE Atamaken adopted the Anticorruption Charter of Entrepreneurs of Kazakhstan which comprises fundamentals and postulates a concept of doing corruption-free business, as well as voluntary commitments aimed at introduction and implementation of additional mechanisms of prevention of corruption. The Charter is open for signing by all companies and business organizations, as well as profile associations.</p>			

		<p>and social control in public procurement. Source: Survey/interviews.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d):</p> <ul style="list-style-type: none"> <li>- number of suppliers that have internal compliance measures in place (in %).</li> </ul> <p>Source: Supplier database.</p>	<p>Real examples of corruption at a high governmental level, quality of GWS of public procurement.</p> <p>There is no vision how CSO can help to control/ improve public procurement system. The Results of Survey pointed out following obstacles for CSO participation:</p> <ul style="list-style-type: none"> <li>• Economic and legal literacy of population should be increased</li> <li>• Absence of civil society or Low social activity</li> <li>• There is no normative framework allowing civil society to be heard</li> <li>• No access to information</li> <li>• Complex bureaucratic system - it requires lawyers' participation; such costs are probably beyond the power of civil</li> </ul>	<p>It is envisaged that the Charter should form a basis for the development and adoption of three model Codes (Business Ethics Code; Procurement Good Practice Code; and Corporate Governance Code<sup>123</sup>), 22 policies and templates (concerning insider information, evaluation of corporate governance, risk management, etc.), and two ratings (the shadow turnover and perception of corruption ones)</p>			
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			<p>non-profit organizations</p> <ul style="list-style-type: none"> <li>• Corruption and impunity for wrong decisions</li> <li>• No interest of all parties in public procurement development</li> <li>• Mistrust</li> </ul> <p>No data available on suppliers with internal compliance measures (total number of suppliers in 2017-198,509)</p>				
	14(f) Secure mechanism for reporting prohibited practices or unethical behaviour	(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.	<p>(a) There are several channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour with varied levels of security, accessibility and confidentiality. They include:</p> <ul style="list-style-type: none"> <li>- by writing to the Anticorruption Bureau (the address is provided on the website of the Anticorruption Bureau)- secure, accessible, but not confidential</li> </ul>		<p>Criteria a) to d) partially met.</p> <p>Protection of whistle-blowers is not very effective</p>		<p>Legal provisions for the protection of whistle-blowers should be strengthened</p> <p>The types of cases, where anonymous reports are accepted, could be extended.</p>

		<p>(b) There are legal provisions to protect whistle-blowers, and these are considered effective.</p>	<p>- using E-gov Portal. Electronic signature is required – secure, not accessible to those with no internet access</p> <p>Call-center 1424, which provides free consultations to citizens on anticorruption issues, as well as receives reports on potential corruption cases. The Call-center operates from 9.00 to 18.30 during the working week, from 9.00 to 13.00 on Saturdays. All other calls are recorded. – accessible, confidential, secure</p> <p>(b) Anonymous reports are not accepted, except in cases when such a report contains information about crimes being prepared or committed, or about a threat to state or public security and which is subject to immediate redirection to state bodies in accordance with their competence.</p>				
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		<p>(c) There is a functioning system that serves to follow up on disclosures.</p>	<p>The information on this channels is given on the Anticorruption Bureau’s website, as well as at the signboards at the entrance to every governmental office.</p> <p>Information on whistle-blowers is protected by the Law on state secrets. However, according to the reports by civil society organizations, citizens do not fully believe in the protection of their confidentiality and are afraid of informal punishments. There is a system of monetary encouragements of whistle-blowers.</p> <p>(c) Every report received by the Anticorruption Bureau by any information channel is registered in the Bureau’s informational system. The reports are then filtered based on its criminal/non criminal nature. Criminal cases are registered in the Book of Information</p>				
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			<p>Records, directed to the respective territorial unit, registered in the Single Register of Pre-trial Investigation, after pre-trial investigation directed to respective bodies or written-off. Non-criminal cases of civil law nature are sent back to the reporter with a respective explanation. Complaints regarding pre-trial investigations are directed to the prosecution. In all cases the reporter/complainant is informed of the decision in written.</p>				
	14(g) Codes of conduct /codes of ethics and financial disclosure rules	(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*	(a) There is a Code of Ethics for civil servants approved by the Presidential Decree on December 29, 2015. There are no particular provisions for those involved in PFM or procurement. However, the Code sets out general behaviour standards that include inter alia opposing		<p>Criteria a) to e) partially met.</p> <p>There are no particular provisions in the Code of Ethics for those involved in PFM or procurement.</p> <p>Conflict of interest statements, financial disclosure forms and information on</p>		<p>Code of Ethics needs to be revised to include specific provisions on those involved in PFM</p> <p>Conflict of interest statements, financial disclosure forms and information on beneficial ownership need to be systematically filed and made</p>

		<p>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</p>	<p>actions that are detrimental to the interests of the state, impeding or decreasing the effectiveness of the functioning of state bodies; abstaining from the use of official position to influence the activities of state bodies, organizations, civil servants and other persons when solving personal issues, and prevent misdemeanours and other offenses for which disciplinary, administrative or criminal liability is provided by law.</p> <p>(b) The Code does not specify accountability for the decision making. This, as well as specific financial disclosure requirements, are specified in the Law on Civil Service.</p>		<p>beneficial ownership are not accessible.</p>		<p>available to the public.</p>
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		<p>(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>	<p>(c)The code of Ethics is of mandatory nature, but the consequences of any failure to comply are of disciplinary nature, not administrative or criminal. Ethics Councils replaced Disciplinary Councils in 2016 with the refocusing of its activity from hearing of disciplinary cases to prevention of corrupt behaviour. Ethics Councils are tasked with developing recommendations based on corruption risks assessments and anticorruption monitoring. In 2017, the Ethics Councils held 176 hearings, where 1130 questions were discussed. Of 1130 cases, 253 questions related to the breach of civil service and anticorruption legislation, 94 questions related to the findings of corruption risks assessments, 545 disciplinary cases.</p>				
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		<p>(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.</p> <p>(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.</p>	<p>(d) According to the Code of Ethics, every civil servant has to study the Code of Ethics before commencing its service. All civil servants at least once every three years have to go through a training program at the Academy of Public Administration, which includes a session on ethics. 11172 (or 12%) civil servants went through professional development training in 2017. The annual target is 10%.</p> <p>(e) Civil servants should inform their management in written of a potential or actual conflict of interest situation as per Article 51 of the Law on Civil Service. ACSAC launched a project on Prevention and Resolution of Conflict of Interest Situation, whereby 7 cases of Col situation were detected. However, the team</p>				
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			could not locate evidence that this information is systematically filed, moreover it is not accessible by the public. Financial disclosure forms are filed by every civil servant, but they are not accessible. Civil servants are encouraged to publish their declarations, but the mandatory disclosure will be effective starting 2020 only. Beneficial ownership information is submitted to HR units, and is not accessible by the public. These are general requirements, not specific to procurement cycle.				
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a): - share of procurement entities that have a mandatory code of conduct or	Ethical code of civil servants of the Republic of Kazakhstan was approved by the Decree of the President as amended on 1.06.2017 applies to employees in the field of procurement (Total number of	14(g) (a) 0%. All procurement entities have a mandatory code of ethics, but with no particular provisions for those involved in PFM, including procurement  14 (g) (b) – 100% of civil servants (including public procurement officials) have filed financial disclosure forms			

		<p>ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.</p> <p>* 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). Source: Normative/regulatory function.</p>	<p>procuring entities 23,194)</p> <p>Civil servants are encouraged to publish their declarations, but the mandatory disclosure will be effective starting 2020 only.</p>				
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# **Methodology for Assessing Procurement Systems (MAPS)**

**Samruk Kazyna**

**Indicator Matrix**

(a) Pillar I. Legal, Regulatory, and Policy Framework

(b) 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  
The legal and regulatory body of norms complies with the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Poten tial red-flag?	Initial input for recommendations
(a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	Art. 1 (6) of the Procurement Rules <sup>1</sup> lays down the institutions responsible for the adoption of different norms regulating public procurement of SK. It specifically states, "List of unreliable vendors and List of reliable vendors of the Holding shall be approved by Executive Authority for procurement in the manner determined by the Management Board of the Fund. Registers of goods producers, organizations of persons with disabilities (individuals - persons with disabilities engaged in entrepreneurial activity) of the Holding shall be approved by Executive Authority for procurement in accordance with procedures specified by the Management Board of the Fund. Procedure and forms of reporting provided by the Contracting Authority on procurement, rules for determining the market prices of goods, rules of posting information on the procurement on the website of the Contracting Authority and the website, determined by the Fund, the procedure for processing applications for potential suppliers (vendors), Instruction on implementation of e-procurement and the Regulations on the Fund's Committee for consideration of complaints on procurement shall be approved by the Management Board of the Fund". The fundamental law is the law No. 550-IV of February 2012 ("On the Sovereign Wealth Fund"), article 19 of which provides the basis for the fund to develop its own public procurement rules.		Criterion partially met  The hierarchy of norms is not explicitly specified in the legal and regulatory framework as such. Some conclusions can be made on the hierarchy of norms depending on the status and role of the institution adopting the norms.		Clarify the hierarchy of the legal and regulatory framework within the different legal instruments.

<sup>1</sup> Full title: *Rules on Procurement of Goods, Works and Services of the Joint Stock Company “National Wealth Fund Samruk Kazyna” and Organisations 50% and more Voting Shares of which Directly or Indirectly Belong to Samruk Kazyna with the Right of Ownership or Trust Management*



(b) It covers goods, works and services, including consulting services for all procurement using public funds.	<p>Yes. Art. 1 of the Procurement Rules (in the definitions we can find works, services and goods) and Annex 1 relates to the procurement of consulting services. The Procurement Rules (regulating the purchase of goods, services, works) states that it covers procurement at the expense of the resources of the SK and its subsidiaries.</p> <p>In accordance to Art. 41 of the Budgetary Code of Kazakhstan, the state budget means can be directed to SK for the realisation of socio-economic programs in the scope of the state order. These funds are not spent in accordance to the Public Procurement legislation. In accordance with point 138 (5) in case of state order, single sourcing can be organised based on the collegial executive body/supervision council of the contacting authorities.</p>		Criterion met		
(c) PPPs, including concessions, are regulated.	PPPs are not covered.		<p>Criterion partially met</p> <p>PPPs are not covered.</p>	X	PPPs should be covered by the Procurement Rules or by a separate dedicated piece of legislation
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	Yes, the regulations and policies are published in the official website of the SK and are accessible free of charge.		Criterion met		

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	<p>The procurement methods are listed under Art. 15 (1-5) of the Procurement Rules and are the following: 1. tender (open, closed, two stage (open and closed two stage); 2. price quotation; 3. commodity markets; 4. single sourcing; 5. centralized trading of electric energy. There is no specific hierarchical structure (i.e. open procedure is not acknowledged as the preferred option) and the Contracting Authority chooses the method itself (Art. 17) but there are conditions for the usage of the methods.</p> <p>There is a threshold cap for the usage of the price quotation and the cases of the single source procurement are laid down in Art. 136-140. Also, specific types of procurement are regulated in the Annexes to the Procurement Rules (consultation services, procurement by the Subsoil Users of the Holding, procurement from the qualified suppliers and procurement for the realization of the category strategies).</p>		Criterion met		

	<p>Closed procurement is used in case the procurement subject contains state secrecy (Art. 92). Two-stage tendering is organized in case: 1. It is difficult to formulate the technical characteristics and specifications for the procurement of goods, services and works, and 2. there is a need to get acquainted with the different means of satisfying the need and choosing the best of them. (Art. 95)</p>				
<p>(b) 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.</p>	<p>Art. 15 (1-5) of the Procurement Rules provides a good mix of competitive and non-competitive methods. In addition, there is a special procedure named "attestation", which is essentially a pre-qualification for the purchase of consultancy services. It should be mentioned though that there is a very long list of grounds for single sourcing described in points 136-140 of procurement policies. Single sourcing can be used:</p> <ul style="list-style-type: none"> <li>• following a decision by the management of the contracting authority (e.g. in case the procurement was cancelled),</li> <li>• in case of the decision of the collegial executive body of the contracting authority (e.g. in case of procuring new technologies from the owner of such technologies)</li> <li>• through direct contracting (e.g. in case of procurement of pharmaceutical products when the life of the patient is under the threat).</li> </ul> <p>(b)</p> <p>Interviews with Samruk-Kazyna representatives revealed that only 20% of all the single sourcing is done due to cancellations, the rest of 80% is based on one of the grounds mentioned in points 136-140.</p>		<p>Criterion partially met</p> <p>The list of the grounds for the usage of single sourcing is too large, which artificially limits the competition in many markets. As has been submitted in 2016 about 87% of the procurement of SK has been single sourcing. This is a concerning number taking into account the volume and the available procurement budget of SK.</p>		<p>Reduce the number of cases where single sourcing is permitted.</p>
<p>(c) Fractioning of contracts to limit competition is prohibited.</p>	<p>Art. 99: "To apply methods of request for price quotations, annual volumes of procurement of homogeneous types of goods, works and services, planned for the relevant calendar year, may not be split into parts, those not exceeding four thousand-fold monthly calculating indicator, established by the law on the republican budget for the relevant fiscal year. This requirement shall not be applied when Contracting Authority purchases goods, works and services necessary for functioning of his branch (representative office) thereof, subject to procurement on behalf of the Contracting Authority directly by this branch (representative office) hereof".</p>		<p>Criterion partially met</p> <p>There is no general prohibition on the splitting of the contracts in order to avoid competition. The only such norm refers to the cases of the request for</p>		<p>Include a general rule on the prohibition of splitting the contract in order to avoid the application of a more competitive procurement method.</p>

			<p>quotation. In addition, there is a waiver from this rule in case the procurement is carried out for the branch by the branch acting on behalf of the contracting authority. Usually there is a general prohibition on the splitting of the contract in order to avoid the application of more competitive methods. International tools/treaties also contain such norms. For example, Art. 12 of the UNCITRAL Model Law from 2011, Art. II:6 of the WTO GPA and Art. 5 of the EU Directive 24/2014/EU.</p>		
(d) Appropriate standards for competitive procedures are specified.	Even though the contracting authorities are given discretion to choose the procurement procedure (Art. 17 of the Procurement Rules), they have to obey to the requirements of the legislation setting conditions for the usage of the procurement procedures.		No gaps are identified.		

1(c) Advertising rules and time limits  
The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?
(a) The legal framework requires that procurement opportunities are publicly	Yes. For open tenders, the contracting authority after the approval of tender documentation and at least 15 calendar days in advance to the bid submission deadline, shall publish a notice on periodic		Criterion met	

<p>advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).</p>	<p>media with the frequency of publication not less than three times a week and also publish the notice and the tender documents on the web-site of the Contracting Authority and procurement organizer as well as web-site determined by the Fund. For closed tenders, no information is published and potential suppliers are informed by invitations (Art. 93-94). For price quotations, the Contracting Authority/ procurement manager no later than within 5 working days prior to the deadline for submission of price quotations shall be obliged to post on the website of the Contracting Authority and on a website determined by the Fund, a notice containing information on:</p> <ol style="list-style-type: none"> <li>1) planned procurement through request for price quotations - name, brief characteristics, as well as required volume, terms of payment, terms, place and conditions of delivery of goods, execution of works and rendering of services (technical specifications that shall comply with requirements of sub-item 2) of item 37 of the Rules to be attached, if necessary), term of a procurement contract conclusion with a potential vendor, recognized as the winner;</li> <li>2) requirements for the form and content of the information about conflict of interest (in implementing procurement of consulting services);</li> <li>3) first day for submission of price quotations by potential vendors;</li> <li>4) venue, date and time of opening of envelopes with price quotations;</li> <li>5) draft procurement contract;</li> <li>6) information on sums allocated for procurement of goods, works or services without VAT, which are subject of the request for price quotations;</li> <li>7) requirements in terms of formalization of envelopes with price quotations". (Art. 101).</li> </ol> <p>For two-stage tendering rules applicable to open tendering (in case not stated otherwise) are applicable, meaning that the deadline for the submission for the first stage is at least 15 calendar days (Art.98). For the second stage the submission should be in no more than 60 calendar days since concluding the 1st stage". For closed two-stage tender no deadline is envisaged (the invitations are sent out to potential suppliers).</p>			
<p>(b) Publication of opportunities provides sufficient time, consistent</p>	<p>As is mentioned under point a) the Policy provides for the deadlines for each procurement method.</p>		<p>Criterion met</p>	

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.				
(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).	Yes, see point a). The website where the opportunities are publicised is the following: <a href="https://zakup.sk.kz/#/ext">https://zakup.sk.kz/#/ext</a> The general public can see the main elements of the tender, but in order to get the details the interested parties need to register using the e-signature, which implies costs. Complications related to this are analysed under other indicators.		Criterion met	
(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.	Yes. Art.37 of the Procurement Rules details the information that the tender documentation should contain and Art. 45 relates to the content of the announcement (for open tender). For two stage tendering, the rules as the open tendering apply and for price quotation, the information to be published is laid down in Art. 101. The amount of the information required to be published is enough to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.		Criterion met	

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	The legal framework does foresee participation based on qualification and provides rules on eligibility and exclusions. However, the delineation between eligibility criteria vs selection criteria and technical specifications is not clear.		Criterion not met  Eligibility and qualification criteria are not clearly delineated. For example, point 49 of the Procurement Rules require submitting documents related to the registration of the company. The same point also asks to submit technical specification, qualification criteria (in case required by the contracting authority for the procurement above KZT 75 mln), etc.		A clear distinction between the eligibility and qualification criteria should be given. Clearly define and delineate the eligibility and qualification criteria. The legal and regulatory framework could contain a clear definition of the different types of criteria and their use, and should be clearly delineated according to their use in the public procurement process. .
(b) It ensures that there are no barriers to participation in the public procurement market.	The legislation contains set-aside for “in-house” suppliers, as well as companies of disabled persons and the goods’ producers included in the list of Holding. In addition, each 1% of local content will provide provisional discount of 0,15%, local goods will have the discount of 5%, companies for disabled and the ones in the Holding are not providing bid security, advance payment security and contract performance security. The suppliers can be included in the lists of companies of disabled persons, of goods’ producers, of unreliable and reliable suppliers (blacklist and whitelist). In case the bidder is in white list, it receives provisional discount of 1%.		Criterion not met  The assessment team acknowledges all the progress made in relation to elimination of the preferential treatment of local suppliers and goods in line with the WTO requirements. This said, it should be noted that still all of the complex rules on participation, different lists, pre-qualification,	X	SK could aim at eliminating all the exclusionary practices such as set-asides and provisional discounts; this can be done gradually. Access to the procurement markets of different goods,

