



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF PHILIPPINES PUBLIC PROCUREMENT SYSTEM

2021





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Volume I – Main Report

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Table of Contents

Volume I

Acknowledgments.....	1
Acronyms	2
Executive Summary.....	4
Pillar I. Legal, Regulatory and Policy Framework.....	8
Pillar II. Institutional Framework and Management Capacity	10
Pillar III. Public Procurement Operations and Market Practice	11
Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System.....	13
Recommendations for Prioritized Future Reforms Initiative	18
Chapter 1: Introduction	20
Strategic Context and Rationale of the Assessment.....	20
Development Objectives of the Assessment	22
Methodology of the Assessment	23
Chapter 2: Analysis of Country Context	27
Political, Economic, and Geostrategic Situation of Philippines	27
The Public Procurement System and its Links with Public Financial Management and Public Governance System	30
National Policy Objectives and Sustainable Development Goals	43
Public Procurement Reform in the Philippines.....	47
Chapter 3: Assessment	56
Pillar I. Legal, Regulatory and Policy Framework.....	56
Indicator 1: The public procurement legal framework achieves the agreed principles and complies with applicable obligations.....	65
Indicator 2: Implementing regulations and tools support the legal framework.....	73
Indicator 3: The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.....	75
Pillar II. Institutional Framework and Management Capacity	77
Indicator 4: The public procurement system is mainstreamed and well-integrated with the public financial management system.....	78
Indicator 5: The country has an institution in charge of the normative/ regulatory function	80
Indicator 6: Procuring entities and their mandates are clearly defined	83
Indicator 7: Public procurement is embedded in an effective information system	84

Indicator 8: The public procurement system has a strong capacity to develop and improve.....	95
Pillar III. Public Procurement Operations and Market Practices	97
Indicator 9: Public procurement practices achieve stated objectives	103
Indicator 10: The public procurement market is fully functional	112
Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System.....	115
Indicator 11: Transparency and civil society engagement strengthen integrity in public procurement .	117
Indicator 12: The country has effective control and audit systems.....	120
Indicator 13: Procurement appeals mechanisms are effective and efficient	125
Indicator 14: The country has ethics and anti-corruption measures in place	126
Chapter 4: Recommendation for prioritized future reforms initiatives.....	131
Validation Process	132

Volume II

Detailed Report- Indicator Matrix for Pillar I, II, III, IV: Covers Assessment Criteria, Qualitative Analysis, Quantitative Analysis, Gap Analysis, Potential Red Flag, Initial Input for Recommendations as per standard MAPS template

Volume III: Annexes:

Annex 1: Concept Note and related material -Final Revised

Annex 2: An update on CPAR 2012 Actions and APCPI comparison between 2010 and 2019

Annex 3: A note on Emergency Procurement (Post COVID-19)

Annex 4: Assessment Criteria in Quantitative Terms- Compliance

Annex 5: Extracts from Data Analytics of June 2019 (RAS: PhilGEPS)

Annex 6: Private Sector Survey- Objective, Methodology, Questionnaire and Results of Survey

Annex 7: Summary of feedback from CSO consultations

Annex 8: Sample Cases- Approach for Sampling and consolidated table for 186 samples and **Snapshot of LGU Procurement and Capacity Development**

Annex 9: Letter of Request from the Government

Annex 10: Stakeholder Analysis

Annex 11: List of laws, regulations, documents reviewed and websites

Volume II and III will be attached as separate documents.

Acknowledgments

The Philippines Country Public Procurement System Assessment using 2018 MAPS methodology was initiated at the request of the Government of the Philippines (GoP), through its procurement regulatory body, the Government Procurement Policy Board and its Technical Support Office (GPPB-TSO) under the Department of Budget and Management. The assessment was jointly conducted by GPPB-TSO, the World Bank (the Bank), and the Asian Development Bank (ADB).

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Acronyms

AAPSI	Agency Action Plan and Status of Implementation
ABC	Approved Budget for the Contract
ADB	Asian Development Bank
AMP	Alternative Method of Procurement
APCPI	Agency Procurement Compliance and Performance Indicators
APMT	Action Plan Monitoring Tool
APP	Annual Procurement Plan
BAC	Bids and Awards Committee
BOT	Build-Operate-Transfer
BTMS	Budget and Treasury Management System
CO	Capital Outlay
COA	Commission on Audit
CPAR	Country Procurement Assessment Report
CPSD	Country Private Sector Diagnostic
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSO	Civil Society Organization
DOF	Department of Finance
DOH	Department of Health
DOST	Department of Science and Technology
DOTr	Department of Transportation
DBM	Department of Budget and Management
DILG	Department of Interior and Local Government
DND	Department of National Defense
DPWH	Department of Public Works and Highways
DTI	Department of Trade and Industry
e-GP	Electronic Government Procurement
eNGAS	Electronic National Government Accounting System
FDI	Foreign Direct Investment
GAA	General Appropriations Act
GDP	Gross Domestic Product
GFI	Government Financial Institution
GOCC	Government-Owned and Controlled Corporation
GoP	Government of the Philippines
GPA	Government Procurement Agreement
GPPB	Government Procurement Policy Board
GPPB-TSO	Government Procurement Policy Board-Technical Support Office
GPRA	Republic Act No. 9184 Providing for the Modernization, Standardization and Regulation of Procurement Activities of the Government and For Other Purposes (2003)
HoPE	Head of the Procuring Entity
ICT	Information and Communication Technology
IDR	Integrity Development Review
ILO	International Labour Organization
IRR	The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184
ISSAI	International Standards of Supreme Audit Institutions

LCC	Life Cycle Costing
LGU	Local Government Unit
MAPS	Methodology for Assessing Procurement Systems
MDB	Multilateral Development Bank
MOOE	Maintenance, Operating, and Other Expenses
mPhilGEPS	Modernized Philippine Government Electronic Procurement System
MSMEs	Micro, Small, and Medium Enterprises
NEDA	National Economic and Development Authority
NELP-GCP	National Ecolabelling Programme - Green Choice Philippines
NGA	National Government Agency
NGO	Nongovernmental Organization
OECD	Organization for Economic Co-operation and Development
OCDS	Open Contracting Data Standards
PBD	Philippine Bidding Document
PCA	Philippine Competition Act
PCAB	Philippine Contractors Accreditation Board
PCC	Philippine Competition Commission
PDP	Philippine Development Plan
PDMF	Project Development and Monitoring Facility
PEFA	Public Expenditure and Financial Accountability
PFM	Public Finance Management
PhilGEPS	Philippine Government Electronic Procurement System
PPMP	Project Procurement Management Plan
PPP	Public-Private Partnership
PS	Procurement Service(s)
RA	Republic Act
RAS	Reimbursable Advisory Services
SDGs	Sustainable Development Goals
SMEs	Small and Medium Enterprises
SPD	Standard Procurement Document
STI	Science, Technology and Innovation
SUC	State University and College
TWG	Technical Working Group
UACS	Unified Accounts Code Structure
UNCAC	United Nations Convention against Corruption
WTO	World Trade Organization

Currency Unit: US\$1.00 = 47.728 Philippine Peso (PHP) (Exchange rate as of June 11, 2021 - Source IMF)

Fiscal Year: January 1–December 31

Executive Summary

1. **This report provides the results of the assessment of the Philippine Public Procurement System using the Methodology for Assessing Procurement Systems (MAPS) and its various steps, including the validation process.**

This Assessment Report identifies key findings, lays out the strengths of the procurement system and the challenges, and provides a set of recommendations to address those challenges and help decide the government to prioritize public procurement reforms.

2. **Public procurement is a crucial component of public services delivery, good governance, and sustainable economies with inclusive growth.** Governments around the world spend approximately US\$9.5 trillion every year, which means on average public procurement constitutes around 12–20 percent of a country's gross domestic product (GDP).¹ The World GDP in 2018 was US\$85 trillion with GDP of the Philippines at US\$330.91 billion.² All government spending on capital outlays (COs) and most of maintenance, operating, and other expenses (MOOE) fall under public procurement in the Philippines and for the last two years, these expenditure categories account for an average of 60 percent of the total budget or US\$43 billion. The spike in CO budget is triggered by the government's ambitious 'Build, Build, Build Program' with a total planned budget of US\$171 billion under the current administration. With economy and efficiency in the procurement process including in contract implementation, substantial savings of public resources is possible.

3. **The Philippine Public Procurement System has undergone several reforms** during the last two decades, which yielded significant achievements toward strengthening its legal and institutional framework particularly through the adoption of the public procurement Republic Act (RA) in January 2003, establishment of the Government Procurement Policy Board (GPPB) as the public procurement regulatory and normative body, introduction of the Agency Procurement Compliance and Performance Indicators (APCPI) system for periodic monitoring and evaluation of performance, and establishment of the Philippine Government Electronic Procurement System (PhilGEPS) - the e-procurement system for publication of bidding opportunities and contract award information. However, many challenges remain to be addressed in further reforms, especially with respect to eligibility and rules of participation, procurement approaches for optimal value for money, independent complaints review body, and PhilGEPS operational functionality and efficiency.

4. **The Philippines MAPS was initiated at the request of the Government of the Philippines (GoP),** through its procurement regulatory body, the Government Procurement Policy Board, and its Technical Support Office (GPPB-TSO) under the Department of Budget and Management (DBM). On February 15, 2019, GPPB-TSO had requested the World Bank (the Bank) to assist the government in assessing the Philippine Public Procurement System following the MAPS 2018³ methodology. The Asian Development Bank (ADB) is partnering in the assessment, providing additional technical and financial support.

5. **The broad development objective of the MAPS assessment is to support the GoP** to further improve the quality and performance of the public procurement system and yield optimal results in the use of public funds and delivery of services to the citizenry while maintaining high standards of integrity. More specifically, the assessment aims to provide in-depth analysis of the Philippines' current public procurement system to identify its strengths and weaknesses, determine the substantial gaps that continue to impede the improvement of its efficiency, and

¹ MAPS 2018 - Foreword.

² World Bank Data.

³ Methodology for Assessing Procurement Systems (MAPS) is a universal tool based on a set of quantitative and qualitative indicators reflective of leading international procurement practice that serves as a guide toward sustainable and inclusive public procurement reform.

recommend prioritized future reform actions to close the identified critical gaps and improve procurement performance to deliver better economic and social outcomes.

6. **The scope of the assessment covers national and local government units**, including government-owned and controlled corporations (GOCCs) and state universities and colleges (SUCs), but excludes defense and national security procurement. The assessment has followed the 2018 MAPS methodology which is based on four pillars: (i) Legal, Regulatory and Policy Framework; (ii) Institutional Framework and Management Capacity; (iii) Public Procurement Operations and Market Practices; and (iv) Accountability, Integrity and Transparency of the Public Procurement System, and is guided 14 indicators, 55 sub-indicators, and 210 assessment criteria.

7. **Limitations and challenges posed by the COVID-19 pandemic situation:** the assessment initiated in mid-October 2019 was seriously affected by the restrictions caused by the COVID-19 situation in the Philippines and related limitations imposed on travel, the interaction with the key MAPS stakeholders, and the collection of the required data and information, particularly the data required for the assessment of the quantitative indicators. However, the outstanding collaboration and continued support from the DBM/GPPB-TSO and other stakeholders has contributed to adequately deal with some of the challenges and allowed the MAPS Assessment Team to successfully complete the Assessment Report.

8. **The Assessment Report is organized in three main volumes: Volume I:** Main Assessment Report; **Volume II:** Detailed Indicator-wise Matrix; and **Volume III:** Annexes. The first part of this **Executive summary** consists of a narrative of the main findings, providing a concise overview of the status of public procurement in the Philippines. The second part of the executive summary is a structured, pillar-by-pillar⁴ overview of the MAPS assessment, including areas for improvement, as prescribed in the methodology.

9. Based on the main findings of the assessment, the status of the public procurement system in the Philippines is summarized as follows.

Adequacy of the Legal and Regulatory Framework

10. The assessment of the legal and regulatory framework has revealed the impact of the accomplishments of the GoP's sustained efforts to reform its public procurement system during the last two decades. The current legal and regulatory framework, established around the 2003 RA 9184 and the 2016 Revised Implementing Rules and Regulations of Republic Act No.9184 (IRR), has achieved a fair level of adequacy and improvement particularly in terms of hierarchical order that differentiates and distinguishes between laws, regulations, and procedures and establishment of the precedence in application and identification of a set of formal procurement rules and procedures. Moreover, generic and specific procurement manuals, standard bidding documents (Philippine Bidding Documents, PBDs), sample forms, and a green technical specifications guide are prepared and published which are free and accessible to the public.

11. The current framework is marked by its wide coverage as it applies to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GoP except when treaties or international or executive agreements, to which the GoP is a signatory, expressly provide for another or different procurement procedures and guidelines that shall apply in the procurement of foreign-funded projects.

12. The assessment findings have particularly confirmed the impact of other major accomplishments of the previous reform in strengthening the institutional aspects of the current public procurement system through the

⁴ The assessment is structured under the four pillars of the MAPS: Pillar I. Legal, Regulatory and Policy Framework; Pillar II. Institutional Framework and Management Capacity; Pillar III. Public Procurement Operations and Market Practice; and Pillar IV. Accountability, Integrity and Transparency.

establishment of GPPB as the public procurement regulatory and normative body with appropriate authorities and functions broadly aligned with international practice. Equally important is the enhancement of the system's transparency through the Philippines pioneer introduction of social accountability and participation of civil society organizations (CSOs) as observers in the procurement process.

13. However, there are still key issues that are hindering the current legal and regulatory framework from achieving the principles of competition and value for money. The primary issue is the eligibility requirements concerning licensing and nationality/establishment which constitute a potential barrier to participation in the public procurement market for foreign bidders and may deprive the procuring entities, and government as a whole, of the benefits of vigorous competition and achieving value for money. Foreign bidders are eligible to participate only in limited circumstances. This would require the GoP to carry out a critical analysis to assess whether these measures deliver the desired outcomes and achieve value for money in public procurement. Another identified issue that prevents the current framework from increasing the efficiency of the public procurement is the lack of regulatory provisions that promote the use of life cycle costing (LCC) and sustainability criteria in evaluation of bids.

Procurement Practices

14. The practices in the bidding stage of the procurement process see good compliance with the GPRA⁵ and its allied rules and issuances. Procuring entities, during budget preparation for the succeeding fiscal year, do include their indicative Annual Procurement Plan (APP) containing specific projects and the proposed budget for the contract. However, this practice does not include any structured and comprehensive approach to procurement planning to inform the decision on the suitable approach to market and optimal procurement methods that would help procuring entities achieve fair level of competition and value for money.

15. The GoP has established a system of APCPI. Based on the 2019 APCPI data of 17 agencies and its comparison with the 2010 data of Country Procurement Assessment Report (CPAR) 2012, the participation by bidders in bidding opportunities has decreased, **leading to bids found responsive** from 3 bidders in 2010 to just 1.72 bidders in 2019. Based on all evidence, including on mismatch between demand and supply of contractors, there is lack of competition and absence of qualified firms to support the 'Build, Build, Build' program of the government and its development objectives. The assessment of the current practices has also raised a serious contract management issue. A substantial proportion, 68 percent of the 111 assessed contracts with verifiable information, have been completed with an average time overrun of 84 days. There is room for improvement of this practice particularly through strengthening contract management function in procuring entities to handle not only contract administration but also the more holistic approach of contract management and performance monitoring.

E-procurement

16. The Philippines has been one of the early adopters of e-procurement in Asia with the introduction of PhilGEPS in 2000. However, while features such as e-submission have not been fully deployed in the system, PhilGEPS has supported most other steps of the procurement process for the last 20 years, which is an achievement that is not matched by many other countries. In addition, the main challenge with PhilGEPS has been compliance by procuring agencies performing and recording procurement activity in the system, leaving a significant gap in the information available. The assessment took note of the planned implementation of the modernized Philippine Government Electronic Procurement System (mPhilGEPS) that will allow for use of full e-procurement including procurement plans, e-submission, and contract management and would need to observe an improvement in compliance with the information collected and made available within the system and the open data portal.

⁵ Republic Act No. 9184 Providing for the Modernization, Standardization and Regulation of Procurement Activities of the Government and For Other Purposes (2003).

Appeals Mechanism

17. The legal and regulatory framework provides the participants in procurement proceedings the right to challenge decisions taken by the procuring entity at all stages of the procurement. However, the bid protest/challenge procedure is, in most cases, a procedure conducted internally by the procuring entity which is the subject of the bid protest/challenge. There is no specialist independent administrative appeal/review entity. The provisions of the legal framework do not allow for administrative review of bid protest to another body independent of the procuring entity. The subsequent right of review to an independent body is to the Regional Trial Court by way of an original action which is not appellate in nature. Addressing this gap would require the establishment of an independent administrative procurement review body that would further improve the transparency, efficiency, and effectiveness of the system, in line with the United Nations Convention against Corruption (UNCAC) recommendations and international good practices.

18. Applications for appeal and decisions are not consistently published in an easily accessible place and in line with legislation. There is a need for better enforcement of the requirement on procuring entities to file copies of applications to Regional Trial Courts and decisions of the Regional Trial Courts, and further appeals, with GPPB-TSO, if so decided.

19. Lack of involvement of GPPB-TSO in monitoring of bid protest/challenges and appeals, as well as in the review of blacklisting decisions, may inadvertently impair its wider monitoring role to ensure compliance of the procuring entities with the procurement legal framework and hinder assessment of overall effective operation of the procurement system.

Major Reform Challenges and Opportunities

20. One of the challenges in the procurement reform is the COVID-19 pandemic and its effect on the market and economy. The return to more restrictive quarantine measures continued to dampen market sentiments, manufacturing output and exports contracted in February 2021, while the stock market retreated amid fears of prolonged lockdown. The authorities continued to support the economy through higher public spending and accommodative monetary policy. Inflation has finally slowed down, halting five months of steady rise. However, these challenges also present an opportunity to improve public procurement system and service delivery to respond to government's plan for '*Reset, Rebound, and Recover*' as reflected in the 2021 National Budget. The public procurement reform priorities need to be aligned with the immediate development challenges of the government post COVID-19 to improve results and bring savings of public money while following principles of transparency, integrity, and accountability.

21. Key incentives for the GoP for further procurement reforms as identified by the assessment include (a) capitalizing on the substantial and consistent reform efforts over the last two decades toward improving and aligning the country procurement legal and regulatory framework with international standards and practices and also by fast-tracking digitalization for the entire procurement process, (b) translating Green Public Procurement Strategy into procurement documents and technical specification as part of Sustainable Public Procurement Agenda including use of LCC to achieve value for money, (c) modernizing PhilGEPS, and (d) harvesting saving potentials as shown by Data Analytics of 2019 which estimated that the GoP could save between 26 percent and 29 percent of the total procurement spend through designing and implementing better procurement strategies and policies.

22. The GoP has an opportunity to further improve the quality and the performance of the country public procurement system, continue the drive for greater transparency and value for money, further strengthen the professionalization of the procurement workforce with clear standards of competence, and promote integrity and citizen engagement in public procurement. First, however, the GoP will need to address the remaining legal,

institutional, lack of competition, barrier to entry, and implementation of mPhilGEPS challenges identified by the MAPS assessment.

23. The next section summarizes the findings of the MAPS assessment using a pillar-by-pillar approach, including areas for improvement.

Pillar I. Legal, Regulatory and Policy Framework

Key Strengths

- Well-established legal framework, with a clear hierarchy and corresponding precedence levels (GPRA, IRR, resolutions, circulars, guidelines, and opinions plus standard bidding documents). The requirement to comply with international treaty obligations is acknowledged both in the GPRA and IRR.
- Comprehensive legal framework with documents accessible and publicly and freely available from the GPPB website. This open public platform and free access to the latest public procurement rules, regulations, and supporting documents make a significant contribution to achieving the GPRA principle of transparency.
- Procurement methods are clearly described in the legal framework, with open competitive bidding specified as the default method.
- Sustainable procurement: Environmental aspects have been recognized through the Philippine Green Public Procurement Roadmap which was published in 2017 and adopted by GPPB Resolution 25-2017, together with Green Public Procurement (GPP) specifications for priority product groups of common use supplies and equipment. A Green Public Procurement Bill is currently before Congress, establishing a GPP program for all departments, bureaus, offices, and agencies of government.

24. The most critical substantial gaps in the public procurement system identified by the assessment, and corresponding recommendations, are summarized in Table 1.

Table 1. Gaps and Recommendations under Pillar I

Sub-indicator	Substantive Gap	Recommended Improvements
Sub-indicator 1(b)(b) Procurement methods	The range of procurement methods may not be suitable for more complex requirements and high-value procurement due to the lack of provision for prequalification and/or carefully structured negotiations, respecting procurement principles.	The legal framework to provide for fit-for-purpose competitive procedures for procurements with more complex needs where prequalification and/or carefully structured negotiation, respecting procurement principles, may be beneficial.
Sub-indicator 1(d)(b) Rules on participation: Eligibility requirements concerning licensing and nationality/establishment	Eligibility requirements concerning licensing and nationality/establishment are a potential barrier to participation in the public procurement market for foreign bidders and may deprive the procuring entities,	In the next review of the procurement legal framework, the government may consider undertaking a critical analysis to assess whether these measures deliver the desired outcomes and achieve value for money in public procurement. Alternative arrangements can be explored to ensure that Filipino contractors are given ample opportunity to

Sub-indicator	Substantive Gap	Recommended Improvements
	and government as a whole, of the benefits of vigorous competition and achieving value for money. Foreign bidders are eligible to participate only in limited circumstances.	participate, while enhancing competition, promoting flow of innovative solutions, and achieving best value for the public money spent.
Sub-indicator 1(e)(b) Procurement documentation and specifications - neutral specifications	Lack of clear provision of general application in the GPRA or IRR, requiring the use of neutral specifications or citing of international norms when possible	Consider adding a provision of general application in the GPRA or IRR, requiring the use of neutral specifications or citing of international norms when possible.
Sub-indicator 1(h)(b) Lack of independent administrative complaints review mechanism	There is no specialist independent administrative appeal/review entity to review the complaints.	Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with UNCAC recommendations, and international good practices.
Sub-indicator 2(b)(b) and sub-indicator 2(c)(a) Model procurement documents for goods, works and services, and standard conditions of contract-other contractual provisions	Use of “incorporation by reference” to laws and regulations in general and not to specific provisions in PBDs (including contract conditions) for Goods and Works Infrastructure creates significant uncertainty as to which provisions apply in practice. PBDs, including contract conditions, fall short in addressing topics such as use of LCC as evaluation criteria, reference to green procurement in technical specifications, abnormally low bids, price adjustment for long-term contracts.	Consider returning to earlier format of PBDs, not using incorporation by reference but by setting out fully the terms and conditions and contractual clauses applicable to the procurement and contract in question, to increase clarity and certainty. —also suggestion for improvement to reflect international practices (for example, International Federation of Consulting Engineers- FIDIC conditions), which is expected to increase competition.
Sub-indicator 3(a)(c) and 3(a)(d) Sustainable Public Procurement	. The primary focus is on “green” i.e. environmental issues which is currently addressed through other means than evaluation criteria. Provisions in the legal and regulatory framework allowing for economic and social criteria to be incorporated at all stages of the procurement lifecycle do not appear to be fully addressed.	Enhance use of Life Cycle Costing principles to apply at all stages of the procurement cycle including evaluation. Include provisions in the legal and regulatory framework allowing for green/environmental, economic and social criteria to be incorporated at all stages of the procurement lifecycle, including through evaluation criteria, supported by practical guidelines for implementation.

Pillar II. Institutional Framework and Management Capacity

25. There are significant strengths under Pillar II, which can be summarized as follows:

- Existence of APP and multiyear planning for multiyear contracts
- The country has a strong institution in charge of the normative/regulatory function. The legal framework (GPRA s.63) establishes GPPB as a statutory, independent inter-agency body, with full control over the budget it receives from the national government through GPPB-TSO. GPPB includes members from various government departments as well as a representative from the private sector. The GPPB Service Charter sets out the vision, mission, and objectives.
- GPPB has made sustained efforts to create a competent procurement workforce. As per section 16 of Revised IRR of 2016, GPPB is required to establish a sustained training program to develop the capability of Bids and Awards Committees (BACs), BAC Secretariats, Technical Working Groups (TWGs), and the Procurement Units of Procuring Entities, and professionalize the same. The Head of the Procuring Entity (HoPE) is required to ensure that the BAC, its Secretariat, and TWG members, including other relevant procurement personnel are sent to attend procurement training or capacity development program.

26. In addition to these strengths, the assessment identified substantial gaps in the institutional framework and management capacity of the Public Procurement System, as summarized in Table 2.

Table 2. Gaps and Recommendations under Pillar II

Sub-indicator	Substantive Gaps	Recommended Improvements
Sub-indicator: 4(b)(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders	<p>One of the key challenges is the absence of an integrated system from budgeting to recording of transactions in procurement process and contracts management and payment of invoices. This causes information gaps and delays in monitoring transactions against budgetary amounts.</p> <p>This could be improved and should be a feature of the Budget and Treasury Management System (BTMS) /mPhilGEPS when it is complete and comprehensively rolled out. As on date, it is not possible for prospective bidders, suppliers, and consultant to get data on actual time taken by the government department to process an invoice in general and for a contractor, supplier, and consultant to know through a system the status on payment on invoices submitted.</p>	<p>Expedite rollout of BTMS/mPhilGEPS to track payment of invoices. Need for streamlining standard document to be submitted by the contractor/supplier as specified by Commission on Audit (COA) and not burden the contractor/supplier for submitting as part of billing/invoicing tax clearance certificate. Need for Internal Audit Unit of agencies to keep track of timely payment of invoices. Also, need for a forum where contractors/suppliers could submit their complaint/grievance in case of unjustified/unexplained delays in payment. Also, timely payment may be part of the citizen charter and performance-based bonus.</p>
Combination of sub-indicators 1(h) 5(a), 5(b)(k) designing and managing online platforms and other e-Procurement System and 7(c) strategies	<p>Constraints in effectiveness of normative and regulatory function of GPPB-TSO due to several silos of responsibilities and lack of control over implementation of PhilGEPS.</p> <p>The legal and regulatory framework specifies the normative/regulatory function and assigns</p>	<p>GPPB to consider ways to strengthen further the effectiveness of GPPB-TSO as an organization to lead the procurement reform at the country level with all required resources and technology support (please see the part implementation of PhilGEPS under Indicator 7, in particular 7(a)(f)</p>

Sub-indicator	Substantive Gaps	Recommended Improvements
to manage procurement data	<p>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> <p>Other responsibilities of GPPB-TSO: (a) evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures; (b) monitoring the compliance to the GPRA and assisting procuring entities improve their compliance; (c) monitoring the implementation and effectiveness of PhilGEPS, for example, under indicator 1(h) and indicator 13, there is no central source of information concerning bid protests for 2017 onwards, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR.</p>	Responsibility for the management and operation of the system is clearly defined).
Sub-indicator 8(b)(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified	<p>However, it is not clear if the country's public service recognizes procurement as a profession (for example, accountancy) and if procurement positions are defined at different professional levels and job description and requisite qualifications and competencies specified. Provision of personal liability for actions and decision taken in the conduct of official duties on behalf of the government is a deterrent to join procurement profession</p>	<p>Update the strategy and the roadmap for public procurement professionalization to provide an enabling environment for informed use of well-documented discretion by procurement professionals to get results and improve service delivery. Consider how to provide protection from personal liability for actions and decisions taken in the conduct of official duties on behalf of the government to encourage and motivate qualified persons to join procurement profession.</p>

Pillar III. Public Procurement Operations and Market Practice

27. The main strengths under Pillar III can be summarized as follows:

- Contracts reviewed from 17 sample procuring entities show that practices in the bidding stage of the procurement process have good compliance with the GPRA and its allied rules and issuances
- Procuring entities, during budget preparation for the succeeding fiscal year, do include their indicative APP containing specific projects and the proposed budget for the contract.
- Competitive bidding procedures provide for the conduct of a multistage activity allowing bidders to be able to study, prepare, and submit responsive bids.
- Throughout the bid evaluation, post-qualification up to award of contract, confidentiality is ensured.

28. The substantial gaps identified by the assessment and recommendations for possible ways to address them are summarized in Table 3.

Table 3. Gaps and Recommendations under Pillar III

Sub-indicator	Substantive Gaps	Recommended Improvements
Sub-indicator 9(c)(c) on timely payment of invoices	Billings and invoices are not paid on time.	Standardize and define stages and steps in the payment process, including exact timelines to stabilize and make efficient the timely payment of claims/bills.
Sub-indicator 9(c)(f) on involvement of external stakeholders	Direct involvement of external stakeholders in procurement is not maximized. Despite invitation to observe all stages of the procurement process, observers attend only the pre-bid conference and bid opening but not all the other stages of the acquisition exercise. It is noted that out of 87 contracts, 42 contracts, or 48%, have no observers attending, while 45 contracts, or 52%, have attended the bid opening stage only and attendance in the other stages of the procurement process was not complied with.	Government, through GPPB, should incentivize participation of observers in the conduct of the procurement process.
Sub-indicator 9(c)(g) The records are complete and accurate and accessible in a single file	Efficient and effective record filing and management are not practiced. Of the 100 contracts actually reviewed, none has complete compilation of procurement and contract documents from planning, selection, up to contract implementation.	Establish and formalize procurement record-keeping and management in every agency of the government to allow ready access to and retrieval of procurement documents including on contracts management.
Sub-indicator 10(b)(b): There are no major systemic constraints inhibiting private sector access to the public procurement market	Procurement methods and procedures are not proportionate to risk and value in question (it appears there is lack of market research to guide a proactive identification of optimal procurement strategies and absence of prequalification for large and complex contracts).	Modernize standard bidding document, make these user friendly for the market participants, and consider green/sustainable procurement in technical specification and use of LCC as evaluation criteria for complex facilities, as reflected in recent revisions by development partners. Simplify submission of eligibility/qualification documents by participants to reduce cost of doing business and improve competition.
Sub-indicator 10(c)(a) Key sector and strategy	Based on the government's priority spending areas—key sectors associated with procurement of goods, works, and services—there is no identification of key sectors to secure collaboration with sector market participants in a meaningful way.	Identify key sectors associated with the public procurement market to improve competitive effectiveness of local construction companies to respond to the focus on building infrastructure (Build, Build, Build). Carry out study on share of public procurement contracts by small and medium enterprises (SMEs) and steps being taken by the government to increase their share of business.

Sub-indicator	Substantive Gaps	Recommended Improvements
		Have a strategy to break monopolies and oligopolies and encourage SMEs.

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

29. The assessment identified the following key strengths under Pillar IV:

- The legal and regulatory framework provides for the good practice for enforcing public oversight and enhancing accountability of public procurement processes through the participation of representatives of the COA and nongovernmental organization (NGO) and CSOs as observers during the pre-award procurement processes.
- The 1987 Constitution provides for an independent COA that has the power to audit all accounts pertaining to government funds nationwide, including procurement-related transactions. The Government Auditing Code (PD 1445) empowers the COA to determine policies, promulgate rules and regulations, and prescribe standards governing the performance of its powers and function.
- The COA, as the country's Supreme Audit Institution, regularly conducts procurement audit as part of the annual regular audit of the transactions of the government agencies. With the adoption by the COA of the International Standards of Supreme Audit Institutions (ISSAI) on compliance and performance audits, government procurement will be considered as one of the prioritized subject matters for audit.

30. The substantial gaps identified by the assessment and corresponding recommendations for improvement are summarized in Table 4.

Table 4. Gaps and Recommendations under Pillar IV

Sub-indicator	Substantive Gap	Recommended Improvements
Sub-indicator 11(c)(a) participation of citizens in planning (consultation), bid/proposal opening (observation), evaluation and contract award (observation), contract management and completion (monitoring)	Based on the definition in RA 9184 and IRR 2016, the involvement of observers appears to cover procurement process as part of BAC. This does not cover involvement of observers in procurement planning/needs assessment and in contract implementation.	Consider CSO involvement in planning process, for example, large-scale or environmentally or socially sensitive procurement. CSOs may be permitted to be officially involved in monitoring the performance and contract completion, for example, through the application of innovative techniques such as geotagging or in the context of social audit. Procurement Watch (or similar initiative) to be revived in particular for the education and health sectors (such as medical equipment and pharmaceuticals), more so in post-COVID-19 situation, through involvement of experts. Consider CSO involvement in alternative methods of procurement. In fact,

Sub-indicator	Substantive Gap	Recommended Improvements
		<p>transparency may be an issue in negotiated procurement, direct contracting, or single source procurement.</p> <p>It is recommended that the GoP/GPPB-TSO and procuring entities engage with the civil society and independent organizations to account for citizen's voice in improving the procurement system in the time of pandemic.</p>
Sub-indicator 13 Procurement appeals mechanisms are effective and efficient	MAPS Team faced constraints on availability of data and information to fully assess the functioning of the existing complaints review mechanism at procuring entity and courts level (please see Note 1 at the end of this table).	Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with UNCAC recommendations, and international good practices.
Sub-indicator 14(b)(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	<p>Definition of 'fraudulent practices' in the IRR is not the same as definition included in the definition for the goods standard procurement documents (SPDs).</p> <p>'Obstruction' is included in SPDs as a misconduct, but it is not defined in the IRR.</p>	Ensure that definitions of misconduct are consistent across the legal framework to avoid misinterpretation and ensure legal consistency.
Sub-indicator 14(c)(b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.	There is no evidence on systematic reporting and follow-up by enforcement authorities on allegation of procurement-related fraud and corruption (please see Note 2 at the end of this table).	A system to be instituted for reporting and strengthening the effectiveness of sanction and enforcement system.
Sub-indicator 14(c)(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	There is no evidence that due process is followed as action is taken by procuring entities without any control of an independent authority.	The system of suspension and debarment to consider due process by control of an independent authority.
Sub-indicator 14(d)(a) Anticorruption framework and integrity training	The country has in place a comprehensive anti-corruption framework to prevent, detect, and penalize corruption in the government that involves the appropriate agencies of the government with a level of responsibility and capacity to enable its responsibilities to be carried out. However, penalties are stringent which is a disincentive to serve and take decisions.	As recommended in Ombudsman Annual Report there is need for "revisiting of the procurement rules and systems to offer solutions in making them more efficient and public service-oriented in contrast with merely making them stringent and punitive." Collaboration needed between Ombudsman, DBM, GPPB-TSO, Department of Justice on ways to achieve this objective.
Sub-indicator 14(d)(b) As part of the anti-corruption framework, a mechanism is in place and is	There is no mechanism in place for systematically identifying corruption risks	Revive system of Integrity Development Review (IDR), as task carried out till 2006. The IDR to assist the Office of the

Sub-indicator	Substantive Gap	Recommended Improvements
used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.	and for mitigating these risks in the public procurement cycle.	Ombudsman together with its key partners in the corruption prevention program of the government.

Note 1 on Indicator 13: Procurement appeals mechanism are effective and efficient. The MAPS Team was not able to fully assess the functioning of the existing complaints review mechanism at procuring entity level (bid protest) as per the MAPS methodology. There is no central source of information concerning bid protests from 2017 onward, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR. There is no specialised administrative/judicial review body and judicial review by the courts is not appellate in nature. Against the backdrop of lack of reliable information or data and the non-existence of appeal to an independent review body it is not possible to fully assess the Sub-indicators 13(a)(c), 13(b)(c) to (g), 13(c)(b)-(d) in terms of qualitative or quantitative indicators. The Assessment Team considered that the Assessment Criteria for these sub-indicators are ‘not possible to be assessed due to lack of data’ and/or “criterion not met”.

Note 2 on Indicator 14: The country has ethics and anti-corruption measures in place. Based on input received from the Ombudsman and available information, while it was possible to find out the status on legal definitions on prohibited practices, conflict of interest, provisions of fraud and corruption in procurement document, reporting and channels for allegations of fraud and corruption, there was no published or available data on enforcement of anti-corruption framework, stakeholder support to strengthen integrity in procurement, or data on number of officials involved in public procurement who filed financial disclosure forms. As a result, in the absence of data and information, there are a number of criteria under **Indicator 14**—sub-indicators 14(c)(b) to 14(c)(d), 14(d)(a) to 14(d)(e), 14(e)(a) to 14(e)(d) 14(f)(a) to 14(f)(c), 14(g)(a), 14(g)(b), 14(g)(d) and 14(g)(e)—which are assessed as either partially met or not met related to enforcement of legal framework.

Overview of the Compliance of Philippines MAPS with the 55 Sub-indicators of the 2018 MAPS methodology

Finally, this executive summary provides an overview of the findings of the assessment at the level of sub-indicators. Each sub-indicator is color-coded to match the findings according to the following scheme:

Green = full compliance; Yellow = gaps identified; RED- Substantial Gap identified

31. In case red flags are identified, the respective sub-indicator is marked with an asterisk (*) – “red flag” with * represents the identified issues that are imposed from outside the sphere of public procurement environment and that cannot be mitigated directly or indirectly but could significantly impede the achievement of main goals of public procurement system and the improvement of its quality and performance. All “red flags” are identified as substantive gap with high risk in this report and hence marked RED. There are few “RED” as substantial gaps but not necessarily a “red flag”

Table 5: Overview of the Assessment Findings at the Level of Sub-indicators

PILLAR I	
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
	1(b) – Procurement methods
	1(c) – Advertising rules and time limits
	1(d) – Rules on participation *
	1(e) – Procurement documentation and technical specifications
	1(f) – Evaluation and award criteria
	1(g) – Submission, receipt, and opening of tenders
	1(h) – Right to challenge and appeal *
	1(i) – Contract management
	1(j) – Electronic Procurement (e-Procurement)
	1(k) – Norms for safekeeping of records, documents and electronic data.*
	1(l) – Public procurement principles in specialized legislation
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures
	2(b) – Model procurement documents for goods, works, and services
	2(c) – Standard contract conditions
	2(d) – User’s guide or manual for procuring entities
3. The legal framework reflects the country’s secondary policy objectives and international obligations	3(a) – Sustainable Public Procurement (SPP)
	3(b) – Obligations deriving from international agreement
PILLAR II	
4. The public procurement system is mainstreamed and well integrated into the PFM system.	4(a) – Procurement planning and the budget cycle
	4(b) – Financial procedures and the procurement cycle*
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 *
	5(b) – Responsibilities of the normative/regulatory function*
	5(c) – Organisation, funding, staffing, and level of independence and authority*
	5(d) – Avoiding conflict of interest
6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities and formal powers of procuring entities
	6(b) – Centralized procurement body
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology
	7(b) – Use of e-Procurement
	7(c) – Strategies to manage procurement data *
8. The public procurement system has a strong capacity to develop and improve.	8(a) – Training, advice and assistance
	8(b) – Recognition of procurement as a profession *
	8(c) – Monitoring performance to improve the system

PILLAR III	
9. Public procurement practices achieve stated objectives.	9(a) – Planning
	9(b) – Selection and contracting
	9(c) – Contract management *
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector
	10(b) – Private sector's organization and access to the public procurement market
	10(c) – Key sectors and sector strategies *
PILLAR IV	
11. Transparency and civil society engagement foster integrity in public procurement.	11(a) – Enabling environment for public consultation and monitoring
	11(b) – Adequate and timely access to information by the public
	11(c) – Direct engagement of civil society *
12. The country has effective control and audit systems.	12(a) – Legal framework, organisation and procedures of the control system
	12(b) – Coordination of controls and audits of public procurement
	12(c) – Enforcement and follow-up on findings and recommendations
	12(d) – Qualification and training to conduct procurement audits
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals *
	13(b) – Independence and capacity of the appeals body*
	13(c) – Decisions of the appeals body*
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
	14(b) – Provisions on prohibited practices in procurement documents
	14(c) – Effective sanctions and enforcement systems
	14(d) – Anti-corruption framework and integrity training
	14(e) – Stakeholder support to strengthen integrity in procurement
	14(f) – Secure mechanism for reporting prohibited practices or unethical behaviour
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules
Refer to Detailed Matrix (Volume II) and a chart on: Criterion Met, Criterion Partially Met and Criterion Not Met for all 210 Assessment Criteria covering 55 sub-indicators as above	

Recommendations for Prioritized Future Reforms Initiative

32. **The recommendations emerging from the application of the MAPS have identified several key areas for improvement, the details of which have been highlighted in the relevant sections and volumes of this Assessment Report.** The present section summarizes the critical areas that need to be improved urgently given their anticipated impacts on **enhancing the performance of the Philippines procurement systems in terms of increased competition, efficiency, and transparency.** However, setting the sequencing to implement the recommended improvement activities to address substantive gaps would be left to the discretion of the GoP. It is expected that the findings of this assessment would offer the opportunity for the GoP and participating development partners to explore possible ways and means to support the recommended actions plan.

33. The MAPS assessment identified the following seven priorities areas for improvement:

1. **Rules on participation.** In the next review of the procurement legal framework, the government may consider undertaking a critical analysis to assess whether the restrictive eligibility requirements concerning licensing and nationality/establishment deliver the desired outcomes and achieve increased competition, reduced cost of bidding, and best value for money in public procurement. Alternative arrangements can be explored to ensure that Filipino contractors are given ample opportunity to participate, while enhancing competition, promoting flow of innovative solutions, and achieving best value for the public money spent. The next reform could also consider provisions that provide for a clear segregation of eligibility criteria (grounds for exclusion), evaluation of bids criteria, and qualifications of the bidder.
2. **Procurement methods.** Consider amending the legal framework to provide for fit-for-purpose competitive procedures for procurements with more complex needs where prequalification and/or carefully structured negotiation, respecting procurement principles, may be beneficial. The key incentive is ensuring increased competition through reducing the cost of doing business where in a prequalification or multistage bidding, cost of preparation of bid could be reduced and participation of genuinely competitive and qualified bidders is increased.
3. **Support to value for money,** a comprehensive review of model procurement document and contract conditions/evaluation criteria. Consider amending the specific provisions in the legal framework that currently prevent procurement processes from achieving best value for money. Consideration should be given to clarifying the various aspects of evaluation of bids including provisions to be included in the bidding documents regarding the disclosure and protection of specific sensitive information of the bidders. There is a need for comprehensive review of PBDs, including contract conditions which fall short in addressing topics such as reference to abnormally low bids; price adjustment for long-term contracts; adopting contract conditions not using incorporation by reference but by setting out clearly the terms and conditions, obligations and rights, remedies, and other contractual matters applicable to the contract in question—also to reflect international practices (for example, FIDIC conditions), all of which is expected to increase competition.
4. **Complaints review mechanism.** Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with UNCAC recommendations, and international good practices.

5. **Sustainable public procurement.** Consider in the next revision of the legal and regulatory framework the incorporation of sustainable public procurement criteria (green/environmental, economic and social) and use LCC principles at all stages of the procurement cycle including reference to green procurement in technical specifications. This would include amending Section 31 of RA 9194 and Section 31 of IRR on Ceiling of Bid Price (ABC) which considers automatic disqualification beyond ABC and modifying Section 32 for using LCC as a factor in economic evaluation of bids including use of performance-based specification to deliver maximum value for money for the procuring entity and cost savings to the government over the useful economic life of the asset.
 6. **Strategy and enabling environment for professionalization of procurement function.** Update the strategy and the roadmap for public procurement professionalization to provide an enabling environment for informed use of well-documented discretion by procurement professionals to get results and improve service delivery.
 7. **E-procurement system.** The government to consider ways to further strengthen the effectiveness of GPPB-TSO as a regulatory and normative organization to lead the procurement reform at the country level with all required resources and technology support, especially PhilGEPS. The implementation of full e-procurement through the new mPhilGEPS platform would yield quick wins of the recommended priority actions in terms of transparency, increased competition, value for money, and cost savings. It should help implement the full procurement process and should serve as the official source for all procurement data including plans, filing for blacklisting, protest, and contract performance, so that the public procurement is embedded in an effective information system in an integrated manner.
34. Based on the recommendations of this assessment in general and the priority areas for improvement in particular, GPPB-TSO could prepare a detailed action plan. It is expected that the findings and recommendations of the assessment shall inform the strategic planning process for future procurement reforms or system development by the GoP.

Chapter 1: Introduction

Strategic Context and Rationale of the Assessment

1. **Philippines MAPS (P171918) was initiated at the request of the Government of the Philippines (GoP),** through its procurement regulatory body, the Government Procurement Policy Board and its Technical Support Office (GPPB-TSO) under the Department of Budget and Management (DBM). On February 15, 2019, GPPB-TSO had requested the World Bank (the Bank) to assist the government in assessing the Philippine Public Procurement System following the MAPS 2018⁶ methodology. The Asian Development Bank (ADB) is partnering in the assessment providing additional technical and financial support.
2. **Public procurement is a crucial component of public services delivery, good governance, and sustainable economies with inclusive growth.** Governments around the world spend approximately US\$9.5 trillion every year, which means on average public procurement constitutes around 12–20 percent of a country's gross domestic product (GDP).⁷The World GDP in 2018 was US\$85 trillion with GDP of the Philippines at US\$330.91 billion.⁸ All government spending on capital outlays (COs) and most of maintenance, operating, and other expenses (MOOE) fall under public procurement in the Philippines and for the last two years, these expenditure categories account for an average of 60 percent of the total budget or US\$43 billion. The spike in CO budget is triggered by the government's ambitious 'Build, Build, Build Program' with a total planned budget of US\$171 billion under the current administration. With economy and efficiency in the procurement process including in contract implementation, substantial savings of public resources is possible. Based on available procurement data, it is estimated that the GoP could save between 26 percent and 29 percent of the total procurement spend through designing and implementing better procurement strategies and policies, without changing any laws and regulations.⁹
3. **The government's procurement reform agenda began almost two decades ago.** Key initiatives included passage of Republic Act No. (RA) 9184 in January 2003, mandatory use of open competitive bidding, introduction of Agency Procurement Compliance and Performance Indicators (APCPI) system for periodic monitoring and evaluation of performance, mandatory participation of civil society organizations (CSOs) as procurement observers, mandatory use of the e-procurement system for publication of bidding opportunities and contract award information, periodic updates of the implementing rules and regulations, use of ordering (framework) agreement, and so on. In recent years, the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO), both created under the law, developed the policy on organization, staffing, and competency requirements for procurement professional in the government and standardized all procurement documents and harmonized them with development partners. Currently, the government is upgrading and modernizing the Philippine Government Electronic Procurement System (PhilGEPS), for which the Bank has provided technical advisory services through the Public Finance Management-Reimbursable Advisory Services (PFM-RAS). Despite the progressive steps taken by the government over the last two decades aimed at strengthening the regulatory framework, public procurement continues to be plagued with inefficiencies and lack of assurance of value for money. Governance concerns periodically reported in the media, large number of small-value contracts, lengthy internal approval processes, significant proportion of failed biddings, infrastructure construction delays, and so on continue to challenge and undermine confidence in the public procurement system.

⁶ Methodology for Assessing Procurement Systems (MAPS) is a universal tool based on a set of quantitative and qualitative indicators reflective of leading international procurement practice that serves as a guide toward sustainable and inclusive public procurement reform.

⁷ MAPS 2018 - Foreword.

⁸ World Bank Data.

⁹ PhilGEPS – 'Insights and Ideas for Procurement Policies and Strategies' (World Bank, June 2019).

4. **The government continues to be committed to procurement reform and public procurement remains an integral part of the government's development agenda.** The Philippine Development Plan (PDP) 2017–2022, in support of the long-term vision Ambisyon Natin 2040, begins with laying down a strong foundation for more inclusive growth, a high trust and resilient society, and a globally competitive knowledge economy. Throughout the PDP, it outlines several areas in reinforcing and improving the current governance and procurement practices in the country, including the need for participatory governance and making PhilGEPS data available to all.
5. **However, there is currently no defined vision, strategy, or structured plan for establishing a robust public procurement system to deliver the desired outcomes.** Much of the procurement reform effort so far has been driven by piecemeal approach and limited adoption of reform recommendations of previous diagnostic assessments by development partners and periodic research by think tanks and individuals, undertaken from time to time over the last decade. This includes the last Country Procurement Assessment Report (CPAR) 2012 jointly undertaken by ADB, Japan International Cooperation Agency (JICA), and the Bank; Use of Country Procurement Systems Pilot by the Bank (initial stages 1 and 2) 2011; Public Expenditure and Financial Accountability (PEFA) assessment 2016 by the Bank; the Promises and Pains in Procurement Reforms in the Philippines by the Philippine Institute of Development Studies; and Reforming Public Procurement in the Philippines - Progress and Constraints by David Seth Jones. There were also other empirical studies such as Data Analytics for Measuring Performance in Procurement and Implementation of Infrastructure Works in the Philippines (2014) by the Bank and the most recent data analytics of existing data in PhilGEPS - 'Insights and Ideas for Procurement Policies and Strategies (2019)' conducted by the Bank under the Public Finance Management-Reimbursable Advisory Services (PFM-RAS). An official comprehensive assessment of the public procurement system led by the government has never been conducted before and is crucially needed.
6. **Public procurement outcomes may not be achieving best value for money, based on a joint 2014 World Bank and government empirical study of infrastructure contracts.** Data extracted from PhilGEPS indicate a high level of fragmentation of contracts into a plethora of small contracts, with about two-thirds being under US\$1 million. This imposes a large administrative burden on the government and bidders and undermines the potential benefits of economy of scale. Part of the reason for breaking up procurement requirements into smaller-value contracts could be that larger contracts require greater scrutiny through a more stringent approval process. Furthermore, the procurement process for larger-value contracts takes substantially longer to complete. Contracts exceeding US\$1 million on average take 60 percent longer than smaller contracts. Added to this, the time taken for contract signing is unusually long, sometimes up to three months. There is also a high percentage of unsuccessful procurement processes, the extent of which varies across agencies, but some experience more than 30 percent of bidding failures by value, even on low-value tenders.¹⁰
7. **The legal framework for public procurement is governed by RA 9184 (GPRA¹¹),** an act providing for the modernization, standardization, and regulations of the procurement activities of the government and for other purposes. Under the law, GPPB has been established with a number of designated functions including to conduct annual review of the effectiveness of the act and recommend any amendments. GPPB is chaired by the Secretary of the DBM, and co-chaired by Secretary of the National Economic and Development Authority (NEDA), with membership from secretaries of several line departments and a representative from the private sector. A TSO is providing support to GPPB in the performance of its duties and responsibilities. A Handbook on Philippine Government Procurement has been developed by GPPB-TSO that includes the 2016 Revised Implementing Rules and Regulations of Republic Act No.9184 (IRR) and latest GPPB issuances with 28 appendices based on GPRA, all of which

¹⁰ Systematic Country Diagnostic of the Philippines (the World Bank Report, 2019) and PhilGEPS- 'Insights and Ideas for Procurement Policies and Strategies' (World Bank, June 2019)

¹¹ Republic Act No.9184 Providing for the Modernization, Standardization and Regulation of Procurement Activities of the Government and For Other Purposes (2003).

are available at GPPB website. A separate law and IRR for public-private procurement is governed by RA 7718, also known as the Build-Operate-Transfer (or BOT) Law. Joint ventures, both contractual and corporate, provide another framework for the implementation of PPPs.

8. **With the above background and as indicated earlier, GPPB-TSO requested the Bank's assistance in undertaking a holistic up-to-date assessment of the public procurement system** using the latest version of the universal Methodology for Assessing Procurement Systems (MAPS 2018) to get a complete picture of its strengths and weaknesses against international standards and best practices; identify the impediments adversely affecting performance, provide recommendations for improvement; and prepare a strategic plan to guide systematic strengthening of the system in the immediate, medium, and long term for greater impact. The assessment will also identify areas where the government may need future support, and further opportunities and engagement modalities, particularly through RAS, for collaboration with the Bank will be subsequently discussed with the government.

Development Objectives of the Assessment

9. **The broad development objective of the assessment is to support the GoP** to further improve the performance of the public procurement system and yield optimal results in the use of public funds and delivery of services to the citizenry while maintaining high standards of integrity. An improved public procurement system is also expected to contribute in several areas mentioned above in relation to PDP 2017–2022. The assessment will support this agenda through (a) identifying the strengths and weaknesses of the public procurement system, their relative importance and major risks; (b) identifying any substantial gaps that impede the efficient use of public funds; (c) making appropriate recommendations to address the identified gaps; and (d) elaborating a strategy and priority reform activities and action plan to improve procurement performance to deliver better economic and social outcomes. It is a priority to use the MAPS assessment to support the government to further improve on specific indicators under the four pillars based on identified gaps but more specifically on Public Procurement Operations and Market Practices (Pillar III) to align it with the current country conditions in support of the PDP. The assessment will be conducted on all the four pillars of MAPS: (i) Legal, Regulatory and Policy Framework; (ii) Institutional Framework and Management Capacity; (iii) Public Procurement Operations and Market Practices; and (iv) Accountability, Integrity and Transparency.

10. The scope of the assessment covers national and local government units, including government-owned and controlled corporations (GOCCs) and state universities and colleges (SUCs), but excludes defense and national security procurement.

11. Particular attention is being placed on supporting the development of efficient and robust procurement operations which will provide better value for money; strengthened data analytics capability for measuring performance and making appropriate improvements in the various areas of procurement, flexible procurement arrangement for the different procurement requirements involving, among others, R&D, complex and innovative activities, emergency disaster operations (more relevant post COVID-19 situation); and levelling the playing field for foreign firms in bidding for government procurement. Focus will also be on (a) reviewing roles of agencies having oversight over procurement: Commission on Audit (COA), Office of the Ombudsman, and Construction Industry Authority of the Philippines/Philippine Contractors Accreditation Board (PCAB) and (b) finding faster way of capacitating local government units (LGUs) given the Mandanas decision of the Supreme Court which will come into effect in 2022, resulting in an increase in the funds and workload of LGUs.

12. The above areas are being given particular attention as part of the core assessment based on the four pillars. This assessment may identify priority areas where use of supplementary MAPS may be needed in the future to further support the government's procurement reform agenda.

Methodology of the Assessment

13. **The MAPS analytic framework** is a universal tool for assessing country procurement systems and entails applying a rigorous assessment methodology for setting high aspirational standards and providing strategic direction to countries for procurement reform. As indicated earlier, the MAPS methodology assesses four main pillars of the public procurement system (i) Legal, Regulatory and Policy Framework; (ii) Institutional Framework and Management Capacity; (iii) Public Procurement Operations and Market Practices; and (iv) Accountability, Integrity and Transparency, against 14 indicators and 55 sub-indicators. The findings, recommendations, and strategic plan would support the country's efforts toward a well-governed public procurement system, both from modernization and professionalization perspectives, a system that contributes to meeting the government policy objectives, improving efficiency in public services delivery, increasing public trust, and enhancing the prosperity of the population while achieving value for money with high transparency, fairness, and good governance.

14. **The assessment was envisaged to be conducted in three phases.**

- **Phase I - Planning and Preparing for the Assessment Phase includes** the following: (a) discuss and build consensus around the MAPS 2018 methodology application, validation process, data collection; (b) conduct stakeholders mapping and agree on composition of the Steering Committee; (c) make sure that the scope of the MAPS assessment is tailored to the government public procurement strategy and development objectives; (d) finalize the Concept Note for this important task; and (e) establish a multidisciplinary team for carrying out the assessment, having complementary skills in areas of legal, procurement, supply market assessment, and contract management.
- **Phase II: Conducting the Assessment Phase includes** the following: (a) desk review of the documents making up the legal and regulatory frameworks and other relevant policy documents and PFM/Public Procurement System studies available; (b) collecting other relevant qualitative data through interviews and stakeholders' workshops; (c) collecting hard data as required by MAPS for quantitative indicators in the form of statistical information on public procurement performance from PhilGEPS and through public and private sector surveys; and (d) conducting data analysis against the MAPS indicators using the three-step approach as per MAPS methodology.
- **Phase III: Reporting Phase includes** the following: (a) preparing the Philippines MAPS Draft Assessment Report comprising identified gaps, recommendations for system improvement, and an action plan; (b) sharing the draft report with government counterparts, Steering Committee, and other key stakeholders for comments (the draft report will be subject to a quality assurance); and (c) preparing the Final Assessment Report considering the comments received during the quality assurance process and follow-up. Subsequently, the Government would be liaising with counterparts, as needed, to seek support for implementation of the action plan and continue monitoring the outcomes.

15. Analysis as per MAPS methodology was applied using the three-step approach shown in Table 1.1.¹²

Table 1.1. Three-Step Approach

Steps	Assessment
Step 1	Review of the system applying assessment criteria expressed in qualitative terms. Provide detailed information related to this comparison (actual situation versus assessment criteria) and on changes under way.
Step 2	Review of the system applying a defined set of quantitative indicators (applying at least the minimum set of quantitative indicators defined). Detail the findings of this quantitative analysis.
Step 3	Analysis and determination of substantive or material gaps (gap analysis). Sub-indicators that exhibit a 'substantive gap' are to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system. In case of identified reasons that are likely to prevent adequate actions to improve the system, 'red flags' need to be assigned. Red flags highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

16. The review¹³ of the legal, regulatory, and policy framework and institutional framework and existing procurement challenge mechanism was carried out by the procurement legal experts, based on a desk review of all available documents, followed by several rounds of subsequent clarifications with GPPB-TSO. The full list of documents and legal resources is given as part of Volume III of the Assessment Report.

17. Pillar III on public procurement operations and market practices looks at the operational efficiency, transparency, and effectiveness of the procurement system at the level of the implementing entity. This requires selection and review of sample of actual procurement transactions (files) to determine how procurement operates and performs on the ground.

18. The overall timeline of the assessment with important milestones starting from the GoP request for conducting assessment till the stakeholder's validation workshop of **May 17, 2021**, is given in Box 1.1.

¹² MAPS 2018.

¹³ In respect of the legal review, the substantial work was undertaken between December 2019 and March 2020 followed by several rounds of clarifications with GPPB-TSO, throughout 2020 and to date.

Box 1.1. Philippines MAPS - Timeline of Assessment - Important Milestones

- **February 15, 2019:** Request from GoP/GPPB-TSO for technical assistance from the Bank for conducting assessment of the Philippine procurement system following revised MAPS
- **August 27–30, 2019:** Preparation of mission and agreement on ADB's additional technical/funding support with the Bank leading the assessment
- **October 14–15, 2019:** Launch of mission
- **November 26, 2019:** Finalization of draft Concept Note of September 19, 2019, after review by Bank's MAPS Global Team with comments from Technical Advisory Group
- **December 9–13, 2019:** First implementation mission
- **December 10, 2019:** First meeting with the Steering Committee
- **December 12, 2019:** Consultation workshop with the private sector
- **April 2020:** Implementation mission **cancelled** due to COVID-19 situation (data gathering activity suspended)
- **July 20, 2020:** Virtual consultation workshop with CSOs
- **October 19–23, 2020:** Virtual implementation mission with extensive consultation with stakeholders led by GPPB-TSO including briefing to the Steering Committee
- **January–April 2021:** Several rounds of virtual consultations/meetings with stakeholders and GPPB-TSO and collection of data by virtual/electronic means and personal calls/contacts
- **May 17, 2021:** Stakeholder validation workshop (virtual consultations)

19. Planning/preparation phase was completed following consultation with GPPB-TSO during the Bank mission to Manila from August 27 to 30, 2019.