	<p>Pre-qualification process can also inhibit constraints on the access to the market especially for the standardised goods, services, works for which pre-qualification in accordance to international best practice is not required.</p> <p>Procurement rules applicable to the holding's subsoil users (i.e. the largest mining and oil and gas companies in Kazakhstan) favour domestic suppliers of goods, works and services with the highest local content (each 1% of local content will result in a provisional discount of 0.15% of the offer price).</p>		<p>provisional discounts, set-asides and preferences complicate the access of the suppliers into the market.</p> <p>The interviewed suppliers have mentioned that it is practically impossible for some of them to supply to SK. Market distortion as a result of such actions is obvious, especially taking into account the importance and size of the procurement of SK.</p>		<p>services and works should be streamlined both for the domestic and foreign suppliers..</p>
(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.	<p>No provision on exclusion for criminal or corrupt activities was found. The <i>Rules on Forming, Maintaining and Approving the List of Unreliable Potential Bidders of the Holding</i> states seven grounds for the inclusion of potential bidders in the list in which case they will not be able to participate to procurement procedures for 18 months. In case of repetition of the misconduct, for 3 years. The grounds include: provision of false information about the mandatory contract award criteria, avoidance of signing the contract in case of being awarded the contract, not provision of contract award and/or advance payment security, the court decision about non-performance or improper performance of the contract, etc. The decision on the inclusion in the list is taken by the SK Contract and can be appealed to the Fund.</p>		<p>Criterion not met</p> <p>Criminal and corrupt practices are not seen as a basis for the exclusion from participation.</p>		<p>Such activities as criminal and corrupt practices should be grounds for ad-hoc or temporary exclusion from participation to procurement procedures. It can be suggested to add this ground in the Rules on Forming, Maintaining and Approving the List of Unreliable Potential Bidders.</p>
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	<p>The state owned enterprises in the Holding receive special treatment as they are covered by the so-called 'in-house' procurement rules, i.e. there is no procedure organised for the procurement of goods, services, works that could be obtained from the subsidiary companies in the Holding (Point 137 (4) of the Procurement Rules). There are no specific rules related to the participation of other SOEs.</p>		<p>Criterion not met</p> <p>The "in-house" procurement closes specific markets for the suppliers.</p>	X	<p>In-house procurement distorts competition. This is also the case when taking into account the number and coverage of the areas by the subsidiary companies of the Holding. Even</p>

					though as mentioned during the interviews, since February 2018 there is a list of goods, services, works to be procured 'in-house' (about 409 categories), the list should be decreased as much as possible in order to open the market for competition.
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	Point 49 of the Procurement Policies lays down the information to be submitted by the suppliers. This includes all the necessary documents (or links to official sources) to prove that the bidder is a registered legal or natural person carrying out entrepreneurial activities, technical specifications, documents proving the right to claim provisional discounts, list of subcontractors, meeting the requirements of qualification criteria (in case claimed and the value is above KZT 75 mln), documents about the absence of conflict of interest, etc.		Criterion met		

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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.	Yes. Art. 37-40 regulate the content of tender documentation and Art. 45 sets up the mandatory information that needs to be included in the tender announcement. It can be stated that the information required to be publicised is relevant and sufficient for the suppliers to submit bids.		Criterion met		
(b) It requires the use of neutral specifications, citing international	Yes. Art.37 (2): "technical specification on the procured goods, works, services with the description and required functional, technical, qualitative and operational		Criterion partially met		It is advised to eliminate the exclusion from the



norms when possible, and provides for the use of functional specifications where appropriate.	<p>characteristics of the procured goods, works, services"; Art. 37 (29): "The Bidding documents are prohibited to indicate trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and name of the manufacturer, as well as other characteristics that determine the identity of purchased goods, works and services to the individual potential supplier or manufacturer, except when it is carried out procurement of:</p> <p>1) goods and services for addition, modernization, re-equipment, as well as for further technical support, maintenance and repair work, including routine repairs (if necessary) of the basic (fixed) equipment;</p> <p>2) goods in accordance with the project (project-estimate) documentation, which has the positive endorsement of the state expertise".</p>		<p>There are two exclusions from the prohibition to use specific trademarks one of which is logical as it refers to the cases where the already procured equipment needs repair, modernisation, etc. The second ground cannot be considered legitimate as it refers to the cases where the goods are procured in accordance to the estimates that received positive endorsement of the state expertise.</p>		<p>prohibition to use the trademarks, trade names, service names, patents, utility models, industrial designs, appellations of origin and name of the manufacturer in case the procured goods are in accordance with the project (project-estimate) documentation, which has the positive endorsement of the state expertise.</p>
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p>Yes. Art. 37 (2): "the technical specification has to contain (if any):</p> <ul style="list-style-type: none"> <li>- stating of technical standards, including national or non-governmental standards of the Republic of Kazakhstan approved by non-profit organizations of producers of the Republic of Kazakhstan;</li> <li>- stating of the specifications and technical documentation (if necessary);</li> <li>- the design and budget documentation approved in accordance with the established procedure or its necessary section in implementation of works procurement.</li> </ul> <p>If technical specifications indicate a reference to the technical conditions, standards and other normative-technical documents that are not registered on the territory of the Republic of Kazakhstan, Contracting Authority / Procurement Manager must include these documents in the tender documents or to provide them electronically or on paper within three (3) days at the request of potential suppliers".</p>		Criterion met		
(d) Potential bidders are allowed to request a clarification of the procurement	<p>The tender documentation is put for public discussion not later than 10 working days before the date of the tender documentation approval. Within 5 working days of publication of draft tender documentation, the suppliers</p>		Criterion met		

document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	can submit their comments as well as the requests for clarifications (Art. 44). Within 5 working days, the contracting authority has to give clarification and publish the received comments as well as decisions taken. Also, in accordance to Art. 37 (21), tender documentation should lay down the conditions for meeting with potential suppliers on the explanation of provisions of tender documents (if the tender documentation provides for meetings with potential suppliers), as well as the means by which potential providers may seek clarifications on the content of tender documentation.				
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1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) 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,	Point 37 (10) of Procurement Rules: “description of all mandatory criteria for evaluating and comparing the applications of potential vendors to participate in tendering, affecting conditional decrease of prices”. The bidders are asked to submit relevant documents confirming the applicability of criteria for the evaluation and comparison referred to in item 39 of the Rules to the application (if the potential supplier claims the application of the criteria that affect the provisional discount). Point 70 of Procurement Rules states that the winner of the open tender is the supplier who has submitted the lowest price taking into account all the criteria envisaged in the tender documentation.		Criterion met		While evaluation criteria and possible cases of provisional discounts are clearly described in the legislation, they should be also included in the tender documentation.
(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.	No. For open tender in accordance to Art.70 the winner of open tendering shall be selected on the basis of the lowest conditional price calculated with account of criteria usage set out in bidding documents. For the first stage of two stage tendering the selection of suppliers is based on the basis of submitted technical characteristics and specifications of purchased goods, works and ways of satisfying Contracting Authority’s needs. There is no provision on the award criteria. For the price quotation, the lowest submitted price is used as the award criteria (Art. 111).		Criterion not met  The non-price criteria are not used as contract award criteria. In future the LCC is going to be used for the procurement in accordance with category management (in case of implementation of an approved pilot category procurement strategy). Hence, the usage of LCC is pending. There is no other		The usage of the LCC in the future somehow predetermines also the usage of the non-price criteria in the evaluation of the bids but as far as LCC is not fully implemented, we cannot verify to what extent non-

			<p>indication of the future possible usage of criteria other than the price.</p>		<p>price criteria are taken into account. In any case and independent of the usage of the LCC in case of category management, it is recommended to lay down specifically that the price as well as non-price criteria can be used in all procurement procedures. In addition, it is advised to require from the contracting authorities to envisage the way the evaluation criteria are combined and their relative weight in the tender documentation.</p>
<p>(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.</p>	<p>For the procurement of consultancy services attestation (pre-qualification) is conducted to assess technical abilities of the suppliers (experience, suggested staff). The list of pre-qualified suppliers is published and the contracting authority is asked to procure from the suppliers included in the list. The contract is awarded to the supplier proposing the lowest price.</p>		<p>Criterion met</p>		
<p>(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the</p>	<p>No. The non-price/quality criteria are not used for evaluation.</p>		<p>Criterion not met</p> <p>The law does not foresee the use of any non-price or quality criteria for the evaluation of tenders. In</p>		<p>The usage of LCC in the future somehow predetermines also the usage of the non-price criteria in</p>

procurement documents.			the future, LCC is going to be used for the procurement in accordance with category management (in case of implementation of an approved pilot category procurement strategy). Hence, the usage of LCC is pending. There is no other indication of the future possible usage of criteria other than the price.		the evaluation of the bids but as far as LCC is not fully implemented, we cannot verify to what extent non-price criteria are taken into account. In any case and independent of the usage of the LCC in case of category management, it is recommended to lay down specifically that the price as well as non-price criteria can be used in all procurement procedures. In addition, it is advised to require from the contracting authorities to envisage the way the evaluation criteria are combined and their relative weight in the tender documentation.
(e) 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	There is no specific prohibition on the disclosure of the information on the examination, clarification and evaluation of bids. In case of e-procurement, there is such thing as "preliminary consideration of bids" in which case the bidders that have paid bid security (in case of such requirement) are allowed to bring their bids in conformity with the requirements of the Art. 49. As all the procedures are carried out electronically this rule effectively covers all transactions.		<p>Criterion not met</p> <p>The bidders that paid bid security (in case such requirement exists) in e-procurement procedures can bring their bids into conformity with the requirements. This</p>		The bidders should not be allowed to amend their bids after the bid submission deadline.

officially involved in the evaluation process.			means that the participant is well - informed about the non-compliance of its own bid and is given a chance to rectify the situation. On the one hand, this procedures helps the suppliers to qualify even if there are preliminary non-conformities in their documents. This ultimately enhances competition. On another hand, there is a large risk of corruption as the bidders are allowed to amend their documents even after the deadline for submission has passed.		
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1(g) Submission, receipt, and opening of tenders  
The legal framework provides for the following provisions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	The process of the bid opening is regulated in detail in Art. 54-62 but Art. 54 rules that the bids are opened in the day, time and venue mentioned in the tender documentation. Point 64 of the Instructions for e-procurement, reiterates the above mentioned Articles. There is no rule on the immediate opening after the deadline.		<p>Criterion partially met</p> <p>Bids are not required to be opened right after the opening deadline but rather on a date and time envisaged in the documents.</p>		Require the bids to be opened immediately after the deadline for submission. With the e-procurement, it will be much easier, as the software will open the bids automatically. The authorities just need to set the date, which should be the same as the one for the submission.
(b) Records of proceedings for bid	Art. 61: "Not later than 3 (three) working days following the day of the meeting of Tender commission, the Contracting		Criterion partially met		Have a clear retention policy for

openings are retained and available for review.	Authority and Procurement Manager shall post on their website and website determined by the Fund the text of signed minutes of opening of envelopes with applications for open tendering". No specificities on the retention policy. The Law "On National Archival Fund" refers to the archiving of documents that essentially have some value for the country. Procurement documentation is not covered as such.		There are no specific rules on the retention and future accessibility of the records of proceedings for bid opening.		not only the records of bids opening but also for all documents created during the procurement procedure.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	Yes. Art. 51 (para 2): "Secretary of the Tender Commission shall be responsible for storage of applications submitted by potential suppliers to tender for the period from the date of their adoption and prior to their transfer by the Contracting Authority / Procurement Manager in the established procedure to archive for safekeeping. The Contracting Authority / Procurement Manager in order to eliminate the possibility of access to the tender applications of persons who do not have these special powers must provide the Secretary with the necessary conditions for their storage (room, safe deposit box with the right and ability to access of the Secretary)". In case of e-procurement, the bids are opened automatically at the day and time envisaged in the documents.		Criterion met		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	The legislation contains provisions on the handling of information containing state secrets. In accordance to Art. 92 of the Procurement Rules, a closed tender is held in case of procurement of goods, works, services, related to state secrets. In addition, procurements related to state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) which contain proprietary information of limited distribution, as defined by the Government of the Republic of Kazakhstan, do not fall under the requirements of paragraph 44 of the Procurement Rules, which refers to the requirement of preliminary discussion. It is important to highlight that this indicator includes also the trade secrets and know-how and there is no specific prohibition of the non-announcement/protection of such sensitive information. Instead, in case of the implementation of the state assignment and procurement of services for the listing of shares, this information might not be reflected in the procurement plans and might not be publicised at all in case this will entail breach of commercial or state secrecy. Art. 58 (1) lays down the information to be		Criterion partially met  There is no specific prohibition of the non-announcement/protection of sensitive information from a business / trade perspective.		Prohibit the publication of sensitive information, which includes the state, commercial, bank, trade secrets as well as information related to know-how.

	announced by the Secretary and it is of a rather technical character (the submitted documents, prices, etc.).				
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	Yes. Art. 48-54 provides all the details of the submission and receipt of the tenders (documentation required, requirements for the envelope, obligations of the Secretary to register and maintain the security of the received bids, etc.).		Criterion met  No gaps are identified.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	Yes. Art. 146: "Potential vendors (suppliers) have the right to appeal the decisions and actions taken by the executive body of the Contracting Authority, as well as other persons, including members of the tender, the expert commissions, and an expert, in accordance with the laws of the Republic of Kazakhstan. Complaints may be also submitted for consideration to the Contracting Authority or the authorized body for procurement". Point 3 of the Regulation for the Examination of the Pleas from the Suppliers states that the suppliers have the right to complaint against the actions (inactions) of the contracting authorities, organisers of the procurement, operators of e-procurement, tender commissions.		Criterion met.		
(b) Provisions make it possible to respond to a challenge with administrative review by another body,	In the subsidiary companies of the Holding units, persons entrusted with the conduct of procurement, control and monitoring should also carry out the review. The suppliers can refer to the Authorised Body (Procurement		Criterion partially met  The control and review functions are mixed and entrusted to a single unit of the Fund. Point 144		Clearly differentiate the control and the review functions.

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.	<p>Methodology and Control Unit of the Fund) for the review as a second tier.</p> <p>In addition, a Commission is created to review the complaints against the decisions of the Authorised Body by the suppliers and the contracting authorities.</p> <p>A subsidiary company of the Holding, in case the reasoning of the supplier is considered legally correct, has the right to cancel the results of the procurement or make additions and /or amendments in the respective documents. The Fund, as a result of the review can submit to the management of the subsidiary company of Holding mandatory instructions on the planned and conducted procurement procedures as well as on the elimination of violations. The suppliers are also entitled to refer to the court in case they are not happy with the response from the Fund.</p>		<p>states that the unit in the Authorised Body (Procurement Control and Monitoring Department) is dealing with the procurement complaints as well as the monitoring and analysis of procurement.</p> <p>The procurement (controlling, monitoring) units in the subsidiary companies are not independent from the procuring entity but the Authorised Body (except for the procurement for its own needs) and the Commission could be considered to be independent</p>		Provide for an independent body created specifically to hear the complaints from aggrieved suppliers.
(c) Rules establish the matters that are subject to review.	Yes. In accordance to point 2 of the Regulation for the Examination of the Pleas from the Suppliers: “the complaint is a request from a person about the restoration of his violated rights or the protection of his/her rights, freedoms or interests; about the elimination of illegal actions or inactions of officials, tender commission members and other employees of the Fund or of the subsidiary companies”. The Commission can review the complaints against the decisions of the Authorised Body by the suppliers and the contracting authorities.		Criterion met		
(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.	<p>Point 12 of the Regulation for the Examination of the Pleas from the Suppliers states that complaints for the review of which there is no need for information from other bodies, subsidiary companies of the Holding, are reviewed in 15 calendar days since the day of submission. In case there is a need of additional information from other bodies, subsidiary companies of Holding, the decision should be taken within 30 calendar days since the submission. In case there is a need for additional examination or check, the deadline can be extended for up to 30 calendar days about which the complainant is informed. In case the questions raised in the complaint require longer period, the complainant is being informed about it.</p> <p>The decision is taken by the Commission within 5 working days after the receipt of the materials in the Fund.</p> <p>Related to the deadline for the submission of the complaint there is no specific standstill period requirement but point</p>		<p>Criterion not met</p> <p>There is no explicit provision on the deadline for the submission of challenge, even though point 125 requires the contract to be signed not earlier than 10 calendar days after the signature of the protocol on the results. The problem is that the protocol is published in 3 working days after the signatures, which means that the suppliers will learn the results three days later. There is only one provision in the Rules on Control (Art. 38 (4)) which states that the</p>	X	Regulate the deadlines for the submission of complaints for each institution (subsidiary company of the Holding, Fund and Commission). Regulate the suspension of the procurement procedure in case of complaints.



	125 of Procurement Policies state that the contract cannot be signed earlier than 10 calendar days and later than 25 calendar days since the signature of the protocol on the results.		controllers conducting unplanned checks <i>can</i> require to suspend the procurement process until the control activity is over. This provision does not relate to the review process and the suspension depends on the discretion of the controlling body. The suppliers need to know how many days they have for the submission of the complaint in each stage. In case there is no suspension of the procedure, the contract might be awarded and even implemented while the process of review is still going on.		
(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	The complainant is informed about the results of the final decision on the review. After the review of the Commission, the Authorised Body sends the appropriate letter to the subsidiary company of the Holding.		Criterion not met  No publication of the decision is envisaged.		Publish the decision the same day it is taken.
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	Yes. The suppliers are entitled to refer to the court in case they are not happy with the response from the Fund.		No gaps are identified. Criterion met		

1(i) Contract management

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	The Procurement Rules set out the process of signing the contract setting the deadline to this end for both the contracting authority and the supplier as well as the sequence of steps for the conclusion of the contract (point 125) but there is nothing on the contract management phase itself. The only provision dealing with the contract management stage is point 127 of the Procurement Rules		Criterion partially met  Currently, the procurement legislation contains no provision in that regard.		It will be necessary to see whether and how the new standard on Contract Management is implemented.

	obliging the Contracting Authorities to pay the Suppliers within 30 working days from the date of signature of the delivery-acceptance acts. The new standard on Contract Management that is approved but not implemented yet provides provisions on the acceptance of goods, services and works, payment to the supplier, monitoring of the contract implementation, etc.				
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	Yes. Art. 131-133 clearly define the exhaustive list of cases that can give rise to contract amendments. They can be said to provide economy (change of the price in case the prices went down) and not to limit the competition as in accordance to At. 135 it is forbidden to amend the draft or the concluded contract in a way that change the conditions of the procurement procedure except for the cases envisaged under Art. 131-133. In case the procurement is conducted in accordance with the Special Regulation (for the attestation of potential suppliers for the provision of services) <sup>2</sup> , other cases of contract amendments might be envisaged. In this regard it was submitted that the Fund's Commission agrees on amendments and additions made only to the procurement contracts on consulting services to support the implementation of the Transformation Program of the Fund, approved by the decision of the Board of Directors of the Fund dated September 17, 2014, which were concluded according to the Special Regulation.		Criterion partially met  The provision about contract amendments in case Special Regulation is used is too vague and it would be better to define clearly those cases. As is submitted, the amendments to the contracts signed in accordance to the Special Regulation supporting the implementation program are approved by the Fund's Commission. No further details of any other possible amendment were found.		Clearly define in the legislation the cases for the contract amendments when Special Regulation is used.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	No provision on the dispute settlement during the contract implementation phase. The future standard on Contract Management also does not contain such norms. The Commission for the review of the complaints is not entitled to review claims related to the already signed contract (point 9(1) of the Regulation on the Commission "SK" for the Review of the Complaints Related to Procurement). Point 3 of the Regulation for the Examination of the Pleas from the Suppliers states that the suppliers have the right to complaint against the actions (inactions) of the contracting authorities, organisers of the procurement, operators of e-procurement, tender commissions. There is no mentioning about the contract management disputes.		Criterion met  According to interviews, once the contract is signed, the parties to it can refer to court in case of disputes. Reserving the dispute resolution at the contract management stage to the court is not contradicting international best practice. However, no provision to this end was found in the legislation.		Provide a provision on the dispute settlement during the contract management stage, including the enforceability of the adopted decisions to this end. In case the resolution of such disputes is entrusted to the courts, this should

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<sup>2</sup> This special Regulation is an annex to the general policy for the conduct of procurement procedures. The attestation of consultants for the provision of services is essentially a pre-qualification procedure.

	It has been revealed during the interviews, that once the contract is signed, the parties to it can refer to court in case of disputes.				be clearly mentioned in the appropriate legislation.
(d) The final outcome of a dispute resolution process is enforceable.	No provision on the final outcome of the dispute settlement during the contract implementation phase. It can be assumed that as the contract management disputes are under court jurisdiction, they are properly enforced.		Criterion partially met  No provision on the final outcome of the dispute settlement during the contract implementation phase. It can be assumed that as the contract management disputes are under court jurisdiction, they are enforced.		

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	Paragraph two of clause 15 of the Rules of Procurement states that "procurement by means of a tender, request for quotations, and by a single source method is carried out by electronic procurement." In addition, point 3 of the Instructions on the Organisation of the E-Procurement mandates to carry out the open tendering (including two-stage tendering), request for price quotation and single sourcing by using electronic means. Moreover, the procurement via open tendering and request for price quotation can include also e-auction.		No gaps are identified. Criterion met		
(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.	Full access to the system is provided by: <ul style="list-style-type: none"> <li>• RP Clause 2. The system is the information system of the Fund, which ensures electronic procurement in accordance with the Procurement Rules and the Instruction for electronic procurement (IEP);</li> <li>• IEP Clause 5. The procedure for registration of Participants, as well as the powers of Users in Appendix 1 to the Instruction on electronic procurement. Regulations on the procedure</li> </ul>		Criterion partially met  While the Regulation of e-Procurement includes security protocols to protect records, there is no specific provision on the security of data when using the e-procurement system and no provisions on the interoperability of the used technologies. It has		Most probably there are standards for keeping the data secure but no such provision was found in either Procurement Rules or the Instructions for Electronic Procurement. It is

	for the operation of the System are set out in Annex 2 to the Instruction on electronic procurement. (c) How does the RP handle security of data? • not found in the rules		been submitted by the SK authorities during the interviews that the security is a major issue as there have been several attacks, during one of which the system has been down for 1.5h.		advised to include such in one of the above-mentioned documents.
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	Interested parties: Paragraph two of clause 15 of the Rules of Procurement states that "procurement by means of a tender, request for quotations, and by a single source method is carried out by electronic procurement." Thus, the legislation clearly defines the procurement procedures to be carried out electronically and the interested parties are aware of the procedures and processes. In addition, all the changes and amendments to the legislation is published online,		.		

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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.	In accordance to point 5 of the Procurement Rules the documents, relating to the ongoing/finished procurement procedures should be kept in the unit responsible for the organisation and implementation of the procurement procedures. The term for keeping the documents should be set in accordance to the norms related to the record-keeping and/or the file registration of the contracting authority.		Criterion partially met  There is no list of specific documents to be kept in the records. The policy for the access and public inspection are not described in the legislation.		Specify the list of documents to be kept in records. These documents should cover the whole procurement cycle and provide the assessors/controllers with meaningful information about each procurement transaction.
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating	No further information is available on the retention policy of the documents. As has been mentioned under point a) above, the policy is decided by each contracting authority. However, according to order 263 of September 29, 2017 "On approval of the List of standard documents formed in the activities of state and non-governmental organizations,		Criterion partially met  There is no specific document retention policy compatible with the statute of limitations in the		Adopt a unified data retention policy for the Fund and the subsidiary companies of the Holding, which will

and prosecuting cases of fraud and corruption and compatible with the audit cycles.	indicating the period of storage", issued by the Ministry of Culture and Sport, foresees unlimited retention of the documents related to the strategic development of national holdings and other organisations with a state participation (point 159). Section 10 refers to the retention of the documents related to procurement and contains an exhaustive list of documents created throughout the procurement cycle that need to be retained (from 3 years to an unlimited period).		country and prosecuting cases of fraud and corruption and compatible with the audit cycles.		contain norms on the policy for the access and public inspection.
(c) There are established security protocols to protect records (physical and/or electronic).	In accordance to point 51 of the Procurement Rules, the Secretary of the tender committee is responsible for the safekeeping of the tenders from the moment of their acceptance to the submission into the archive. The contracting authority in order to eliminate the possibility of access to the tender applications of persons who do not have these special powers must provide the Secretary with the necessary conditions for their storage (room, safe deposit box with the right and ability to access of the Secretary). For electronic procurement point 63 of the Regulation of e-Procurement states that the system places the received bids in an externally inaccessible repository until the deadline for the opening of bids. Point 64 envisages that the tenders are automatically opened after the deadline and access to the content is given to the members of the evaluation commission, to the Secretary, other bidders participated in the procurement procedure and the Authorised Body.		Criterion met.		

1(l) Public procurement principles in specialized legislation

The legal and regulatory body of norms complies with the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	Currently, the procurement legislation for all the entities within the Holding is the same. All the procurement policies and guidelines have equal effect for all subsidiary companies. The holding is planning to pass in the near future to the so-called category-management in which case the basic principles will be set in standards while the detailed procurement rules will be drafted by each subsidiary company in accordance to the area of activity. The category management is seen as a new tool for the transformation		Criterion met		

	team to improve the procurement system and to introduce advanced methods of procurement. It is envisaged to pass to this type of procurement in 2018-2019 as the project is still in piloting phase.				
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	PPPs and concessions are not covered by the procurement legislation.		Criterion partially met  PPPs and concessions are not covered by the procurement legislation.	X	Regulate PPPs and concessions.
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	PPPs and concessions are not covered by the procurement legislation.		Criterion partially met  PPPs and concessions are not covered by the procurement legislation.		

*(c) 2. Implementing regulations and tools support the legal framework.*

2(a) Implementing regulations to define processes and procedures

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	Yes. The main legislative act relating to the procurement process of the Fund and subsidiary companies of the Holding is the Procurement Rules, supplemented by different regulations related for example to the conduct of e-procurement, compilation of the black list, list of local producers, etc.		Criterion met  No gaps and contradictions are identified.	
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	Yes. The norms are grouped in regulations as per the area they are regulating. Can be accessible free of charge from the following web site: <a href="https://sk.kz/purchases/">https://sk.kz/purchases/</a> .		No gaps are identified.  Criterion met	
(c) Responsibility for maintenance of the regulations is clearly established, and the	Yes. The Authorised Body (Procurement Methodology Unit) is entrusted with the methodological management of the procurement process. The monitoring of the official web site shows		No gaps are identified. Criterion met	

regulations are updated regularly.	that the regulations are updated regularly and all the updates are published.			
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2(b) Model procurement documents for goods, works, and services

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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.	The tender documentation is formulated in the e-procurement system (point 53 of the Instructions of e-procurement). This means that there are model procurement documents even though there is no direct mentioning.		Criterion not met  There is no specific mentioning of model procurement documentation. It will be good if such are approved by the secondary/tertiary legislation. Access to the e-procurement system would help to assess the availability and quality of such documents. As of December 2018, the assessors were unable to verify the existence or quality of model procurement documents.	X	It is advised to approve model procurement documents as a secondary or tertiary legislation
(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.	Yes. Point 37 of the Procurement Rules envisages the mandatory set of information to be reflected in the tender documentation. Point 45 sets the information to be included in the contract notice.		No gaps are identified in the legislation. As no access to the e-procurement system was provided, the availability of the mandatory information in tender documentation. As of December 2018, the assessors were unable to verify the existence or quality of templates or standard clauses.		
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	Due to the lack of access to model procurement documents, this question cannot be answered.		Due to the lack of access to model procurement documents, this question cannot be answered.		

2 (c) Standard contract conditions

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
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(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	No such conditions are envisaged by the current legislation but the future standard on Contract Management states that the standard contracts should be developed taking into account the established business practices in the respective areas, as envisaged by the sectoral regulation of procurement. It should be noted that recently, the contract management standard has been approved which is a very good step forward. Due to the recent adoption, implementation cannot be assessed at this stage; the outcome of the implementation will be crucial to observe.		Criterion not met  It will need to be seen whether and how the standard on Contract Management is implemented in practice.	X	Provide at least the minimum information to be included in the standard contracts.
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	As part of the recently approved contract management standard, standard contracting conditions were introduced. However, the assessment team did not have access to the standard contracting conditions and were unable to assess their content.		The assessors did not have access to the standard contracting conditions to evaluate them.		
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	As mentioned in assessment criterion (a), the standard contracting conditions were recently introduced and according to the authorities, the procurement documents include the standard contract condition. However, the assessment team did not have access to procurement documents to assess them with regards to the inclusion of standard contract conditions.		No access to the procurement documents.		

2 (d) User's guide or manual for procuring entities

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	Yes. SK Contract has prepared guidelines for the users of the e-procurement system. In addition, there are video tutorials explaining how to register, how to submit a bid, etc.		No gaps are identified. Criterion met		
(b) Responsibility for maintenance of the manual is clearly	SK Contract is responsible for the development and installation of the e-procurement platform (point 145 of the		Criterion partially met		Clearly assign the task of



established, and the manual is updated regularly.	Procurement Rules) but there is no clear responsibility for it to maintain the manuals.		No clear responsibility for the maintenance of the manuals is established even though it can be assumed that the SK Contract is undertaking this task.		maintenance of the manuals.
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*(d) 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.*

3(a) Sustainable Public Procurement (SPP)

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	There is no policy/strategy to implement SPP in support of broader policy objectives for SK's contracting units. However, some criteria related to ecology, health, etc. are taken into account for the pre-qualification procedure.		<p>Criterion partially met</p> <p>This indicator requires an overarching strategy or a policy for the implementation of SPP within the broader national policy scope; such a strategy was not identified for SK. The limited use of some criteria, like ecology for the pre-qualification procedure, cannot satisfy the requirements of the current indicator.</p>	X	It can be stated that SPP is not considered a tool to obtain broader policy objectives for SK. Taking into account the portfolio companies and their areas of activities, it is advised as a first step to draft a general strategic document describing the importance and ways of implementation of the SPP, tools for the facilitation and monitoring of the implementation, ways of incorporation into the different stages of the procurement cycle, etc. Capacity building activities

					will also be necessary to familiarise the contracting authorities and the suppliers with the new policies on the SPP. At later stages, the incorporation of the SPP in technical specifications, contract award criteria and standard contract terms should be mandated coupled with the creation of specific tools for the monitoring/control over implementation.
(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.	There is no SPP implementation plan and no tools to operationalise, facilitate and monitor the application of SPP.		Criterion partially met  No SPP implementation plan and no tools to operationalise, facilitate and monitor the application of SPP		
(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.	While the procurement rules do not include a specific reference regarding the inclusion of sustainability considerations at all stages of the procurement cycle, the new standard for pre-qualification envisages a qualification criteria named “Ecology, Safety and Protection of Labour”. This new standard has yet to be approved. There are 6 levels of pre-qualification depending on the complexity of the procurement subject and the exact qualification requirement changes depending on the level. Thus, the ecology (protection of environment) is considered as a pre-qualification criterion, but is not taken into account in other stages of procurement (e.g. contract award).		Criterion not met  Qualification criteria related to the protection of the environment and labour standards are taken into account as a pre-qualification criterion in accordance to the new Standard. No other stage of procurement cycle includes norms on sustainable procurement, and no		Consider modifications to the procurement rules to allow for sustainability criteria to be incorporated at all stages of the procurement cycle.

			other aspects of sustainability are taken into consideration.		
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	There is no general requirement to have a well-balanced approach to the usage of sustainability criteria. Only the standard for pre-qualification differentiates among the levels of pre-qualification requirements depending on the complexity of the procurement subject.		Criterion partially met  There is no general requirement to have a well-balanced approach to the usage of sustainability criteria.		Consider including a general requirement to have a well-balanced approach to the use of sustainability criteria.

3(b) Obligations deriving from international agreements

Public procurement-related obligations deriving from binding international agreements are:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) clearly established	<p>The international obligations of Kazakhstan related to public procurement such as the Treaty on the Eurasian Economic Union, the Enhanced Partnership and Cooperation Agreement with the EU do not apply to Samruk Kazyna. In case of the EAEU, it covers the procurement activities from the state budget and other means in case so envisaged by the national legislation of the Member States. In PPL of Kazakhstan, the procurement of SK is explicitly excluded.</p> <p>For the EPCA, the SK is not listed as a covered entity, which effectively excludes it from the coverage of the agreement. This has been decided through negotiations.</p> <p>As mentioned during the interviews, the Fund has been involved in the negotiations of both the Treaty on the EAEU and the WTO (when KZ was acceding to it) to present the interests of the Fund. Currently, Kazakhstan has an obligation to start negotiations with the WTO GPA Parties with the aim to join it. It is yet to be seen whether SK will be covered as Annex 3 entity or will be excluded, as was the case with the EPCA.</p>		Criterion met		
(b) consistently adopted in laws and regulations and reflected in procurement policies.	N/A. See answer to point a) above.		N/A		

## (e) Pillar II. Institutional Framework and Management Capacity

(f) 4. The public procurement system is mainstreamed and well integrated into the public financial management system

4(a) Procurement planning and the budget cycle

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	Yes. Art. 2 (7) of the Procurement Rules: "The decision on procurement shall be made by the Contracting Authority on the basis of approved procurement plan(s)"; Art. 2 (9): "Procurement Plan shall be approved by the first head of the Contracting Authority or other person authorized by him within 20 (twenty) working days from the date of approval of production program and (or) investment program, and (or) budget and (or) development plan, and (or) a business plan and should correspond to the form specified by the Management Board of the Fund"; Art. 2(10): "Long-term procurement plan shall be approved by the decision of the first head of the Contracting Authority or other person authorized by him within 20 (twenty) working days from the date of approval of production program and (or) investment program, and (or) budget and (or) development plan, and (or) a business plan and should correspond to the form specified by the Management Board of the Fund. The Contracting Authority shall have the right to make changes and amendments to the approved plan of long-term procurement within the production program and (or) investment program and (or) budget and (or) development plan and (or) a business plan as needed".		No gaps are identified. Criterion met		
(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).	Yes. In some cases, the authorities can start procurement process before the budget is officially allocated but the contract is not signed until the official approval of the budget. In the eyes of policy makers, this approach is intended to save time to ensure that the necessary goods/services/works are supplied without delays. According to stakeholders, it is very rare that the appropriate means are not allocated, and the contract is not signed. However, this approach is not in line with international good practice.		No gaps are identified. Criterion met		While no gap is identified, consider ensuring that funds are committed or appropriated to cover the contract before starting the procurement process, in line with international good practice.

(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	The contracting authorities shall provide monthly reports about the contracts for the procurement of goods, services, works to the Authorised Body until the 10 <sup>th</sup> of the month following the month for which the report is submitted (Point 6 of the Instructions on the Composition and Provision of Reports about Procurement). No specific feedback mechanism reporting on budget execution as a whole is envisaged. The specific feedback mechanism on budget execution usually takes the form of an (annual) report; this report allows to detect and remedy the mismatch between the planned and actual expenditure.		Criterion partially met  Only reporting on individual procurement plans and contracts is regulated while there is no specific mechanism for reporting on the budget execution as a whole.		It is advised to require contracting authorities to submit a report on budget execution for a specific period (trimester, year, etc.), aggregating information from the reporting for individual reporting. As monthly reports are already conducted, requiring this aggregated approach will not be time consuming or onerous. The aggregated reports will clearly show how the funds were allocated and spent within a specific period of time.
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4(b) Financial procedures and the procurement cycle

The legal and regulatory framework, financial procedures and systems should ensure that:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	While the law foresees a procedure in which tenders are only launched once funds have been certified, some tenders are solicited based on a preliminary budget when the approximate allocation is known. The contracts are signed once the budget is approved. This procedure is called "preliminary procurement" and is conducted in exceptional circumstances.		Criterion partially met Samruk-Kazyna considers the procedure of preliminary procurement as a potential opportunity to save time and resources in exceptional circumstances. As reported, usually, the budget is allocated as envisaged.		Consider revising procedures to ensure that the certification of the availability of funds takes place before the solicitation of tenders/proposals

			<p>However, in case the funds are not allocated as envisioned, the resources for the organisation of procedure are wasted. In addition, the potential supplier with whom the contract should have been signed is also carrying a risk, associated with the costs of preparing the tender and the availability to deliver within short notice. As a result, suppliers will lose trust in the procurement system of SK and will no longer participate in procurement procedures. This, in turn, affects competition and ultimately the value for money that SK is able to realise through its procurements. Bidders might be incentivised to increase their asking price in order to account for losses incurred to projects that do not actually materialise.</p>		<p>while ensuring that procurements can occur in a timely manner.</p>
<p>(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*</p>	<p>The current procurement legislation does not contain any information about invoicing but point 127 of the Procurement Rules is indicating that the payment should be made within 30 working days after the signing of the act of delivery. In practice, the interviews revealed that the suppliers are usually paid late and after passing through a heavy bureaucratic process. Sometimes, because of late payments, they cannot pay their own subcontractors or suppliers and have to pay fines. The future standard for Contract Management in its Article 10 also states that the payment should be made not later than 30 working days after signing the delivery act.</p>		<p>Criterion not met</p> <p>Currently, there are cases where invoices are not paid in time, which is harming the financial standing of the suppliers.</p>		<p>Introduce the e-invoicing module, which will automatically disburse the money once the delivery act is signed in the system or uploaded. Reduce the bureaucracy of the whole process of payment.</p>
<p><b>// Minimum indicator</b>  <b>// * Quantitative indicator to substantiate assessment of sub-indicator 4(b)</b>  <b>Assessment criterion (b):</b>  - invoices for procurement of goods, works and services paid on time (in % of total number of invoices).  <b>Source: PFM systems.</b></p>		<p>No access to data granted.</p>	<p>The assessment team did not have access to data to substantiate the assessment using the quantitative assessment criterion.</p>		<p>Recommendation as above.</p>

(g) 5. The country has an institution in charge of the normative/regulatory function

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 criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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.	Yes. Points 144 and 145 of Procurement Rules lay down the powers of the unit in the structure of the Authorised Body (Procurement Methodology and Control Department) and of the daughter company (SK Contract) dealing with procurement.		Criterion met  No gaps are identified.		