- **Launch workshop.** The mission of October 14–15, 2019, was undertaken to conduct a launch workshop to (a) inform stakeholders about the salient features of the assessment including the latest MAPS assessment and process, (b) share experience of similar assessments being carried out in other countries, and (c) seek feedback from the participants and key stakeholders to make this exercise participatory, inclusive, and effective. An implementation mission was conducted from December 9 to 13, 2019, after a successful launch in October 2019 for the assessment of Philippine Public Procurement System using MAPS.
- **Orientation workshop for Government Focal Point (GFP).** This workshop was held on December 12, 2019, in the morning at the Bank's conference room and attended by 16 participants from the selected sample procuring entities. Discussions were led by GPPB-TSO. Some participants raised the issue of ownership of data and confidentiality. Both GPPB-TSO and the Bank assured that analysis of sample contracts is not in the nature of audit and no information related to identity of the agency or the sample cases would be revealed in the Assessment Report. Further, the letter of introduction for the Assessment Team to be issued will provide more details on data privacy.

20. **Consultation with the private sector.** The consultation was held on December 12, 2019, in the afternoon at the same conference room and attended by 36 private sector participants. After the presentation by both GPPB-TSO and the Bank, the survey questions were distributed to the participants which were completed on the spot, based on anonymous feedback mechanism. This was followed by intensive and robust question/answer sessions which were captured for further analysis. A summary of this on-the-spot survey and feedback obtained is given in **Volume**

III: Annexes of the Assessment Report. Findings from on-the-spot survey and those expressed in discussions are suitably reflected in the analysis (both qualitative and quantitative) at relevant indicators of the Assessment Report.

21. **Briefing to Assessment Steering Committee.** As part of the GPPB year-end meeting on December 10, 2019, the members of Assessment Steering Committee were briefed on the progress of assessment. This meeting was attended by representatives from the Bank and members of the Assessment Team.

22. **Extensive support from GPPB-TSO.** Despite the COVID-19 situation, GPPB-TSO has provided its input and responded proactively. The team changed its assessment strategy to rely more on electronic means, webex/virtual meetings among the team members and government counterparts. Feedback from CSOs was sought electronically rather than through face-to-face contact. The response of CSOs was validated through a virtual consultation on July 20, 2020. A virtual mission was held from October 19 to 23, 2020, for consultations/feedback from a broad range of stakeholders.

23. **Limitations and challenges posed by the COVID-19 pandemic situation.** The assessment was seriously affected by the restrictions caused by the COVID-19 situation in the Philippines and the corresponding limitations in interacting with the assessment key stakeholders and the collection of the required documents and information. The most challenging part of the assessment was collection of data (qualitative and quantitative data) and restrictions imposed on face-to-face meetings. In fact, it was possible to collect all data only by mid-April 2021 with extensive support and follow-up through GPPB-TSO.

24. **Sample cases.** Due to the COVID-19 situation, for sample cases, data were collected mostly through virtual means from 17 entities and 186 sample contracts, with a mix of samples from national government agencies (NGAs) (6), GOCCs (3), LGUs (5), and SUCs (3) with civil works contract representing 130 contracts (70 percent), goods 49 contracts (26 percent), and consulting services 7 contracts (4 percent). Out of 186 samples, 167 followed competitive bidding and the remaining 19 were negotiated/single source. Collection on sample cases relied more on procuring entities providing input based on a given template and follow-up through mails and phone by the GPPB-TSO Secretariat. A note on the sampling strategy is given in **Volume III: Annexes** of the Assessment Report.

25. **Stakeholder validation workshop.** A virtual validation consultation workshop was held on May 17, 2021, where the Bank jointly with GPPB-TSO and ADB has presented the findings and the recommendations of the MAPS assessment of the Philippine Public Procurement System to a broad group of stakeholders (list of participants is given in Volume III). During the discussion, with stakeholders from the public and private sector, the findings and recommendation were well received with positive feedback on the quality of the assessments and were considered timely and pertinent to feed into their planned procurement reform agenda. The consolidate feedback and comments of the virtual validation consultations was submitted by GPPB-TSO in early June 2021.

Chapter 2: Analysis of Country Context

Political, Economic, and Geostrategic Situation of Philippines

26. **The Philippines is an archipelago of 7,641 islands situated in Southeast Asia, covering a total land area of 300,000 km².** It is the 13th most populous country in the world with population reaching an estimated 108 million in 2020. The population is scattered among the three main island groups of Luzon, Visayas, and Mindanao, with the highest population density found in major cities mostly in the National Capital Region. The Philippines is organized as a multi-tiered unitary government under a constitutional republic with a presidential system. The government has three independent branches: the executive, the legislative, and the judiciary, where the legislative branch is a bicameral Congress composed of the Senate and the House of Representatives. Since 2016, there is a renewed attempt in the country to move to a federal form of government.

27. **The country is administratively composed of 17 regions, subdivided into 81 provinces, 146 cities, and 1,488 municipalities.** Among the administrative regions, the Bangsamoro Autonomous Region in Muslim Mindanao has an elected government with powers and responsibilities delegated by Cor Subnational jurisdictions are given autonomy through constitutional and statutory provisions. The LGUs are divided into three levels: provinces and independent cities, component cities and municipalities, and barangays. LGUs are headed by elected local chief executives and governed by legislative bodies. Higher-tier jurisdictions exercise some degree of supervision over lower-tier jurisdictions; the former applies to provinces over component cities and municipalities and the latter over barangays. Highly urbanized cities are, however, independent of provinces. Except for barangays, LGUs are classified based on their average annual income on a scale of first (highest income range) to sixth (lowest income range) class.

Figure 2.1. Philippines Map



Source: Encyclopedia Britannica, Inc (2008).

28. **The Philippine economy has emerged as one of the most dynamic economies in Southeast Asia.** Its vitality anchors in strong consumer demand, supported by steady remittances and an improving labor market. Economic growth is lifted in recent years by capital investments as businesses spend for productive capacity and the government pursues its infrastructure investment programs. Business activities are buoyant with notable performance in the services sector including business process outsourcing, real estate, and finance and insurance industries. Having sustained an average annual real growth of 6.4 percent between 2010 and 2019 from an average of 4.5 percent between 2000 and 2009, the country is poised to make the leap from a lower-middle-income country with a gross national income per capita of US\$3,850 in 2019 to an upper-middle-income country with per capita

income range of US\$4,046–US\$12,535 in the near term. This achievement reinforces the image of an evolving Philippine society, characterized by rapid urbanization, growing middle class, and declining poverty.¹⁴

29. **The Philippines, however, registered its worst recession in post-war history as the economy contracted 9.5 percent in 2020.** From 6.0 percent in 2019 and 6.3 percent in 2018, growth contracted by 9.5 percent in 2020, driven by the impact of the COVID-19 pandemic, containment measures, natural disasters, and global recession (Table 2.1). Through the external channel, the pandemic disrupted the global supply chain, which weakened the country's exports trade. It also caused demand disruption, dampening the flow of tourism, remittances, and investment. Through the domestic channel, the pandemic compelled the implementation of strict containment measures which weakened domestic activities and suppressed private consumption and investment. Government consumption was the main driver of economic activity, as public recurrent spending ramped up to mitigate the impact of the pandemic.

Table 2.1. Key Economic Indicators (2018–2020)

	2018	2019	2020
	(annual percentage change, unless otherwise indicated)		
Real GDP growth, at constant market prices	6.3	6.0	-9.5
Private Consumption	5.8	5.9	-7.9
Government Consumption	13.4	9.6	10.4
Gross Fixed Capital Investment	12.9	3.9	-27.5
Exports, Goods and Services	11.8	2.4	-16.7
Imports, Goods and Services	14.6	1.8	-21.9
Real GDP growth, at constant factor prices	6.3	6.0	-9.5
Agriculture	1.1	1.2	-0.2
Industry	7.3	4.7	-13.1
Services	6.7	7.5	-9.1
Inflation (Consumer Price Index)	5.2	2.5	2.6
Current Account Balance (% of GDP)	-2.6	-0.8	3.6
Net Foreign Direct Investment (% of GDP)	2.9	2.3	1.8
Fiscal Balance (% of GDP)	-3.1	-3.4	-7.6
National Government Debt (% of GDP)	39.9	39.6	54.5
Primary Balance (% of GDP)	-1.1	-1.6	-5.5
Sources: Philippine Statistics Authority, Department of Budget and Management, Bangko Sentral ng Pilipinas, and World Bank staff calculations			

30. **The COVID-19 pandemic has put pressure on the fiscal balance, resulting in an increase in public debt.** In the past years, the government has adopted an expansionary fiscal policy to close the gaps in infrastructure and human capital. This led to increases in government spending from 18.7 percent in 2018 to 19.5 percent of GDP in 2019. It shot up further to 23.5 percent of GDP in 2020 as the government expanded spending on social protection and mitigation measures to help contain the impact of the crisis (Table 2.2). To support the higher expenditures, public revenue was enhanced with the implementation of a comprehensive tax reform package including the adjustments of oil and automobile excise taxes, the expansion of the value-added tax base, and the introduction of excise tax on sweetened beverages on top of better tax administration. In turn, the fiscal deficit expanded from 3.1 percent in 2018 and 3.4 percent in 2019 to 7.6 percent in 2020. Domestic sources are tapped to support the fiscal gap and represented about 75 percent of total borrowing in 2020. As a result, the overall public debt ratio rose from 39.9 percent of GDP in 2018 to 54.5 percent of GDP in 2020.

31. **Poverty incidence for 2018 has declined significantly but the pandemic has reversed some of the gains in poverty reduction.** The latest official estimates show that poverty incidence among the population has declined to 16.7 percent in 2018 from 23.5 percent in 2015, with almost all regions, except for the Autonomous Region of Muslim

¹⁴ This section of the report was prepared with input from country unit economists of the World Bank.

Mindanao, experiencing a reduction in poverty. Real wages continued to rise, and employment continued to expand toward non-agriculture wage employment in the country. However, the COVID-19 pandemic has dampened the poverty-reducing gains from higher wage and salary incomes. Based on the lower-middle-income poverty line, poverty incidence may have increased by 1.4 percentage points between 2018 and 2020. Nonetheless, the Philippines remains classified under the high human development category, ranking 107 out of 189 countries and territories, scoring 0.718 in the UNDP¹⁵ Human Development Index in 2020. This index score is below the average of 0.747 in East Asia and the Pacific.

32. **The current administration has achieved much in terms of preserving macroeconomic stability, promoting transparency, and directing the growing fiscal space toward pro-poor infrastructure and social services.** Trends in recent years point to the beginnings of a more inclusive growth pattern. Despite these achievements, developmental challenges persist. These include laying out the ‘unfinished business’ on the economic reform agenda such as further enhancing competition in sectors with a high impact on jobs such as shipping and telecommunications, securing property rights through more systematic and administrative adjudication of land rights, and simplifying business regulations to encourage the growth of firms of all sizes while continuing to sustainably ramp up public investments in infrastructure and social services. Priority is also needed in Mindanao, where decades of conflict and neglect have kept it from reaching its potential.

33. **Related to international rankings, on the World Bank’s Doing Business,** the Philippines ranked 95 out of 190 economies covered in the Doing Business Report, 2020 edition, with improvements in three areas—starting a business, dealing with construction permits, and protecting minority investors. Perception of corruption, however, may also affect the business environment. In Transparency International’s Corruption Perception Index in 2020, the Philippines ranked 115 out of 180, below Malaysia (57), Indonesia (102), and Thailand and Vietnam (both 104). The rank of the Philippines in 2018 was 99 out of 180.

34. The Philippines is a founding member of the United Nations established in 1945, and the Association of Southeast Asian Nations, established in 1967. It is a member participant of the ADB, Asia-Pacific Economic Cooperation, East Asia Summit, World Bank Group, World Health Organization, and the World Trade Organization (WTO), among others.

35. **Barring a prolonged economic crisis as a fallout of the current COVID-19 epidemic, the Philippines is about to finally cross the upper-middle-income country threshold, but with increasing inequality.** Growth in the Philippines has not been highly inclusive. While a decade of impressive growth and key gains signals the beginning of potential job and economic transformation, root causes of the uneven playing field facing most Filipinos show little change. Further, economic mobility seen in the sustainable exit from poverty and moving upward in the middle class has been limited. The combined total share of the moderate poor and the economically vulnerable has remained constant at roughly 50 percent of the population for the last 20 years while the share of the economically secure has increased very modestly relative to neighboring countries. Furthermore, conflict-affected areas in Mindanao have seen little improvement in the past decade, with the Bangsamoro Autonomous Region in Muslim Mindanao region accounting for the poorest provinces in the Philippines, with weak delivery of basic social services such as education, health, water and sanitation, and electricity compared to Mindanao and the Philippines overall. All these social vulnerabilities are deepened by the current COVID-19 epidemic and its economic damages on households, firms, and communities. As the Philippines nears the threshold to upper-middle-income country status, the overarching EFI engagement will be to reduce core constraints to inclusive growth and poverty reduction in relation to people, competition, and key institutional and implementation vulnerabilities.

¹⁵ UNDP = United Nations Development Programme.

36. **To continue to grow and achieve the country's long-term vision (Ambisyon 2040), productivity needs to accelerate and be broad based.** Productivity in the Philippines is constrained by limited competition, cumbersome regulations, skills and infrastructure gaps, and high cost of trading across borders. The Philippines has the highest level of market concentration among major countries in Southeast Asia, a product of market rules and regulations that hinder competition. The impacts of restrictive regulations stretch across the economy. It has consistently ranked below the regional average in the ease of doing business and ranked 124 in the Doing Business Indicators for 2019. A ranking of 166 for starting a business and 184 for getting credit are further indications of the challenges faced by businesses. Access to finance continues to be a challenge, particularly for important segments such as agriculture and small and medium enterprises (SMEs) which employ a large part of the workforce.

37. **Furthermore, foreign direct investment (FDI) in the Philippines remains low relative to peers.** The Philippines was the most restrictive country in terms of FDI regulation among 62 countries included in the Organisation for Economic Co-operation and Development (OECD) FDI Regulatory Restrictiveness Index. Restrictive labor regulations such as high redundancy costs and limitations in the use of flexible contracts have an impact on job creation and fuel the large informal sector. High trade costs due to a large infrastructure gap also constrain productivity while steep logistics costs, low connectivity to international markets, and non-tariff measures discourage investment. For the Philippines to fulfill its goal of a middle-class society by 2040, bold measures will be needed to expand good and better paying jobs that are essential to significantly expand the current middle class of the country. These measures are first to improve private sector dynamism and support a structural upgrade; then improve financial services access and use; and finally, improve the quality of education, enhance skills match, and improve support for school-to-work transition. As the COVID-19 crisis has made it clear, digitalization will play a key role in this economic transformation, boosting the country's medium- to long-term productivity as well as its resilience to natural disaster risks, including health risks.

38. **Related to trade, high trade costs restrict competition and reduce opportunities for domestic firms to access larger markets.** As reported in the Systematic Country Diagnostic, (Country Private Sector Diagnostic [CPSD] by the World Bank - IFC) highlights the regulatory and trade restrictions that limit competition and investment more generally. Firms trying to enter markets are discouraged by the complexity of regulatory procedures, administrative burdens on startups, and regulatory protection of incumbents. Similarly, firms requiring imports and wanting to export face high trade costs. Over 93 percent of exporters and 98 percent of importers report procedural obstacles as the main barriers to trade, the highest among peer countries.¹⁶

The Public Procurement System and its Links with Public Financial Management and Public Governance System

Scale of Public Procurement Expenditure and Focus of Budget 2021

39. **Based on World Bank Data, GDP of the Philippines was US\$376.796 billion (current US dollars) in 2019.** According to the latest data from the National Government Cash Account Nominal GDP for the Philippines was PHP 17,976 billion in 2020. Estimated public procurement expenditure in 2020 was 12.2 percent of GDP which translates to PHP 2193 billion (equivalent US\$43.86 billion based on exchange rate of US\$1 = PHP 50). The details are given in the following tables.

¹⁶ Systematic Country Diagnostic of the Philippines (World Bank 2019).

Table 2.2. National Government Cash Accounts (GFS basis) (2018–2020)

	2018	2019	2020
	Actual		
	(in percentage of GDP, unless otherwise indicated)		
Total Revenue and Grants	15.6	16.1	15.9
Tax Revenue	14.0	14.5	13.9
Non-tax revenue	1.6	1.6	2.0
Grants	0.0	0.0	0.0
Total Expenditures	18.7	19.5	23.5
Current Operating Expenditures	13.4	14.0	18.5
Personnel Services	5.4	5.7	6.6
Maintenance and other Operating Expenditures	2.9	2.9	4.9
Subsidy	0.7	1.0	1.3
Allotment to LGUs	2.3	2.4	3.4
Interest Payments	1.9	1.8	2.1
Tax Expenditure	0.1	0.1	0.2
Capital Outlays	5.3	5.3	4.9
Infrastructure/ Other Capital Outlays	4.4	4.5	3.8
Equity	0.0	0.0	0.1
Capital Transfers to LGUs	0.9	0.8	1.0
Net Lending	0.0	0.1	0.1
Fiscal Balance	(3.1)	(3.4)	(7.6)
Primary Balance (GFS)	(1.1)	(1.5)	(5.5)
<i>Memorandum items</i>			
Nominal GDP (In billions Php)	18,265.2	19,516.4	17,976.0
Sources: Bureau of Treasury, Department of Budget and Management, and World Bank staff calculations			

Table 2.3. Extracts from National government cash accounts (GFS basis) (2018–2020) - in percentage of GDP, unless otherwise indicated

Item	2018	2019	2020	Remarks
Total expenditure	18.7	19.5	23.5	Total expenditure figures include personnel services, subsidy, interest payments, tax expenditures, and equity in addition to items under (i) to (iv)
(i) Maintenance and other operating expenditure	2.0	2.9	4.9	
(ii) Allotment to LGUs (part of current operating expenditure)	2.3	2.4	2.5	
(iii) Infrastructure and other COs	4.4	4.5	3.8	
(iv) Capital transfers to LGUs (part of COs)	0.9	0.8	1.0	
Total (i) + (ii) + (iii) + (iv)	9.6	10.6	12.2	Estimates of Public Procurement Expenditure
Nominal GDP (PHP billions)	18,265.2	19,516.4	17,976.0	

Source: Bureau of Treasury, DBM, and World Bank staff calculations.

40. **The 2021 National Budget is aimed at ‘Reset, Rebound, and Recover’ by investing for resilience and sustainability.** The national budget of PHP 4.506 trillion for FY2021 is focused on government efforts in effectively responding to the COVID-19 pandemic. The second Bayanihan Law authorizes the allocation of at least PHP 140.0 billion funds for the continuous implementation of various government COVID-19 response programs. PHP 4.3335 trillion cash appropriation in the national budget will focus on strengthening the country’s capability to address the COVID-19 pandemic. Related to infrastructure, priorities include crucial and shovel-ready projects under the ‘Build, Build, Build Program’ to focus on health-related facilities and digital infrastructure. Related to governance, the focus is on fast-tracking implementation of the Philippine Identification System, investment in information and communication technology (ICT), remote government operations, conducting of capacity building and continuous learning programs, including the use of e-learning platforms and digital upskilling. Out of PHP 1.108 trillion for the ‘Build, Build, Build Program’, the Department of Public Works and Highways (DPWH) is allocated PHP 638.4 billion and the Department of Transportation (DOTr) is allocated PHP 123.7 billion.

PFM Reforms

41. **PFM reform agenda.** Based on the PFM Strategy Implementation Support - Public Financial Management and Accountability Assessment Report of June 2016,¹⁷ the Philippines Government implemented its Philippine PFM Reform Roadmap: Towards Improved Accountability and Transparency, 2011–2015. Also, the Good Governance and Anti-Corruption Cabinet Cluster Action Plan 2013–2016 included several PFM-related activities.

42. A PFM Program Steering Committee provided strategic oversight to program planning and implementation and decides funding priorities each year. The NEDA played an important advisory role to the program. The PFM program had improvement activities in the following areas relevant to the findings of the PEFA assessment of 2016:

- Automating financial management processes in large spending agencies
- Introducing a government-integrated financial management information system (GIFMIS)
- Supporting departments to improve their internal controls, risk management, and internal audit functions
- **Pilot-testing a PFM competency framework.** The PEFA results showed that the reform program till the time of assessment succeeded in strengthening the capacity of central agencies such as the DBM in budget development and transparency, but this has not been matched by reform improvements in the capacity of line agencies to provide accurate and timely reporting. It was clear from the results of this PEFA assessment that the reforms associated with technology need substantial increases in scope to enable line agencies to manage financial transactions in accord with regulations and budget intentions and to obtain real-time financial reporting to maintain budget execution in line with service delivery requirements.
- The improved accounting systems must enable agencies to produce annual accounts that are timely and free from audit qualifications. The performance of the Electronic National Government Accounting System (eNGAS) and current IT development plans need to be reviewed against international practices and in relation with the PEFA results and revised as necessary to provide the PFM information and management systems needed.
- PEFA 2016, as part of its assessment provided an objective, indicator-led assessment of the national PFM system in a concise and standardized manner. Some of key indicators linked to the functioning of

¹⁷ PEFA for Philippines June 2016.

public procurement system were (a) PI-8 on Performance information for service delivery; (b) PI-9 on Public access to fiscal information; (c) PI-11 on Public investment management; (d) PI-18 on Legislative scrutiny of budgets; (e) PI-24 on Procurement management; (f) PI-25 on Internal controls on non-salary expenditure; (g) PI-26 on Internal audit; (h) PI-30 on External audit; and (i) PI-31 on Legislative scrutiny of audit reports. The details on these aspects are covered under relevant pillars/indicators of this assessment report.

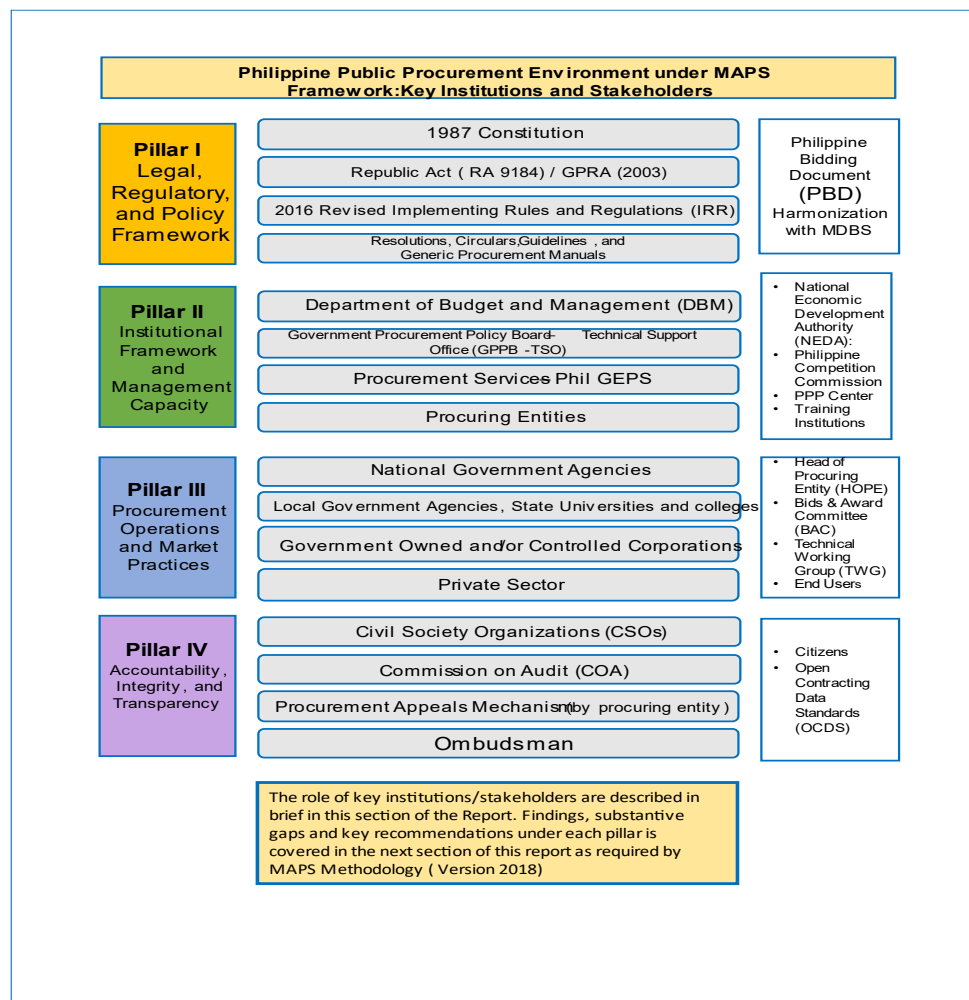
- **The role of DBM and NEDA is crucial in PFM reform.** Public procurement reform is an integral part of the government's PFM agenda. No further update of PEFA was carried out after 2016. However, it is expected that data analytics with focus on COVID-19 will be carried out in 2021–2022 to build on the success of government actions to improve the timeliness and quality of information provided to the government, parliament, and other stakeholders on the use of public funds. Following implementation of the Unified Accounts Code Structure (UACS) coding system, enhancement of the URS reporting systems, and deployment of the Budget and Treasury Management System (BTMS) budget transaction and reporting system, the government wants to maximize their usefulness for decisions and accountability. The government is seeking to have more effective mechanisms for reporting and analyzing budget expenditure in more granular and timely ways to ensure funds are spent where and when intended and for the appropriate purposes. They are also interested in linking budget expenditures to results.

43. A Box 2.2 is provided under the section on National Policy Objectives in the later part of this chapter that, among others, lists major reforms in progress in the Philippines linked to PFM, procurement, and governance.

Analysis of Key Institutions and Stakeholders

44. Figure 2.2 depicts the Philippines Public Procurement Environment under the MAPS Framework with key institutions/stakeholders (formal and informal) and their roles in operating the procurement system, including its control, which are described in this section of the report. A Stakeholder Analysis is presented in Annex 10 of Volume III of the Assessment Report. The analysis has informed the planning of the MAPS assessment meetings, interviews, and surveys with the identified stakeholders. Its role was critical for the validation process of the assessment outcomes and in future on recommendations for the implementation of the reform priorities improvements.

Figure 2.2. Philippines Public Procurement Environment under the MAPS Framework



45. **Department of Budget and Management (DBM).** The DBM, created under Executive Order No. 25 dated April 25, 1936, is mandated under this order and by subsequent issuances to promote the sound, efficient, and effective management and utilization of government resources (that is, technological, manpower, physical, and financial) as instruments in the achievement of national socioeconomic and political development goals.

46. According to the DBM's mission statement, it leads public expenditure management to ensure the equitable, prudent, transparent, and accountable allocation and use of public funds to improve the quality of life of each and every Filipino.

47. The general functions of the DBM, among others, include¹⁸

- Formulating the overall resource application strategy to match the government's macroeconomic policy;
- Preparing the medium-term expenditure plan, indicating the programming, prioritization, and financing of capital investment and current operating expenditure requirements of medium-term sectoral development plans; and

¹⁸ [Home \(dbm.gov.ph\)](http://Home.dbm.gov.ph).

- Undertaking the formulation of the annual national budget in a way that ensures the appropriate prioritization and allocation of funds to support the annual program of the government.

48. The DBM is an executive body under the Office of the President of the Philippines headed by the Secretary of the DBM, who is a member of the President's Cabinet. The Secretary advises the President in issuing executive/administrative orders, regulations, proclamations, and other issuances, the promulgation of which is expressly vested by law in the President, relative to matters under the jurisdiction of the department. The Secretary is assisted by functional group heads/undersecretaries including on functions of budget policy and strategy, budget preparation and execution, supervision of internal audit services, and supervision of procurement services (PS). GPPB-TSO works under the administrative supervision of the DBM.

49. **Government Procurement Policy Board (GPPB).** As a primary aspect of the Philippine government's public procurement reform agenda, GPPB was established by virtue of GPRA s.63 as an independent inter-agency body that is impartial, transparent, and effective, with private sector representation. The GPRA and IRR provide that GPPB shall have the following duties and responsibilities:¹⁹

- To protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations
- To formulate and amend public procurement policies, rules, and regulations and amend, whenever necessary, the implementing rules and regulations Part A (IRR-A)
- To prepare a generic procurement manual and standard bidding forms for procurement
- To ensure the proper implementation by the procuring entities of the Act, its IRR-A, and all other relevant rules and regulations pertaining to public procurement
- To establish a sustainable training program to develop the capacity of government procurement officers and employees and to ensure the conduct of regular procurement training programs by the procuring entities
- To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.

50. GPPB, being an inter-agency body composed of top-level public officials, is supported by its very own TSO in the performance of its duties and responsibilities, particularly in spearheading the implementation of public procurement reform initiatives in the Philippines (Sec. 63.2, of IRR).²⁰

51. In accordance with GPRA s.64 and IRR s.64, GPPB shall be composed of the Secretary of the DBM, as Chairperson, the Director-General (now Secretary) of NEDA, as the Alternate Chairperson, with the following as members: the Secretaries of the Departments of Public Works and Highways (DPWH), Finance (DOF), Trade and Industry (DTI), Health (DOH), National Defense (DND), Education, Interior and Local Government (DILG), Science and Technology (DOST & DICT)²¹, Transportation(DOTr),ICT (DOST), and Energy (DOE), or their duly authorized representatives, and a representative from the private sector to be appointed by the President upon the recommendation of GPPB. GPPB may invite representatives from the COA or from relevant government agencies and

¹⁹ [Government Procurement Policy Board - Technical Support Office \(gppb.gov.ph\)](http://gppb.gov.ph).