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 criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) providing advice to procuring entities	Art. 144 (1) of Procurement Policies refers to methodological management but does not specifically state the advising to the procuring entities. Also in accordance to 145 (1) the daughter company is “coordinating the procurement process in the subsidiary companies of the Holding”.		Criterion partially met  In practice, the Procurement Methodology Service provides advice to procuring entities. However, there is no legal basis for this activity, leaving uncertainty about what kind of services can be expected and demanded by contracting authorities.		Clearly define the powers to advise authorities and to amend and draft new legislation.
(b) drafting procurement policies	Yes. Art. 144 (1).		No gaps are identified. Criterion met		

(c) proposing changes/drafting amendments to the legal and regulatory framework	Art. 144 (1) of Procurement Policies refers to methodological management which most probably involves also the amendments and drafting of the legislation. In practice, this responsibility is indeed exercised by the Procurement Methodology Service.		Criterion partially met.  The responsibility to propose changes and draft amendments to the legal and regulatory framework is not explicitly mentioned in the legal and regulatory framework, even though the Procurement Methodology Service is exercising it in practice.		It can be advised to specifically mention the power to amend and draft new legislation to bring the legal and regulatory framework in line with practices.
(d) monitoring public procurement	Yes. Art.144 (3).		Criterion met.  No gaps are identified.		
(e) providing procurement information	Art. 145 (5) refers to the collection, aggregation and analysis of the reports in the area of public procurement submitted by the subsidiary companies in the Holding to the Authorised Body. In case of need, it can also check the validity of the data, materials and information on procurement submitted.		Criterion partially met  There is no specific power to provide procurement information.		Prescribe the following powers: provision of procurement information, preparation of reports for other parts of the government (SK), support of professionalization .
(f) managing statistical databases	Yes. Art. 145 (5).		No gaps are identified. Criterion met.		
(g) preparing reports on procurement to other parts of government	Art. 145 (5) refers to the collection, aggregation and analysis of the reports in the area of public procurement submitted by the subsidiary companies in the Holding to the Authorised Body. In case of need, it can also check the validity of the data, materials and information on procurement submitted.		Criterion partially met. There is no specific power to prepare the reports to other parts]of government.		
(h) developing and supporting implementation of initiatives for improvements of the	As has been mentioned, the methodological management is one of the powers of the structural unit of the Authorised Body. In addition, it also agrees on the goods/services/works to be included in future category management. The daughter company is responsible of the e-procurement,		No gaps are identified. Criterion met.		



public procurement system	comprises and manages the lists and registers envisaged by the Procurement Rules.				
(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement	Art. 145 (2): The daughter company organises seminars and trains the employees of the subsidiary companies in the Holding.		Criterion partially met.  No specific <i>integrity</i> program is envisaged, according to interviews.		Introduce specific <i>integrity</i> program in the training sessions prepared for the staff dealing with procurement.
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	Certification rules for procurement specialists in SK have been approved by the decision of the Fund's Board dated August 14, 2018 protocol 24/18. This decision is currently being implemented. Overall, there is an increasing emphasis on professionalising the procurement workforce in SK.		No gaps are identified. Criterion met.		
(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate	Yes. Art. 145 (6)		No gaps are identified. Criterion met.		

5(c) Organisation, funding, staffing, and level of independence and authority

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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	The normative/regulatory function is entrusted to the Procurement Methodology and Control Department of the Fund. The head of the Board of Directors of SK is the Prime Minister of Kazakhstan ex officio. The current head of the management was deputy Prime Minister twice during his career. It can be safely concluded that the Fund and its management have high-level standing in the government.		No gaps are identified. Criterion met.		

authoritative standing in government.					
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.	The financing of the SK comes from its own means increasing its independence. The government can direct funds to SK for the realisation of socio-economic programs in the scope of the state order only.		No gaps are identified. Criterion met.		
(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.	The two units of the SK (Procurement Methodology and Control) were merged in the beginning of the 2018. Thus, the newly created department is entrusted with regulatory, review and control functions which enhance its authority vis a vis the subsidiary companies. As has been reported during the interviews, there is a shortage of staffing within the Department.		Criterion partially met.  According to stakeholders, staffing of the Procurement Methodology and Control Department is not adequate to the functions entrusted to it. This might affect the quality of delivering the assigned tasks.	X	Ensure adequate staffing of the Procurement Methodology and Control Department.

5(d) Avoiding conflict of interest

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p>There is a code of corporate conduct, which is the same for all the functions across the Fund.</p> <p>In addition, the Board of Directors of Samruk Kazyna has approved the "Policy for the Prevention of Conflict of Interests When Engaging Consulting Services" (October 2014), where it is envisaged that the employees of the contracting authorities need to report any case of conflict of interest.</p> <p>At an institutional level, the control and review functions are within the same unit (Procurement Methodology and Control Department) of the Fund. The powers among the regulatory authority and the contracting authority is separated (except for the cases of procurement for the own needs of the regulatory body). The Fund in this case can be considered the regulatory body while the subsidiaries are the contracting authorities. Government in case of the SK is the sole shareholder. There is an agreement between the SK and the Government on the cooperation first paragraph of which acknowledges the need of delineation of the powers</p>		<p>Criterion not met.</p> <p>This seems to refer only to cases where consultants are involved. It would be better if all the employees for all procurement procedures would be asked to report conflict of interests. On another hand, at an institutional level the review and control functions are carried out by the same department.</p>		<p>It would be better if all the employees for all procurement procedures would be asked to report conflict of interests. Delineation of the functions of review and control is advised.</p>

	of the Government as the sole shareholder and the powers related to state regulation. Interference of the Government, its employees and other officials of state bodies into the operational activities of the Fund can be allowed only if prescribed so by Law, acts and orders of the President of Kazakhstan.				
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*(h) 6. Procuring entities and their mandates are clearly defined*

6(a) Definition, responsibilities and formal powers of procuring entities  
The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procuring entities are clearly defined.	Yes. In accordance to Point 2 of the Procurement Rules, the contracting authorities are the Fund or subsidiary companies in the Holding.		No gaps are identified. Criterion met.		
(b) Responsibilities and competencies of procuring entities are clearly defined.	Yes. The Procurement Rules lay down in detail the rights and obligations of the contracting authorities.		No gaps are identified. Criterion met.		
(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*  // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities	Yes. The contracting authorities are required to have a separate structural unit responsible for organizing and carrying out procurement procedures (point 5 of Procurement Rules). The recently adopted certification rules approved by the decision of the Fund's Board dated August 14, 2018 (protocol 24/18) require the Fund to certify the capacities of procurement specialists of the Fund and of subsidiaries hence making sure the staff dealing with procurement has all the necessary capacities and capabilities.	No information about the number of contracting authorities in Samruk-Kazyna was available to the assessors.	Criterion partially met.  In order to verify this indicator the assessors need to have access to the quantitative indicators related to the number of procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).		Gather statistics and information about the procurement units within SK.

with a designated, specialised procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.					
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	In accordance to the interviews, the procurement unit collects requests containing needs of the responsible units, organizes the procurement procedure. The deliveries are accepted by the responsible unit. Payment is done from the treasury after the final check of the invoice. Thus, several units are involved in the procurement process.		<p>Criterion partially met.</p> <p>While de facto, decision-making power is delegated, the assessors were unable to identify specifications about delegation of decision making authority in the legal and regulatory framework. As a result, responsibilities, authorities and expectations are not clearly defined, and it remains unclear what kind of decisions procuring entities at lower levels are able to take without approval by higher levels of the organisational hierarchy and where they have to consult. The assessment criterion also requires that risks undertaken by each of such units is associated with the inherent risks and involved monetary sums, which was not found by the assessors.</p>		Describe in the legal and regulatory framework the rights and obligations of the procurement unit and responsible units with regards to decision making, also addressing delegation to the lowest competent level. It is also recommended to adopt a risk-based approach, balance the necessity for approval with the involved risk and monetary sums.
(e) Accountability for decisions is precisely defined.	<p>Yes. Point 148 of the Procurement Rules: “The employees of the contracting authorities, including the head, responsible for procurement, members and secretary of the tender commission, experts and/or members of the expert commission, the head of the structural unit responsible for organizing and carrying out the procurement procedures, the persons responsible for compiling and reporting on procurement issues shall be personally liable for breach of the Rules.</p> <p>The procedure to prosecute employees for violation of Rules shall be defined on the basis of an internal document,</p>		<p>No gaps are identified.</p> <p>Criterion met.</p>		

	approved by decision of the contracting authorities, establishing measures and the degree of responsibility in accordance with the laws of the Republic of Kazakhstan".				
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6(b) Centralized procurement body

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	<p>Point 21 of the Procurement Rules: "When carrying out Central procurement:</p> <p>1) the Fund shall have the right to act as a single procurement organizer for organizations within the Holding;</p> <p>2) the Fund shall be entitled to determine a single procurement organizer for all or several organizations of the Holding based on the decision of the Management Board of the Fund.</p> <p>The procedure for centralized procurement is performed in the order defined by the Management Board of the Fund".</p> <p>In accordance to Annex 2 to the "Rules on the Organisation of Centralised Procurement of Goods, Works and Services", centralisation refers only to cars and services for the estimation of property.</p> <p>The recently adopted concept of category management contains elements of centralisation as the SK subsidiaries on the first organisational level within the holding centralise the procurement of the subsidiaries on the second level. Thus, this approach can be considered as contributing to increased efficiency due to centralisation.</p>		<p>Criterion partially met.</p> <p>Even though the regulation on centralised procurement exists, during the interviews it became Criterion partially met.</p> <p>obvious that centralisation is not considered to be the most beneficial tool for procurement and the list of goods, services and works to be procured centrally is not going to increase. Framework agreements are not used.</p>		<p>Make full use of the "Rules on the Organisation of Centralised Procurement of Goods, Works and Services" and further increase the use of centralised purchasing, by further centralising (on the level of the holding or within the subsidiaries), as well as by utilising a wider range of tools like framework agreements, dynamic purchasing systems and e-catalogues.</p>
(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following: • Legal status, funding, responsibilities and	No centralised purchasing body exists. Either the Fund or the subsidiary company in the Fund will carry out the centralised procurement. In practice, it is the Fund.		N/A		

<p>decision-making powers are clearly defined.</p> <ul style="list-style-type: none"> <li>• Accountability for decisions is precisely defined.</li> <li>• The body and the head of the body have a high-level and authoritative standing in government.</li> </ul>					
(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.	No centralised purchasing body exists.		N/A		

*(i) 7. Public procurement is embedded in an effective information system*

7(a) Publication of public procurement information supported by information technology  
The country has a system that meets the following requirements:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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>SK e-procurement system is on the Internet and is in wide circulation of media, more readily available than a newspaper. Additionally, information on the platform has been on television advertising. SK also has a media plan and publishes tenders in newspapers and journals. The platform has dedicated websites that are relevant, timely and complete. Electronic procurement sites help interested parties understand the procurement process and the requirements for monitoring the results.</p> <p>Websites: <a href="http://www.zakup.sk.kz">http://www.zakup.sk.kz</a>, <a href="http://skm.kz">http://skm.kz</a>, <a href="http://pko.skc.kz/">http://pko.skc.kz/</a></p> <p>Foreign suppliers can access the platform by a signature from GAMMA Technology, which is associated with a fee.</p>		<p>Criterion not met.</p> <p>It is difficult for foreign companies to register in the system, which is the prerequisite for viewing tender opportunities. To be register, certain requirements have to be met – either for the company to be registered in Kazakhstan, or an alternative mechanism associated with a fee (see also assessment criterion (b) about costs for registration below.)</p>	X	<p>Make it easier for foreign companies to register in the system without the need to have legal representation in Kazakhstan for the electronic digital signature. For example, travel to KZ could be avoided by having documents checked in a KZ Embassy in the home country of a bidder and by</p>

					having a video call which could serve as the in-person meeting. In addition, the mechanism for companies not incorporated in Kazakhstan could be offered for free (see below assessment criterion (b))
(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>There is no single centralized integrated information system, purchases are conducted on one site, market analysis on another, prequalification procedure on another site. Accessing organizations are granted access on a fee basis at the approved tariffs. For suppliers, registration, access and participation in procurement are free of charge. However, some services, for example the prequalification procedure, are provided for suppliers on a fee basis. The system is integrated with a black list of suppliers. At the same time, the system is not yet integrated with some other public systems, such as the taxation system, the justice system and the court decision system. Participation of foreign companies in tenders requires the opening of a legal representation in Kazakhstan with a view to obtaining an electronic digital signature.</p> <p>The law foresees official communication (including tender documentation) in Kazakh or Russian language.</p>		<p>Criterion not met.</p> <p>There is no single integrated website for the procurement information and procedures. It remained unclear to what extent these platforms are integrated. Participants need to register using e-signature in case they want to access tender documentation and/or to participate.</p> <p>In addition to the difficult registration process, there is an inherent cost for foreign suppliers to register: they either must have a legal representation in Kazakhstan to receive an electronic digital signature (which is free), or apply for a signature from GAMMA Technology. The latter is not for free (about EUR 130 for one year). While this is not a prohibitively large fee, it places the foreign suppliers in a disadvantaged position in</p>	X	<p>Create a single integrated web site with a single database for all procurement transactions. This will serve as a basis and will ease the passage to open format.</p> <p>Competition and as a result value for money could be increased by facilitating access of foreign suppliers. Aside from reconsidering the registration fee, it could be beneficial to publish tender documentation for complex or large tenders in English, to enable</p>

			comparison to domestic suppliers.		international bidders to participate more easily.
<p>(c) The information system provides for the publication of: *</p> <ul style="list-style-type: none"> <li>• procurement plans</li> <li>• 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</li> <li>• linkages to rules and regulations and other information relevant for promoting competition and transparency.</li> </ul> <p><b>// Minimum indicator</b>  <b>// Quantitative indicators to substantiate assessment of sub-indicator 7(a)</b>  <b>Assessment criterion (c):</b></p> <ul style="list-style-type: none"> <li>• procurement plans published (in % of total number of required procurement plans)</li> <li>• key procurement information published along the procurement</li> </ul>	<p>PROCUREMENT PLANS: According to the rules, unclassified (non-military) procurement plans are published in the System (requiring access) in real time by means of an electronic digital signature within 20 (twenty) working days from the date of approval. Procurement plans are published on the main page of the site <a href="https://zakup.sk.kz">https://zakup.sk.kz</a> and can be viewed by anyone. The procurement plan is published at the beginning of the purchasing year before the bidding. The participants of the holding company publish long-term and yearly procurement plans. Procurement plans are approved automatically in the system. The procurement plans are published well before the tenders are advertised, as there is a process for approval of procurement plans and then tenders. INFORMATION RELATED TO SPECIFIC PROCUREMENTS: The electronic procurement system publishes advertisements and the procurement method, the type of procurement (goods / works / services), the procurement organizer and the address of the procurement organization. In addition, it should be noted that the tender document, draft contracts and technical specifications are published. In addition, explanations are published. Final reports of the evaluation report are published. The e-procurement system does not publish contracts and information on the implementation of the contract, amendments to contracts, final payments for completed contracts and appeals. LINKAGES TO RULES: Yes, the e-procurement site provides links to rules and regulations, as there are links to rules and instructions for e-procurement in the "Regulations" section of the link <a href="https://zakup.sk.kz/#/ext/regulation">https://zakup.sk.kz/#/ext/regulation</a>.</p>	<p><b>7(a) Assessment criteria (c):</b></p> <ul style="list-style-type: none"> <li>• procurement plans published (in % of total number of required procurement plans) <ul style="list-style-type: none"> <li>○ 2016 – not public</li> <li>○ 2017 – not public</li> <li>○ 2018 – _____ (report # not public)</li> <li>○ This comes from the information and analytical portal <a href="http://skm.kz/ru/plangz/holdplans/">http://skm.kz/ru/plangz/holdplans/</a></li> </ul> </li> <li>• key procurement information published along the procurement cycle (in % of total number of contracts): <ul style="list-style-type: none"> <li>○ contracts are not published</li> </ul> </li> <li>• invitation to bid (in % of total number of contracts) <ul style="list-style-type: none"> <li>○ 100% invitation to bids are all published</li> <li>○ Invitations to bid is 100% of total number of contracts.</li> </ul> </li> <li>• contract awards (purpose, supplier, value, variations/amendments) are not published for unauthorized users</li> </ul>	<p>Criterion not met.</p> <p>Tender documentation, contract awards, procurement statistics are not open for the wider public. In the absence of the access to the e-procurement system, it was not possible to verify that this information is published for the authorised users even though the legislation requires mandatory publication of some of this information (contract notice, contract award, etc.).</p>	X	<p>In order to enhance the transparency of the procurement process, it is advised to give access the wider public to the procurement documentation, e.g. tender documents, evaluation reports, contract award decisions, contracts, statistics, etc. This will allow the NGOs and citizens to act as a watchdog and to take part of the monitoring function. In addition, this will enhance the competition and will be a tool to combat corruption.</p>



<p>cycle (in % of total number of contracts) :</p> <ul style="list-style-type: none"> <li>• invitation to bid (in % of total number of contracts)</li> <li>• contract awards (purpose, supplier, value, variations/amendment s)</li> <li>• details related to contract implementation (milestones, completion and payment)</li> <li>• annual procurement statistics</li> <li>• appeals decisions posted within the time frames specified in the law (in %).</li> </ul> <p>Source: Centralised online portal.</p>		<ul style="list-style-type: none"> <li>• details related to contract implementation (milestones, completion and payment) are not published</li> <li>• annual procurement statistics <ul style="list-style-type: none"> <li>○ Annual procurement statistics is not available on the web site.</li> </ul> </li> <li>• appeals decisions ) are not published</li> </ul>			
<p>(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).</p>	<p>Yes, the concept of open contracting is supported. Comprehensive information is published on the online portal at each stage of the procurement process, including a full set of bidding documents, evaluation reports, complete contract documentation, including technical specifications and implementation details that comply with the regulatory framework. However, part of the information is available only to registered users.</p>		<p>Criterion partially met.</p> <p>Most of the information mandatory to be published is accessible to registered users only All procurement information is available in Kazakh and Russian languages only. No English translation of any procurement document was found. While this is fully in accordance with the legal and regulatory framework, additional value for money and increased transparency could be achieved by publishing selected information in English in addition to the full documentation that remains available in Russian and</p>	X	<p>Ease the process of obtaining the e-signatures (see above).</p> <p>Publish selected documents in one of the WTO languages (English, French, Spanish) to facilitate transparency and access. As a results, foreign suppliers would be able to gain an understanding of whether they are interested in</p>

			/ or Kazakh to facilitate participation by international bidders, as suggested by international best practice. For example, WTO GPA, Art. VII:3 states that “a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages”. <sup>3</sup>		procurement procedures in Kazakhstan and increase their knowledge about Kazakhstan’s procurement market.
<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p> <p>* 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.</p>	SK has plans to provide information in a structured way for NCE Atameken and other interested parties as part of the development of e-procurement 2.0. At the moment, though, the publication of data in the Open Contract Data Standard format has not yet been implemented.	7(a) Assessment criterion (e): No data in the e-procurement portal is published in open data format.	<p>Criterion not met.</p> <p>Data is not published in open data format.</p>	X	In order to have the above-mentioned advantages open format can be used. It provides for the publication of a data in a structured, classified format allowing an easy search in accordance to several indicators. The data should be published for the public in general and not only for selected counterparts and the government.
(f) Responsibility for the management and operation of the system is clearly defined.	Yes, Samruk Kazyna Contract has clear responsibility for the management and operation of the system. It is regulated by clause 145 in the RP.		No gaps are identified.		

<sup>3</sup> WTO official languages are English, French and Spanish.

7(b) Use of e-Procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*  // 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.	Yes, the electronic procurement system is widely used in all companies that are part of the Samruk-Kazyna holding structure, at all levels of government.	<b>7(b) Assessment criterion (a): uptake of e-Procurement</b> number of e-Procurement procedures in % of total number of procedures 100% All procurement is done through the e-procurement system value of e-Procurement procedures in % of total value of procedures 100% All procurement is done through the e-procurement system Source: e-Procurement system.	No gaps are identified.  Criterion met.		
(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.	Corporate University Samruk-Kazyna conducts regular trainings for Contracting Authorities and suppliers. There are video instructions, manuals and technical support. Please note that Government officials do not use the system.		No gaps are identified. Criterion met.		
(c) Procurement staff is adequately skilled to	The Corporate University provides training for purchasing staff of procuring entities. There is no formal certification		No gaps are identified.		

reliably and efficiently use e-Procurement systems.	program to use the e-procurement system. In spite of the fact that within the procurement process on the electronic procurement portal there are video instructions and manuals and technical documents for purchasing personnel.		Criterion met.		
<p>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*</p> <p>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):</p> <ul style="list-style-type: none"> <li>- bids submitted online (in %)</li> <li>- bids submitted online by micro, small and medium-sized enterprises (in %)</li> </ul> <p>Source: e-Procurement system.</p>	Most of the vendors who participate in public procurement in general are SMEs. There are no up to date numbers for Samruk-Kazyna available. Previously, the tax system captured characteristics of vendors in the general government procurement system and there was the ability to view if a vendor was an SME. That means that two years ago, when this information was still captured, it was noted that 98% of the vendors participating in general government procurement were SMEs. Currently, there are no markers in the system for SMEs and the tax system no longer captures this information, therefore there is no data for 2016 and 2017 on SME participation.	<p><b>7(b) Assessment criterion (d):</b></p> <p>bids submitted online (in %)</p> <p>100%</p> <p>bids submitted online by micro, small and medium-sized enterprises (in %)</p> <p>There is no current, quantitative information relating to procurement by Samruk-Kazyna. For context, previous estimates for the general public procurement system stated that 98% of bids were submitted by SMEs.</p> <p>Source: e-Procurement system.</p>	<p>Criterion met.</p> <p>There is no longer quantitative evidence that SMEs are actively participating in the procurement procedures of SK.</p>		Consider developing a means of tracking SME participation in Samruk-Kazyna procurement procedures.
(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	Not applicable as there is an e-procurement system, which is used 100% of the time for all procurement transactions.		<p>No gaps are identified as SK is using e-procurement.</p> <p>Criterion met.</p>		

7(c) Strategies to manage procurement data

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag ?	Initial input for recommendations
(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.	Yes, the e-procurement system in operation collects data on procurement of goods, works and services, including consulting services.		No gaps are identified. Criterion met.		
(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.	The e-procurement system can provide information to the parent organization of the fund, including information on the annual report and its capabilities; it also provides analysis of trends and levels of participation and efficiency and economy of procurement and compliance. There is a BI system for this type of functionality. Please note that these reports are not published. For the subsidiary companies, they can view their own information in the e-procurement system.		Criterion partially met.  As is revealed during the interviews, the BI system is used to support the data collection and analysis. No annual procurement report could be found online. In order to verify this indicator to the full extent, the assessors would require access to a report compiled and analysed based on the data from the e-procurement system. Additional information on how exactly the BI system works in SK would be welcome to substantiate the analysis.		Publishing annual procurement reports, introducing aggregated data for the procurement of the Fund and the subsidiary companies of the Holding, could be beneficial. Thus, the results of the work of the BI system would become visible and usable by public in general.
(c) The reliability of the information is high (verified by audits).	External audits are held annually. External third party (Russell Bedford) audit vulnerabilities of the system. They are engaged when they launch new systems. They do not do yearly security audits. They are not public. They are also checked by the government agencies especially IT agency. Last audit was 2017 where the focus was to check the compliance of law on private information. The audit was not published. The IT agency received recommendations, which were addressed. For data safety they have two data centres (main and BCC).		No gaps are identified. Criterion met.		

<p>(d) Analysis of information is routinely carried out, published and fed back into the system. *</p> <p>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</p> <ul style="list-style-type: none"> <li>• total number and value of contracts</li> <li>• public procurement as a share of government expenditure and as share of GDP</li> <li>• total value of contracts awarded through competitive methods in the most recent fiscal year.</li> </ul> <p>Source: Normative/regulatory function/E-Procurement system.</p>	<p>The analysis of information is regularly conducted and provided to the parent organization of the fund.</p>	<p>(j) <b>7(c) Assessment criterion (d):</b></p> <ul style="list-style-type: none"> <li>• total number and value of contracts <ul style="list-style-type: none"> <li>◦ data requested from SK, but not provided</li> </ul> </li> <li>• public procurement as a share of government expenditure and as share of GDP <ul style="list-style-type: none"> <li>◦ data requested from SK, but not provided</li> </ul> </li> <li>• total value of contracts awarded through competitive methods in the most recent fiscal year. <ul style="list-style-type: none"> <li>◦ data requested from SK, but not provided</li> </ul> </li> </ul>	<p>Criterion partially met.</p> <p>Quantitative analysis was not possible due to a lack of access to data / the e-procurement system.</p>		
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(k) 8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) substantive permanent training programmes of suitable	SK Contract is tasked with the training of the subsidiary companies of the Holding and organises seminars related to procurement. There are no permanent training programmes		Criterion partially met.		The fund could establish clear rules on substantive,

quality and content for the needs of the system.	<p>and as became clear from the interviews, the trainings are carried out on an ad-hoc basis. Corporate University SK also aims at training and enhancing the qualification but their programs relate to all the activities of the Holding, not only, but including procurement.</p> <p>In addition, new rules on certification have been adopted in August 2018. These rules do not contain any reference to permanent training programs, but regulate the certification process and procedures.</p>		<p>Even though SK has recently adopted Rules on Certification, the document does not speak to substantive, permanent trainings as required by the assessment criterion.</p>	<p>permanent training programmes as part of the efforts to certify procurers. This is important to establish clear expectations and requirements for procurers.</p> <p>In doing so (also taking into account the findings for the following assessment criteria), the Fund could start with a training needs assessment of all its employees involved in procurement transactions. Based on the results, procurement training strategy should be developed which in its turn will serve as a basis for the permanent training program. The program should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions, etc.</p>
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(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.	No routine evaluation as there are no permanent training programmes.		Criterion partially met.  SK does not provide for permanent training programmes, consequently, there are no routine evaluations and adjustments of these training programmes.		SK should put in place a permanent training program which should be routinely evaluated and amended based on the needs of the stakeholders.
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.	As detailed by the authorities, the Procurement Methodology Service provides advisory services through a telephone hotline and offer to respond to questions within a short turnaround time via email. In addition, Samruk-Kazyna Contract LLP maintains a call centre, a support service for issues related to e-procurement 2.0.		Criterion partially met.  It is our understanding that the support is provided to contracting authorities only while the indicator includes the suppliers and public in general. No advisory service is available to suppliers or the public.		Provide for the advisory services not only for contracting authorities but also for suppliers and for the public in general.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	While there are current efforts to certify SK's procurement workforce, the assessors did not find any indication of more general strategy on procurement capacity in SK. The recently adopted Rules on Certification do not refer to a training strategy and instead focus on the certification process and procedures.		Criterion partially met.  No training strategy exists.		

8(b) Recognition of procurement as a profession

The country's public service recognises procurement as a profession:

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	Procurement is not recognized as a function. There is no specific grading system for procurement officers but there is one for the HR in general.		Criterion partially met.  Procurement is not recognized as a profession.		Recognise procurement as a function and provide for different professional levels with the requisite qualifications and competencies specified.



(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The new rules on certification describe in detail who should pass the certification and how this should be organised. The rules have been approved recently by Board Decision on 14 August 2018 (protocol 24/18).		<p>Criterion partially met.</p> <p>The introduction of a certification mechanism is an important step towards the professionalisation of procurement staff. However, the new framework does not speak to the question whether and how the certification translates into appointment and promotion decision, as foreseen by this assessment criteria. Beyond the new certification programme, the assessors found no information on how appointment and promotion decisions are made.</p>		Use the changing context created through the certification programme to make appointments and promotions more competitive. Appointments and promotions could be based on the results achieved by the procurers during the qualification and certification programme.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	<p>In accordance to the Decision on Certification (Protocol 24/18) the certification is once every two years for procurement officials. The Decision refers only to the certification and does not rule on the further actions based on the results.</p> <p>No specific continuous development programme is provided for the procurement officials based on the certification results.</p>		<p>Criterion partially met.</p> <p>No specific Continuous Development Program is envisaged for the staff based on the certification results.</p>		Provide for a CDP for the staff involved in procurement activities.

8(c) Monitoring performance to improve the system

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	Point 8 of the Procurement Rules: "Procurement plan for the planning period shall be formed based on production program and (or) investment program and (or) budget and (or) development plan and (or) business plan. The procurement plan(s) concerning goods is (are) formed in terms of the nomenclature of goods. ". As reported by SK, according to this rule and the Corporate Governance Code of the Fund, decisions are based on historic procurement data of the fund. However, there is no specific performance measurement system in SK.		<p>Criterion not met.</p> <p>As noted by the authorities, a KPI system has been established in all subsidiaries of the Fund. However, no details of the system were made available to the assessors to ascertain whether a performance measurement</p>	X	Develop the details of a specific performance measurement system that focuses on both quantitative and qualitative aspects. Information from such system should

			system according to the assessment criterion exists.		be used to take policy decision on the future development of the procurement system of SK. This will also be a useful tool to check the results of the transformation program and its effect on the Fund and subsidiary companies of the Holding.
(b) The information is used to support strategic policy making on procurement.	As noted by the authorities, the KPI system has been established in all subsidiaries of the Fund. However, it is unclear how the KPI system is used for strategic policy making.		Criterion not met.  No information was provided on how the established KPI system relates to the strategic policy-making.		
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	The plans of SK involve the production program, the investment program, the budget, a development plan, and a business plan. It seems that the development plans might be seen as strategic plans but the assessors did not find any information to indicate how these plans relate to procurement and the improvement of the procurement system.		Criterion partially met.  It is not clear whether the strategic plans are used to improve the procurement system and how exactly KPIs are related to strategic plans.		
(d) Responsibilities are clearly defined.	According to the authorities, the KPI system has been established in all subsidiaries of the Fund. However, it is unclear how the responsibilities are defined/allocated when using the KPIs.		Criterion partially met.  It is unclear whether and how the responsibilities are defined when using the KPI system.		

## Pillar III. Public Procurement Operations and Market Practices

### 9. Public procurement practices achieve stated objectives

#### 9(a) Planning

Assessment criteria	Step 1: <b>Qualitative analysis</b> (comparison of actual situation vs. assessment criteria)	Step 2: <b>Quantitative analysis</b>	Step 3: <b>Gap analysis</b> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	It became clear during the interviews, that needs analysis and market research are not carried out in SK or in its subsidiaries. This is substantiated by reviewing limited cases available online.		Criterion not met.  According to stakeholders, needs analysis and market research are not carried out. No access to sample cases or similar data from the e-procurement system to analyze the actual practices was provided to assessors. Limited cases from second-tier organization KazAutoZhol also prove that market	X	Make the needs analysis and market research as a mandatory stage of the procurement cycle before the procurement planning. This will enhance

Sample cases were requested but not received from SK. This section is based on the interviews during the fact-finding mission, as well as the requirements of the legislation. Some sample cases from the second-tier subsidiary KazAutoZhol were found online. Even though those cases are appropriately analysed, and findings are reflected in Indicator 9, they cannot be indicative of the SK procurement. The assessors analysed a set of cases based on the assumption that SK procurement rules apply to KazAutoZhol because shares of KazAutoZhol were given to Kazakhstan Temir Zholi (a first tier SK subsidiary) for trust management.

Aside from cursory review, cases chosen for the analysis of the Indicator 9 are the following: 1. Open tender for the procurement of works related to the intermediate-level maintenance of the roads of republican importance of Aktyubinsk and Western-Kazakh regions (N of announcement - 369498-1). 2. Open tender for the procurement of works for the renovation of vehicles (N of announcement 369472-1). 3. Price quotation for the procurement of diesel (N of announcement 369432-1). 4. Price quotation for the procurement of technical control (inspection) services of highway roads (announcement N 369421-1). 5. Price quotation for the procurement of GPS receiving set (N of announcement 369420-1).

			analysis has not been conducted.		the market intelligence and will provide an overview of the available goods, services, work as well as their market prices. It should be also noted that market research should not become preliminary negotiations with specific suppliers. Safeguards to minimise the corruption risk should be in place. In addition, training on how to conduct market analysis could be provided.
(b) The requirements and desired outcomes of contracts are clearly defined.	As there was no access to signed contracts, the clear definition of outcomes cannot be verified. There are also no standard contract terms in order to assess general contract terms. It should be mentioned that the draft contract terms from KazAuthoZhol found online clearly define requirements and the desired outcomes of the procurement procedure.		Criterion not met.  No access to signed contracts in order to verify the clear definition of outcomes. Limited cases from second-tier organisation KazAutoZhol contain only template documents which clearly define all the desired		Ensure that contracts include clear requirements and desired outcomes.

			outcomes of the procurement process.		
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	Criteria related to sustainability are not used as award criteria. The main criteria is the lowest price. This is substantiated by reviewing limited cases available online.		Criterion not met.  Criteria related to sustainability are not used as award criteria.	X	Start using sustainability-related elements in procurement process. The elements might be included in technical specifications as mandatory requirements, as contract award criteria and/or as contract terms.

9(b) Selection and contracting

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	For complex procurement pre-qualification procedure is used which includes technical audit. The limited cases accessed online did not have a pre-qualification stage, even though some of them can be considered complex. This might be the result of KazAutoZhol's usage of its own Instructions for the procurement of goods, services and works.		Criterion not met. The assessment team did not have access to a sample of procurement cases from SK; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms. Several cases from KazAutoZhol did not reveal usage of multi-stage		Ensure that multi-stage procedures are considered for complex procurements.

			procedures for complex procurement.		
(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	There are no SBDs approved by SK as a secondary or tertiary legislation, but as all the transactions are carried out online, it is assumed that there are e-documents to be used when forming procurement documentation and bids. It is also submitted that standard contract terms should be introduced with the implementation of the Standard on Contract Management.		Criterion partially met.  Standard Bidding Documents are not approved on a legislative level but it is assumed that due to the usage of e-procurement for all procurement procedures, some form of standardized documents exist. No standard contracts or contractual terms are in force currently.		Approve the SBDs at a secondary or tertiary level.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	Contracting authorities choose procurement procedures based on the requirements of Procurement Rules. No approval of the Fund is required. The Procurement Rules provide a wide array of methods suitable for complex or simple procurement. The analysed cases do not contain a justification for the chosen method in accordance with the purpose.		Criterion not met.  According to statistics located in previous analysis, the vast majority of procurement cases is conducted using the single source method. <sup>6</sup>		Ensure that the choice of procurement procedure is documented and justified.
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing	Procedures for bid submission and other phases of procurement are clearly defined in Procurement Rules. After the deadline for the bid submission, the access to see all the submitted bids is granted to members of the evaluation commission, Authorised Body, secretary of the evaluation commission, potential suppliers participating to the procedure. Members of Atameken get access as part of evaluation commission for tenders over KZT 250 mln.		Criterion not met.  The assessment team did not have access to a sample of procurement cases of SK; three out of five cases from KazAutoZhol did not contain tender documentation. No information was found on the involvement of civil		Ensure that procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with.

<sup>6</sup> See OECD Anti-Corruption Network Eastern Europe and Central Asia (2017), Anti-corruption reforms in Kazakhstan. 4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>

bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	Representatives of unions and associations are included in tender commissions as observers for procurement over KZT 75 mln. Three of the five cases analysed did not contain detailed information on bid submission, receipt and opening. In addition, no information was found on the involvement of civil society or the representatives of the bidders.		society or the bidders in the procurement process.		
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	After the deadline for the bid submission, the access to see all the submitted bids is granted to members of the evaluation commission, Authorised Body, secretary of the evaluation commission, potential suppliers participating to the procedure.		Criterion partially met.  According to stakeholders, there are several stakeholders besides the evaluation commission that have access to the bids. This enhance transparency of procurement procedures but could undermine confidentiality.		Consider reviewing access to submitted bids to ensure an appropriate balance between transparency and confidentiality.
(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.	The quality-related or sustainability criteria are not used to award the contract in accordance to current legislation. The lowest price is the sole criterion. On another hand, the future Category Management Standard requires the usage of LCC. All procurement contracts analysed were awarded using the lowest price criterion.		Criterion not met.  None of the five cases from KazAutoZhol contained quality-related criteria or sustainability considerations. All cases were awarded using the lowest price criterion.		Where possible and appropriate, consider the use of quality or sustainability-related criteria to achieve the best value for money.