²⁰ Implementing Rules and Regulations of Republic Act 9184.

²¹ RA 10844 of 2015 establishing the Department of Information and Communications Technology (DICT), provides for the Secretary of DICT to serve as a member of the GPPB

private sectors to serve as resource persons. In addition, the law establishing the Philippine Space Agency (PhilSA) provides for the Director General of the PSA to serve as a member of the GPPB.²²

52. In accordance with the latest IRR,²³ GPPB has also nominated alternate members as inter-agency Technical Working Group (TWG) members from the above departments, PhilSA (Philippine Space Agency), and a resource person from the CoA.

53. In accordance with IRR s.63.2, GPPB created a TSO which shall provide support in the performance of its duties and responsibilities specified in the GPRA and IRR. TSO is an attached agency of the DBM and working under its administrative supervision for general oversight and for budgeting purposes. In accordance with IRR s.63.2, GPPB shall determine the TSO's organizational structure and staffing, subject to DBM approval.

54. As per IRR s.63.2, TSO shall be headed by an Executive Director and supported by Deputy Executive Directors, of good moral character, unquestionable integrity, and known probity, to be appointed by the President of the Republic of the Philippines. All other employees of the TSO shall be appointed by its Executive Director.²⁴

55. **The Government Procurement Policy Board-Technical Support Office (GPPB-TSO).** GPPB-TSO provides technical and administrative support to GPPB that includes the following functions listed in IRR s.63.3:

- Research-based procurement policy recommendations and rule drafting
- Development and updating of generic procurement manuals and standard bidding documents/forms
- Management and conduct of training on procurement systems and procedures
- Evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems procedures
- Monitoring of compliance to the Act and assisting procuring entities in improving their compliance
- Monitoring of the effectiveness of the Government Electronic Procurement System
- Secretariat support

56. Given the above-mentioned functions, the TSO is receiving its own budgetary support from the national government as authorized under the annual General Appropriations Act (GAA) for the implementation of programs and projects in line with its mandate and to support the policy making, capacity development, and monitoring functions of GPPB.

57. **Procurement services (PS).** The PS was created on October 18, 1978, by virtue of Letter of Instructions (LOI) No. 755 which directed the establishment of an integrated procurement system for the national government and its instrumentalities. The mechanics of the PS system was earlier tested and validated from 1976 to 1978 in an experimental implementation of a centralized form of procurement on a limited basis. On July 28, 1987, the President issued Executive Order No. 285 reiterating the mandate of LOI 755 by abolishing the General Services Administration and transferring the procurement and price monitoring functions of the Supply Coordination Office to the PS.

²² RA 11363 of 2019 Establishing the Philippine Space Development and Utilization Policy and Creating the Philippine Space Agency, and for other purposes.

²³ IRR updated on March 31, 2021.

²⁴ As amended by the GPPB Resolution No. 17-2019, dated July 17, 2019, published in the Philippine Daily Inquirer on July 26, 2019.

Subsequently, on June 2, 1989, the President issued Executive Order No. 359 which prescribed the systematic expansion of the PS through a network of regional depots under a governing Procurement Policy Board.²⁵

58. The PS works under the supervision of the DBM with the following mandate:

- Operation of a governmentwide procurement system
- Price monitoring of common use supplies, materials, and equipment
- Identification of supplies, materials, and such other items, including equipment and construction materials, which can be economically purchased through centralized procurement and which is within the scope of its activity
- Identification of the sources of supply which are able to offer the best prices, terms, and other conditions for items procured by the government
- Continuous evaluation, development, and enhancement of its procurement system, coverage, and procedure
- Management and maintenance of the Government Electronic Procurement System or PhilGEPS

59. The PS-DBM is headed by an Undersecretary-level official (currently an officer-in-charge).

60. PhilGEPS and its functions are defined in IRR s.8. PhilGEPS is the single centralized electronic portal that serves as the primary and definitive source of information on government procurement.²⁶ PhilGEPS is headed by a Director-level official (currently an officer-in-charge).

61. In accordance with IRR s.8.3 all **procuring entities** are mandated to fully use PhilGEPS in accordance with the policies, rules, regulations, and procedures adopted by GPPB and embodied in this IRR. In this connection, all procuring entities shall register with PhilGEPS and shall undertake measures to ensure their access to an online network to facilitate the open, speedy, and efficient online transmission, conveyance, and use of electronic data messages or electronic documents. The DBM-PS shall assist procuring entities to ensure their online connectivity and help in training their personnel responsible for the operation of PhilGEPS from their terminals.

62. **Procuring entities.** In accordance with GPRA s.5, IRR ss.5(f) and (bb) 11, 13, and 14 provide for the legal reference for the organizational structure. A procuring entity shall be the central office or, when duly authorized to procure independently, the regional office or any decentralized, local, or lower-level agency/bureau/office of NGAs, GOCCs, government financial institutions (GFIs), SUCs or LGUs. However, the authority to procure independently of the central office must not be presumed, as the entire structure of the organization would have to be considered to determine whether or not such regional, decentralized, local, or lower-level agency/bureau/office is authorized to undertake procurement activities. Additionally, the existence of directives from the central office delegating such authority to procure to its regional, decentralized, and local or lower-level agency/bureau/office would have to be determined.

63. **National Economic and Development Authority (NEDA).** NEDA is the country's premier socioeconomic planning body, highly regarded as the authority in macroeconomic forecasting and policy analysis and research. Its key responsibilities include the following:

²⁵ [PS-PhilGEPS](http://ps-philgeps.gov.ph/home/index.php/about-ps/legal-bases). Explanation provided on website: <http://ps-philgeps.gov.ph/home/index.php/about-ps/legal-bases>.

²⁶ [PS-PhilGEPS](http://ps-philgeps.gov.ph).

- Coordination of activities such as the formulation of policies, plans, and programs to efficiently set the broad parameters for national and subnational (areawide, regional, and local development)
- Review, evaluation, and monitoring of infrastructure projects identified under the Comprehensive and Integrated Infrastructure Program consistent with the government's thrust of increasing investment spending for the growing demand on quality infrastructure facilities
- Undertaking of short-term policy reviews to provide critical analyses of development issues and policy alternatives to decision-makers.

64. Seven institutions specializing in research, volunteer coordination services, public-private partnerships (PPPs), statistics, tariff setting, and population are attached including the PPP Center.

65. The NEDA Board is composed of the President as Chair, the Socioeconomic Planning Secretary as Vice Chair, and designated department secretaries as members. The NEDA Secretariat, headed by the Socioeconomic Planning Secretary, is regarded as the authority in macroeconomic forecasting, policy analysis, and research. It provides high-level policy advice to the executive and legislative branches of government. It is tasked to

- Coordinate activities such as the formulation of policies, plans, and programs to efficiently set the broad parameters for national and subnational (areawide, regional, and local) development.
- Review, monitor, and evaluate infrastructure projects identified under the Comprehensive and Integrated Infrastructure Program consistent with the government's thrust of increasing investment spending for the growing demand on quality infrastructure facilities; and
- Undertake critical analyses of development issues and provide policy alternatives to decision-makers.

66. **PPP Center.** The PPP Center is mandated to facilitate the implementation of the country's PPP program and projects.²⁷ The PPP Center's power and functions cover all PPP programs and projects including all the variants or arrangements under the amended BOT Law and Joint Venture Agreements, among others.

- The PPP Center is the main driver of the PPP Program. It serves as the central coordinating and monitoring agency for all PPP projects in the Philippines. It champions the country's PPP Program by enabling implementing agencies in all aspects of project preparation, managing the Project Development and Monitoring Facility (PDMF), providing projects advisory and facilitation services and monitoring and empowering agencies through various capacity-building activities.
- The PPP Center provides technical assistance to NGAs, GOCCs, GFIs, SUCs, and LGUs as well as to the private sector to help develop and implement critical infrastructure and other development projects.
- The PPP Center advocates policy reforms to improve the legal and regulatory frameworks governing PPPs to maximize the great potential of these infrastructure and development projects in the country.
- The PPP Center acts as the Secretariat of the PPP Governing Board. The board is the overall policy-making body for all PPP-related matters, including the PDMF. It shall be responsible for setting the strategic direction of the Philippine PPP Program and creating an enabling policy and institutional environment for PPP.

²⁷ [Executive Order No. 8 series of 2010](#), as amended by [Executive Order No. 136 series of 2013](#).

67. **COA.** According to 1987 Philippine Constitution Article IX-D, the principal duties of the COA are the following:²⁸

- Examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by, or pertaining to, the government.
- Promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.
- Submit annual reports to the President and the Congress on the financial condition and operation of the government.
- Recommend measures to improve the efficiency and effectiveness of government operations.
- Keep the general accounts of the government and preserve the vouchers and supporting papers pertaining thereto.
- Decide any case brought before it within 60 days.
- Perform such other duties and functions as may be provided by law.

68. Internal controls on government procurement are the responsibility of the management of the audited agencies. In fact, one of the functions of the Internal Audit Service/Internal Audit Unit stated under DBM Circular 2008-005 dated April 14, 2008, is the review and appraisal of systems and procedures/processes, organizational structure, assets management practices, financial and management records, reports, and performance standards of the agencies/units covered.²⁹

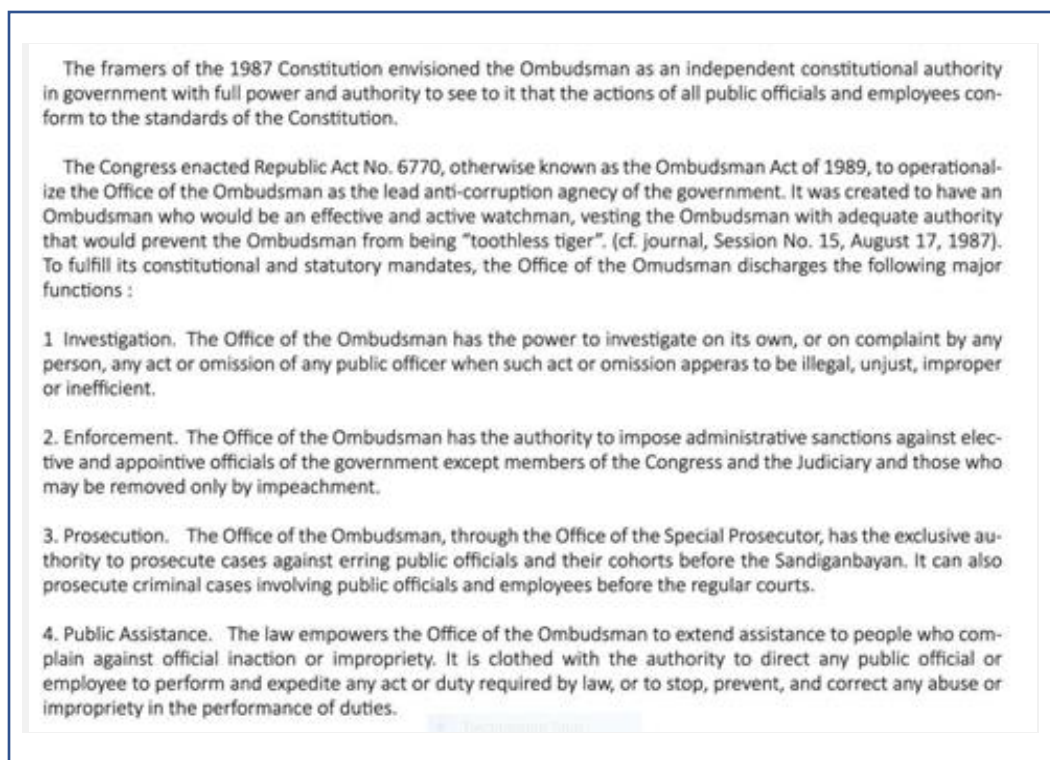
69. On the part of the COA, the audit mechanisms and functions including reporting to management on compliance, effectiveness, and efficiency of procurement processes are part of the regular compliance and performance audits being performed by the audit groups/audit teams.

70. **Ombudsman.** RA 3019 – ‘Anti-Graft and Corrupt Practices Act’ is applied in determining the ‘corrupt or fraudulent practices’. RA 6713 establishes a code of conduct and ethical standards for public officials and its employees. There are penal sanctions for public officers and penal liabilities and sanctions for private individuals as also embedded in RA 9184 to ensure integrity of the procurement process and public procurement practitioners. The Office of Ombudsman gives importance to enhancing transparency and accountability as well as policy and program effectiveness. The main functions of the Ombudsman are as follows:

²⁸ [Commission on Audit - The Official Website of the Commission on Audit \(coa.gov.ph\)](http://coa.gov.ph).

²⁹ [cl2008-5.pdf \(dbm.gov.ph\)](#)

Figure 2.3. Main Functions of the Ombudsman



Source: Ombudsman Annual report 2018.

71. **Philippine Competition Commission (PCC).** According to its mission, the PCC shall prohibit anti-competitive agreements, abuses of dominant position, and anti-competitive mergers and acquisitions. Sound market regulation will help foster business innovation, increase global competitiveness, and expand consumer choice to improve public welfare. The Philippine Competition Act (PCA) or RA 10667 is the primary competition policy of the Philippines for promoting and protecting the competitive market. It will protect the well-being of consumers and preserve the efficiency of competition in the marketplace. The PCA was passed in 2015. The legislation is expected to improve consumer protection and help accelerate investment and job creation in the country, consistent with the national government's goal of creating more inclusive economic growth. Enforcement of this law will help ensure that markets are open and free, challenging anti-competitive business practices while maintaining an environment where businesses can compete based on the quality of their work. A competitive market means a market with multiple buyers and multiple sellers, driving market prices lower, and offering consumers more choices. A truly competitive market encourages efficiency and innovation and forces businesses to excel. Its mandate includes the following:

- Review of mergers and acquisitions
- Investigation and adjudication of antitrust cases
- Imposition of sanctions and penalties
- Conduct of economic and legal research on competition-related matters
- Issuance of advisory opinions
- Advocating of pro-competition culture in government and businesses.

72. As per its Annual Report of 2019,³⁰ among some of its activities, the PCC's Leniency Program offers either immunity from suit or reduction of administrative fines to an entity that was or is a participant in a price fixing, bid rigging, market allocation, or output restriction agreement, in exchange for the entity's voluntary disclosure of information regarding such an agreement. The PCC has issued rules to streamline its merger review process for joint ventures formed for solicited PPP projects. The PCC Memorandum Circular No. 19-001 dated July 2, 2019, details the procedure in securing a Certificate of Project Exemption, which effectively allows prospective bidders to meet the requirements of both the PCA and the BOT Law in the streamlined process.

73. **CSOs.** In the Philippines, around 2001 onward, there was active and meaningful participation by CSOs to improve transparency and integrity in public procurement, with organizations such as Procurement Watch. This was possible due to an enabling environment, initiatives from the government and procuring entities, and donor support. Based on a study carried out by ADB around 2012, it was noted that there was dwindling of CSO engagement and over a period of time, the government did not involve CSOs in actual operations. Major changes were initiated in the 2016 Revised IRR of RA 9184 with stakeholder consultations including CSOs. The revised IRR of RA 9184 requires engagement of CSO Observer in all stages of procurement process. Some of the CSOs who are active in the area related to procurement and were consulted in July 2020 for these MAPS tasks are (a) Institute of Environmental Planners and Philippine Institute of Civil Engineers, (b) National Citizens' Movement for Free Elections (NAMFREL), (c) Life-long Initiatives for the Formation of Ecosystem (LIFE Inc.), (d) CODE-NGO, (e) QCPTA Federation and District 6-QCPTA Federation, (f) Sorsogon Provincial Alliance of nongovernmental organization (NGOs) and POs for Development, (g) Bohol Integrated Development Foundation Inc, (h) Maguindanaon Development Foundation Inc., and (i) Philippine Partnership for the Development of Human Resources in Rural Areas Inc. (PhilDHRRA).

74. **Private Sector:** Considering the importance of private sector as one of the important stakeholders, GPPB-TSO led a consultation workshop with private sector on December 12, 2019 in Manila with participation of 36 representatives of private sector to seek their feedback to improve public procurement system of Philippines. Details are covered under Pillar III as part of analysis.

75. **Other stakeholders of public procurement.** In addition to the above, there are other stakeholders such as 15 partner SUCs with whom the GPPB has a Memorandum of Agreement for stronger partnership for implementation of Public Procurement Specialist Certification Course.

Governance and control of corruption

76. **Governance challenges.** The Philippines faces a complex mix of governance challenges that span across inclusive growth and jobs, human capital, and resilience. The PDP has adopted the Worldwide Governance Indicators, which provides a rough snapshot view of governance concerns for the country. The Philippines ranks above regional peers in voice and accountability and regulatory quality but below them in government effectiveness, control of corruption, and rule of law. Limited government effectiveness results in poor implementation of the government's policies and programs. More than one-third of firms identify corruption as a major constraint, suggesting that it stifles economic growth and poverty reduction.³¹

77. According to Systematic Country Diagnostic of the World Bank (2019), government effectiveness is limited by a range of public administration challenges. In combination, these profoundly limit policy and program implementation. The institutional structure emanating from the 1987 Constitution and subsequent legislation and regulations has been characterized by overlapping responsibilities and duplication between agencies. This is exemplified by the roles and responsibilities of financial management and accountability institutions of the DOF, the

³⁰ 2019 Annual Report of Philippine Competition Commission - Keeping Unfair Competition in Check.

³¹ Systematic Country Diagnostic of the Philippines (World Bank Group 2019).

DBM, and the Commission of Audit. Differences in views and approaches to financial management and fiscal governance among agencies have resulted in delays in development and implementation of reform agendas, mixed signals to line agencies about what is required, and reinforcement of a culture of excessive caution.

78. **Strengthening of PFM** has been incrementally supported through successive administrations, and improvements in transparency and regulatory arrangements are evident. Nonetheless, there remain areas where additional reform has further potential, particularly in budget utilization, procurement, financial reporting, and parliamentary oversight of financial management. Better use of technology can improve PFM. The government is implementing a new financial management information system across all agencies to improve the reliability and timeliness of financial information.³²

79. **Lack of legal protection for bureaucrats in the conduct of their duties.** As a general rule, officials are personally liable for decisions taken or for acts of commission or omission in the conduct of their duties, even where they did not make the decisions (for example, where their subordinates made the decisions) and even after they have left or retired from the service. This is a strong disincentive to autonomous decision-making, informed risk-taking, and innovation.³³

80. **The challenges facing public sector governance in the Philippines are greater at the local government levels.** The Local Government Code of 1991 devolved many service delivery responsibilities and was intended to provide greater autonomy, authority, responsibilities, and resources to LGUs. The intention was to improve local services by bringing resource allocation and prioritization close to the citizens, making it easier also to hold the government accountable. Nearly 30 years on, however, the impacts of decentralization on poverty reduction and access to services remain uneven across the country. Limited good governance remains a defining factor in the development of communities, including the progress in poverty reduction.³⁴

81. **Control of corruption.** The Philippines ranks at the 34th percentile among countries in the Worldwide Governance Indicator for control of corruption. The average percentile rank among regional peers is 45. A principal challenge for evaluating the extent of corruption is the lack of publicly available data. Most analyses of corruption rely on perception surveys. Data from surveys of firms confirm that corruption affecting the private sector remains widespread. In the 2015 Enterprise Survey, 35 percent of firms identified corruption as a major constraint, more than double the average among countries in East Asia and the Pacific. The fraction of firms reporting that gifts are expected for various government transactions is also high but in most cases below the average for other countries in the region. Particularly high rates of expected gift giving are to get things done (59 percent), get a construction permit (40 percent), and secure a government contract (21 percent).³⁵

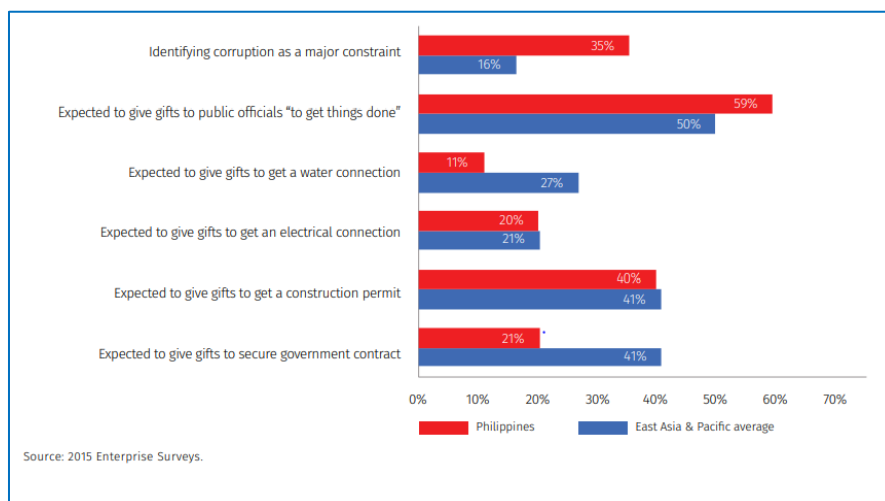
³² Systematic Country Diagnostic of the Philippines (World Bank Group 2019).

³³ There are some indemnification provisions for the specific case of BAC members, set out in ss.72 & 73, Article XXIV RA 9184.

³⁴ Systematic Country Diagnostic of the Philippines (World Bank Group 2019).

³⁵ Systematic Country Diagnostic of the Philippines (World Bank Group 2019).

Figure 2.4. Corruption Reports in the Enterprise Survey (percentage of firms), 2015



82. **The GoP's plan to strengthen public integrity and accountability.** Based on the PDP update of 2017–2022, in the remaining plan period, the government will focus on intensified inter-agency and whole-of-society efforts in reducing corruption through education, prevention, and enforcement, as depicted in Box 2.1.

Box 2.1. GoP Plan to Strengthen Public Integrity and Accountability

- Engage citizens in anti-corruption drives. Public awareness will be enhanced through continuous collaboration with the nongovernment sector (for example, academia, media, and civil society) and the use of technology-enabled platforms (for example, social media).
- By providing appropriate and adequate mechanisms for citizens to report incidents of corruption, citizens' active involvement in the campaign against corruption will be heightened. To this end, the mobile and web platforms of Hotline 8888 will be reinforced, while reporting tools will be simplified.
- A quick response system will also be established to build public trust by providing simplified reporting tools in various delivery modes, channels, and platforms.
- Whistleblowing programs of agencies will also be strengthened by increasing incentives and protection for whistleblowers.
- Integrate anti-corruption measures in risk reduction and management framework for disasters and other forms of crisis. The government will conduct corruption risk assessments of disaster and crisis preparedness and response. In this regard, Internal Audit Service units of government agencies will be capacitated to ensure effective control systems in the bureaucracy. Safeguards will be installed to protect the integrity of systems and mechanisms, such as using technology for the disbursement of resources.
- Previous prevention measures will be continued such as the country's commitment to the United Nations Convention against Corruption (UNCAC), other anti-corruption programs (for example, Integrity Management Program), and existing transparency initiatives (for example, Full Disclosure Policy, Transparency Seal, and Citizen's Charter).

Source: PDP update of 2017–2022.

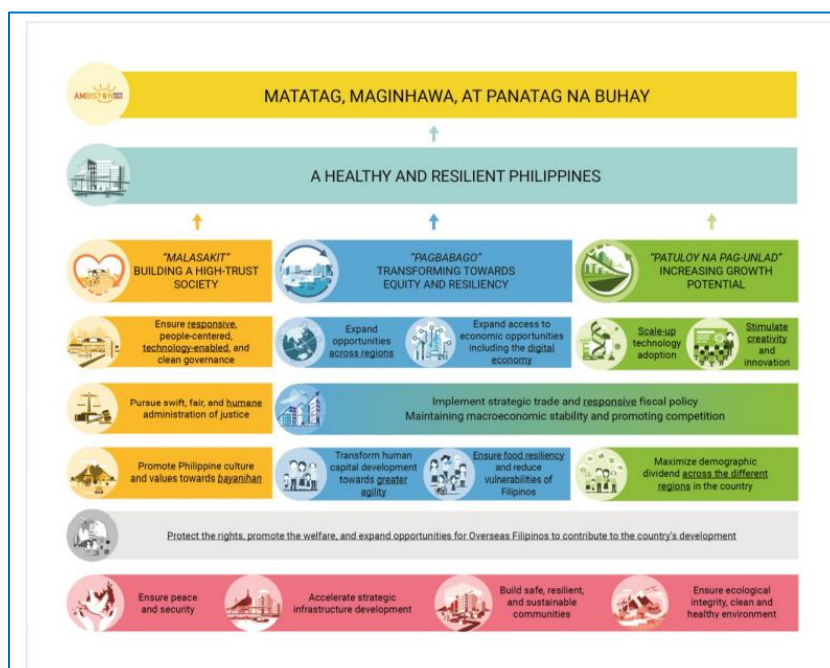
National Policy Objectives and Sustainable Development Goals

83. **In accordance with PDP 2017–2022,** "by 2040, the Philippines shall have been a prosperous, predominantly middle-class society where no one is poor; our peoples live long and healthy lives, are smart and innovative, and live in a high-trust society." PDP 2017–2022 will strengthen the nation's aspirations of inclusive and sustainable

development through national efforts by improving the role of the government, including public procurement, to create businesses, jobs, and income.

84. **PDP has been updated to build on the gains in recent years and consider the imperatives for recovery and adapting to the new and better normal state of affairs.** Moving forward, the health and resiliency of the Filipinos will be prioritized as the foundation for achieving AmBisyon Natin 2040. The Strategic Framework of Updated PDP 2017–2022³⁶ envisages a ‘Healthy and Resilient Philippines’ as depicted in Figure 2.5.

Figure 2.5. Strategic Framework of the Updated PDP 2017–2022



85. **The Philippines is committed to the new Sustainable Development Goals (SDGs) including goal 12** to achieve sustainable consumption and production. The Green Public Procurement Roadmap and its implementation is the Philippines contribution to achieve SDG target 12.7 to promote public procurement practices that are sustainable, in accordance with national policies and priorities.³⁷ Also, according to the PDP, “Development and implementation of programs will enhance productivity and efficiency through green programs and sustainable consumption and production patterns” (Chapter 3, p 94).

86. **Major reforms in progress.** Related to National Policy Objectives and SDGs as linked to PFM, procurement, and governance, major reforms are in progress, which have been adapted to the COVID-19 situation³⁸ that includes a host of measures as depicted in Box 2.2.

Box 2.2. Major Reforms in Progress in the Philippines linked to PFM, Procurement, Governance, and Sustainable/Green Public Procurement

- **The government has embarked on the ‘Build, Build, Build’ program**, which is an ambitious infrastructure program that increases spending for infrastructure from 4% of GDP in 2016, based on actual disbursement, to 5.5% in 2021, and 4.3% in 2022.

³⁶ Updated PDP 2017–2022.

³⁷ Philippine Green Public Procurement Roadmap- Advancing GPP until 2022 and beyond.

³⁸ Updated National Development Plan (2017–2022).

- **To improve business environment, continue efforts to ease or remove restrictions in the services sector** and pursue reforms to open the sector to foreign participation and encourage competition. Restrictions in telecommunication and transportation services will be given particular attention, including the amendment of the Public Service Act of 1936.
- **Improve digital skills, ICT infrastructure, and digital connectivity** to ensure reliable and affordable broadband and internet services. The PhilSys Act establishes a national digital ID system that will provide every Filipino with proof of identity.
- **PDP 2017–2022 reinforces the PCA** through strategies that aim to foster an environment that penalizes anti-competitive practices, facilitates entry of players, supports regulatory reforms, and improves trade policies to stimulate investments and innovation and boost competitiveness.
- **Under pro-competitive policies and government Interventions, the government will ensure that all policies, laws, rules and regulations, issuances, and other interventions do not unnecessarily distort competition.** It will amend or repeal anti-competitive laws and regulations and factor in market competition in the formulation of new policies. The adoption of this element in the design of government interventions will reduce barriers to entry and reentry as well as reduce limits to entrepreneurship. This will be beneficial in facilitating the market participation of more firms, especially micro, small, and medium enterprises (MSMEs), which are among the most affected by the COVID-19 pandemic.
- **Under competitive neutrality, the government will ensure that GOCCs and private sector businesses compete on a level-playing field.** Unless it can be clearly demonstrated that greater public interest will be served and the undertaking lacks commercial viability, GOCCs will not enjoy net competitive advantages or disadvantages over private sector businesses simply because of public sector ownership.
- **Reducing barriers to entry and reentry to conduct market scoping studies in priority sectors to facilitate competition among MSMEs.** Considering the economic consequences of the COVID-19 pandemic, the government will provide financial and technical support to MSMEs to enable them to thrive in a market participated by larger and more established foreign and domestic players. For MSMEs to better respond to increasing customer expectations and competition in the market, digitalization of business processes, capacity building on formulating and implementing business continuity plans, and upskilling and retooling of the workforce should be adopted. PCC, NEDA, and DTI will continue to conduct market scoping studies in priority sectors that will provide comprehensive market analysis and identify concerns that need to be addressed
- **Improve the regulatory environment by addressing restrictive laws and regulations that hamper competition.** To increase the number of business players in the market and facilitate their entry and reentry, especially MSMEs, the government will address barriers to entry that stem from government regulation, patent protection, start-up costs, education, licensing requirements, or technological challenges. In the services sector, the government will open sectors to foreign players and consider the enactment of legislation that will ease requirements for the practice of professions in the country to not only increase competition but also push local players to further improve their goods and services. Opening the telecommunications sector, for instance, will ensure more reliable internet services in the country and digitalization of businesses, especially of small business players and MSMEs in the new normal.
- **In the construction sector, the government will address public restraints** by reviewing regulations that hinder competition such as the nationality-based distinction, which creates an uneven playing field between local and foreign contractors. The subsequent strengthening of regulatory quality within the industry will effectively reduce the formal and informal costs of doing business that held back sector efficiency and performance far below its inherent potential for so long.
- **Formulate public procurement guidelines for Science, Technology and Innovation (STI) PPAs consistent with the Government Procurement Reform Act (RA 9184).** The National Innovation Council, in coordination with the GPPB, will review and identify the problems in the current procurement process for STI PPAs and suggest solutions on how to resolve these constraints. This will entail the issuance of procurement guidelines consistent with RA 9184 that will ensure efficiency, transparency, timeliness, and relevance in the procurement process for STI PPAs (for example, creation of special/separate procurement process for certain STI projects). This strategy will be prioritized and implemented with urgency in light of the current pandemic and possible occurrences of disasters, epidemics, and other emergencies.