<p>(g) Contract awards are announced as prescribed.</p>	<p>Contract award notice should be published in media, on the web site as well as sent to the bidder who was awarded the contract within three working days of signing the contract award decision (protocol on the results). In all cases analysed the contract award notice with justifications was published.</p>		<p>Criterion met.</p> <p>In all cases analysed the contract award notice with justifications was published. The assessment team did not have access to a broader sample to procurement cases from the SK holding.</p>		
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(h) Contract clauses include sustainability considerations, where appropriate.	Sustainability is not prescribed as a contract term.		Criterion not met.  Sustainability is not prescribed as a contract term.		Include sustainability in the standard contracts to be drafted after the Contract Management Standard enters into force.
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	<p>In accordance to Procurement Rules, the Contracting Authorities are entitled to withhold fines when returning the contract performance guarantee in case the supplier has violated the terms of the contract. The assessed cases confirm this.</p> <p>If the contract is implemented properly, the suppliers can possibly enter the so-called "white-list" which gives them a provisional discount in future procurement procedures. This however, does not mean that the suppliers are given an incentive to exceed the levels of performance. Rather, they are awarded for the proper execution of the contract.</p>		<p>Criterion partially met.</p> <p>No incentives for exceeding the performance levels are envisaged.</p>	X	Provide the suppliers with the incentives (monetary and others) to exceed the required levels of performance.
<p>(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *</p> <p>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b)</p>	<p>Where the selection of the winner and award of the contract is carried out in accordance to the Procurement Rules, it can be stated that overall the process is efficient and transparent.</p> <p>It is not possible to conclude on the efficiency and effectiveness of the procurement processes based on the cases accessed cases due to the lack of the following data:</p> <p>- no signed contracts were found online, so the average time to procure cannot be calculated:</p>		<p>Criterion not met.</p> <p>The assessment team did not have access to a reliable sample of procurement cases or aggregated data; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.</p>		

<p>Assessment criterion (j):</p> <ul style="list-style-type: none"> <li>- average time to procure goods, works and services</li> <li>number of days between advertisement/solicitation and contract signature (for each procurement method used)</li> <li>- average number (and %) of bids that are responsive (for each procurement method used)</li> <li>- share of processes that have been conducted in full compliance with publication requirements (in %)</li> <li>- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)</li> </ul> <p>Source for all: Sample of procurement cases.</p>	<p>- no aggregated data or report was found online to conclude on the average number (%) of responsive bids, share of the well-implemented processes or the number (%) of successfully awarded contracts.</p> <p>Out of five analysed cases, for the first case 4 out of 7 lots were cancelled as no bidder had required qualification. Out of the remaining 4 cases 3 were cancelled (no qualified bidders or no bids submitted).</p>				
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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
<p>(a) Contracts are implemented in a timely manner.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)</p>	<p>According to stakeholders, the majority of contracts are implemented on time. If not, the Contracting Authority is imposing fines on the suppliers, which it withholds from the paid contract performance guarantee. The timely implementation of contracts cannot be verified due to the lack of access to signed contracts and other documents of the contract management phase.</p>		<p>Criterion not met.</p> <p>The assessment team did not have access to a sample of signed procurement contracts; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.</p>		
<p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as</p>	<p>As revealed during the interviews, the responsible unit is entrusted with inspecting the deliveries to be in accordance with the contract. If accepted, delivery-acceptance act is signed which is a basis for the payment.</p>		<p>Criterion not met.</p> <p>The assessment team did not have access to a sample of contract management documents; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.</p>		

stipulated in the contract (in %)					
<p>(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.</p> <p>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).</p>	<p>The interviews revealed that the suppliers are usually paid late and after passing through a heavy bureaucratic process. Sometimes because of late payments, they cannot pay their own subcontractors or suppliers and have to pay fines.</p>		<p>Criterion not met.</p> <p>According to stakeholders, suppliers usually receive the payments later than it is envisaged in the contract. It was not possible to assess the actual timeliness, as the assessment team did not have access to procurement documents.</p>	X	<p>Introduce e-invoicing that will make the disbursement of funds automatic.</p>
<p>(d) Contract amendments are reviewed, issued and published in a timely manner.*</p> <p>Recommended quantitative indicator to substantiate assessment</p>	<p>Procurement Rules lay down exhaustive cases of allowed amendments to draft and already signed procurement contracts (points 131 and 133). There is no provision on publication of the amendments.</p>		<p>Criterion not met.</p> <p>The assessment team did not have access to a sample of signed contracts and respective amendments;; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.</p>		

<p>criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)</p>					
<p>(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.</p>	<p>SK sends reports on procurement activities to the Government. The assessors were able to locate limited procurement statistics, while more detailed statistics were not located. It is unclear whether such statistics exists for registered users.</p>		<p>Criterion not met.</p> <p>No statistical information was found online.</p>	<p>X</p>	<p>Publish aggregated statistical information (on trimester, semester and annual basis). The data should be accessible to general public.</p>
<p>(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*</p> <p>Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society:</p>	<p>As is discussed under indicator 11(c), Atameken (the Chamber of Commerce of Kazakhstan) and the representatives of unions and associations are engaged in different stages of procurement procedure except for procurement planning and contract management phases. However, the assessors were unable to ascertain the actual use of the possibilities provided by the law. The accessed five cases also did not make reference to the involvement of relevant stakeholders.</p>		<p>Criterion partially met.</p> <p>In accordance to the legislation, civil society organisations are not engaged in planning and contract management phases. Involvement is restricted to procurement above certain value as described in indicator 11 (c). The assessors were unable to verify the involvement of civil society in practice.</p>	<p>X</p>	<p>Engage civil society organisations in all stages of procurement process.</p>

planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.					
(g) The records are complete and accurate, and easily accessible in a single file.*  <b>// Minimum indicator // *</b> <b>Quantitative indicators to substantiate assessment of sub-indicator 9(c)</b> <b>Assessment criterion (g): - share of contracts with complete and accurate records and databases (in %)</b> Source: Sample of procurement cases*	It was not possible to access the records of procurements, as the information is available for registered users only. Limited information and documents from second-tier subsidiary "KazAutoZhol" were found online. The website is user-friendly, and the documents are easily accessible.		Criterion met.  The assessment team did not have access to a sample of procurement cases from SK or its first-tier subsidiary; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.		

## 10 The public procurement market is fully functional

10(a) Dialogue and partnerships between public and private sector

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
<p>(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>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a)</p>	<p>Representatives of non-governmental organisations and associations (unions) are included in the tender commission as an observer in case of procurement of goods/services/works with the value of more than KZT 75 mln. The unit of the contracting authority authorised to carry out procurement procedures sends out the notice to NGOs and associations (unions) requesting nominations. Not all information received by such observers should be disclosed to third persons unless in cases directly envisaged by the legislation of the Fund or the Republic of Kazakhstan.</p> <p>As detailed by the authorities, the Fund also has a working group to improve the procurement system, approved by order of the Chairman of the Board of the Fund. The Working Group includes representatives of the Fund, subsidiaries of the Fund, as well as representatives of Atameken.</p> <p>No further formal mechanisms for the dialogue with the private sector are envisaged, especially related to the consultations when formulating changes in public procurement system.</p> <p>The only ethics and integrity rule relates to the non-disclosure of confidential information.</p>		<p>Criterion partially met.</p> <p>No further formal mechanisms for dialogue with the private sector, especially related to the consultations when formulating changes in public procurement system, are envisaged.</p>		<p>Envisage a consultation mechanism with the civil society organizations when amending the procurement system.</p>

Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.					
(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.	<p>The suppliers receive trainings in the Corporate University of Samruk Kazyna, as are the contracting authorities. The course relates to the Procurement Rules and other regulatory documents regulating procurement activities. The web-site of SK also contains training courses on the use of an electronic platform.</p> <p>The Fund conducts free procurement webinars, and also provides an e-learning procurement training program.</p> <p>No specialised programs for the SMEs are envisaged.</p>		<p>Criterion partially met.</p> <p>No specialized programs for the SMEs are envisaged.</p>		<p>When preparing permanent training programs, inclusion of SMEs should be one of the taught modules alongside with the integrity module.</p>

10(b) Private sector's organization and access to the public procurement market

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) The private sector is competitive, well-organised, willing	As was mentioned during interviews, SK is working to build a close relationship with suppliers. The new procedure of pre-qualification can be said to be used for this purpose. There are		<p>Criterion not met.</p> <p>No quantitative data has been provided to help assess the openness of the procurement markets and</p>		Even if SK will decide to move forward with the creation of



<p>and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"> <li>• number of registered suppliers as a share of total number of suppliers in the country (in %)</li> <li>• share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)</li> <li>• total number and value of contracts awarded to domestic/foreign firms (and in % of total)</li> </ul> <p>Source: E-Procurement system/Supplier Database.</p>	<p>three levels of pre-qualification each with two sub-levels starting with the easiest procurement (office supplies, etc.) and ending with complex procurement for specific purposes and activities.</p> <p>Creating a pool of own suppliers can have both advantages and disadvantages. Suppliers will build capacity and will provide better quality services/works. This is advantageous especially for complex procurement taking into account the specific areas the companies within the Holding are working in. However, such measures will preclude the entry into the market of new suppliers that will miss the necessary qualification and after some years, the contracting authorities will depend on the incumbent suppliers losing the bargaining power.</p> <p>This indicator is about the practice; assessors interviewed several suppliers. Most of them did not participate in SK procedures and one has informed that they tried but SK has its 'own suppliers'.</p>		<p>the participation rate of domestic and foreign suppliers.</p>	<p>the pool of its own suppliers, it should not preclude the entry into the market of new (more efficient) suppliers. In the long run, this strategy will be beneficial for SK, as it will not depend on specific suppliers.</p>
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<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* 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.</p>	<p>The Procurement Policy does not put excessive qualification criteria but it contains set-aside for “in-house” suppliers, as well as organisations for disabled. In addition, each 1% of local content will provide provisional discount of 0.15%, local goods will have the discount of 5%.</p> <p>Pre-qualification process can also inhibit constraints on the access to the market especially for the standardised goods, services, works for which pre-qualification in accordance to international best practice is not required.</p> <p>Foreign suppliers can participate to procurement procedures but they will have to compete with local companies having preferences. The ones that do not have representations in Kazakhstan can use GAMMA Technologies that provides e-signatures to use in the system for some fee (around EUR 130 for 1 year).</p> <p>The foreign companies wishing to receive free e-signatures have to have a representation in Kazakhstan, which is connected to costs. During the interviews, an information was received that currently there are 15 non-residents registered in the system.</p> <p>As has been already mentioned, SK is trying to create a pool of its own suppliers.</p>		<p>Criterion not met.</p> <p>Local preferences, “in-house” procurement as well as preferences for disabled peoples’ organisations can create market access barriers.</p>	X	<p>Opening up the market for foreign suppliers will increase the competition and allow for better value for money. All of such policies should be well weighted and thought through so as not to hinder the access of new and foreign companies.</p>
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#### 10(c) Key sectors and sector strategies

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag?	Initial input for recommendations
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<p>(a) Key sectors associated with the public procurement market are identified by the government.</p>	<p>The subsidiary companies in the Holding are the ones in a key market starting from oil and gas companies to national air carrier and post. It thus can be stated that key markets are identified by the state and grouped in one Holding.</p> <p>With the rollout of the transformation program, the sectorial approach to procurement will be more visible as the subsidiaries will be asked to have their own procurement rules following the specific needs of the sector they operate in (gas, oil, post, etc.). These policies have to be based on 7 standards one of the central of which is the standard for category management. In accordance to it, procurement subjects have to be divided in 3 categories – I, II and III depending on their importance for the subsidiary company, possibility to achieve cost efficiency, etc. For each of these categories a strategy should be developed except for III category for which this is not mandatory.</p>		<p>No gaps are identified. Criterion met.</p>		
<p>(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.</p>	<p>Taking into account the strategic importance of the areas the companies in the Holding are active in, it has been decided that the procurement should be organised in categories taking into account the analysis of spending for that category, market, future needs of supplies, life cycle costing, etc. In accordance with the Rules on Category Management, the procurement category group should send a request to NCE “Atameken” to provide information on the market of Kazakhstani suppliers by procurement category when analysing the external environment and developing procurement strategies. At the stages of strategy development and implementation, procurement category groups conduct preliminary face-to-face negotiations.</p> <p>Thus, potential suppliers are contacted in order to provide information about their own activities</p>		<p>In general, no gaps are identified. Criterion met.</p>		

	<p>but the decision on the categories is taken by the Fund or the subsidiary companies in the Holding. Risk and strategic management of specific categories of procurement are assessed but the suppliers are not engaged in support of procurement objectives. In fact, the Fund and subsidiary companies in Holding use them to have an understanding about the structure and maturity of the market, which later can affect the decision on categories.</p>				
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## Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

### 11. Transparency and civil society engagement foster integrity in public procurement

#### 11(a) Enabling environment for public consultation and monitoring

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag?	Initial input for recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	In accordance to the representatives of civil society, there has been no consultative process when formulating amendments to the procurement system of SK. NGOs that were interviewed as part of the fact-finding did not hear about or were not invited to such communicative procedures. The SK in its turn has explained that such communication is carried out via Atameken (The National Chamber of Entrepreneurs) in accordance to the Agreement on Cooperation between the Atameken and SK. Point 3.1.3. of the above-mentioned Agreement states that the representatives of Atameken are included in the working group on the drafting and improving the legislative acts of the Fund. According to stakeholders, Atameken includes 99% of the business community of Kazakhstan.		<p>Criterion not met.</p> <p>Atameken is a Chamber of Commerce and cannot be considered an organisation of civil society; aside from Atameken, no civil society organisations have been consulted. In addition, it is reported that Atameken had ties with the government. On 13<sup>th</sup> of June 2018, an agreement between the Government and Atameken has been signed according to which the government has withdrawn its membership. Notwithstanding this, it is submitted, “the Government and the National Chamber of Entrepreneurs have big joint plans for future</p>	X	Include widerlayers of civilsociety into the consultative process relatedto the amendments of the procurement system.

			cooperation".		
(b) Programmes are in place to build the capacity of relevant	SK Corporate University organizes courses on the legislation regulating the procurement area. Civil society organizations are free to take the course. Interviews with the representatives of civil		Criterion partially met.  In accordance to the information received from counterparts, the participation to the		Spread the information about the trainings

stakeholders to understand, monitor and improve public procurement.	society organizations revealed that they were unaware of such trainings.		trainings organized by SK Corporate University is open to anyone including civil society. Unfortunately, the interviews revealed that the civil society representatives had no information about such opportunity.		organized by SK Corporate University. Have specific training days for the representatives of civil society.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	The Fund has a working group to improve the procurement system, approved by order of the Chairman of the Fund Board. The Working Group includes representatives of the Fund, subsidiaries of the Fund, as well as representatives of the NCE "Atameken" representing various business structures.		Criterion partially met.  Beyond this working group, assessors did not identify consultations with civil society representatives. It remained unclear to what extent the comments and feedback of civil society is taken into account.		After the consultation process, consider the comments and suggestions of civil society and incorporate them as much as possible. In case the comments are not considered, provide for a written justification.

11(b) Adequate and timely access to information by the public

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Requirements in combination with actual	While there are rules on access to information, the actual practices remained unclear.		Criterion not met.  Legal requirements mandate the publication of information for the	X	Establish practices to ensure all stakeholders have adequate and timely access to information.

practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	<p>In accordance to points 24 (2) and (3) of the Procurement Policy the notice and tender documentation of the open tender should be published on the website of the contracting authority, the organiser of the procurement as well as the web-site of the Fund. In addition, these should be published also in paper-media that is published in the territory of whole Kazakhstan with the frequency of not less than 3 times per week. Similar provisions are envisaged for the request for price quotation (point 101), two-stage tendering (point 96) and attestation for consulting services (point 13 Annex 1). The information about the results of the tender also should be public (points 75, 116, 136). In addition, there is the mechanism of the so-called preliminary discussion of tender documentation. According to this procedure, following the publication of tender documentation, interested bidders can comment on the terms stated in the bidding documents. This is a laudable first step to enhance transparency in the public procurement system.</p> <p>The Regulation on e-Procurement lays down the requirements for the registration of the civil unions or associations in the e-procurement system. As there is no access for the experts of the OECD to the e-procurement system, it was not possible to verify what associations or unions have registered.</p>		stakeholders to be able to monitor procurement procedures. However, the assessors were unable to verify the full extent of the published information and who has access. There does not seem to be one access point that provides information about public procurement in a sufficient level of granularity. There is no means to verify how many and what kind of associations have been registered so far.		
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11(c) Direct engagement of civil society

<b>Assessment criteria</b>	Step 1: <b><u>Qualitative analysis</u></b> (comparison of actual situation vs. assessment criteria)	Step 2: <b><u>Quantitative analysis</u></b>	Step 3: <b><u>Gap analysis</u></b> / conclusions (describing any substantial gaps)	Potential red - flags?	Initial input for recommendations
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<p>(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"> <li>• the planning phase (consultation)</li> <li>• bid/proposal opening (observation)</li> <li>• evaluation and contract award (observation), when appropriate, according to local law</li> <li>• contract management and completion (monitoring).</li> </ul>	<p>The representatives of unions or associations are included in the tender commission as observers for the tenders above the value of KZT 75 mln. The Contracting authority provides the representatives with the following:</p> <ol style="list-style-type: none"> <li>i. the documentation regulating procurement procedures;</li> <li>ii. procurement plans in which the representatives are included.</li> <li>iii. information about people responsible for the organisation of the procedure;</li> <li>iv. information about the organisation of tenders in which the representatives are included.</li> </ol> <p>Though it is not explicit, it can be deduced from the above mentioned that the representatives are not included in the planning phase. Rather they participate in bid opening, evaluation, and contract award. The contract management and completion (monitoring) also seems to be outside the scope of such engagement.</p> <p>Representatives of Atameken are also included to the tender commissions of open tenders for the procurement of above KZT 250 mln. They are also included in the assessment of projects in the scope of the realisation of the Program for the support of modernisation of the existing and creation of new products in 2014-2022. The Atameken representatives are participating in the review of the project design and estimate documents, technical and economic substantiations, technical specifications and bids</p>		<p>Criterion partially met.</p> <p>Formally, the legal/regulatory and policy framework allows the representatives of civil society and the National Chamber of Commerce to participate in the procurement procedures. In case of civil society, this engagement is in the phase of bid evaluation and contract award while Atameken also participates in the documentation drafting process for setting the minimum and maximum local content requirements. Civil society and Atameken are not engaged in procurement planning and contract management phases. It remained unclear to what extent the participation really takes place.</p>	<p>Engage the representative s of civil society in all stages of procurement process.</p>
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	for participation to the investment and other projects in order to set the minimal and maximal indicators of the local content.				
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.	<p>As is mentioned under indicator 11 (c) (a), SK procurement legislation contains several provisions on the participation of unions and associations as well as of Atameken.</p> <p>As opposed to this, the interviewed representatives of civil society organizations were not aware that they could participate to the tender committee activities of the Fund. They did not receive any invitation from the Fund to participate to the activities of tender commissions.</p>		<p>Criterion partially met.</p> <p>Civil society organizations interviewed never receive an invitation to participate to the bid evaluation and contract award procedures. It turns out, they were not even aware that such regulation exists.</p>		<p>Make sure various civil society organizations are included in the consultations related to the procurement system as well as in different stages of the procurement process as observers.</p>

## 12. The country has effective control audit systems

### 12(a) Legal framework, organization, and procedures of the control system.

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) laws and regulations that establish a comprehensive control framework,	The Law N 392 –V “On State Audit and Financial Control” dated 12 November 2015 in its Art. 1 (7) mentions the entities in the quasi-public sector as objects of state audit and financial control, meaning that the Law applies to the latter. In		<p>Criterion partially met.</p> <p>The only regulation that was found online was the Rules on Implementing Control. The rest of the information was received</p>		<p>Publish all the laws and regulations related to internal and</p>

including internal controls, internal audits, external audits and oversight by legal bodies	<p>addition, the Rules on Implementing Control have been approved by the Decision of the Council of Directors of Samruk-Kazyna as Annex6 to Protocol of the Council of Directors N 85 dated 29 October 2012 (amended on 27<sup>th</sup> of October 2017). According to interviews and information provided by Samruk-Kazyna, each subsidiary has its own internal audit regulation while the Procurement Methodology and Control Department acts as an external auditor.</p> <p>According to information provided by Samruk-Kazyna, the highest audit institution within Samruk-Kazyna is the Audit Committee on the level of Samruk-Kazyna's board of directors. The Audit Committee consists solely of independent directors. It is the Audit Committee that handles results of audits throughout Samruk-Kazyna.</p> <p>In addition, Samruk-Kazyna has a Special Committee, consisting of representatives from the Holding management, the Ministry of Finance and Kazakhstan's Accounts Committee. The remit of the Special Committee is more related to follow up on the holding's operations from a general impact and efficiency perspective. That means that the Special Committee focuses more on performance monitoring for operational decision-making rather than audits to tackle violations. The Special Committee is interested in investment programs, transformations, business processes and does not look specifically at procurement transactions.</p> <p>The external audit of the Fund is usually carried out by one of the "Big 4" audit firms, selected via tendering.</p>		as commentary during the interviews.		external control activities.
(b) internal control/audit mechanisms and functions that ensure appropriate	The Rules on Implementing Control envisage that there are two types of control activities: planned and not planned. Planned control is carried out taking into account analysis of the procurement activities for the previous period of work,		<p>Criterion partially met.</p> <p>It should be mentioned that even though the Rules on Implementing Control contain provisions</p>		Publish internal audit regulations and manuals. Make sure they are

			compliant with this		
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oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	<p>including the detected violations in the course of unplanned control activities. In case the subsidiary company has a credit rating from one of the major credit rating agencies and achieves an 85-100 rating in the area of corporate governance, this subsidiary does not have to repeat control activities.</p> <p>Unplanned control is carried out in case there is such a request from the (potential) suppliers, members of the tender commission, experts; as a result of monitoring of the web-sites of the Holding to check whether the procurement rules are followed; in accordance to materials submitted by the subsidiary companies for the category management implementation; by the order of the Authorised person of the Fund<sup>7</sup>, when a) information has been received through the hot line; b) the management, internal audit of the subsidiary company or a unit of the Fund requests so; c) an information has been received through media (TV, Internet, etc.).</p> <p>After the control is carried out, an instruction mandatory for the implementation is directed to the subsidiary company by the Authorised Body (Fund) which shall include recommendations on the elimination of the reasons and conditions resulting in the violation. Recommendations should also contain suggestions on the elimination and prevention of violations in future, compliance with corporate documents, and an increase of effectiveness of concrete directions of activities of the subsidiary company.</p>		indicator, this is considered to be already an external audit, not an internal one. As has been mentioned, each subsidiary company has its own internal audit unit and regulation.		providing for a reporting to management on compliance, effectiveness and efficiency of procurement operations.
(c) internal control mechanisms that ensure a proper	The planned control can take up to 30 calendar days and the Authorised Body should inform about its start at least 7 working days in advance.		<p>Criterion met.</p> <p>The provided deadlines are reasonable and support</p>		

<sup>7</sup> In accordance to point 2 of the Rules on Implementing Control, the Authorised Person of the Fund is a person whose obligations include the coordination of the procurement implementation activities in the subsidiaries.

balance between timely and efficient decision-making and adequate risk mitigation	<p>The control can be prolonged in case of need but not for more than 15 calendar days.</p> <p>The unplanned control activities can take up to 30 calendar days and can be prolonged, in case needed, for not more than 15 calendar days.</p>		decision-making.		
(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>The Procurement Methodology and Control Department is exercising the external audit function over the subsidiaries in the holding, in cooperation with the Special Committee (see above.) Within the functions of the Special Committee under the Fund Board (which includes the representatives of the Accounts Committee), an impact analysis of portfolio companies' mergers on the national economy or its specific sector is carried out. Within this analysis a procurement process can be considered in general terms (for example, the execution of the Procurement Plan).</p> <p>While being a member of the Special Committee, the full role of this vis a vis Samruk-Kazyna remained unclear: whether the Accounts Committee's oversight is limited to this participation in the special committee, or whether the Accounts Committee can act independently of this Special Committee to exercise a full supervisory function that an SAI should have.</p> <p>In an interview for a press release by Samruk-Kazyna, the Managing Director for Government Relations Nurlan Rakhmetov mentioned that the State Committee for the Control over the Execution of State Budget has gained the right not only to control the absorption of state budget but also the effectiveness of the asset management. In his opinion, Samruk-Kazyna should be audited as a commercial company based on the international standards for audit</p>		<p>Criterion partially met.</p> <p>It is unclear to what extent the Accounts Committee independently and fully exercises an oversight function over Samruk-Kazyna, or it is doing so only as a member of the Special Committee. There is no further information on how (or if) the Accounts Committee periodically audits the procurement function of SK (and/or of the subsidiaries). No information was provided to suggest that risk assessments are conducted or used to manage external audits of Samruk-Kazyna. The Procurement Methodology and Control Department or the Special Committee cannot be considered a sufficiently independent institution to provide external audit and oversight.</p>	X	<p>Clearly describe the role of the Accounts Committee in exercising external control over the procurement transactions of SK. In case the Accounts Chamber has no role besides as a member to the created special committee, also clearly state that in the legislation.</p>

	and this is different form the audit of state bodies. <sup>8</sup>				
(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)	No review of specific audit reports by the SAI is envisaged. At least once in three months, the Head of the Accounts Committee submits information on the work of the Committee to the President. The Accounts Committee also submits for the discussion and approval of the Parliament an annual report on the execution of the republican budget. The Head of the Committee also provides information on the work of the Committee to the Parliament not less than once in three months.		Criterion partially met.  No review of specific audit reports by the SAI is envisaged.		In case the Accounts Committee is involved as an external auditor, provide for a review of the audit reports.
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	After the control is carried out, a mandatory instruction on the implementation is directed to the subsidiary company by the Authorised Body (Fund) which shall include recommendations on the elimination of the reasons and conditions resulting in the violation. Recommendations should also contain suggestions on the elimination and prevention of violations in future, compliance with corporate documents, increase of effectiveness of concrete directions of activities of the subsidiary company.  In case the instructions are not carried out or are carried out partially, the requested documentation is not submitted or is submitted partially, the submitted information is false, the deadline for the implementation of the instructions is missed the employees of the contracting authority, including the manager controlling the procurement activities, head of the unit responsible for the organisation of procurement procedures, carry personal responsibility.		No gaps are identified.  Criterion met		

<sup>8</sup> See [https://sk.kz/press-centre/news/17601/?sphrase\\_id=51074](https://sk.kz/press-centre/news/17601/?sphrase_id=51074)

	The aggregated results of the control activities are basis for the Authorised Body to draft suggestions on the effective usage of money, prevention of ineffective use of money, development of the system of procurement and the normative basis, etc.				
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12(b) Coordination of controls and audits of public procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag?	Initial input for recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	As has been mentioned during the interviews, there are internal audit manuals for each subsidiary company which are not public.		Criterion partially met. This is an oral explanation as the manuals are not public.	X	Publish internal audit manuals.
(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.	As has been mentioned during the interviews, there are internal audit manuals for conducting procurement audit that are not public.		Criterion partially met. This is an oral explanation as the manuals are not public.		Publish internal audit manuals.



<p>(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):</p> <ul style="list-style-type: none"> <li>- number of specialised procurement audits carried out compared to total number of audits (in %).</li> <li>- share of procurement performance audits carried out (in % of total number of procurement audits).</li> </ul> <p>Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>The planned control activities are carried out in accordance to the annual plan. The schedule for scheduled audits is determined based on the level of the subsidiary within the Samruk-Kazyna holding structure, past procurement activity and results of past audits (e.g., unscheduled audits.)</p>		<p>There is no information about the actually carried out internal audit as this is done within each subsidiary.</p>		<p>Establish that the internal audit is carried out at least annually in each subsidiary of the Holding.</p>
<p>(d) Clear and reliable reporting lines to relevant</p>	<p>Internal audit units can ask the Procurement Methodology and Control Department to carry out an unplanned control in their subsidiary</p>		<p>Criterion partially met. The reports on external audit are submitted to the management of the</p>	<p>X</p>	<p>Provide for a clear hierarchy for the</p>

oversight bodies exist.	<p>company. Also, in accordance to point 144 the Department is cooperating with internal audit units of the subsidiaries.</p> <p>Instructions are sent to the subsidiaries and the management required to be acquainted and sign the act of control within 3 working days of receiving it. In case the manager does not sign it, an act about this fact is being comprised.</p> <p>In case the subsidiary does not agree with the results of the planned control or if, during an unplanned control, violations affecting the results of the procurement procedure have been detected, the audit materials are sent to the Fund's Special Committee. The Special Committee can then send an instruction to the subsidiary on the suspension of the contract award for not more than 10 working days and on the cancellation of the results of the procurement before the conclusion of the contract.</p>		<p>subsidiary company of the Holding where the control activities are carried out as the Procurement and Control Department is an external audit body. No information on the internal audit reporting lines.</p>		<p>reporting of internal audit findings to the management.</p>
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12(c) Enforcement and follow-up on findings and recommendations

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a)  Recommendations are responded to and implemented within the time	The fact that the managers have personal responsibility for the correct and timely implementation of the instructions leads to the assumption, that the deadlines are generally respected.		<p>Criterion partially met.</p> <p>Due to the lack of data this cannot be verified.</p>		

<p>frames established in the law.*</p> <p>* 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 %). Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>Due to the lack of data this cannot be verified.</p>				
<p>(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.</p>	<p>The system on the follow up on the implementation of the audit recommendations is not clearly described in the Rules on Implementing Control. It is mentioned that in case the instructions are not carried out or are carried out partially, the requested documentation is not submitted or is submitted partially, the submitted information is false, the deadline for the implementation of the instructions is missed the employees of the contracting authority, including the manager controlling the procurement activities, head of the unit responsible for the organisation of procurement procedures, carry personal responsibility. The way of holding persons liable is described in a specific internal document of the contracting authority which envisages sanctions</p>		<p>No gaps are identified. Criterion met.</p>		

	<p>in accordance to the legislation of the Republic of Kazakhstan.</p> <p>The aggregated results of the control activities are basis for the Procurement Methodology and Control Department to draft suggestions on the effective usage of money, prevention of ineffective use of money, development of the system of procurement and the normative basis, etc.</p>				
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12(d) Qualification and training to conduct procurement audits

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red	Initial input for recommendations
<p>(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>* Recommended quantitative indicator to substantiate assessment of sub-</p>	<p>There are no specific training programs for procurement auditors. They receive the same training as general civil servants.</p>		<p>Criterion partially met.</p> <p>No specific training program for procurement auditors exists.</p>		<p>Provide for specific training programs for internal and external auditors.</p>

<p>indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.</p>					
<p>(b) The selection of auditors requires that they have adequate knowledge of the</p>	<p>There is no specific requirements for the employees of the Procurement and Control Department related to the function of the audit. The selection is carried out via usual HR procedure.</p>		<p>Criterion partially met. There are no specific knowledge/background requirements for the auditors.</p>		<p>Provide for requirements related to the knowledge of procurement</p>

subject as a condition for carrying out	The fact that the Procurement and Control Units are in the same Department, means that the			for auditors that will be entrusted to
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procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	controllers (external auditors of SK) will get support from their procurement colleagues, but it also limits the independence of the audits.				audit procurement transactions.
(c) Auditors are selected in a fair and transparent way and are fully independent.	The auditors of the Control Unit of the SK are usual employees of the Fund. The selection is carried out via usual HR procedure.  The external auditors for the Fund are usually selected from Big4 via public tender.		As submitted during the interviews, the HR procedures are transparent and merit based.  No gaps identified. Criterion met		

### 13. Procurement appeals mechanisms are effective and efficient

#### 13(a) Process for challenges and appeals

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Decisions are rendered on the basis of available evidence submitted by the parties.	The aggrieved suppliers are required to submit to the Fund and/or the subsidiary companies of the Holding all necessary information and documentation related to the actions/inactions of the contracting authority. The Fund has the right to ask and receive all the documents, oral and written explanations from the subsidiary company of the Holding in order to resolve the case.		No gaps are identified. Criterion met.		

<p>(b) The first review of the evidence is carried out by the entity specified in the law.</p>	<p>The first review is carried out either by the Fund or by the subsidiary company of the Holding depending on the procurement procedure being challenged. This has been specified in the Rules on Reviewing the Requests from the Potential Suppliers, Suppliers of the JSC SK and Organizations 50 or More Voting Shares of which Directly or Indirectly Belong to the Fund on the Right of Ownership or Trust Management (approved by the decision of the Management N 29/12 dated 5 July 2012 amended with Protocol 12/16 dated 18 April 2016).</p>		<p>No gaps are identified. Criterion met.</p>		
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p><b>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</b></p>	<p>The question whether decisions are final and enforceable, and which bodies are issuing these, remained unclear. Rules to this effect were not located in regulations available to the assessment team.</p> <p>In case the complainant is not happy with the decision of the subsidiary company of the Holding, the supplier can refer to the Authorised Body (Department of Procurement Methodology and Control). The Fund has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations.</p> <p>If still unhappy, the suppliers can refer to the Fund's Commission on Public Procurement Complaints created to review <i>inter alia</i> the complaints against the decisions of the Authorised Body. In case there is a complaint against the decision of the Commission on Procurement Complaints, it is possible to have the second hearing of the Special Committee in case there is an order of the Chairman of the Management Board. The Authorised Body sends out respective letters to the subsidiary of the Holding based on the conclusions of the Commission on Procurement Complaints (clause</p>	<p>No quantitative information was provided.</p>	<p>Criterion partially met.</p> <p>There is only a small provision about the mandatory nature of the decisions of the Fund when reviewing the decisions of the subsidiary companies of the Holdings. There is no such provision about the decisions of the Special Committee</p>		<p>Envisage the mandatory nature of the decisions of the Commission.</p>



\* Recommended quantitative indicator to

<p>substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.</p>	<p>24 of the Provision on the Fund's Commission on Complaints). However, the provision does not specify the enforceability of the decisions or of the mentioned letters.</p> <p>The Suppliers also have the right to refer to the Court in case not being satisfied. The court of course has its own means to enforce its decisions.</p>				
<p>(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.</p>	<p>Point 12 of the Regulation for the Examination of the Pleas from the Suppliers states that complaints for the review of which there is no need for information from other bodies, subsidiary companies of Holding, are reviewed in 15 calendar days since the day of submission. In case there is a need of additional information from other bodies, subsidiary companies of Holding, the decision should be taken within 30 calendar days since the submission. In case there is a need for additional examination or check, the deadline can be extended for up to 30 calendar days about which the complainant is informed. In case the questions raised in the complaint require longer period, the complainant is being informed about it.</p> <p>The decision is taken by the Commission on Procurement Complaints within 5 working days after the receipt of the materials in the Fund.</p> <p>Related to the deadline for the submission of the complaint there is no specific standstill period requirement but point 125 of Procurement Policies state that the contract cannot be signed earlier than 10 calendar days and later than 25 calendar days since the signature of the protocol on the results.</p> <p>The results of the contracting authority on the preliminary discussion of the tender documentation can be contested in accordance</p>		<p>Criterion partially met</p> <p>There are some deadlines envisaged for the complaint to be launched but they are not complete and do not refer to all the stages of the complain process. Thus, it is unclear how many days the supplier has in order to ask for a review in the Authorized Body or afterwards in the Special Committee. The deadline for the Authorized Body to come to a conclusion is not very specific and can be potentially extended for an unlimited period. In addition, there is no specific provision on the suspension (continuations) of the procurement process. As there are several levels of the complain process, it is necessary to have clear deadlines for both the suppliers to launch a complaint and the authorities to issue a</p>	<p>X</p>	<p>Clearly define the number of days allowed to complain in each stage of the complain process. In addition, the deadline for the Authorized Body to decide on the case should be clearly established with limited possibilities of prolongation. Provision on (automatic) suspension should be provided in the legislation.</p>

	to the rules regulating the control function in SK. No specific time frame is envisaged for such complaint to be launched.		decision, as well as to clearly set up rules for the suspension (continuation) of the procurement process.		
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13(b) Independence and capacity of the appeals body

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	The first review is done by either the subsidiary company of the Holding or the Fund itself. This means they are reviewing their own decisions or the decisions of other units in the subsidiary company. The other levels ( Commission on Procurement Complaints, court) can be said to enjoy more independence even though in case of the review by Commission on Procurement Complaints the working organ is still the Department of Procurement Methodology and Control. Representatives of Atameken are also invited to participate to the work carried out by the Commission on Complaints but this does not mean that such participation renders the Commission automatically independent.		Criterion not met  It cannot be stated that the first instance appeals body is independent as it is reviewing its own decisions. Other levels are more independent though they still do not meet the standard of independence set up by the international best practice. Only the independence of court can be asserted.	X	Create a body independent of the Fund and subsidiary companies of the fund entrusted with the review function.
(b) does not charge fees that inhibit access by concerned parties	No charges are paid for the review.		No gaps are identified.		

<p>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p> <p><b>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.</b></p>	<p>The rules for submission and resolution are envisaged in two documents:</p> <p>i. Rules on Reviewing the Requests from the Potential Suppliers, Suppliers of the JSC SK and Organisations 50 or More Voting Shares of which Directly or Indirectly Belong to the Fund on the Right of Ownership or Trust Management (approved by the decision of the Management N29/12 dated 5 July 2012 amended with Protocol 12/16 dated 18 April 2016);</p> <p>ii. Regulation on the Commission of JSC SK for the review of complaints related to procurement (approved by the decision of the Management N29/12 dated 5 July 2012 amended with Protocol 12/16 dated 18 April 2016).</p> <p>Both documents are publicly available.</p>	<p>No quantitative information to establish this assessment criterion was accessible.</p>	<p>No quantitative information about the timeframe within which cases are resolved was accessible to the assessment team.</p>		
<p>(d) exercises its legal authority to suspend procurement</p>	<p>The Subsidiary company of the Holding, in case the reasoning in the complaint is considered to be legitimate, has the right to cancel the results of the procurement or to include additions and/or amendments in the appropriate</p>		<p>Criterion not met</p> <p>No provision of the suspension of the procurement process and no specific remedies. As decisions are not</p>		<p>Prescribe (automatic) suspension in the legislation.</p>

proceedings and impose remedies	<p>documentation on its own initiative. After hearing the case the Fund has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations. The Special Committee takes a decision that is the basis of the letter from the Fund directed to the subsidiary company of the Holding.</p> <p>No provision of the suspension of the procurement process and no specific remedies.</p> <p>According to the authorities, a system of automatic suspension is currently being developed to be included in the e-procurement system. So far, the work has not been finished. In addition, there is a need to prescribe in legislation when is the automatic suspension possible and only after develop a tool for the implementation of the legal requirements.</p>		published, nor were they made available, the assessment team was unable to verify the activities of the appeals body.		
(e) issues decisions within the time frame specified in the law/regulations*	Even though there are some rules on the deadlines for taking a decision, due to the absence of data, the assessors were unable to verify the application of these provisions.		Cannot be verified.		
(f) issues decisions that are binding on all parties	<p>It remained unclear to what extent decisions by the Procurement Methodology and Control Department are binding for subsidiary companies. The Fund, after hearing the case, has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations.</p> <p>In the Rules on the Implementation of the Control, it is also mentioned that the Fund might <i>request</i> the subsidiary company of the Holding to cancel the results of the procurement before the conclusion of the contract in case the Special</p>		There is no explicit provision requiring the decision to be mandatory. However, for example in the Rules on the Implementation of the Control it is mentioned that the Fund might <i>request</i> the subsidiary company of the Holding to cancel the results of the procurement before the conclusion of the contract in case the Special Committee has		

	Committee has decided so. Moreover, in such case the results of the procurement should be reconsidered. This is the case when the management of the subsidiary company does not agree with the results of the planned control activities or the unplanned control detected violations affecting the results of the procurement procedure.		decided so in which case the results should be reconsidered. The Fund in its own turn can also give instructions to the subsidiary companies of the Holdings related to the planned or implemented procurement procedures.		
(g) is adequately resourced and staffed to fulfil its functions.	The Procurement Methodology and Control Department is responsible for the methodology, control and the review functions.		According to stakeholders, the Procurement Monitoring and Control Department will need more staff to fulfil different entrusted functions. These indications are credible, given the high workload and increasing number of diverse tasks for the Procurement Monitoring and Control Department. However, they cannot be verified due to the absence of data on the number of complaints reviewed by the Fund/Special Committee and the structure/staffing of the Department.		Hire highly qualified staff to help the Department to fulfil its functions of methodological guidance, review and control.