- **Green Public Procurement Bill.** It aims to strengthen green public procurement (GPP) by enhancing compliance of procuring entities in integrating green criteria in the procurement guidelines, including bidding documents and technical specifications, and in setting clear LGU involvement based on market readiness.
- **Address industry value chain gaps by encouraging sustainable use of raw materials along with parts,** components, and intermediate products and linking manufacturing with knowledge-intensive services. The lack of sustainability in production processes, inadequate processing (resulting in nonconformance to standards prescribed by processors), challenges in logistics, warehouse and storage facilities, and internal firm factors such as lack of human resource capabilities and low technology adoption have been identified as gaps in the country's manufacturing sector. Adequate investment required in acquisition of technology licenses, adoption of innovative and sustainable manufacturing processes.
- **A concrete example in pushing forward sustainable production in the manufacturing sector is the National Ecolabelling Programme - Green Choice Philippines (NELP-GCP).** The NELP-GCP is a voluntary, third-party ecolabelling program that follows the guidelines set by ISO 14020 and ISO 14024. Through a multisectoral process, the program provides criteria for environmentally preferable products which can be used as a guide for consumers and institutions for product selection. Ecolabelling and green purchasing are just the first step to create awareness on sustainable consumption and production practices. To further promote and patronize ecolabelled products and services in the public sector, the Philippine Green Public Procurement Roadmap has been launched by the GPPB in 2017. Encouraging green procurement in the public sector is critical as this will create demand and will concretely lay down green purchasing policies.³⁹

Source: Updated National Development Plan (2017–2022).

87. **Legislative agenda to promote market competition.** The government's legislative agenda to strengthen the country's promotion of market competition includes an amendment to the Foreign Investment Act of 1991 (RA 7042), as depicted in Table 2.4.⁴⁰

Table 2.4. Legislative Agenda to Promote Competition

LEGISLATIVE AGENDA	RATIONALE
Amendment of the Public Service Act (Commonwealth Act No. 146)	<p>The measure will define "public services" and "public utilities," which have been used interchangeably, to distinguish the former from the latter. The 1987 Philippine Constitution limits the operation of a public utility to citizens of the Philippines or to corporations or associations, at least sixty percent of whose capital is owned by Filipinos.</p> <p>The measure will lift foreign equity restrictions in certain sectors that offer services not under the scope of public utilities such as those engaged in the telecommunication services. This will encourage potential investors to participate, reducing the market power of incumbent firms.</p>
Amendment of the Foreign Investments Act of 1991 (Republic Act No. 7042)	The measure will ease restrictive provisions in the Foreign Investment Act to address procurement restrictions and lengthy procedures that hamper foreign investment and participation of foreign bidders in local procurement. It will also include provisions to ease restrictions on the practice of professions in the Foreign Investment Negative List.
Amendment of the Consumer Act of the Philippines (Republic Act No. 7394)	<p>The measure will facilitate the growth of e-commerce and ensure that firms respond to the requirements in the new normal and thrive in the digital economy. It will regulate e-commerce to protect both firms and consumers from fraudulent schemes.</p> <p>E-commerce will play a big role in the new normal as businesses and consumers increase the use of online transactions. (See Chapter 9)</p>
Amendment of the Magna Carta for Micro, Small and Medium Enterprises (MSMEs) (Republic Act No. 9501, amending Republic Act No. 6977)	The measure will promote the growth and development of MSMEs by addressing challenges such as limits to entrepreneurship and lack of access to finance and markets, among others. It will increase access of MSMEs to financing such as extending credit window to recover from the economic consequences of the COVID-19 pandemic.

³⁹ Philippine Green Public Procurement Roadmap - Advancing GPP until 2022 and Beyond.

⁴⁰ Updated PDP 2017–2022.

Public Procurement Reform in the Philippines

88. **Procurement Reform since 2002 CPAR.**⁴¹ In 1999, the GoP, working closely with the Bank and other development partners, reviewed its own public procurement system and recognized the need for further improvement. The 2001–02 CPAR noted that the system at that time was fragmented, cumbersome, and prone to corruption. There were too many procurement laws, rules, and regulations, and many agencies with overlapping functions. Given this setup, it was impossible to implement real procurement reforms including enforcement, monitoring, and performance evaluation across the bureaucracy. Competition among bidders was low, the process was susceptible to corrupt practices, and foreign bidders found it difficult to participate.

89. Following the completion of the first CPAR of 2001–02, many reform measures were institutionalized through the passage of an Omnibus Procurement Law that was aligned with international best practices at that time, and it was structured around the principles of transparency, competition, economy and efficiency, fairness, and accountability. The Government Procurement Reform Act (RA 9184) or GPRA was passed by both houses of Congress, approved by the President on January 10, 2003, and became effective on January 26, 2003. The GPRA eliminated more than 100 laws, rules, and regulations replacing them with a single public procurement system that was attuned to the local culture and governance environment. The GPRA also created GPPB, a policy and monitoring body with the mandate of handling all procurement matters affecting national interest.

90. The GPRA was the outcome of a widely participatory process including with key development partners that resulted in streamlined and time-bound procedures, standardization of procurement document, manuals, and forms, use of e-procurement, creation of oversight agencies, increased accountability of procuring entities, staff professionalization, and presence of CSOs as observers of the bidding process. It also created opportunities for foreign bidders to participate in cases when items were not locally available, situation of reciprocity rights between countries, and when there was a need to prevent a situation that defeats competition or restrains trade.

91. **The CPAR of 2008.** The GPRA led to legal and institution reforms, alignment, and harmonization with multilateral development banks (MDBs) and use of the procurement law as an anti-corruption measure. However, according to the CPAR of 2008, challenges remained in implementation and monitoring of compliance with the procurement law, including the enforcement of anti-corruption measures. The Philippines was selected as a pilot for the testing of the Baseline Indicator System and Compliance Performance Indicator System (version 4, July 2006), developed by the OECD-Development Assistance Committee (DAC) - World Bank Joint Venture on Procurement. Based on the CPAR of 2008, certain procurement policies and mechanisms were considered to be not in accordance with international procurement practices such as use of ABC that sets a price bid ceiling, absence of independent complaint review body, replacement of prequalification process by an eligibility check/screening, and only bidders that the eligibility check are allowed to secure the bid document and submit a bid. Based on this CPAR, the challenges that remained to be tackled included implementation and enforcement of anti-corruption measures and lack of public awareness of procurement reform including by private sector participants.

92. **Use of the Country Procurement System (2008–2010).** In the given period, the Bank, donor partners, and developing countries alike recognized and supported the need for strengthening the country systems. The Bank and many of its development partners and partner countries endorsed the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, committing to actions to move toward the use of country systems. As public procurement was considered a strategic government function, raising the quality of countries' procurement policies, rules, and procedures by reference to international standards was increasingly seen as critical to support the economic growth

⁴¹ Philippines Country Procurement Assessment Report - A Joint Document of the Government of Philippines, the Asian Development Bank and the World Bank (October 3, 2008).

and trade that will help countries reach their development goals. Therefore, at the request of the Board of Executive Directors, Operations Policy and Country Services (OPCS) of the Bank prepared a detailed methodology on how to identify countries and projects to participate in a limited piloting program on increased use of country systems (UCS) in procurement, which the Board approved on April 24, 2008.

93. The Philippines was the only country in East Asia and Pacific Region that expressed its interest to be the part of the pilot for UCS as per the GoP's letter dated October 3, 2008. The assessment of the Philippines' Public Procurement System and its validation was conducted by a World Bank team in August 2009 using OECD/DAC 'Methodology for Assessment of National Procurement Systems' version of July 2006 as adopted for UCS.⁴²

94. Status of piloting program as of end-December 2010 is depicted in Box 2.3.

Box 2.3. Use of Country System - Piloting for the Philippines' Public Procurement System (2009)

The Philippines. Although the Philippines remains interested in the UCS piloting program, the team has identified issues that have proven to be difficult to resolve.

First, to review procurement complaints before contract award, the Philippines uses a two-tier system that can be expensive, time-consuming, and inefficient in providing the remedies that bidders are looking for. The first tier is the implementing-agency-level review of complaints that can be elevated to the concerned ministry, and the second tier is the judicial-level review; there is a need to develop complaints review process that will provide for independent administrative review of decisions as an intermediary step before seeking a judicial decision.

Second, it may be difficult for foreign firms to meet the Philippines' eligibility requirements for bidding to participate under the national procurement system.

A third issue relates to the use of the government's ABC which provides for the upper limit of a bid which, if exceeded, results in the automatic disqualification of the bid, a form of bracketing that is unacceptable to the Bank and is not considered good practice. Several studies were commissioned in the Philippines to look at these issues, and the results of these studies will affect the mitigation measures included in the CDAP. The Bank anticipates that the Philippines Stage I and II assessments will be submitted for OPRC consideration by mid-January 2011. The UCS pilot has been dropped by the Bank since then.

Source: OPCS, World Bank - The Second Progress Report (December 22, 2010).

95. The above pilot and the Country Development Action Plan (CADP) were useful for later country-led engagement resulting in increased focus on performance measurement and management, a modern approach to risk management that shifted to principles and results rather than on procedural compliance and the development of a modern procurement function.

96. **The CPAR of 2012.** The GoP spearheaded the 2012 CPAR process in collaboration with its stakeholders and major development partners, led by ADB with support from Japan International Cooperation Agency and the Bank. According to CPAR 2012, during 2008–2012, the Philippine government's average annual procurement was at US\$7.5 billion, increasing at an average growth rate of 5.6 percent, which accounted for an average of 21 percent of the national budget and 3.7 percent of GDP.

97. CPAR 2012 reported certain improvements since 2008, such as reducing bidder's eligibility documentary requirements, introduction of rules to encourage foreign bidders to participate, further harmonization of Philippine Bidding Documents (PBDs) for goods and infrastructure projects with MDBs, introduction of specialized bidding documents for ICT goods and services, customized bidding document for text books, cascading of procurement

⁴² Assessment of the Philippines Public Procurement System based on OECD/DAC Benchmarking Tool (The World Bank, August 2009).

reforms to LGUs, including through the Community Participation Manual and the Procurement Observer's Guide, improving the participation of CSOs as observers in the procurement process.

98. CPAR 2012 also reports institutional capacity development in 2011 when GPPB-TSO was transferred from the PS to the DBM as an attached agency which granted it more stability and independence. In 2008, the DBM issued guidelines on the establishment of procurement units in all NGAs.

99. In 2010, the COA developed, issued, and adopted the Guide in the Audit of Procurement and trained more than 900 of its auditors nationwide. It also conducted training programs on forensic audit for 1,000 auditors. In 2009, through funding from the Bank, GPPB engaged the Asian Institute of Management to develop 15 procurement training modules to professionalize government procurement personnel and conduct a pilot training from May to August 2009. Private sector organizations, such as the Philippine Constructors Association, the Confederation of Filipino Consulting Organizations, and Philippine Institute of Civil Engineers imparted training on procurement to their members. A few government departments conducted training on the GPRA for their suppliers, contractors, and consultants.

100. The National Archives of the Philippines issued a circular on the management of government records that included procurement and supply contracts.

101. In 2010, with Bank assistance, the APCPI was developed as a tool to evaluate procurement performance at the agency level, collect information for national procurement statistics, and strengthen GPPB-TSO capability to monitor and enforce national compliance with procurement regulations. GPPB, through its resolution 10-2012, dated June 1, 2012, approved the use of APCPI by all procuring entities as the standard performance monitoring and evaluation tool. The assessment tool was pilot-tested in 17 procuring entities comprising NGAs, GOOCs, and LGUs.

102. Related to improvements in PhilGEPS, the online virtual store was launched in July 2011 to facilitate the online ordering of common supplies and equipment on stock by the PS, for use by all government procuring entities. Based on 2012 assessment of PhilGEPS, its features at that time were found to have complied with the MDB's procurement procedures and principles. These features included registration, e-payment, bid matching, a United Nations standard product and services code catalogue, advertisement of opportunities, document download functions, and a virtual store. Data on government agencies compliance with PhilGEPS indicated an increase from 11.44 percent in 2008 to 22.48 percent in 2012.

103. CPAR of 2008 and 2012 adopted assessment based on the Baseline Indicator System and Compliance Performance Indicator System (version 4, July 2006) which is an earlier version of MAPS 2018, with assessment on the basis of four pillars, which are Pillar I Legislative and Regulatory Framework, Pillar II Institutional Framework and Management Capacity, Pillar III on Procurement Operations and Market Practices, and Pillar IV on Integrity and Transparency of the Public Procurement System. These four pillars were further divided into a total of 12 indicators and 56 sub-indicators with scoring on each sub-indicator in the range of 0 to 3. A score of 3 meant full compliance with the stated standard. A score of 2.0 indicated a system with less than full compliance and needing improvement in the area being assessed. A score of 1.0 indicated an area where substantive work was needed for compliance. A rating of 0 is the residual, which indicated failure to comply with the standard. Based on an aggregated score, the situation between 2008 and 2012 was as shown in Figure 2.6.

Figure 2.6. Comparison of Baseline Indicator Rating

Pillar	Maximum Baseline Indicator Rating	2008 Government Score	2012 Government Score
I	3.00	2.63	2.56
II	3.00	2.08	2.08
III	3.00	1.64	2.22
IV	3.00	1.96	2.09

Source: CPAR Working Group, 2012.

104. Based on the results, it is seen that between 2008 and 2012 there were substantial improvements in Pillar III on Procurement Operations and Market Practices and some minor improvements in Pillar IV on Integrity and Transparency of the Public Procurement System. In Pillar II, one of the major areas of improvement was in public procurement mainstreamed to the PFM and governance system. This was due to improvements in the procedures for multiyear budget planning according to DBM circular Letter 2011-11 in November 2011.

105. CPAR of 2012 identified challenges and areas for improvement that the government needed to address with regard to the implementation and enforcement of the GPRA. Also, despite efforts to simplify and standardize the procurement processes at local governments, the APCPI also indicated that continued compliance with the GPRA remained a major challenge. Overall, the GPRA needed to be communicated further to LGUs, the private sector, civil society, the media, and the public in general.

106. CPAR 2012 summarized five major issues pertaining to differences and inconsistencies between the GPRA and the MDBs' rules on national procurement that warrant further review as follows:

- The restrictions on foreign ownership of Filipino firms and the nationality requirements for joint venture arrangements that limit the entry of foreign bidders
- The use of the ABC as the ceiling for bid prices and the award of contracts
- The institution of an independent and autonomous complaint appeals body to resolve protests
- The absence of procedures for international competitive bidding in the GPRA, as it is assumed that this is applicable only to foreign-funded procurements
- The absence of prequalification procedures.

107. CPAR 2012 identified the Action Plan for the Philippine Public Procurement System, with recommended actions/measures, specific weaknesses against each Base Line Indicator/APCPI, responsible agencies, funding source with short-term, medium-term, and long-term actions (all between 2012 and 2016). These are categorized according to the following key results areas: (a) communications strategy for procurement, (b) strengthening of monitoring and enforcement, (c) strengthening of procurement capacity, and (d) improvements in procurement processes and practices. The 2012 CPAR Action Plan was presented to GPPB, which approved it on March 30, 2012. It was then presented to the Philippine Development Forum Sub-Working Group (PDF SWG) on Procurement, which endorsed it on April 19, 2012. The Assessment Team has taken note of Action Plan (Annex 1) of CPAR 2012, which is dealt with as part of the analysis on the relevant indicators for the MAPS 2018 version of this assessment based on which

GoP/GPPB-TSO is expected to prioritize their reform agenda. A status on follow-up actions on CPAR 2012 as of April 2021 is given in Volume III of the Assessment Report.

108. **Empirical study of infrastructure contracts in 2014.** Based on this study which was a joint effort of the government and the Bank, it was noted that public procurement outcomes may not be achieving best value for money, based on a joint 2014 World Bank and government empirical study of infrastructure contracts. Data extracted from PhilGEPS, the government e-procurement system, indicated a high level of fragmentation of contracts into a plethora of small contracts, with about two-thirds being under US\$1 million. This imposes a large administrative burden on the government and bidders and undermines the potential benefits of economy of scale. Part of the reason for breaking up procurement requirements into smaller-value contracts could be that larger contracts require greater scrutiny through a more stringent approval process. Furthermore, the procurement process for larger-value contracts takes substantially longer to complete. Contracts exceeding US\$1 million on average take 60 percent longer than smaller contracts. Added to this, the time taken for contract signing is unusually long, sometimes up to three months. There is also a high percentage of unsuccessful procurement processes, the extent of which varies across agencies, but some experience more than 30 percent of bidding failures by value, even on low-value tenders.⁴³

109. **Status based on APCPI - 2011 to 2018/2019.** The following information is quoted from GPPB Resolution No. 10-2012 issued on June 1, 2012, and its Annex A: APCPI User's Guide. The APCPI tool was approved by GPPB as the standard procurement monitoring and assessment tool for all procuring entities. The APCPI is a methodology to assess the performance of a government agency's procurement activities and to compare its effectiveness against that of the national public procurement systems and international best practices and standards using baseline standards and indicators. The APCPI consists of 16 indicators and 40 sub-indicators representing the four pillars, with scoring according to defined benchmarks for each indicator/sub-indicator.⁴⁴ Based on data from 17 selected agencies in 2011 and a comparison of 2018 and 2019, the average APCPI ratings are in Table 2.5 against a maximum score of 3.

Table 2.5. Comparison of APCPI Rating

Agency APCPI Rating		Average APCPI Rating Per Pillar in 2011	Average APCPI Rating Per Pillar in 2018	Average APCPI Rating Per Pillar in 2019
Pillar I	Legislative and Regulatory Framework	1.61	1.59	1.77
Pillar II	Agency Institutional Framework and Management Capacity	2.50	2.61	2.72
Pillar III	Procurement Operations and Market Practices	2.24	2.26	2.35
Pillar IV	Integrity and Transparency of Agency Procurement Systems	2.71	2.59	2.75
APCPI Rating		2.26	2.26	2.41

110. The details for these ratings are given in **Volume III of the Assessment Report**. Based on these APCPI ratings during 2011 to 2018/2019, while there has been increase in the percentage of competitive bidding and limited source bidding contracts in terms of amount of total procurement, from 59 percent to 73 percent to 77 percent, the number of bidders who acquired bidding documents has remained stagnant in the range of 3 to 4 bidders, but those who submitted bids and were found responsive are in the to be 1.62/1.72 in 2018/2019. Percentage of contracts awarded

⁴³ Extracts from Systematic Country Diagnostic of the World Bank (2019).

⁴⁴ Poor/Non-compliant (0), Acceptable (1), Satisfactory (2), and Very Satisfactory/Compliant (3).

(initial validity of bids) reduced from around 90 percent in 2011 to around 80 percent from 2011 to 2018/2019. These APCPI data have been compared with results of sample cases (Indicator-9) for validation.

111. **PFM and accountability assessment.**⁴⁵ The 2015 PEFA assessment was carried out by the Bank in collaboration with the GoP, in relation to the indicator/dimension on PI-24 on procurement, the scoring was as given in Figure 2.7.

Figure 2.7. PEFA Assessment on Procurement Indicator/Dimension

PI-24 Procurement		
3.181. Significant public spending takes place through the public procurement system. This indicator examines key aspects of procurement management. It focuses on transparency of arrangements, emphasis on open and competitive procedures, monitoring of procurement results, and access to appeal and redress arrangements. The scope of the indicator covers the entire central government and all procurement of goods, services, and civil works whether classified as recurrent or capital investment expenditure (e.g., including civil works and major equipment investments).		
<i>Indicator / Dimension</i>	<i>Score</i>	<i>Brief Explanation</i>
PI-24 Procurement	C+	Overall rating based on M2 methodology.
24.1 Procurement monitoring	B	The procurement monitoring system of 15 national government agencies maintains data for contracts on what has been procured, value of procurement and who has been awarded contracts. The data are accurate and complete for most (about 80% by value) of the contracts procured using different methods for goods, services and works.
24.2 Procurement methods	B	The total value of contracts awarded through competitive methods in 2014 was PhP 35.4 billion for central government agencies and PhP 26.2 billion or 74% was done through competitive bidding.
24.3 Public access to procurement information	B	5 of the 6 key procurement information elements are complete and reliable for national government agencies representing 75% of procurement operations (by value) and are made available to the public in a timely manner through appropriate means.
24.4 Procurement complaints management	D	There is no independent administrative procurement complaints system provided for under GPRA.

112. Compared to the above score of 'C+', a comparable score was 'B' for PI-19 on procurement for competition, value for money, and controls in procurement.⁴⁶ The difference in scores were due to change in methodology on PEFA Framework scoring between 2010 and 2016.⁴⁷

113. **Data Analytics of 2019.** The Bank under an RAS carried out data analytics which was completed in 2019. The DBM/GPPB-TSO has permitted selective use of the data analytics by the Assessment Team as relevant for MAPS. A presentation prepared by the RAS Team and the relevant extracts of data analytics are given in Annex 3 of the Assessment Report. Some important findings are given in Box 2.4.

⁴⁵ PEFA Report of June 2016.

⁴⁶ PEFA of May 2010.

⁴⁷ [Philippines | Public Expenditure and Financial Accountability \(PEFA\)](#).

Box 2.4. Savings Potential by the GoP through Strategic Approach to Government Procurement

- Data analytics was carried out for transactions related to a value of PHP 4,087.660 billion (US\$85 billion) covering public procurement in 2014–2018 for a wide range of diverse goods, works, and services.
- Based on available procurement data, it is estimated that the GoP could save between 26% and 29% of the total procurement spend through designing and implementing better procurement strategies and policies. Changes to laws or regulations are not required to materialize these savings, but rather a more strategic approach to government procurement.
- Buying in bulk resulted in more economical prices and our model estimates that the Philippines could save 8.2% by leveraging the demand of the Government as a whole to drive prices down.
- Bundling up items within a single procurement process resulted in more economical prices for the Philippines. We estimate that the GoP could save 3.8% with more strategic packaging of items that consolidate demand and reduce the share of very small processes. But 94% of the processes had only one item, dispersing the demand in small-value processes.
- Monopolies and oligopolies of public procurement markets had a substantial impact on prices paid by the Government. In fact, we estimate that the GoP could save 3.4% with a more diversified supplier base, which requires breaking up some monopolies and oligopolies. Our recommendation is to approach these markets with custom-tailored strategies to foster competition and new entrants to public procurement.
- Small and medium-size companies offered more economical prices than large companies according to data for 2014–2018. Our model estimates savings of 1.6% by increasing participation of medium-size companies in public procurement. Company size was calculated as terciles of awarded value by suppliers. Our recommendation is to develop an outreach and training program for small and medium size companies on how to bid for government contracts.

Source: Data analytics for PhilGEPS. ⁴⁸

114. These results have been used by the Assessment Team for relevant indicators (Indicator 9 and Indicator 10 on Procurement Operations and Market Practices) as supplemental data for validation of its findings and to assist in framing the recommendations.

115. **The GoP Public Procurement Reform Priorities in 2021 National Budget post COVID-19 situation.**⁴⁹ The government will fast-track the procurement of the COVID-19 vaccine to guarantee mass immunization and in turn effectively curb the spread of the virus. Procurement of learning resources for improving basic education facility DBM in its budget call for FY2021 emphasized the importance of prioritizing implementation readiness of programs and projects through better procurement planning and coordination.

116. DBM in its Technical Note for National Budget for 2021 has committed for 'Ensuring Responsive Procurement in Philippine'. One of the important initiatives is a modernized Philippine Government Electronic Procurement System (mPhilGEPS). The DBM and the PS -PhilGEPS pursued the project to expand the functionalities of PhilGEPS and establish an efficient, transparent, and competitive marketplace for government procurement.

⁴⁸ PhilGEPS RAS of the World Bank - Insights and Ideas for Procurement Policies and Strategies that Generates Savings (June 2019).

⁴⁹ Technical Note prepared by Department of Budget and Management on Proposed National Budget of 2021.

Box 2.5. The Philippines: Goals and Objectives of the mPhilGEPS Project

- To provide and implement a holistic e-government procurement solution and achieve transparency in all stages of government procurement, (that is, from procurement planning to bidding and bid evaluation to project management/contract implementation and management)
- To utilize new technologies and applications to create a suitable and comprehensive e-procurement solution that meets the present and future requirements of the Philippine Government
- To provide a procurement system that can be linked with other government registration databases and in turn allow the electronic validation of supplier records
- To be integrated with the BTMS for the generation of purchase request, purchase order and invoices, and contract management
- To generate data for the APCPI for the compliance and performance monitoring of agencies
- To provide access to structured open data on all stages of procurement using the Open Contracting Data Standards (OCDS).

Source: Technical Note on National Budget 2021.

117. The Philippines has been one of the early adopters of e-procurement in Asia with the introduction of PhilGEPS in 2000. **Indicator 7** under Pillar II of the assessment report that deals with e-procurement provides more details on evolution of electronic government procurement (e-GP), the current status, and implementation plan of the GoP on mPhilGEPS.

118. According the Technical Note on National Budget 2021, to deal with post-COVID-19 situation, the GPPB-TSO, among others, issued the following important guidelines:⁵⁰

- Simplified Guidelines on Negotiated Procurement under Emergency Cases-GPPB
- Circular on Emergency Procurement under the Bayanihan Act
- Streamlining Procedures and Adapting to the New Standards of Government Operations
- Online Blacklisting Portal.

119. Details are provided in Volume III of the **Assessment** Report as a Note on Emergency Procurement (post COVID-19).

120. **Incentives for procurement reforms and challenges.** The Assessment Team considers the following incentives for procurement reform for the GoP:

- The current GPRA was enacted in 2003 with IRR revised in 2016. There is an incentive for the GoP to align its procurement laws, regulations, and bidding documents in line with international practices also by fast-tracking digitalization for the entire procurement process. The government has already showed evidence by committing to mPhilGEPS as reflected in Technical Note to Budget 2021.
- There are incentives for translating the Green Public Procurement Strategy into procurement documents and technical specifications as part of the Sustainable Public Procurement Agenda including use of life cycle costing (LCC) to achieve value for money.

⁵⁰ Technical Note prepared by the Department of Budget and Management on Proposed National Budget of 2021.

- The government is well aware of saving potentials based on Data Analytics of 2019. It is estimated that the GoP could save between 26 percent and 29 percent of the total procurement spend through designing and implementing better procurement strategies and policies.

121. However, there are issues and challenges which have been reflected in successive CPARs from 2008 onward, mostly related to lack of competition and barrier to entry by foreign firms as also evidenced by APCPI and data analytics, which requires action by policy makers.

122. However, one of the challenges according to the Philippine Monthly Development Report (April 2021) of the Bank is the continuing COVID-19 cases and its effect on the market and economy, and the return to more restrictive quarantine measures continued to dampen market sentiments, manufacturing output, and exports contracted in February 2021, while the stock market retreated amid fears of prolonged lockdown. The authorities continued to support the economy through higher public spending and accommodative monetary policy. Inflation has finally slowed down, halting five months of steady rise. While liquidity expanded, bank lending continued to decline over concerns on asset liquidity and profitability.⁵¹

123. Despite the difficult working environment post the COVID-19 situation, the DBM/GPPB-TSO has demonstrated its commitment to procurement reform by continuing with virtual consultations/collection of data and providing all the required input and support to the MAPS Assessment Team for completing the Assessment Report. It is expected that with continued support from the DBM/GPPB-TSO and other stakeholders, it should be possible to deal with challenges. It is expected that the GoP would deal with the COVID-19 situation and push forward its economic reform agenda as also reflected in the updated PDP and 2021 National Budget. The public procurement reform priorities need to be aligned with the immediate development challenges of the government post the COVID-19 situation to improve results and bring savings of public money while following principles of transparency, integrity, and accountability.

124. **An independent assessment as per MAPS methodology (2018).** The MAPS Assessment Team has taken cognizance of the above background as reflected in this chapter on Analysis of Country Context but carried out an independent analysis and assessment, with input and support from the GPPB-TSO and other stakeholders, based on the latest status, laws, regulations, data, and information following the qualitative and quantitative criteria according to MAPS (2018) to identify the strengths, substantive gaps, and recommendations to assist the GoP in prioritizing its procurement reform agenda.

⁵¹ Philippine Monthly Development Report (April 2021) of the World Bank.

Chapter 3: Assessment

125. This section of the Main Report discusses the findings of the assessment in relation to each of the pillars and indicators based on the qualitative review of the system and the application of quantitative indicators as defined in the MAPS methodology. It describes the main strengths and weaknesses and identifies the areas that show material or substantive gaps and require action to improve the quality and performance of the system. Substantive gaps are classified into categories by the risk they may pose to the system and actions are recommended to address these weaknesses. In case factors have been identified that are likely to prevent appropriate action to improve the public procurement system, 'Red flags' are assigned as per criteria reflected at paragraph 24 of Section I of the User's Guide of MAPS 2018, which broadly defines it as factors that impede the main goals of public procurement but lie outside the sphere of public procurement (Volume IIA - Colored Excel Table provides rationale for 'Red flags'). The detailed assessment results covering each sub-indicator and each criterion are given in Volume II of this Main Report in a matrix form as a separate document. All other backup material and documentation in support of this analysis are given in Volume III of the Assessment Report. The Assessment Team has used the guidance and assessment criteria as given in MAPS 2018.