### 13(c) Decisions of the appeals body

Procedures governing the decision making process of the appeals body provide that decisions are:

<b>Assessment criteria</b>	Step 1: <b><u>Qualitative analysis</u></b> (comparison of actual situation vs. assessment criteria)	Step 2: <b><u>Quantitative analysis</u></b>	Step 3: <b><u>Gap analysis</u></b> / conclusions (describing any substantial gaps)	Potential red -	Initial input for recommendations
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				flag?	
(a) based on information relevant to the case.	<p>In case the issue is not described or the complaint is received from the anonymous source, the complaint is not taken for the review. The relevant issue is described and documents are provided by the complainant. Afterwards if the review is carried out already by the Fund, the latter can request all the relevant information and documentation from the subsidiary company of the Holding (contracting authority). Experts and consultants can also be engaged in the process.</p> <p>Whether in practice the decisions are taken based on the submissions from the parties and experts that are relevant for the case cannot be verified due to the unavailability of data.</p>		<p>Not met</p> <p>Cannot be verified due to the unavailability of case files.</p>		
<p>(b) balanced and unbiased in consideration of the relevant information.*</p> <p><i>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c)</i>  <i>Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).</i>  <i>Source: Survey. -</i></p>	<p>According to interviews, the responsible bodies to consider available information and are generally balanced and unbiased in their judgement. However, given that no access to case-related files was possible, the analysis of this criterion has to remain limited.</p>	<p>It was not possible to conduct a survey with suppliers.</p>	<p>Criterion not met</p> <p>The institutional structure limits the extent to which decisions of the appeals body can be really considered unbiased and balanced: This is because the appeals body is part of the management structure of Samruk-Kazyna for day-to-day operations; in fact, the appeals function is fulfilled by the Department in charge of setting rules on public procurement and also exercising the audit function (see above.)</p>	x	<p>Consider revising the institutional structure to separate the appeals body and the management structure.</p>

share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.					
<p>(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.</i></p>	<p>The subsidiary company of the Holding, in case the reasoning in the complaint is considered legitimate, has the right to cancel the results of the procurement or to include additions and/or amendments in the appropriate documentation on its own initiative. After hearing the case the Fund has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations. The Commission on Procurement Complaints takes a decision that is the basis of the letter from the Fund directed to the subsidiary company of the Holding.</p> <p>In the Rules on the Implementation of the Control it is also mentioned that the Fund might request the subsidiary company of the Holding to cancel the results of the procurement before the conclusion of the contract in case the Special Committee has decided so. Moreover, in such case the results of the procurement should be reconsidered.</p> <p>No provision on specific remedies in the Rules on the Examination of the Pleas or in the Rules on Commission JSC SK. The content of the decision is not published.</p>		<p>Criterion partially met</p> <p>The subsidiary company by its own will can cancel the process or make necessary amendments in the documents. The decisions are not published and no data was provided in order to understand the type of remedies issued.</p>		<p>Describe the remedies the Fund and the Special Committee are entitled to take against the contracting authority violating the procurement regulation.</p>



<p>(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*</p> <p><i>// Minimum indicator //</i>  <i>*Quantitative indicator to substantiate assessment of sub-indicator 13(c)</i>  <i>Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralised online portal.*</i></p>	<p>Decisions are not published as there is no legal obligation to do so.</p>	<p>Decisions are not published.</p>		<p>X</p>	<p>Publish the decisions.</p>
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#### 14.The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	Definition of corruption is given in the Law “On Resistance to Corruption” (Art. 1 (6)). Bodies of the quasi-public sector, including Samruk Kazyna are subject to the above –mentioned Law. There is no specific definition of corruption in procurement area.		Criterion partially met  There is only a general definition of corruption found in the Law “On Resistance to Corruption” (Art. 1 (6)).		Consider developing a more specific definition of corruption in procurement.
(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.	There are criminal and administrative penalties for corrupt practices by government employees (e.g. Art. 189 (3) (2), Art. 364-370 of the Penal Code and Art. 676-681 of the Administrative Code) as well as special articles related to the violation of public procurement rules (Art. 207 of the Administrative Code). The future legislation that is currently being discussed in the Parliament envisages amending the Administrative Code and adding Art. 207 -1 which prescribes responsibility for the violations of procurement rules of the national holdings, national companies and organisations 50 and more voting shares directly or indirectly belong to the national holding or national company. This means that the violation of procurement rules of Samruk Kazyna will also invoke administrative penalties in case the proposed amendments will be adopted. As was mentioned by the Vice-Minister of Finance Mr. Beketaev in his speech in		Criterion partially met  Currently there is no responsibility or penalty envisaged by the legislation of Kazakhstan for the violation of the procurement rules of SK. Once the amendments to the Administrative Code will be adopted, there will be responsibility for the seven most sensitive violation of the procurement rules with reduced sanctions.		Ensure that Samruk Kazyna’s corporate governance procedures adequately define individual responsibilities, accountability and penalties for fraud, corruption and other prohibited practices for violations not covered by the amendments to the Administrative Code.

	the Mejilis, the violation for the procurement rules of the quasi-public sector is envisaged only for seven main sensitive administrative violations with reduced sanctions, as the state does not want to get involved in the corporate governance.				
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	<p>Procurement Policies contains the definition of the conflict of interest of the tender commission members as well as lays down provisions describing the steps in case such situation arises. It also regulates the cases where there is a conflict of interest with the consultant while also referring to the Corporate Standard on the Conflict of Interest when Involving Consultants.</p> <p>No information about the cooling-off period for the former officials was found.</p>		<p>Criterion partially met</p> <p>No information about the cooling-off period for the former officials was found.</p>		Prescribe a cooling off period for former officials.

#### 14(b) Provisions on prohibited practices in procurement documents

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and	Consultants are required to submit a written statement about the absence of the conflict of interests in accordance with the form annexed to the <i>Policy on the Prevention of the Conflict of Interest when Engaging Consultants</i> . The Contracting Authority is obliged to ask for the mentioned written form through the contract notice and draft contract in case of the open tender, closed tender, two-stage tender (open and closed) and request for price quotation. In case of single sourcing such form should be submitted before the conclusion of the contract.		<p>Criterion partially met</p> <p>The policy seems to refer only to the cases of the procurement of consultancy services while provisions on the incorporation of the prohibited practices in procurement documentation should have a wider scope and should include all types of</p>		Ensure the incorporation of prohibited practices in the documentation of all types of procurement.

contract documents.	The employees of the contracting authority also have to disclose any information about the (potential) conflict of interest in written.		procurement no matter the value or the method.		
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	<p>It was not possible to find any provision requiring to mention in the procurement and contract documents the prohibition of fraud, corruption and other such practices.</p> <p>As there is no access to procurement documentation, the assessors could not verify that the documentation does not contain such provisions also in practice.</p>		<p>Criterion partially met</p> <p>The legislation does not require the inclusion of a provision on the prohibition of corrupt and other such practices in the procurement documentation. In addition, due to the lack of access to procurement documentation, this could not be verified.</p>		Establish processes or formal requirements that procurement and contract documents include provisions on fraud, corruption and other prohibited practices.

14(c) Effective sanctions and enforcement systems

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a) 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.	The state bodies are required to conduct internal analysis of corruption risks as a result of which measures are undertaken for the elimination of causes and conditions supporting the conduct of corrupt practice. The external analysis of corruption risks is conducted by the authorized state body (Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption). Violations can be reported through 1.) common letters; 2.) e-complaints on the portal; 3.) hotline (supported by Deloitte). There was no information found about specific <i>procedure</i> for reporting corrupt practices to law enforcement authorities.		Criterion not met  There was no information found about specific procedure for reporting corrupt practices to law enforcement authorities.		Describe a procedure using which the contracting authorities can report the cases of corruption/fraud to law-enforcement agencies.

	As revealed during the interviews, in case there are elements of criminal or administrative misconduct, the law-enforcement agencies are intervening.				
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.	No such evidence was found, as there is no specific system for the reporting of corrupt practices by procuring entities.		Criterion not met  No such evidence was found, as there is no specific system for the reporting of corrupt practices by procuring entities.		
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	As has been already analyzed in Indicator 1 (d) there is no debarment or suspension for the conduct of corrupt practices.		Criterion not met  As has been already analyzed in Indicator 1 (d) there is no debarment or suspension for the conduct of corrupt practices.	X	One of the grounds for debarment should be the involvement in corrupt practices.
(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.*  <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c)</i>	The interviews revealed that there have been several cases of corruption scandals mainly involving the management of the Fund as a result of which those involved were dismissed. No such scandal has taken place during the last two years.  Other sources such as newspapers provide information about a corruption scandal involving former minister of National Economy Kuandik Bishimbayev (also Quandyk Bishimbaev). The prodigy completed an elite education programme sponsored by Kazakhstan's president Nazarbayev and held high-ranking posts at a young age, including a position on the board of Samruk-Kazyna from 2011-2013. In 2018, Bishimbayev was convicted for corruption (accepting bribes while he was the head of SOE	It was not possible to conduct a survey with suppliers as no access to Samruk-Kazyna's suppliers was granted.	Criterion partially met  It seems that the law on corruption works, as there are several high-level corruption scandals those involved in which were sanctioned.		

<p><i>Assessment criterion (d):</i></p> <ul style="list-style-type: none"> <li>- <i>Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).</i></li> </ul> <p><i>Source:</i></p> <p><i>Normative/regulatory function/anti-corruption body.</i></p> <ul style="list-style-type: none"> <li>- <i>Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.</i></li> </ul> <p><i>Source:</i></p> <p><i>Normative/regulatory function/anti-corruption body.</i></p> <ul style="list-style-type: none"> <li>- <i>Gifts to secure public contracts: number of firms admitting to unethical practices, including making</i></li> </ul>	<p>Baiterek) and is currently serving a 10-year prison term.<sup>9</sup></p>				
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gifts in (in %). Source: Survey.					
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14(d) Anti-corruption framework and integrity training

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise 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.*	<p>Elements of Kazakhstan's anti-corruption framework are outlined in the law "On Resistance to Corruption" (2015). The law prescribes that external analysis of corruption risks should be carried out by a body designated by the Government of Kazakhstan in agreement with the Administration of the President. To that effect, an Agency of the Republic of Kazakhstan for Public Service and Resistance to Corruption has been created in 2016 as a result of reorganisation of the Ministry of Public Service. The Law also prescribes anti-corruption measures to be undertaken by the public bodies, including the quasi-public sector bodies, as well as financial disclosure requirements for natural persons and employees of public sector.</p> <p>The Agency has 10 departments in accordance to geographical division of the country.</p>		<p>No gaps are identified.</p> <p>Criterion met.</p>		



<p><i>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):</i>  <i>- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).</i>  <i>Source: Survey.</i></p>					
<p>(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.</p>	<p>In case of public procurement, the Agency of the Republic of Kazakhstan for Public Service and Resistance to Corruption is monitoring the possible artificial increase of the prices by contracting authorities, legislative gaps that might give rise to corruption opportunities and proposes measures to increase transparency. For the monitoring of prices, it uses the e-procurement system and in case the price is found to be 30% or higher than the market price, the Agency sends a recommendation to reduce the price. Though the recommendation is not mandatory, the CA usually follow it. This mechanism does not cover procurement of SK.</p> <p>The SK is conducting internal analysis of corruption risks as a result of which measures are undertaken for the prevention and elimination of corrupt practices.</p>		<p>Criterion not met.</p> <p>There is no specific mechanism in place to combat corruption in the procurement of SK.</p>	<p>X</p>	<p>The Agency should be given right to monitor possible artificial increase of the prices by contracting authorities and the Fund and legislative gaps that might give rise to corruption opportunities as a result of which measures to increase transparency should be proposed.</p>

(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	No such statistics was found.		<p>Criterion not met.</p> <p>No such statistics was found.</p>	X	Compile and publish reports on anti-corruption measures, detected cases of corrupt practices and convictions.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	No special measures were identified for the procurement of SK.		<p>Criterion not met.</p> <p>No special measures were identified for the procurement of SK.</p>	X	Anti-corruption legislation should fully cover also SK. In addition, and even without legal requirements, specific measures could be implemented by SK to counter corruption preventively, i.e. identify and mitigate risks before they arise, instead of detecting corruption after the fact through audits. Preventive measures to counter corruption related to procurement

					can have many different forms and can include training, risk analysis, four-eyes-principles, among others (see OECD Recommendations on Public Integrity.)
(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.	No special integrity training is offered. The Corporate University of Samruk-Kazyna covers anticorruption within a 3-day course on the general presentation of the Fund, describing the violations and how to avoid them. No specific course on ethics or integrity in procurement is envisaged.		Criterion not met.  No specific course on ethics or integrity in procurement is envisaged.		Establish special integrity training programmes and ensure the procurement workforce regularly participates.

#### 14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	There is no dedicated civil society organization providing an oversight of the procurement transactions of public procurement or SK procurement. All the organizations interviewed during the fact-finding mission were dealing with procurement <i>inter alia</i> . Moreover, it seems that public procurement is in the attention of the civil society organizations more than the procurement of SK. It might be related to the fact		Criterion not met.  No evidence was found that the civil society organizations are exercising social control and audit of the procurement of SK.	X	Allow the civil society organizations to access procurement information and to exercise social audit and control.

	that the e-procurement portal of SK seems to be more closed than the one for public procurement. Also, the state organizes tender procedures awarding contracts to the NGOs for conducting specified monitoring activities. The effectiveness of such monitoring is under doubt but it is worth mentioning that no such equivalence exists in SK.				Support capacity building of such organizations and take their recommendations into account.
(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.	No clear channels for the civil society organizations to engage in the monitoring of procurement transactions of SK.		Criterion not met.  There was no evidence of third-party monitoring of procurement of SK.	X	Establish clear channels through which the civil society organizations will engage in monitoring of procurement transactions of SK. Publishing procurement related information for public scrutiny could be the first step.
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*  * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e)	There is no dedicated civil society organization providing an oversight of the procurement transactions of public procurement or SK procurement. All the organizations interviewed during the fact-finding mission were dealing with procurement <i>inter alia</i> .  There is no ample evidence that the civil society organizations are involved in shaping and improving the integrity in procurement of SK.		Criterion not met.  There is no ample evidence that civil society is an active player in shaping and improving the integrity in procurement of SK.	X	Support the creation of NGOs dedicated to organizing social control over procurement transactions. Allow such NGOs access to information and data.

<p><i>Assessment criterion (c):</i></p> <ul style="list-style-type: none"> <li>- number of domestic civil service organisations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement.</li> </ul> <p><i>Source:</i> <i>Survey/interviews.</i></p>					
<p>(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.*</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e)</i></p> <p><i>Assessment criterion (d):</i></p> <ul style="list-style-type: none"> <li>- number of suppliers that have internal compliance measures in place</li> </ul>	<p>Suppliers are requested to sign a form on the absence of conflict of interest or to inform about the existence of such in a written form. Representatives of Atameken (the National Chamber of Entrepreneurs) are participating to the open tenders with the value of KZT 250 mln as members of tender commission.</p> <p>The Policy for the prevention of the Conflict of Interest when Engaging Consultants states that the Contracting Authorities should try to engage consultants that are committed to respect high standards of professional, business and ethical conduct. In addition, consultants have to sign the Policy and agree to comply with its norms as well as the requirements of the internal documents of professional organizations and the legislation of the Republic of Kazakhstan.</p>		<p>Criterion partially met.</p> <p>There are some measures in place where the suppliers and business associations can be said to be involved in the support of integrity and ethical behavior of the procurement of SK.</p>		<p>Consider developing more extensive measures and engagement with suppliers and business associations to actively support integrity and ethical behavior.</p>

(in %). Source: Supplier database.					
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14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	<p>Art. 24 of the Law “On Resistance to Corruption” states that the employee of the organization that knows about corrupt practices informs the management of the organization or the authorized body for the resistance to corruption. Management of the organization, the authorized body for the resistance to corruption had to take measures concerning the submitted information. The person who has informed about the corrupt practice or has resisted it in some other way is under the protection of the state and is being encouraged (in monetary terms).</p> <p>In addition, the SK has a hot line through which it accepts complaints and other information including about procurement. This can be done anonymously. As has been already mentioned, the information from suppliers can also be basis for control activities.</p>		<p>No gaps are identified.</p> <p>Criterion met.</p>	
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	<p>The data about the person who has submitted information on corrupt practices is considered a state secret and is made available only in cases prescribed by Law “On State Secret”. Disclosure of such information entails liability envisaged by the above-mentioned Law.</p>		<p>No gaps are identified.</p> <p>Criterion met</p>	

(c) There is a functioning system	The information received through the hot line is passed to the department of compliance-control for further investigation.		No gaps are identified. Criterion met.	
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that serves to follow up on disclosures.				
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14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
<p>(a) 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><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):</i></p>	<p>As has been revealed during the fact-finding mission, SK has a code of corporate conduct where there is one general provision on procurement. In accordance to it, the suppliers should be selected based on their qualifications, merit and competitiveness. This is the only (fairly vague) provision found in relation to procurement. Some ethical norms are contained in the Policy for the Prevention of the Conflict of Interest when Engaging Consultants. Those relate to the professional conduct and ethics in situations where conflict of interest might arise but only in cases of engaging consultants.</p>		<p>Criterion partially met.</p> <p>SK has a code of corporate conduct, which contains only one small sentence on procurement: “The suppliers should be selected based on their qualifications, merit and competitiveness”. No other, more specific provision was detected. However, the assessment criterion asks for “particular provisions” regulating the conduct of procurement or public finance officials.</p>		<p>Include specific provisions in the Code of Corporate Conduct requesting ethical and corrupt-free behavior from officials involved in public financial management, including procurement.</p>



<p>- 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). Source: Normative/regulatory function.</p>					
<p>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g)</i> Assessment criterion (b): - officials involved in public procurement that have filed financial</p>	<p>No such provision is found in the Code of Conduct.</p> <p>The Law “On Resistance to Corruption” contains provisions on the financial disclosure requirements. In accordance to it, people holding responsible public office and their spouses, officials and their spouses, persons entrusted with the implementation of public function and people equated with the persons entrusted with the implementation of public function shall submit declaration on income and assets.</p> <p>By 31<sup>st</sup> of December each year the declarations of <i>inter alia</i> the management of quasi-public sector should be publicized.</p>		<p>Relevant provisions on financial disclosure could be found in the Law “On Resistance to Corruption”.</p> <p>No gap was identified. Criterion met.</p>		

disclosure forms (in					
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% of total required by law). Source: Normative/regulatory function.					
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	Yes and the subsidiary companies of the Holding are required to draft similar codes. The non-compliance will lead to firing the person. In case there are elements of violation of administrative or criminal legislation, appropriate sanctions might follow.		No gaps are identified. Criterion met.		
(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.	No regular training programs are envisaged to ensure sustained awareness and implementation of measures.		Criterion partially met.  No regular training programs are envisaged to ensure sustained awareness and implementation of measures.		In the scope of the permanent training program, include also a module on the financial disclosure rules, anti-corruption measures in force and integrity in general.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and	No disclosure of beneficial ownership is envisaged.  Information from financial disclosure forms for specific categories of employees, including the management of quasi-public sector, is published annually.  In case a member of the tender commission has a conflict of interest, he informs about it the Secretary who makes appropriate notes in the protocol of the results (point 30 of the Policies to		No disclosure of beneficial ownership is envisaged.	X	Ensure the disclosure of beneficial ownership of at least the suppliers awarded the contract in a specific tender procedure.

utilised by decision makers to prevent					
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corruption risks throughout the public procurement cycle.	Conduct Procurement). The Protocol is published.				
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