Pillar I. Legal, Regulatory and Policy Framework

126. This pillar assesses the existing legal, regulatory and policy framework for public procurement in the Philippines. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The indicators under Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that the public procurement system lives up to its important strategic role and contributes to sustainability.

127. A consolidated list of applicable laws and regulations for the Philippines and documents referred for this assessment report is given in **Volume III**.

The analysis presents pillar-wise summary, strength and for each indicator key findings, substantive gaps and areas of improvement, before finally presenting a tabulation on overview of substantive gaps with risk and recommendations, with identification of "red flags"

Summary for Pillar I - Legal, Regulatory and Policy Framework

128. **Laws, regulations, and precedence of different instruments.** The main sources of Philippine law are the constitution, legislative enactments passed by Congress,⁵² and Executive/Presidential issuances. **Judicial decisions** form part of the legal system of the Philippines.⁵³ Decisions of the Supreme Court establish jurisprudence and are binding on all other courts. International treaties and conventions have the same force of authority as legislative enactments. There are a number of codes in force such as the Civil Code, Administrative Code, Cooperative Code, Corporation Code, and the Local Government Code.⁵⁴

⁵² Republic Acts, Commonwealth Acts, Acts, Presidential Issuances/Directives, Presidential Decrees, Batas Pambans, and Executive Orders. Article VI, Section 1 of the 1987 Constitution provides that legislative power shall be vested in the Congress of the Philippines consisting of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

⁵³ Civil Code (RA 386(1950) as amended) A.8 provides that "judicial decisions applying to or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

⁵⁴ Republic Acts/Executive Orders: Civil Code (RA 386 (1950) as amended), Administrative Code of 1987 (Executive Order 292), Cooperative Code (RA 6938 (1990)/RA 9520(2009), Revised Corporation Code RA 11232 (2019), Local Government Code RA 7160 (1991). ASEAN Law Association legal system in Philippines refers to 29 codes.

129. The legal framework for public procurement comprises, as the primary legal act, the **GPRA**.⁵⁵ The key secondary legislation on public procurement is the IRR.⁵⁶ The GPRA s.4 and the IRR s.4.2 confirm that the provisions of any treaty or international or executive agreement shall be observed. The GPRA and IRR are supported by numerous resolutions and circulars issued by GPPB, which may be of general or specific application, as well as GPPB guidelines and opinions issued by GPPB. GPPB also prepares and publishes generic and specific procurement manuals, standard bidding documents (PBDs), sample forms, and a green technical specifications guide. Current acts, regulations, resolutions, circulars, PBDs, and other supporting documents and information are regularly updated, published, and accessible free of charge from the GPPB website <https://www.gppb.gov.ph/index.php>.

130. In addition, there are guidelines, executive orders, and other implementing rules and regulations, including issuances published by government departments and other governmental organizations, such as the PS,⁵⁷ DOH,⁵⁸ DTI,⁵⁹ and PPP Center.⁶⁰

131. **Governing principles.** Government procurement is subject to five governing principles set out in GPRA s.3. These are, in summary, transparency in the procurement process and contract implementation; competitiveness; effective and efficient procurement processes; accountability; and public monitoring of procurement processes and contract implementation.

132. **Scope of application of government procurement.** The legal framework (GPRA s.4 and IRR s.4.2) covers procurement by procuring entities of goods, works (infrastructure projects), and services, including consulting services, for procurement using public funds. The coverage of the subject matter of government procurement is broadly defined, although there is no separate definition of services falling within the scope of the GPRA. Services, other than consulting services, fall within the definition of ‘works’. There is no general exclusion for defense procurement. The IRR lists exemptions from the GPRA as well as activities which are not procurement activities for the GPRA and IRR.⁶¹ The excluded activities include PPPs, contracts financed by foreign loans/grants, acquisition of real estate, lease of government-owned property, employment contracts, and so on. The list of exemptions may be better placed in the GPRA than the IRR to ensure clarity of coverage in the primary legislation. Implementation of some infrastructure projects may be carried out ‘in house’ by the administration itself and, in certain cases, by the AFP Corps of Engineers.

133. **Law governing PPPs and policy making for PPPs.** PPPs, including concessions, are regulated, but the legal framework applying to PPPs is fragmented and in some cases a combination of legal bases may be used for implementation of a PPP project. The term ‘PPP’ covers a range of delivery methods, including a variety of BOT type schemes, joint ventures, and hybrid models. There is no single definition of what constitutes a concession. Contractual infrastructure and development projects involving private participation are primarily regulated by RA

⁵⁵ https://www.gppb.gov.ph/laws/laws/RA_9184.pdf

⁵⁶ This assessment references the revised updated version of the IRR in force when the primary legal review was undertaken, being the IRR dated February 19, 2020, which included amendments to December 10, 2019. https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR_2020_19Feb2020rev.pdf. Accessed October 27, 2020. An updated version of the IRR, dated March 31, 2021, is now available from the GPPB-TSO website https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR_31%20March%202021.pdf. According to GPPB Resolution No. 04/2021, the updated provisions concern, primarily, changes to Regulation 22.4 Pre-bid conferences. The changes to Regulation 22.4 are reflected in the detailed information set out in the Matrix at indicator 1(e)(d).

⁵⁷ <http://ps-philgeps.gov.ph/home/index.php/about-ps/legal-bases> Accessed October 28, 2020.

⁵⁸ <https://dmas.doh.gov.ph/>. Accessed October 28, 2020.

⁵⁹ <https://ciap.dti.gov.ph/publications>. Accessed October 28, 2020.

⁶⁰ <https://ppp.gov.ph/guidelines-and-issuances/>. Accessed October 28, 2020.

⁶¹ See IRR s4.5, s.4.6.

6957 as amended by RA 7718 ‘Amended BOT Law’⁶² and Implementing Regulations (BOT Law IRR).⁶³ Joint ventures, both contractual and corporate, provide another framework for the implementation of PPPs. There is a separate, alternative regime for local government PPP, including joint ventures.⁶⁴ Compliance with a number of principles which are common features of public procurement—such as advance notification; publication of opportunities; and requirements for open, fair, and competitive processes—can be observed in the PPP legal framework, but overarching principles applying to **all** PPPs are lacking. The BOT Law provides for an initial right to challenge to the head of the procuring agency of unit. There is no independent review body dealing with further appeal similar to public procurement challenges. The subsequent right to review is to the Regional Trial Court by way of original action.

134. The PPP governing body is the overall policy-making body for all PPP matters. The PPP Center (formerly the Build-Operate and Transfer Center), attached to the NEDA, is mandated⁶⁵ to facilitate the implementation of the country’s PPP program and projects. The PPP Center Annual Report for 2019 identifies the need to update the legal framework for PPPs due to changes in the infrastructure market and aspects of the policy environment since the passing of the BOT Law.

135. **Procurement plan.** Procuring entities must prepare and publish an Annual Procurement Plan (APP). No government procurement shall be undertaken unless it is in accordance with the APP, and the APP must be consistent with the procuring entity’s approved yearly budget. The APP must identify the method of procurement to be used for a planned purchase and where changes to the original planned method of procurement are made, such changes must be reflected in a revised APP submitted to GPPB. Publication of the APP is part of the Transparency Seal, stipulated under s.93 of the GAA of FY2012, which requires all government agencies to maintain the Transparency Seal on their websites. This requirement is reiterated in National Budget Circular No. 542 of the DBM. Transparency Seal requirements include, among others, APA, contracts awarded, and name of contracts/suppliers/consultants.⁶⁶

136. **Electronic portal and use of electronic procurement.** The legal framework provides for a single portal, PhilGEPS,⁶⁷ to serve as the primary source of information on all government procurement. PhilGEPS is managed and maintained by the DBM PS which also functions as a centralized purchasing body. Key features of PhilGEPS are as follows: electronic bulletin board for posting procurement opportunities, invitations to bid, awards, and reasons for award; a central electronic database registry of manufacturers, suppliers, distributors, contractors, and consultants; a centralized electronic catalogue for all common use items and some other items; and a virtual store. All procuring entities are required to register with PhilGEPS and to use PhilGEPS for all bid opportunities, notices, award, and/or results of bids or contracts as required by the GPRA/IRR. The legal framework does not mandate use of electronic bidding in all cases, although all procuring entities must use PhilGEPS for the procurement of defined common supplies. Procuring entities are also required to subscribe to additional features of PhilGEPS such as the virtual store, expanded supplier registry, e-payment, and e-bid submissions once these are available and implemented. GPPB has

⁶² Republic Act 6957, An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for the other purposes (1990), Republic Act 7718, An Act Amending Certain Sections of Republic Act No. 6957, entitled An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other purposes (1993).

⁶³ Amended BOT Law RA 7718 and Revised Implementing Rules and Regulations (2012 Revision of IRR).

https://ppp.gov.ph/wp-content/uploads/2019/06/BOT_IRR_2012_2017_2.pdf

⁶⁴ For the local government, the DILG has published ‘Guidelines for the Implementation of Public-Private Partnerships for the People Initiative for Local Governments (LGU P4)’ (2016). s.35 Local Government Code of 1991 (Republic Act No. 7160) may be used by LGUs as alternative legal basis for PPPs at the local level. The PPP Center has published a Local Government JV Guidebook 2019. The PPP Center Annual Report 2019 highlights the Local PPP Strategy as top priority for 2019.

⁶⁵ Executive Order no. 8 series of 2010 as amended by Executive Order no. 136 series of 2013.

⁶⁶ <https://www.dbm.gov.ph/index.php/about-us/philippine-transparency-seal>

⁶⁷ GPRA provides for the term G-EPS (s.5(g)), but IRR s.5 provides that in the IRR the term ‘PhilGEPS’ (Philippine Government Electronic Procurement System) shall have the same meaning as, and shall be used interchangeably with, ‘G-EPS’. This analysis adopts the same approach on use of these terms.

undertaken a review of the e-bidding guidelines, which is expected to be completed by July 2021. A pilot implementation of the e-bidding facility will also be conducted from October to December 2021.

137. **Procurement methods.** The legal framework provides for a range of procurement methods, with the default method being open competitive bidding, which may be national or international. GPRA s.10 provides all procurement shall be done through competitive bidding except as provided for in GPRA Article XVI on Alternative Methods of Procurement (AMPs), which may be used exceptionally with prior approval of the Head of the Procuring Entity (HoPE) or his/her duly authorized representative. AMPs are less competitive procedures than competitive bidding and, in some cases, they are noncompetitive procedures. GPRA s.48 provides for five AMPs: limited source bidding, direct contracting, repeat order, shopping, and negotiated procurement. IRR s.48 provides that, as a general rule, the procuring entity shall adopt competitive bidding as the general method of procurement. AMPs “shall be resorted to only in exceptional cases provided for in [IRR Rule XVI].” The legal framework sets out the relevant subject matter, threshold (where applicable), and conditions for use of each AMP. GPRA/IRR s.53 provides for 14 cases where use of the negotiated procedure is permitted. There is no prequalification procedure for large and complex contracts, such as large infrastructure projects. The availability of a prequalification procedure is important to ensure that each bidder who participates in a tender will have the demonstrated ability (expertise, technical and financial capabilities, and resources) to perform the contract in a satisfactory manner.

138. **Publication of procurement opportunities and bidding documents.** GPRA s.21 provides that “In line with the principle of transparency and competitiveness, all Invitations to Bid contracts under competitive bidding shall be advertised by the Procuring Entity...” IRR s.21 sets out a non-exhaustive list of where to advertise, including posting in the procuring entity’s premises, PhilGEPS,⁶⁸ and the website of the procuring entity, if available. The content published is sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in doing so. Procuring entities are required to upload bidding documents to the PhilGEPS website and potential bidders may access PDF versions of those documents and are entitled to request clarification of bidding documents.

139. **Time limits.** GPRA s.21 provides that the advertisement shall be “...in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof...” The legal framework does not specify fixed minimum time limits for submission of bids/proposals in particular procurement procedures. Rather, as provided for in IRR s.38.2, Annex C of the IRR sets out the recommended earliest possible time for action and the maximum permitted periods in respect of specific stages of the procurement process. These minimum and maximum time periods vary according to the nature and complexity of the procedure.

140. **Rules on participation.** GPRA s.24 sets out basic principles and requirements concerning eligibility to participate in government procurement for goods, infrastructure projects, and consulting services. These require that eligibility requirements “shall provide for fair and equal access to all prospective bidders.” Eligibility requirements are outlined in the GPRA ss.23 and 24 with further detail provided in the IRR ss.23 and 24, manuals, and PBDs, and there are provisions concerning the acceptable proof of verification and validation of the successful bidder. The term ‘eligibility requirements’ in the Philippine procurement system is slightly different from the common meaning and application found in other jurisdictions. It encompasses ‘eligibility criteria’ (Philippine nationality requirements and establishment); commercial requirements (incorporation of bidder, license, and so on); and qualification requirements of the bidder (net financial contracting capacity, single largest completed contracts, similar experience, and so on). Most notably, the establishment requirements stipulate that the prospective bidder is a duly licensed

⁶⁸ The term G-EPS is used but IRR s.5 provides that in the IRR the term ‘PhilGEPS’ (Philippine Government Electronic Procurement System) shall have the same meaning as, and shall be used interchangeably with, ‘G-EPS’. This report adopts the same approach on use of these terms.

Filipino citizen/sole proprietor or a partnership, corporation, or joint venture with at least 60 percent Filipino interest/ownership or cooperative duly organized under the law of the Philippines.⁶⁹ Foreign bidders may be eligible to participate where provided for under treaty or international executive agreement and in other limited circumstances specified in the procurement legal framework

141. At the end of August 2020, the Supreme Court published its decision in the case of PCAB v Manila Water Company, Inc. GR 217590. The Supreme Court held as invalid a regulatory rule in the PCAB's Implementing Rules and Regulations of RA 4566 (IRR of RA 4566) reserving regular licenses to contractor firms of Filipino sole proprietorship or partnership/corporation with at least 60 percent Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines. This decision is the subject of a motion for reconsideration.⁷⁰

142. The legal framework (GPRA/IRR s.69) allows for administrative debarment as ineligibility from participation, by way of suspension and blacklisting of suppliers, contractors, or consultants on grounds arising both during the procurement stage and during contract implementation. Grounds for blacklisting during procurement process are listed at s.4.1 of the Blacklisting Guidelines.⁷¹ They include, in brief, submission of false information, false documents, or concealment of information concerning eligibility requirements or in a bid; allowing the use of one's name or using the name of another for public bidding; withdrawal of a bid, or refusal to accept an award, or enter into contract without justifiable cause; refusal or failure to post the required performance security within the prescribed time; refusal to clarify or validate in writing a bid during post qualification; any documented unsolicited attempt to unduly influence the bid outcome; all other acts that tend to defeat the purpose of the competitive bidding. In addition to the penalty of suspension and blacklisting, the bid security is also forfeited.

143. Grounds for backlisting during the contract implementation stage include, in brief, failure of the contractor to comply with requirements to mobilize, start work, or perform the contract; comply with its contractual obligations without valid cause; comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract; assign, subcontract, or substitute without prior written approval; for the procurement of goods, unsatisfactory progress in the delivery of the goods and/or unsatisfactory or inferior quality of goods; for the procurement of consulting services, poor performance by the consultant of his/her services arising from his/her fault or negligence; for the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work. In addition to the penalty of suspension and blacklisting, the performance security is also forfeited.

144. Exclusion applies where a potential bidder is debarred or blacklisted by the GoP or any of its agencies, offices, corporations, or LGUs and also by foreign government/foreign or international financing institution whose blacklist is recognized by GPPB.

145. There is due process in the procedure for suspension and blacklisting during the bidding process set out in s.5 Blacklisting Guidelines. Timescales are specified and are reasonably short. The procedure can be initiated by any bidder/prospective bidder or duly authorized observer by filing a written complaint with the Bids and Awards Committees (BACs). Procuring entities may charge a reasonable fee for the suspension and blacklisting procedure.⁷² The HoPE must issue and communicate his/her decision to the contractor within 15 calendar days. The contractor has three calendar days from receipt of the decision to file a motion for reconsideration. The HoPE must make a final resolution within specified timescales and immediately send the contractor a copy of the final resolution. If the

⁶⁹ Amended by GPPB Resolution 06/2019.

⁷⁰ As of May 20, 2021, the motion for reconsideration is still pending review by Supreme Court.

⁷¹ IRR Appendix 17 Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants ('Blacklisting Guidelines').

⁷² Uniform Guidelines for Blacklisting s.5.1.

contractor does not file a motion for reconsideration within three calendar days of receipt, the decision becomes final. The HoPE then issues a 'Blacklisting Order' disqualifying the erring contractor from participating in the bidding of all government contracts.

146. The decision of the HoPE becomes final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision or resolution on the motion for reconsideration. If an appeal is filed, the affirmed, modified, or reversed decision shall become final and executory upon receipt thereof by the agency and person/entity concerned. A suspended contractor whose motion for consideration has been denied may file an appeal with the 'appellate authority', upon payment of a fee.

147. Blacklisting Guidelines s.6 provide for procedures for blacklisting during the contract implementation stage.

148. **Procurement documents, contract conditions, and specifications.** The legal framework (GPRA/IRR s.21) sets out the form and content of bidding documents and mandates use of the PBDs and generic procurement manuals for competitive bidding processes. There are model procurement documents—PBDs for use in competitive bidding process for the procurement of goods, infrastructure projects (works), and consulting services. There are no model procurement documents for specialized procurements, such as plant design supply and install/design-build, design-build-operate information technology system, pharmaceuticals, medical/technical devices or textbooks, for which a tailored approach is appropriate or documents appropriate for use in alternative bidding methods. There are no comprehensive standard conditions of contract included as part of the procurement documents. There are a limited number of provisions included in the contract form itself, with others being cross-referenced through references to GPRA, IRR, and other procurement documents. The 6th editions of the PBDs for Procurement of Goods and Procurement of Infrastructure Works (2020) are intended to be simplified versions of the previous (5th edition). For consulting services, the 5th edition (2016) is in use. Revisions in the 6th edition remove out-of-date provisions in the 5th edition and content has been reduced. However, in reducing content of the standard bidding document there is increased incorporation by references in the PBDs to GPRA and IRR. At points, incorporation by reference is made in a general and rather indiscriminate manner. Use of brand names in specifications is generally prohibited and use of Philippine standards and, in some cases, international standards is required. Potential bidders may request clarification of bidding documents.

149. **Submission of bids, evaluation criteria, and award.** The legal framework (GPRA/IRR s.29) requires public opening of bids at the time, date, and place specified in the bidding documents. IRR s.29 provides that the BAC shall open bids immediately after the deadlines for submission of bids and that "bidders or their duly authorized representatives may attend the opening of bids." GPRA s.29 provides that minutes of the bid opening shall be made available to the public on payment of a fee. The procuring entities determine the costs of the minutes of the bid opening abiding by the guidelines set under IRR s.29 which is based on the cost to recover materials used in preparation of the minutes.⁷³

150. Evaluation criteria must be precisely specified in advance in the procurement documents and award must be made on the basis of the stipulated criteria. The use of price and non-price attributes is permitted. LCC may be used, particularly in the context of preparation of green technical specifications for common use supplies and equipment; however, the legal framework does not allow for the use of LCC during bid evaluation. Quality-based evaluation and quality-cost-based evaluation is only applicable to the procurement of consulting services. There are domestic preference provisions for goods. Contract award notices must be published for all contracts awarded through competitive bidding and in all instances of AMPs for contracts with ABC over PHP 50,000. GPRA/IRR s.34 provides for post-qualification which is the stage where bidder with the lowest calculated bid, in the case of goods and

⁷³ GPPB-TSO response to World Bank clarification question received on July 24, 2020. Comments based on queries made to the Public Assistance Team of the GPPB-TSO, procuring entities have been receiving requests for minutes of bid opening.

infrastructure projects, or the highest rated bid, in the case of consulting services, undergoes verification and validation whether it has passed all the requirements and conditions as specified in the bidding documents. The bidder must submit to the BAC its latest income and business tax returns and other appropriate licenses and permits required by law as stated in the bidding documents. If the bidder fails to meet any of the requirements or conditions, it shall be disqualified, and the BAC then goes on to consider the qualification of the second placed bidder. For consulting services, GPRA s.34 provides that the contract for consulting services shall be awarded to the bidder with highest rated responsive bid, which involves the assessment of both quality and cost. The weighting allocated to the financial criterion when quality-cost-based evaluation is used is limited to a maximum of 40 percent.

151. **Documenting decision-making, publication, and confidentiality.** The legal framework requires procuring entities to ensure that all procurements are properly documented, and documents must be retained in accordance with provisions of wider application applying to national archives. Public opening of bids is regulated, and minutes of bid opening are available to the public on payment of a fee. There are provisions concerning the security, integrity, and confidentiality of bidding documents during the tender process, but there is no provision in the legal procurement framework addressing the requirement to consider the legitimate needs for protection of trade secrets and proprietary information of bidders included in their bids. By way of example, IRR s.29 'Bid Opening' states that "the abstract of bids as read and minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of material," raising questions regarding the safeguards that are put in place to avoid disclosure of bidders' protected information.

152. PhilGEPS on the other hand produces a detailed bid tracking report to summarize all activity in the procurement transaction including who publishes and revises the tender announcement and all tender details including type and procurement method; bid opening and closing date and times; publication of bidding documents; all amendments and clarifications issued and who approved the documents to be published; list of all suppliers that registered and downloaded loaded bid documents, when they were notified of any amendment, when they retrieved the amendment, when and if they submitted a bid; and the award announcement, awardee, award amount, award date, notice to proceed date and contract date, and any supporting documents uploaded.

153. **Contract management.** Procuring entities are responsible for the implementation and termination of contracts in accordance with detailed contract implementation guidance for goods, supplies, and materials, infrastructure projects, and consulting services provided, respectively, under Annexes D, E, and F of the IRR contract amendments and must always be in writing. Disputes over contract implementation shall be submitted to arbitration, with enforcement available through the courts.

154. **International obligations.** The Philippines is a signatory to the ASEAN Agreements on Trade in Goods (in force June 14, 2010) and Trade in Services (in force April 5, 2021) as well as a number of bilateral trade agreements through its membership of ASEAN and, also, direct bilateral trade agreements. The Philippines has observer status to the committee of the WTO's Government Procurement Agreement (GPA), with effect from June 26, 2019, and has announced and recently confirmed interest in joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

155. GPRA s.4 /R.4 s.4 IRR provides that any treaty or international or executive agreement affecting the subject matter of the GPRA shall be observed.⁷⁴ GPRA s.43/(expanded in R.43 IRR) provides that "Consistent with the country's obligations under international treaties or agreements, Goods may be obtained from domestic or foreign sources and the procurement thereof shall be open to all eligible suppliers, manufacturers and distributors." This is,

⁷⁴ With respect to international agreements with impact on sustainability, the Philippines has ratified 38 ILO Conventions, including all of the 8 Core Conventions. The PBDs for infrastructure projects include provisions on ILO standards compliance.

however, subject to domestic preference in the interest of availability, efficiency, and timely delivery of goods and other general domestic preference provisions.

156. The extent to which domestic preference provisions and rules of participation, such as ineligibility of non-Filipino bidders, have an impact on compliance with obligations deriving from binding international agreements is unclear.

157. **Sustainable public procurement.** The Philippine Green Public Procurement Roadmap was published in 2017 together with GPP specifications for priority product groups of common use supplies and equipment. The Green Public Procurement Roadmap includes a workplan for the short, medium, and long term with an allocation of distinct tasks and timetable which include measures to operationalize, facilitate, and monitor. A Green Public Procurement Bill is currently before Congress, establishing a GPP program for all departments, bureaus, offices, and agencies of government.⁷⁵ It is primarily guided by Goal 12 of the SDGs, and among its principal objectives is promoting the use of sustainability criteria in public tenders whenever possible and practicable.

158. **Right to challenge and appeal.** GPRA Article XVII Bid Protest Mechanism (ss.55 to 58)/IRR Rule XVII Protest Mechanism (ss.55–58) sets out provisions concerning the right to challenge (bid protest), conduct of bid protest, and resort to regular courts. Participants in procurement proceedings have the right to challenge decisions taken by the BAC at all stages of the procurement, including decisions made during the pre-bid conference stage, by way of request for reconsideration, followed by a bid protest procedure. There are clear rules and time frames for requests for reconsideration and submission of bid protests. The bid protest procedure is, in most cases, a procedure conducted internally by the procuring entity which is the subject of the bid protest. The bidder must pay a non-refundable fee ranging from 0.75 percent of the ABC for contracts of PHP 50 million and below up to 0.1 percent of the ABC for contracts over PHP 5 billion.⁷⁶ Bid protest fees may be used as one of the funding sources for paying honoraria and overtime pay to government personnel involved in government procurement (see IRR Appendix 7). Fees charged by the procuring entity are uncommon for this first tier of review and likely to disincentivize the bidders to complain. This has also the effect of diluting the accountability of procuring entities, who are responsible for reviewing and responding to challenges of their decisions, and it does not require extra efforts or review since they have all the information.

159. There is no specialist independent administrative appeal/review entity. The subsequent right of review to an independent body is to the Regional Trial Court by way of an original action which is not appellate in nature. There is no reliable centralized data concerning bid protests.

160. **Potential developments on the complaint review.** The GPPB Annual Report 2019, under the heading ‘Continuing Enhancements of the IRR of RA 9184’, refers to the recently conducted UNCAC Implementation Review Mechanism in the Philippines. It notes that one of the observations of the reviewing peer countries is the absence of an independent and autonomous complaint appeals body to resolve procurement protests. GPPB refers to the only remedy to bidders in respect of decision, the HoPE being regular court action. The report suggests that there is a need to amend the GPRA to authorize GPPB to act as a third party body to which protest decisions of the HoPE may be elevated for resolution. This proposed arrangement is problematic as it would give rise to another set of issues, including potential conflict of interest with GPPB’s role as regulatory/normative body. But this is to say the need for an independent specialist appeals body is acknowledged. Careful thought will eventually need to be given to the

⁷⁵ <http://congress.gov.ph/legisdocs/?v=billsresults#18>

⁷⁶ IRR s55.3 includes a table setting out the fees payable.

Some of the ratified conventions are: C.29 Forced Labour Convention, 1930 C.87 Freedom of Association and Protection of the Right to Organise Convention, 1948 C.98 Right to Organise and Collective Bargaining Convention, 1949 C.100 Equal Remuneration Convention, 1951 C.105 Abolition of Forced Labour Convention, 1957 C.111 Discrimination (Employment and Occupation) Convention, 1958 C.138 Minimum Age Convention, 1973 C.182 Worst Forms of Child Labour Convention, 1999.

establishment, structure, and operation of a specialist appeals body to ensure that it has a sufficient degree of independence and autonomy from the rest of the system⁷⁷ and operates free of conflict of interest.

Strengths under Pillar I

161. **Well-established legal framework.** The legal framework for public procurement is well established, with a clear hierarchy and corresponding precedence levels (GPRA, IRR, resolutions, circulars, guidelines and opinions plus standard bidding documents). The requirement to comply with international treaty obligations is acknowledged both in the GPRA and IRR.

162. **Comprehensive legal framework with documents accessible and publicly available.** The legal framework is comprehensive, and legislation and documents issued by GPPB are freely available to the public from the GPPB website. This open public platform and free access to the latest public procurement rules, regulations, and supporting documents make a significant contribution to achieving the GPRA principle of transparency.

163. **Scope of application.** The definitions of the scope of application and procuring entities to which government procurement applies are broadly drafted, ensuring wide coverage subject to exclusions specified in the procurement legal framework. Fractioning of contracts to circumvent open competition is prohibited.

164. **Procurement methods.** The permissible procurement methods and procedural requirements are clearly described in the legal framework, with open competitive bidding specified as the default method. In practice,⁷⁸ for FY2017 and FY2018 more than 85 percent of procurement procedures were carried out using open competitive bidding. AMPs, which may be competitive or noncompetitive, are for exceptional use only. Apart from the case of more complex procurements, the procurement methods provide for a range of options with underlying principles aimed at ensuring value for money, competitiveness, transparency, and integrity as well as streamlined processes appropriate to the method of procurement.

165. **Conduct of open competitive bidding.** All open competitive bid opportunities are published on PhilGEPS, with PDF versions of the procurement documents available to potential bidders free of charge. The legal framework adequately describes rules on advertisement and content of tender notices, minutes of bid opening and evaluation and notification of contract awards, along with minimum and maximum timelines for each stage of procurement process. The published content is sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one. Potential bidders are allowed to request clarification of bidding documents and the possibility of pre-bid conferences is provided for. Evaluation criteria must be precisely specified in advance and the award must be made on the basis of stipulated criteria. The requirements for bid submission, receipt, and opening are clearly set out. The legal framework also requires the publication of contract award notices for both competitive bidding and AMPs.

166. **Timescales for conduct of procurement.** The legal framework does not specify minimum time limits for use in particular procurement procedures. Rather, it sets out recommended earliest possible time limits for action and the maximum permitted periods in respect of specific procurement activities with reference to different types of procurement. There are specific provisions concerning timescales for more complex contracts or those where there is international participation.

167. **Sustainable procurement.** The use of price and non-price attributes is permitted. LCC may be used in particular in the context of preparation of green technical specifications for common use supplies and equipment.

⁷⁷ Meeting of World Bank MAPS Team with GPPB-TSO on October 23, 2020. GPPB TSO indicated that any discussion on this issue is very much at the initial, exploratory stage.

⁷⁸ PhilGEPS RAS of the World Bank - Insights and Ideas for Procurement Policies and Strategies that Generates Savings (June 2019)

Environmental aspects have been recognized through the Philippine Green Public Procurement Roadmap which was published in 2017 and adopted by GPPB Resolution 25-2017, together with GPP specifications for priority product groups of common use supplies and equipment. The government is in the process of adopting a Green Public Procurement Bill that is currently before Congress, establishing a GPP program for all departments, bureaus, offices, and agencies of government.⁷⁹ The Philippines has ratified 38 International Labour Organization (ILO) Conventions, including all of the 8 Core Conventions.⁸⁰ The PBDs for infrastructure projects include provisions on compliance with ILO standards.

168. **GoP response on emergency procurement post COVID-19 situation.** The Assessment Team has prepared a note on this topic which is given in **Annex 3 of Volume III** of the Assessment Report and a summary is given in Box 3.1.

Box 3.1. Immediate Response by the GoP on Emergency Procurement to the COVID-19 Pandemic

- The amendments to the procurement legal framework were made promptly and, as far as the Assessment Team was able to assess, in accordance with wider procedural requirements.
- The amendments were issued in a comprehensive and clear format, with a helpful Annex A to GPPB Resolution 03-2020 showing both the original and revised version (with revisions shown) of the relevant provisions of Annex H - Consolidated Guidelines for Alternative Methods of Procurement.
- The amendments made to the legal framework appear to be a relevant and proportionate response, in particular, to simplify and streamline selection and award processes, including providing for wider powers of delegation and relaxing some documentary requirements as well as permitting changes to APPs.
- The amended legal framework included safeguards to ensure, as far as possible in this unprecedented situation, the proper use of Negotiated Procurement under Emergency Cases. The legal framework retains important existing provisions such as those mentioned above concerning the time element. The Joint Memorandum Circular refers to the need for negotiated procurement to be directly related to the COVID-19 crisis.
- The country used the flexibilities of existing procurement methods available under the legal framework, with limited adaptation, to respond to the COVID-19 crisis.
- The authorization of Presidential powers under the Republic Act 11469 ('Bayanihan to Heal as One Act'),⁸¹ was time limited and subject to restrictions. Section 4(k) concerns public procurement. It clearly specifies the exemptions from the provisions of RA 9184 and other relevant laws—listing the type of goods, facilities, and services covered.

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

The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents formally in use. This indicator is divided into 12 sub-indicators (a-l), which are individually assessed.

Findings, Substantive Gaps, and Areas for Improvement

169. **Sub-indicator 1(a)(c) and sub-indicator 1(l) PPP.** The legal procurement framework does not apply to PPPs as provided under IRR s.4.4(c). The legal framework applying to PPPs is fragmented and there is no single definition

⁷⁹ <http://congress.gov.ph/legisdocs/?v=billsresults#18>

⁸⁰ <https://www.ilo.org/manila/areasofwork/international-labour-standards/lang--en/index.htm>

⁸¹ Republic Act 11469 ('Bayanihan to Heal as One Act'), passed and adopted on March 23, 2020, included declaration of the existence of a national emergency arising from the COVID-19 situation and a national policy in connection with that national emergency. It authorizes the President, for a limited period and subject to restrictions, to exercise powers necessary and properly to carry out the declared national policy and for other purposes.

of what constitutes a concession. There is no independent or specialist review body dealing with challenges concerning decisions made during the procurement and award of PPP contracts.

170. The term ‘PPP’ covers a range of delivery models, including contractual infrastructure and development projects involving private participation using a variety of BOT type schemes regulated by the Amended BOT Law⁸² and Implementing Regulations;⁸³ joint ventures, both contractual and corporate; and hybrid models involving mixed sources of financing. There are a number of legal bases for implementing PPPs, regulated by primary legislation, executive order, guidelines and, at the local government level, by procuring entities’ own PPP legal codes (local ordinances). In case of hybrid PPPs, a combination of legal bases may be used for implementation of a PPP project.⁸⁴ There is no single definition of a ‘concession’. Concessions falling within the classification of the ‘operate’ element in BOT schemes are regulated by the BOT Law. Local government PPP codes may include a definition of concessions concerning the provision by the private sector to operate a facility and the right to exploitation of that facility.⁸⁵

171. The passage of a new PPP Act is identified in the PPP Center’s Annual Report 2019 as one of the most urgent policy reforms that the center will push to institutionalize best practice and lessons learned.⁸⁶ Proposals for a new PPP Act would see a consolidation of the current fragmented picture to create a unified and updated legal framework for PPP,⁸⁷ although they do not currently include significant reforms to the rules concerning bid protest and right to challenge.

172. **Sub-indicator 1(a)(d) Accessibility of current laws, regulations and policies.** The accessibility of the procurement legal framework could be further improved.

173. A comprehensive collection of documents is published on the GPPB website.⁸⁸ Some of the sections/pages on the website are, to a degree, searchable. The documents can be downloaded free of charge. The MAPS criteria are met but accessibility and user-friendliness would be further enhanced if the search function is improved to allow all users to identify relevant documents more readily. This would be particularly helpful because of the large number of documents pertaining to the public procurement legal framework. For example, the ability to search the whole of the reference section (rather than just individual tabs) using free text in the GPPB search page would be helpful.

174. It would also be helpful to draw together the various resources comprising the wider framework applying to or with a significant impact on public procurement and PPP. This could be achieved, for example, by enhancing the interface/connectivity between the various websites including, in particular GPPB, PhilGEPS, PS, PPP Center.

175. **Sub-indicator 1(b)(b) Procurement methods - lack of procurement method for more complex requirements and high value procurement.** The range of procedures available are appropriate for standard noncomplex

⁸² Republic Act 6957, An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for the other purposes (1990), Republic Act 7718, An Act Amending Certain Sections of Republic Act No. 6957, entitled ‘An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector’, and for other purposes (1993). Amended BOT Law RA 7718 and Revised Implementing Rules and Regulations (2012 Revision of IRR).

https://ppp.gov.ph/wp-content/uploads/2019/06/BOT_IRR_2012_2017_2.pdf

⁸³ Amended BOT Law RA 7718 and Revised Implementing Rules and Regulations (2012 Revision of IRR).

https://ppp.gov.ph/wp-content/uploads/2019/06/BOT_IRR_2012_2017_2.pdf

⁸⁴ Confirmed by PPP Center in discussions with MAPS Team on October 20, 2020.

⁸⁵ Confirmed by PPP Center in discussions with MAPS Team on October 20, 2020.

⁸⁶ <https://ppp.gov.ph/publications/annual-report-2019-investing-in-the-future-of-the-filipino/?so=0>.

House Bill/Resolution No.HB05452, full title: “An Act authorizing public-private partnerships (PPP) appropriating funds therefore, and for other purposes,” filed November 13, 2019, referred to Committee on Public Works and Highways on November 18, 2019,

http://congress.gov.ph/legisdocs/basic_18/HB05452.pdf. Accessed October 26, 2020.

⁸⁷ Meeting between PPP Center and World Bank MAPS Team on October 19 - the PPP Center confirmed that work on the new draft PPP Act is progressing with anticipated adoption in 2021.

⁸⁸ <https://www.gppb.gov.ph/index.php>

procurement. However, they may not be suitable for more complex requirements and high-value procurement due to the lack of provision for prequalification and/or carefully structured negotiations, respecting procurement principles.

176. The legal framework provides for a range of procurement methods, with the default method being open competitive bidding, which may be national or international. Other methods (AMPs) may be used exceptionally. AMPs are less competitive procedures than competitive bidding and, in some cases, they are noncompetitive procedures. There are provisions for use of two-stage bidding methods and negotiation in some cases. However, there is no competitive bidding process under GPRA/IRR which permits negotiation/dialogue with bidders on a range of issues as part of the bidding process before submission of final tenders. This may be appropriate in some cases to achieve optimum outcomes in the procurement, for example, for complex service delivery or IT.

177. **Sub-indicator 1(d)(b) Rules on participation - eligibility requirements concerning licensing and nationality/establishment.** Eligibility requirements concerning licensing and nationality/establishment are a potential barrier to participation in the public procurement market for foreign bidders and may deprive the procuring entities, and government as a whole, of the benefits of vigorous competition and achieving value for money. Foreign bidders are eligible to participate only in limited circumstances.

178. IRR Appendix 9 confirms that the GPRA adopts as a general principle the preference for Filipino nationals in the award of government's procurement contracts. Government procurement opportunities are only open to foreign bidders in specified, limited cases. Qualified foreign nationals may be eligible to participate in the public procurement of goods, infrastructure projects, and consultancy services; provided, however, that provisions on domestic preference, most favored nation status and non-discrimination treatments under applicable laws and treaties are complied with. IRR s.23 lists eligibility criteria for procurement of goods and infrastructure projects. In each case, there are requirements that the prospective bidder is a duly licensed Filipino citizen/sole proprietor or a partnership, corporation, or joint venture with at least 60 percent Filipino interest/ownership or cooperative duly organized under the law of the Philippines. Similar eligibility criteria apply to prospective bidders for consulting services, together with professional registration requirements (where relevant). Eligibility requirements concerning licensing and nationality/establishment are a potential barrier to participation in the public procurement market for foreign bidders. Foreign bidders are eligible to participate only in limited circumstances. At the end of August 2020, the Supreme Court published its decision in the case of PCAB v Manila Water Company, Inc. GR 217590. The Supreme Court held as invalid a regulatory rule in the PCAB's Implementing Rules and Regulations of RA 4566 (IRR of RA 4566) reserving regular licenses to contractor firms of Filipino sole proprietorship or partnership/corporation with at least 60 percent Filipino equity participation and duly organized and existing under and by virtue of the laws of the Philippines. This decision is the subject of a motion for reconsideration.⁸⁹

179. Importantly, the Philippines has observer status to the committee of the GPA, with effect from June 26, 2019,⁹⁰ and has announced and recently confirmed interest in joining the CPTPP.⁹¹ The extent to which domestic preference provisions and rules of participation, such as ineligibility of non-Filipino bidders, have an impact on compliance with obligations deriving from binding international/regional trade agreements to which the Philippines is a signatory is unclear.

180. **Sub-indicator 1(d)(c) Rules on participation - mix of commercial and qualification criteria as eligibility requirements and lack of alignment.** The current eligibility criteria could be reviewed to provide for better

⁸⁹ As of May 18, 2021, the motion for reconsideration is still pending review by Supreme Court.

⁹⁰ https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm

⁹¹ <https://www.officialgazette.gov.ph/2010/09/24/speech-of-president-aquino-at-the-council-on-foreign-relations-new-york-city/>. Accessed September 24, 2010.

segregation between eligibility, qualification, and bid criteria. The term ‘eligibility requirements’ in the Philippine procurement system is slightly different from the common meaning and application found in other jurisdictions. It encompasses ‘eligibility criteria’ (Philippine nationality requirements and establishment); commercial requirements (incorporation of bidder, license, and so on); and qualification requirements of the bidder (net financial contracting capacity, single largest completed contracts, similar past experience, and so on).

181. **Sub-indicator 1(d)(c) Rules on participation - exclusion for criminal and corrupt activities.** The legal framework does not explicitly exclude bidders on grounds of conviction by final judgment for participation in a criminal organization; terrorist offences or offences linked to terrorist activities or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings or the equivalent of those offences.

182. **Sub-indicator 1(d)(c) Rules on participation - administrative debarment/blacklisting: Grounds for blacklisting, system and fees.** Some of the grounds for blacklisting are more appropriate and proportionate as disqualification criteria relating to the award of a particular contract. The blacklisting system is decentralized, with limited or no review available of the process, decisions, and reasons for decision, which does not ensure independence and impartiality. There is an information gap meaning that it is not possible to assess whether blacklisting grounds are applied consistently government-wide. Fees imposed on bidders or observers for commencing blacklisting proceedings can disincentivize bidders.

183. The legal framework allows for the suspension and blacklisting of suppliers, contractors, or consultants. The procedure for suspension and blacklisting is conducted by the HoPE, who may delegate authority to the BAC. The procedure for suspension and blacklisting must be in accordance with IRR Appendix 17 Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants (‘Blacklisting Guidelines’). The **grounds for blacklisting** are set out in the Blacklisting Guidelines and may arise both during the procurement stage and during the contract implementation stage. Some of the grounds for blacklisting, particularly in relation to the procurement stage, are more appropriate and proportionate as disqualification criteria relating to the award of a specific contract (for example, bidders failing to sign a contract can be penalized through recalling of the bid security instead of blacklisting). In the case of a blacklisting decision based on grounds arising during the procurement stage, there is a **right of appeal** against a decision of the HoPE.

184. The right of appeal is to an ‘appellate authority’, essentially a department, office, or government unit exercising general and/or administrative supervision/control over the blacklisting agency. In this context, blacklisting decisions of government agencies that are not subject to general and/or administrative supervision/control of any department, office, or government unit are final and executory. In the case of a blacklisting decision based on a ground arising during the contract implementation stage, there is no express right of appeal in the Blacklisting Guidelines. Blacklisting decisions are thus made at the procuring entity level with limited or no review available of the process, decisions, and reasons for decision. This does not ensure independence and impartiality.

185. The blacklisting agency (procuring entity) must submit information concerning the blacklisting decision to GPPB within seven calendar days of issuing the Blacklisting Order. GPPB publishes a Consolidated Blacklisting Report on its website which sets out limited information: the identity of the blacklisted entity, the blacklisting agency, the project, offences, sanction, and period of sanction. A lack of centrally collated, coordinated, and detailed information on the decision-making process and blacklisting decisions means that it is not possible to assess whether blacklisting grounds are applied consistently.

186. Blacklisting during the procurement process could potentially affect the confidentiality of the procurement process. IRR provides for a fee to be imposed on bidders or observers bringing up or initiating a blacklisting

proceeding, which can disincentivize bidders from raising concerns of possible misconduct or violations during procurement process.

187. **Sub-indicator 1(d)(d) Rules on participation - rules for participation of state-owned enterprises that promote fair competition.** There is a lack of detailed guidance for procuring entities on rules for participation of state-owned enterprises as bidders in government procurement.

188. The legal framework provides that GOCCs may be eligible to participate in competitive bidding only if they can establish that they are (a) legally and financially autonomous, (b) operate under commercial law, and (c) not attached agencies of the procuring entity. However, no guidelines have been published to support this provision, as required by the IRR. Guidelines are often helpful in this context to highlight to procuring entities ways to avoid favorable treatment of GOCCs which participate as bidders for government contracts.

189. **Sub-indicator 1(e)(b) Procurement documentation and specifications - neutral specifications.** The legal framework should include clear provisions of general application requiring use of neutral specifications and international norms. The legal framework provides that reference to brand names is not generally allowed. While there are provisions in the generic procurement manuals and PBDs concerning the use of standards, there is no clear provision of general application in the GPRA or IRR, requiring the use of neutral specifications or requiring citing of international norms when possible.

190. **Sub-indicator 1(f)(b) Use of price and non-price attributes and/or the consideration of life cycle cost is permitted.** Use of LCC in evaluation is not provided for in the procurement legal framework.

191. **Sub-indicator 1(g)(a) Submission, receipt and opening of tenders - bid opening.** Greater clarity is required on who is entitled to be present at bid opening. GPRA s.29 requires public opening of bids at the time, date, and place specified in the bidding documents. IRR s.29, which expands upon the provisions of the GPRA, provides that the BAC shall open bids immediately after the deadlines for submission of bids and that “bidders or their duly authorized representatives may attend the opening of bids” and “the abstract of bids as read and minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of material.” It is unclear from reading the combined provisions of the GPRA and IRR as to precisely who is entitled to be present at bid opening and, in particular, whether the general public have a right to attend. In practice,⁹² some procuring entities allow the public to attend and others do not.

192. **Sub-indicator 1(g)(d) Disclosure of specific sensitive information.** There are no specific provisions in the procurement legal framework regulating the disclosure and protection of specific sensitive information

193. **Sub-indicator 1(h)(b) Lack of independent administrative complaints review mechanism.** There is no specialist independent administrative appeal/review entity to review the complaints. The provisions of the legal framework do not allow for administrative review of bid protest to another body independent of the procuring entity. The subsequent right of review to an independent body is to the Regional Trial Court by way of an original action which is not appellate in nature.

194. **Sub-indicator 1(h)(e) Publication of applications for appeal and decisions. Appeal: Applications for review to Regional Trial Courts:** IRR s.58.30 provides that the BAC Secretariat of the procuring entity shall ensure that GPPB is furnished with a copy of the cases filed in accordance with IRR s.58, that is, court actions to Regional Trial Courts. GPPB-TSO has copies as well as a list of cases, but in practice this is dependent upon procuring entities filing the cases with GPPB-TSO.⁹³ It cannot therefore be guaranteed that the list and copy cases are complete and these are not

⁹² As per GPPB-TSO clarifications on May 11, 2021.

⁹³ GPPB-TSO response to World Bank clarification question received on July 24, 2020.

available in easily accessible places on the GPPB-TSO website. While court decisions are publicly available, the lack of a reliable, centralized collection of those decisions hinders both transparency and the opportunity for learning from those decisions. Interested parties will find it difficult to use the outcomes of court decisions to be better informed on the case law as well as the consistency and fairness of procurement processes and accountability is reduced.

195. **Indicator 1(h) and Indicator 13 Right to challenge and appeal and effectiveness and efficiency of the procurement appeals mechanism.** As noted earlier, there is no central source of information concerning bid protests for 2017 onward, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR.⁹⁴ This means that it is not possible to assess the efficiency, timeliness, and credibility of the complaints review mechanism (challenge) in a reliable and meaningful way.

196. This also means that GPPB is unlikely to be in a position to assess the consistency of decision-making and the effectiveness of the right to challenge by way of bid protest to assess and if needed improve the overall operation of the procurement system (see Indicator 5).

197. **Sub-indicator 1(k)(a)(b) and (c) Norms for safekeeping records, documents and electronic data.** There is no single comprehensive list of procurement records to be kept at the operational level and no procurement-specific document retention policy or procurement-specific security protocols for records management.

198. The legal framework requires procuring entities to ensure that all procurements are properly documented but it does not provide for a single comprehensive list of procurement records and documents to be kept at the operational level which includes an outline of what is available for public inspection. National Archives of the Philippines (NAP) General Circulars provide for different periods of retention by the procuring entity of various procurement documents and mandate all government agencies to establish a records and archive management program, but there is no dedicated procurement-specific retention policy or security protocol. Dedicated procurement-specific guidelines should assist procuring entities to ensure comprehensive and consistent record-keeping. PhilGEPS on the other hand has functionalities that allow the procuring entity to produce a detail bid tracking report to summarize all activity in the procurement transaction including who publishes and revises the tender announcement and all tender details including type and procurement method, bid opening and closing date and times, publication of bidding documents, all amendments and clarifications issued and who approved the documents to be published.

199. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium - M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 1(a)(c) and sub-indicator 1(l) PPP	The legal framework applying to PPPs is fragmented and there is no single definition of what constitutes a concession.	H	Preparation of a new consolidated, fit-for-purpose PPP legal framework which sets out the core principles for the selection and contracting of PPPs. The preparation of a new PPP law is the first step towards a consolidated and efficient legal framework.
Sub-indicator 1(b)(b) Procurement methods - lack of procurement method for	The range of procurement methods may not be suitable for more complex requirements and	M	The legal framework to provide for fit-for-purpose competitive procedures for procurements with more complex needs

⁹⁴ Based on information from GPPB-TSO response to World Bank clarification question received on July 24, 2020.

Sub-indicator	Substantive Gap	Risk	Recommendations
more complex requirements and high value procurement	high-value procurement due to the lack of provision for prequalification and/or carefully structured negotiations, respecting procurement principles.		where prequalification and/or carefully structured negotiation, respecting procurement principles, may be beneficial.
Sub-indicator 1(d)(b) Rules on participation - Eligibility requirements concerning licensing and nationality/establishment ✓ Red flag	Eligibility requirements concerning licensing and nationality/establishment are a potential barrier to participation in the public procurement market for foreign bidders and may deprive the procuring entities, and government as a whole, of the benefits of vigorous competition and achieving value for money. Foreign bidders are eligible to participate only in limited circumstances.	H	In the next review of the procurement legal framework, the government may consider undertaking a critical analysis to assess whether these measures deliver the desired outcomes and achieve value for money in public procurement. Alternative arrangements can be explored to ensure that Filipino contractors are given ample opportunity to participate, while enhancing competition, promoting flow of innovative solutions, and achieving best value for the public money spent.
Sub-indicator 1(d)(c) Rules on participation - mix of commercial and qualification criteria as eligibility requirements and lack of alignment	Eligibility requirements are a mix of 'eligibility criteria', commercial and qualification requirements of the bidder.	L	In the next round of reforms, the government could consider provisions that provide for a clear segregation of eligibility criteria (grounds for exclusion), evaluation of bids criteria, and qualifications of the bidder.
Sub-indicator 1(d)(c) Rules on participation - exclusion for criminal and corrupt activities	Procurement legal framework does not explicitly exclude bidders on grounds of conviction by final judgment for participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.	L	Consider adding provision to legal framework explicitly referring to exclusion of bidders on grounds of conviction by final judgment for participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences - with reference to relevant national, international legislation and agreements where appropriate.
Sub-indicator 1(d)(c) Rules on participation - administrative debarment/blacklisting: Grounds for blacklisting, system and fees	Some of the grounds for blacklisting are more appropriate and proportionate as disqualification criteria relating to the award of a particular contract. The blacklisting system is decentralized, with limited or no review available of the process, decisions, and reasons for decision, which does not ensure	M	Grounds for blacklisting. Review grounds for blacklisting to ensure that the grounds and the consequences (blacklisting) are appropriate and proportionate. Consider whether some of the current blacklisting grounds would be better used as contract (procurement) specific eligibility criteria. Right of appeal against blacklisting decisions/decentralized system/information gap. Consider requiring

Sub-indicator	Substantive Gap	Risk	Recommendations
	independence and impartiality. There is an information gap meaning that it is not possible to assess whether blacklisting grounds are applied consistently government-wide. Fees imposed on bidders or observers for commencing blacklisting proceedings can disincentivize bidders.		reporting by procuring agencies to GPPB or PhilGEPS, if so decided, more detailed information on blacklisting decisions and reasons for those decisions. This is to better assess and monitor consistency in application of grounds and the decision-making process and to support consideration of changes to future operation of the system including right of appeal against blacklisting decisions. Fees. Consider removing the application of a fee as requirement for commencing a blacklisting proceeding brought by bidders or observer, to facilitate greater accountability.
Sub-indicator 1(d)(d) Rules on participation - rules for participation of state-owned enterprises that promote fair competition	There is a lack of detailed guidance for procuring entities on rules for participation of state-owned enterprises as bidders in government procurement.	L	Consider publishing Guidelines for Procuring Entities on how to promote fair competition and avoid favorable treatment of GOCCs participating as bidders for government contracts.
Sub-indicator 1(e)(b) Procurement documentation and specifications - neutral specifications	There is no clear provision of general application in the GPRA or IRR, requiring the use of neutral specifications or requiring citing of international norms when possible.	M	Consider adding a provision of general application in the GPRA or IRR, requiring the use of neutral specifications or requiring citing of international norms when possible.
Sub-indicator 1(f)(b) Use of price and non-price attributes and/or the consideration of life cycle cost is permitted	Use of LCC in evaluation of bids is not provided for in the procurement legal framework.	M	Consider including specific provisions in the legal framework providing for the possibility of use of LCC and sustainability criteria in evaluation of bids, supported by practical guidelines.
Sub-indicator 1(g)(a) Submission, receipt and opening of tenders - bid opening	It is unclear from reading the combined provisions of the GPRA and IRR as to precisely who is entitled to be present at bid opening and, in particular, whether the general public have a right to attend.	L	Provide further clarity in the GPRA and/or IRR on who may be present at bid opening.
Sub-indicator 1(g)(d) Disclosure of specific sensitive information	There are no specific provisions in the procurement legal framework regulating the disclosure and protection of specific sensitive information.	M	Prepare appropriate regulatory provisions on handling and non-disclosure of specific sensitive information.
Sub-indicator 1(h)(b) Lack of independent administrative complaints review mechanism ✓ Red flag	There is no specialist independent administrative appeal/review entity to review the complaints.	H	Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with

Sub-indicator	Substantive Gap	Risk	Recommendations
			UNCAC recommendations, and international good practices.
Sub-indicator 1(h)(e) Publication of applications for appeal and decisions ✓ Red flag	There is no specialist independent administrative appeal/review entity to review the complaints. There is a lack of information about challenges (bid protest) reducing the transparency of the procurement system	H	<ul style="list-style-type: none"> Consider reintroducing the requirement on procuring entities to submit information to GPPB, or PhilGEPS, if so decided, on bid protests received and considered, to include the grounds for the protest and reasons for decisions (see Indicator 5).
Indicator 1(h) and Indicator 13 Right to challenge and appeal and effectiveness and efficiency of the procurement appeals mechanism ✓ Red flag	There is no central source of information concerning bid protests for 2017 onward, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR. ⁹⁵ This means that it is not possible to assess the efficiency, timeliness, and credibility of the complaints review mechanism (challenge) in a reliable and meaningful way. There is no specialist administrative appeal/review entity	H	It is not possible to assess this sub-indicator/indicator due to lack of data (see the legal analysis). Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with UNCAC recommendations, and international good practices.
Sub-indicator 1(k)(a)(b) and (c) Norms for safekeeping records, documents and electronic data ✓ Red flag	There is no single comprehensive list of procurement records to be kept at the operational level and no procurement-specific document retention policy or procurement-specific security protocols for records management. Except for the list of supporting document required by COA for payment purposes	H	It is important for purposes of transparency to include clear provisions in the IRRs on the list of minimum procurement records/documents to be retained by the procuring entity, the period for retention, and security protocols.

Indicator 2: Implementing regulations and tools support the legal framework

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

Findings, Substantive Gaps, and Areas for Improvement

⁹⁵ Based on information from GPPB-TSO response to World Bank clarification question, received on July 24, 2020.

201. **Sub-indicator 2(b)(a) and 2(c)(a) Model procurement documents for goods, works and services, and standard conditions of contract.** There are model procurement documents, PBDs, including standard conditions of contract for use in competitive bidding process for the procurement of goods, infrastructure projects (works), and consulting services. IRR s.6 mandates use of the PBDs by procuring entities. Modifications may be made, particularly for major and specialized procurements, subject to the approval of GPPB. The current versions of the PBDs are 6th editions (2020) for Procurement of Goods and Procurement of Infrastructure Works and 5th Edition (2016) for Procurement of Consulting Services. However, there are no model procurement documents for specialized procurements, such as plant design supply and install/design-build or design-build-operate, information technology systems, pharmaceuticals, medical equipment or textbooks, for which a tailored approach is appropriate. Similarly, there are no standard documents for AMPs.

202. **Sub-indicator 2(b)(b) and sub-indicator 2(c)(a) Model procurement documents for goods, works and services, and standard conditions of contract - 'incorporation by reference'.** The 6th editions of the PBDs for Procurement of Goods and Procurement of Infrastructure Works (2020) are intended to be simplified versions of the previous (5th edition). Revisions in the 6th edition remove out-of-date provisions in the 5th edition and content has been reduced. However, in reducing content of the PBD there is increased incorporation of provisions by means of references in the PBDs to GPRA and IRR. At points, incorporation by reference is made in a general and rather indiscriminate manner, leading to only a limited number of provisions included in the contract form itself, with others being cross-referenced through references to GPRA, IRR, and other procurement documents.

203. The use of 'incorporation by reference' by way of general references and lack of standard conditions of contract creates the possibility for significant uncertainty for both procuring entities and bidders as to which provisions in the PBDs and contracts apply in practice and runs counter to the governing procurement principles of transparency and simple streamlined procurement.

204. This reduces the utility and transparency of the PBDs in practice and presents the possibility of increased misinterpretation and misunderstanding on the intent and content of the PBDs, thus the possibility for disputes/challenges. It also places a significant burden on bidders, especially SMEs who may not have the ability or capacity to undertake the cross-referencing process necessary to establish which provisions apply. This runs counter to the governing procurement principles of transparency and simple streamlined procurement expressed in GPRA s.3. Especially when it comes to contractual provisions, it is paramount to specify with clarity what the conditions applicable to the specific contract are.

205. **Sub-indicator 2(b)(b) and sub-indicator 2(c)(a) Model procurement documents for goods, works and services, and standard conditions of contract - other contractual provisions.** There are provisions in the PBDs that reflect the procurement legal framework. They relate to eligibility of bidders, imposition of ABC, and so on. However, the PBDs, including contract conditions, fall short in addressing topics such as use of LCC as evaluation criteria, reference to green procurement in technical specifications, abnormally low bids, and price adjustment for long-term contracts. On price adjustment, this is especially important for large and complex contracts beyond 18 months to reflect any changes (upwards or downwards) in major cost component of the contract such as labor, equipment, material, and fuel. Use of contract price escalation in extraordinary circumstances only may be contentious and administratively difficult to operate in a transparent manner, and also it does not recognize the price fluctuations in the market which are a reality in long-term and large infrastructure projects.

206. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium - M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 2(b)(b) and sub-indicator 2(c)(a) Model procurement documents for goods, works and services, and standard conditions of contract - 'incorporation by reference'	Revisions in the 6th edition of PBDs, including contract conditions and use of 'incorporation by reference' by way of general reference rather than detailed provisions rather than detailed provisions in line with the GPRA and IRR creates the possibility for significant uncertainty for both procuring entities and bidders as to which provisions apply in practice.	H	Consider returning to the earlier format of the SBDs which were self-standing and self-contained, including adopting contract conditions that set out clearly the terms and conditions, obligations and rights remedies and other matters applicable to the contract in question
Sub-indicator 2(b)(b) and sub-indicator 2(c)(a) Model procurement documents for goods, works and services, and standard conditions of contract - other contractual provisions	PBDs, including contract conditions, fall short in addressing topics such as use of LCC as evaluation criteria, reference to green procurement in technical specifications, abnormally low bids, price adjustment for long-term contracts.	H	<ul style="list-style-type: none"> Consider developing model procurement documents, including conditions of contract, for more specialized procurements such as infrastructure, plant design supply and install/design-build or design-build-operate, information technology systems, pharmaceuticals, medical equipment or textbooks. Suggestion for improvement: Consider addressing in the contract topics such provisions that would offer a more balanced allocation of risks under the contract and that would give confidence to bidders to participate in the government procurement market. One such clause is price adjustment for large contracts with long implementation period. This would reflect international practices (for example, FIDIC conditions) and is expected to increase competition. Consider developing model procurement documents, including conditions of contract, for more specialized procurements such as infrastructure, plant design supply and install/design-build or design-build-operate, information technology systems, pharmaceuticals, medical equipment or textbooks.

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

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

Findings, Substantive Gaps, and Areas for Improvement

208. **Sub-indicator 3(a)(c) and 3(a)(d) Sustainable Public Procurement - incorporation at all stages of the procurement life-cycle and well-balanced application of sustainability criteria.** GPP and sustainability criteria are not practiced as part of the procurement planning and procurement strategy. The PBDs do not incorporate features of GPP and sustainability and application of LCC in PBDs for goods or infrastructure projects.

209. Green/sustainable issues and LCC are currently addressed in the context of technical specifications, with 'green' technical specifications already being used for the procurement of a number of common use supplies and equipment and further green technical specifications planned for common use supplies and equipment and non-common use supplies and equipment procurement, in accordance with the Philippine Green Public Procurement Roadmap. But there is no provision on use of LCC including efficiency of equipment and operation and maintenance cost as part of the evaluation criteria. Section VII on preparation of technical specification in PBDs does not mention the requirement of incorporating GPP criteria.

210. **Sub-indicator 3(a) Sustainable Public Procurement.** Sub-criteria 3(a)(c) requires the legal and regulatory frameworks to allow for sustainability (that is, economic, environmental, and social criteria) to be incorporated at all stages of the procurement cycle and sub-criteria 3(a)(d) requires the legal provisions for a well-balanced application of sustainability criteria to ensure value for money.

211. The concept of sustainable public procurement is reflected in GPPB Resolution 08-2020⁹⁶ and the Philippine Green Public Procurement Roadmap 2017. A Green Public Procurement Bill is currently before Congress, establishing a GPP program for all departments, bureaus, and agencies of government. Award of contracts is made on the basis of lowest price apart from consultancy services. Sustainability is thus currently addressed through other means than evaluation criteria as technical specifications. GPPB has published 'Green Public Procurement Technical Specifications for Priority Product Group'. Based on APCPI of 17 agencies for 2019 data, existing green specifications for GPPB-identified non-common use supplies and equipment items are being adopted by agencies, apart from preparation of APP for procurement of common use supplies and equipment from the PS.

212. However, the Assessment Team could not find any evidence on application of GPP and sustainability criteria in practice. GPP and sustainability criteria are not practiced as part of the procurement planning and procurement strategy. The PBD does not incorporate features of GPP and sustainability and application of LCC in PBDs for goods or infrastructure projects. The evaluation criteria for goods and plant and equipment should provide for sustainability criteria that would provide advantages to be given to bidders offering better efficiency or lower fuel/power consumptions than specified to select bids offering maximum value for money, considering both initial cost and net present value of operating cost. There is some initiative to implement the Green Public Procurement Roadmap as developed and approved by GPPB, to include the procurement of 10 common and 10 non-common use supplies and equipment by the DBM-PS and procuring entities, respectively. There is a need to include additional goods with 'green core criteria' with a view to expanding the list of common and non-common use supplies and equipment. Refer to Indicator 9 for details

213. In fact, there are no standard bidding documents for procurement of plant design supply and installation or design-build or design-build-operate which incorporate LCC principles in combination with performance-based specifications. Performance-based specifications are used where the understanding of what is required in terms of

⁹⁶ <https://www.gppb.gov.ph/issuances/Resolutions/GPPB%20Resolution%20No.%2008-2020.pdf>

outcomes can be described but the procuring entity is uncertain of the best process or method to deliver the requirements or suppliers are known to have the capability to design ‘fit-for-purpose’ solutions.

214. **Sub-indicator 3(b) Obligations deriving from international agreements.** The assessment criteria require that the public procurement-related obligations deriving from binding international agreements are clearly established and consistently adopted in laws and regulations and reflected in procurement policies.

215. The legal framework provides that any treaty or international or executive agreement affecting the subject matter of the GPRA shall be observed.

216. With respect to international agreements with impact on sustainability, the Philippines has ratified 38 ILO Conventions, including all of the 8 Core Conventions.¹ The PBDs for infrastructure projects include provisions on ILO standards compliance.

217. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium - M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 3(a)(c) and 3(a)(d) Sustainable Public Procurement - incorporation at all stages of the procurement life-cycle and well-balanced application of sustainability criteria	The primary focus is on “green” i.e. environmental issues which is currently addressed through other means than evaluation criteria. Provisions in the legal and regulatory framework allowing for economic and social criteria to be incorporated at all stages of the procurement lifecycle do not appear to be fully addressed	M	Enhance use of Life Cycle Costing principles to apply at all stages of the procurement cycle including evaluation. Include provisions in the legal and regulatory framework allowing for green/environmental, economic and social criteria to be incorporated at all stages of the procurement lifecycle, including through evaluation criteria, supported by practical guidelines for implementation.

Pillar II. Institutional Framework and Management Capacity

218. Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector. Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses (a) whether it is adequately linked with the country’s PFM system, (b) whether institutions are in place to undertake necessary functions, (c) existence of transparent and effective information system; and (d) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

The analysis presents pillar-wise summary, strength and for each indicator key findings, substantive gaps and areas of improvement, before finally presenting a tabulation on overview of substantive gaps with risk and recommendations, with identification of “red flags”

The key strengths under Pillar II are as follows.

Strengths

219. **The country has a strong institution in charge of the normative/regulatory function.** The legal framework (GPRA s.63) establishes GPPB as a statutory, independent inter-agency body, with full control over the budget it receives through GPPB-TSO from the national government. GPPB includes members from various government departments as well as a representative from the private sector. The GPPB Service Charter sets out vision, mission, and objectives.

220. **Publication of procurement information supported by information technology.** PhilGEPS is a key component of the government's agenda for open and transparent public procurement since the issuance of the RA 9184 providing for the GPRA by GPPB and subsequent implementation rules and regulations and circulars. The recognition of PhilGEPS as a key component of the government initiative for a modernize procurement system is again highlighted in the latest Technical Notes on the Proposed 2021 National Budget.

Box 3.2. Ensuring Responsive Procurement in the Philippines - Modernizing the Government Procurement System

The COVID-19 pandemic highlighted the importance of procurement activities of the government as well as the work it entails to ensure that the bureaucracy has the goods and services it needs to respond to the global health crisis. The passage of the country's landmark procurement law, the RA 9184 or the Government Procurement Reform Act of 2003, mandated the use of the Government Electronic Procurement System as the sole portal and primary source of information on all government procurement activities and since then has introduced game-changing features to further improve the system. One of these is the mPhilGEPS. The DBM and the PS-PhilGEPS Group pursued the project to expand the functionalities of PhilGEPS and establish an efficient, transparent, and competitive marketplace for government procurement.

221. **Sustained efforts by GPPB to create a competent procurement workforce:** As per section 16 of Revised IRR of 2016, GPPB is required to establish a sustained training program to develop the capability of BACs, BAC Secretariats, TWGs, and the Procurement Units of Procuring Entities, and professionalize the same. The HoPE is required to ensure that the BAC, its Secretariat, and TWG members, including other relevant procurement personnel, are sent to attend procurement training or capacity development program.

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

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

Findings, Substantive Gaps, and Areas for Improvement

223. **Sub-indicator 4(a) Procurement planning and the budget cycle.** GPRA s.7 Procurement planning and budget linking requires all procurement to be within the approved budget of the procuring entity. Only those procurements

considered crucial to the efficient discharge of government functions shall be included in the APP. No government procurement shall be undertaken unless it is in accordance with the APP and the APP must be consistent with the procuring entity's approved yearly budget.

224. **Sub-indicator 4(b) Financial Procedures and the procurement cycle.** In accordance with GC40.3 of PBD for Infrastructure 5th Edition (August 2016), "Payments shall be adjusted by deducting therefrom the amounts for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Procuring Entity's Representative within twenty-eight (28) days from the date each certificate was issued. No payment of interest for delayed payments and adjustments shall be made by the Procuring Entity."

225. **Sub-indicator 4(b)(b) National Regulation/procedures for processing of invoices - timely payment of invoices.** The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available, and clear to potential bidders.

226. Based on a sample of 87 contracts predominantly from infrastructure, 51 contracts, or 59 percent, were paid on time and 36 contracts, or 41 percent, were paid late.

227. Based on private sector survey/consultation held on December 12, 2019, in Manila, 48 percent of the respondents indicated "constraints for participation as payment not being received in time as per provision of the contract." One of the written feedbacks from private survey participants states that "delays in payment for various reasons must be addressed including for contractor to impose penalty (*translated claim interest/financing charges on delayed payment*) considering that contractors are penalized for late delivery."

228. One of the key challenges is the absence of an integrated system from budgeting to procurement to recording of transactions and payment. This causes information gaps and delays in monitoring transactions against budgetary amounts. This could be improved and should be a feature of the BTMS/mPhilGEPS, when it is complete and fully rolled out. As on date, it is not possible for prospective bidders, suppliers, and consultant to get data on actual time taken by the government department to process an invoice in general and for a contractor, supplier, or consultant to get a system update on the status of payment on invoices submitted.

229. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium – M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 4(b)(b) National regulation/procedure for payment of invoices - timely payment of invoices ✓ Red flag	<p>One of the key challenges is the absence of an integrated system from budgeting to recording of transactions in procurement process and contract management and payment of invoices. This causes information gaps and delays in monitoring transactions against budgetary amounts. This could be improved and should be a feature of the BTMS/mPhilGEPS when it is complete and fully rolled out. As on date, it is not possible for prospective bidders, suppliers, or consultants to get data on actual time taken by the government department to process an invoice in</p>	H	<p>Expedite rolling out BTMS/mPhilGEPS to track payment of invoices. Need for streamlining standard document to be submitted by the contractor/supplier as recommended by COA and not burden the contractor/supplier for submitting as part of billing/invoicing tax clearance certificate.</p> <p>Need for Internal Audit Unit of agencies to keep track of timely payment of invoices. Also, need for a forum where contractors/suppliers could submit their complaint/grievance in case of unjustified/unexplained delays in payment. Also, timely payment may be part of citizen charter and performance-based bonus.</p>

Sub-indicator	Substantive Gap	Risk	Recommendations
	<p>general and for a contractor, supplier, or consultant to get a system update on the status of payment on invoices submitted.</p> <p>Based on a sample of 87 contracts predominantly from infrastructure, 51 contracts, or 59%, were paid on time and 36 contracts, or 41%, were paid late.</p> <p>Based on private sector survey/consultation held on December 12, 2019, in Manila, 48% of the respondents indicated “constraints for participation as payment not being received in time as per provision of the contract.” One of the written feedbacks from private survey participants states that “delays in payment for various reasons must be addressed including for contractor to impose penalty (<i>translated claim interest/financing charges on delayed payment</i>) considering that contractors are penalized for late delivery.”</p>		

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

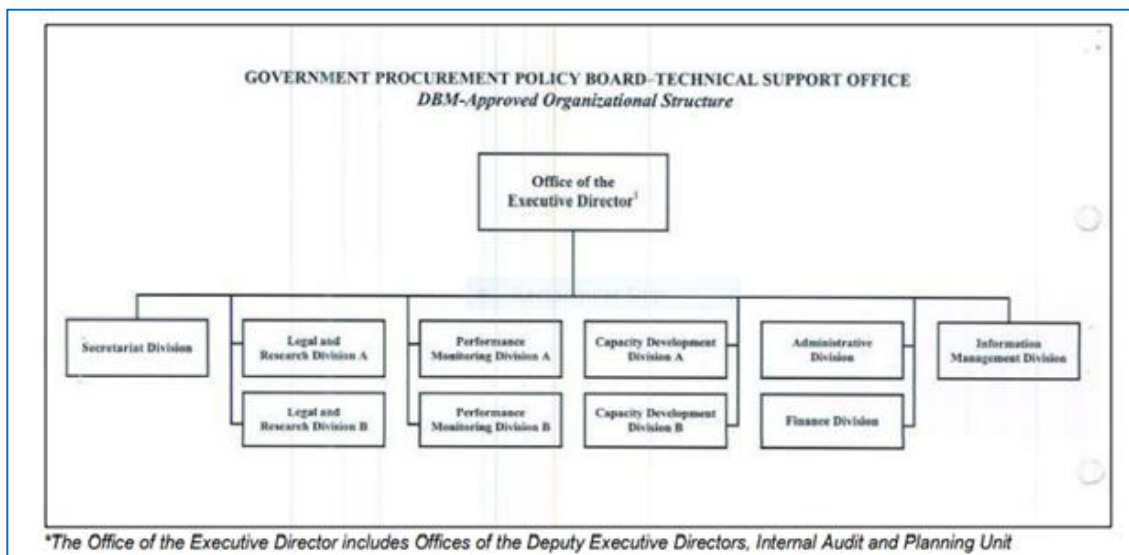
230. This indicator refers to the normative/regulatory function in the public sector and its proper discharge and coordination. The assessment of the indicator focuses on the existence, independence, and effectiveness of these functions and the degree of coordination between responsible organizations.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

Findings, Substantive Gaps, and Areas for Improvement

231. **Sub-indicator 5(a) and 5(b) on Status and legal basis of the normative/regulatory function and responsibilities.** The legal framework (GPRA s.63) establishes the GPPB as a statutory, independent inter-agency body located within the DBM, with full control over the budget it receives from the national government. GPPB includes members from various government departments as well as a representative from the private sector. The GPPB Service Charter sets out its vision, mission, and objectives.

232. Currently, GPPB-TSO has a total of 92 *plantilla* positions strategically distributed among its eight (8) divisions as represented in Figure 3.1: 1. Office of the Executive Director; 2. Administrative Division; 3. Finance Division; 4. Capacity Development Division (A and B); 5. Information Management Division; 6. Legal and Research Division (A and B); 7. Performance Monitoring Division (A and B); 8. Secretariat Division.

Figure 3.1. Organizational Structure of GPPB-TSO



233. The functions of GPPB are set out in the legal framework and are, in summary, to protect national interest in all matters affecting public procurement, with due regard to the country's regional and international obligations; formulate and amend the IRR and the corresponding standard forms for procurement; ensure that procuring entities regularly conduct procurement training programs; prepare a procurement operations manual for all offices and agencies of government; and conduct an annual review of the effectiveness of the GPRA and recommend any amendments.

234. IRR s.63 also provides that GPPB shall create a TSO which shall support GPPB in the performance of its duties. It provides research, technical, and administrative support to GPPB, including research-based procurement policy recommendations and rule drafting; development and updating of generic procurement manuals and standard bidding forms; management and conduct of training on procurement systems and procedures; evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures; monitoring of the compliance to the GPRA and assistance to procuring entities in improving their compliance; monitoring of the implementation and effectiveness of PhilGEPS; and Secretariat support. The GPPB and GPPB-TSO Service Charters on the GPPB website⁹⁷ provide further detail on the services provided.

235. **Combination of Sub-indicator 5(b)(k) Designing and managing centralized online platform with Sub-indicator 1(h) Right to challenge and appeal, Indicator 13 on procurement appeals mechanisms are effective and efficient and Indicator 7 on Strategy to manage procurement data.** As mentioned earlier under Indicator 1(h) and Indicator 13, there is no central source of information concerning bid protests for 2017 onwards, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR.⁹⁸ which means it is not possible to assess the efficiency, timeliness, and credibility of the complaints review mechanism challenge in a reliable and meaningful way. Equally important, this means that GPPB-TSO is unlikely to be in a position to assess the consistency of decision-making and the effectiveness of the right to challenge by way of bid protest, or through appeals mechanism, to assess and if needed, improve the overall operation of the procurement system. Similarly, GPPB-TSO has a limited role in the monitoring and oversight of the blacklisting

⁹⁷ GPPB-TSO Service Charter 2019 1st edition.

https://www.gppb.gov.ph/about_us/pdf/1252019%20External%20Updated%20GPPB-TSO%20Service%20Charter%20Handbook.pdf

⁹⁸ Based on information from GPPB-TSO response to World Bank clarification question, received on July 24, 2020.

decisions. It does not appear that GPPB-TSO carries out reviews of the blacklisting decisions to ensure consistency across the procuring entities who are responsible for the blacklisting process.

236. Lack of involvement of GPPB-TSO in monitoring of challenges and appeals, as well as in the review of blacklisting decisions, may inadvertently impair its wider monitoring role to ensure compliance of the procuring entities with the procurement legal framework and hinder assessment of overall effective operation of the procurement system.

237. GPPB-TSO is not involved in the implementation of PhilGEPS, which is lacking, as explained under Indicator 7.

238. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium - M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Combination of Sub-indicators 1(h) 5(a), 5 (c)5(b)(k) designing and managing online platforms and other e-Procurement System and 7(c) strategies to manage procurement data ✓ Red flag	<p>Constraints in effectiveness of normative and regulatory function of GPPB-TSO due to several silos of responsibilities and lack of control over implementation of PhilGEPS.</p> <p>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. Among GPPB-TSO other responsibilities, it is required to ensure the following: (a) evaluating the effectiveness of the government procurement system and recommendation of improvements in systems and procedures; (b) monitoring the compliance to the GPRA and assisting procuring entities improve their compliance; (c) monitoring the implementation and effectiveness of PhilGEPS</p> <p>Under Indicator 1(h) and Indicator 13, there is no central source of information concerning bid protests for 2017 onward, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR. This means it is not possible to assess the efficiency, timeliness, and credibility of the complaints review</p>	H	<p>GPPB to consider ways to strengthen further the effectiveness of GPPB-TSO as an organization to lead the procurement reform at the country level with all required resources and technology support.</p> <p>Please see the part implementation of PhilGEPS under Indicator -7, in particular 7(a)(f) Responsibility for the management and operation of the system, is clearly defined.</p>

Sub-indicator	Substantive Gap	Risk	Recommendations
	<p>mechanism(challenge) in a reliable and meaningful way.</p> <p>Equally important, this means that GPPB is unlikely to be in a position to assess the consistency of decision-making and the effectiveness of the right to challenge by way of bid protest mechanism, to assess and if needed, improve the overall operation of the procurement system. Similarly, GPPB-TSO has a limited role in the monitoring and oversight of the blacklisting decisions. It does not appear that GPPB-TSO carries out reviews of the blacklisting decisions to ensure consistency across the procuring entities who are responsible for the blacklisting process.</p> <p>Lack of involvement of GPPB-TSO both in the monitoring of challenges as well as in the review of blacklisting decisions may inadvertently impair its monitoring role to ensure compliance of the procuring entities with the procurement legal framework.</p> <p>The DBM PS is set up pursuant to Executive Order. The mandate of the PS includes the procurement and supply of common use items and non-common use items as well as management and maintenance of PhilGEPS.</p> <p>The implementation of PhilGEPS is lacking as explained under Indicator 7.</p>		

Indicator 6: Procuring entities and their mandates are clearly defined

239. This indicator assesses whether (a) the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities, (b) there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and (c) a centralized procuring entity exists.

Findings, Substantive Gaps, and Areas for Improvement

240. **Sub-indicator 6(a), definition, responsibilities and formal powers of procuring entities.** The GPRA defines ‘procuring entities’ as “being any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or - controlled corporations, government financial

institutions, and local government units.....”⁹⁹ LGUs include provinces, cities, municipalities, and barangays (local-level government units).

241. GOCCs are defined by reference to functions relating to public needs and extent of government ownership. A full list of GOCCs is available from the Office of the Government Corporate Counsel.¹⁰⁰ As well as being procuring entities, GOCCs are eligible to participate as bidders in competitive bidding. This is subject to meeting conditions of legal and financial autonomy, operation under commercial law, and not being attached (subordinate) agencies of the procuring entity.

242. **Sub-indicator 6(a)(b) Responsibilities and competences of procuring entities.** GPPB has published guidelines regarding the organization, role, and responsibilities of the procuring entity and the specialized functions of the Procurement Unit/Office, BAC and BAC Secretariat, TWGs, and observers. Functions of the HoPE in the context of government procurement are also clearly defined.

243. **Sub-indicator 6(b) Centralized procurement bodies.** The DBM PS is set up pursuant to Executive Order. The mandate of the PS includes the procurement and supply of common use items and non-common use items as well as management and maintenance of PhilGEPS. All departments, bureaus, offices, and instrumentalities of all branches in the government, including SUCs, GOCCs, GFIs, and LGUs are mandated to use the PS for purchase of common use supplies, materials, and equipment save in the case of emergency.

244. For specialized sectors such as in the health sector, the Philippine Pharma Procurement Inc. (PPPI) (formerly PTC Pharma, Inc.) is designated as the central procurement arm for all government agencies for the *importation* of drugs and medicines, except for specific programs and instances allowed by the DOH.

245. **Sub-indicator 6(b)(a): Framework agreements.** There are guidelines on the establishment, by competitive bidding, and use of framework agreements by procuring entities. They may be set up and used for the procurement of goods and services which are repeatedly required but by their nature, use or characteristic, the quantity of exact time of need cannot be accurately predetermined. Framework agreements may also be used for the procurement of goods which are not advisable to be carried in stock. Framework agreements may be single year or multiyear (not exceeding three years) and with a single supplier or multiple suppliers.

246. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium – M, or High- H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
6(b)(c) The centralized procurement body’s internal organization and staffing are sufficient and consistent with its responsibilities.	PS unit also manages PhilGEPS which does not provide the required mandate and resources for PhilGEPS	H	Please see recommendation under Indicator 5 and Indicator 7.

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

247. The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through

⁹⁹ See GPRA s.4, GPRA s.5(o), ORR s.4.

¹⁰⁰ A full list of GOCCs is available from the Office of the Government Corporate Counsel <http://ogcc.gov.ph/gocc/>.

application of digital technologies, and to manage data that allow for analysis of trends and performance of the entire public procurement system.

Findings, Substantive Gaps, and Areas for Improvement

248. Sub-indicator 7(a) Publication of public procurement information supported by information technology.

The Philippine government introduced the use of electronic procurement through the PhilGEPS system in 2000. PhilGEPS provides a centralized government procurement system providing open and free access to all current and past government procurement opportunities and contract awards. Any user can freely search all current opportunities and awards by agency or commodity or using keywords. Registered users have access to all former opportunities and awards and can register to bid on any opportunity, download bidding documents, and set up a notification service to be notified of new opportunities. The PhilGEPS system operates under an open data policy and includes an open data portal providing access to procurement activity reports (most common purchases, most active agencies, top bidders, number of suppliers and agencies) and 'bid notice and award summary' datasets since the system was launched in 2000.

249. GPPB maintains a separate portal to facilitate the publication of all procurement legislation and updated rules and regulations as well as appeals associated with procurement challenges. The GPPB website also supports options for agencies to publish annual procurement plans and file blacklisting request.

Some key statistical information is given in Tables 3.1 and 3.2.

Table 3.1. Notices Published

	Awarded		Cancelled		Closed		Failed		Shortlisted		Total Notices	Total Agencies
	Notices	Agencies	Notices	Agencies	Notices	Agencies	Notices	Agencies	Notices	Agencies		
Bid Notices 2019												
Negotiated Procurement - Small Value Procurement (Sec. 53.9)	116,543	2,830	13,419	2,156	209,331	5,551	11,546	1,447	29	21	348,355	6,740
Public Bidding	115,897	5,234	13,852	3,315	128,000	12,699	24,458	3,030	420	148	279,981	15,884
Shopping	23,556	1,272	3,663	814	81,483	3,749	2,955	539	6	6	111,065	4,417
Shopping - Ordinary/Regular Office Supplies & Equipment (Sec. 52.1.b)	6,818	693	772	302	16,066	1,486	802	220	2	2	24,387	1,914
Negotiated Procurement - Two Failed Biddings (Sec. 53.1)	3,930	956	489	268	9,485	1,691	1,470	380	2	2	15,318	2,309
Negotiated Procurement - Lease of Real Property (Sec. 53.10)	3,892	364									3,892	364
Direct Contracting (Sec. 50)	2,616	483									2,616	483
Negotiated Procurement - Community Participation (Sec. 53.12)	2,126	185									2,126	185
National Competitive Bidding	1,538	172	165	64	921	243	350	101	6	5	2,963	403
Shopping - Unforeseen Contingency (Sec. 52.1.a)	1,351	228									1,351	228
Negotiated Procurement - Agency to Agency (Sec. 53.5)	891	217									891	217
Negotiated Procurement - Emergency Cases (Sec. 53.2)	807	179									807	179
NP - Scientific, Scholarly/Artistic Work, Exclusive Tech. & Media Service (53.6)	654	115									654	115
Negotiated Procurement - Highly Technical Consultants (Sec. 53.7)	408	61									408	61
Negotiated Procurement - NGO Participation (Sec. 53.11)	135	83	75	40	985	293	20	12			1,213	382
Selection based on Consultants Qualification	131	70	120	48	733	216	43	32	7	6	1,031	314
Limited Source Bidding (Sec. 49)	13	9	2	2	28	19	1	1			44	25
International Competitive Bidding	9	6	2	2	93	38	8	8	4	1	114	51
Negotiated Procurement - Defense Cooperation Agreement (Sec. 53.8)	8	5									8	5
Negotiated Procurement - United Nations Agencies (Sec. 53.13)	5	3									5	3
Grand Total	278,900	7,098	32,368	4,873	442,843	17,174	41,422	3,867	475	182	790,272	20,077

Table 3.2. Days to Publish Award (2019)

Procurement Method	Awarded			Cancelled			Closed			Failed			Shortlisted		
	Days to Award	Max Days	Agencies	Days to Award	Max Days	Agencies	Days to Award	Max Days	Agencies	Days to Award	Max Days	Agencies	Days to Award	Max Days	Agencies
Direct Contracting (Sec. 50)	74.11	617	249												
International Competitive Bidding	121.03	305	5				0.00	0	11	0.00	0	4			
Limited Source Bidding (Sec. 49)	130.45	316	4	0.00	0	2	0.00	0	4	0.00	0	1			
National Competitive Bidding	106.91	399	89	0.00	0	23	39.51	212	100	0.00	0	38	0.00	0	3
Negotiated Procurement - Agency to Agency (Sec. 53.5)	112.22	957	95												
Negotiated Procurement - Community Participation (Sec. 53.12)	88.98	601	84												
Negotiated Procurement - Defense Cooperation Agreement (Sec. 53.8)	37.87	160	3												
Negotiated Procurement - Emergency Cases (Sec. 53.2)	90.03	728	74												
Negotiated Procurement - Highly Technical Consultants (Sec. 53.7)	62.83	305	29												
Negotiated Procurement - Lease of Real Property (Sec. 53.10)	64.36	586	219												
Negotiated Procurement - NGO Participation (Sec. 53.11)	48.82	229	30	0.00	0	14	85.88	382	132	0.00	0	3			
Negotiated Procurement - Small Value Procurement (Sec. 53.9)	63.47	457	2,107	0.00	0	1,266	19.40	428	3,940	0.00	0	786	0.00	0	7
Negotiated Procurement - Two Failed Biddings (Sec. 53.1)	66.45	401	443	0.00	0	92	18.71	344	905	0.00	0	128	0.00	0	1
NP - Scientific, Scholarly/Artistic Work, Exclusive Tech. & Media Service (53.6)	76.89	660	62												
Public Bidding	92.80	445	3,550	0.00	0	1,646	42.50	407	7,494	0.00	0	1,797	0.00	0	86
Selection based on Consultants Qualification	85.85	393	23	0.00	0	11	0.00	0	71	0.00	0	6	0.00	0	6
Shopping	66.73	456	801	0.00	0	355	17.60	382	2,442	0.00	0	219	0.00	0	3
Shopping - Ordinary/Regular Office Supplies & Equipment (Sec. 52.1.b)	74.08	436	372	0.00	0	123	39.23	347	829	0.00	0	84			
Shopping - Unforeseen Contingency (Sec. 52.1.a)	99.09	767	89												
Grand Total	80.98	957	4,922	0.00	0	2,735	30.20	428	11,170	0.00	0	2,332	0.00	0	102

Note: Closed notices are still waiting for award notice or for the bid to be failed, cancelled or shortlisted.

Key Findings

250. PhilGEPS is an open system and does not preclude any interested supplier/bidder from registering on the system, accessing bidding documents, and participating in a bid. Suppliers can be local or foreign. Any qualification or restriction on participation would be set for a specific procurement package, defined in the bidding document, and applied by the BAC of the procurement agency. There is no cost to access information on the system. Any user, public or registered vendor, can search and view current opportunities and awards and access the open data portal to view activity reports or download datasets to analyze procurement activity.

251. Registered suppliers can search all former opportunities and awards to research past activities and set up notification services to be advised on new opportunities that match their search criteria. Registration allows suppliers to identify as different forms of organizations, sole proprietor, corporation, foreign organizations, individual consultant, or cooperative. The system should include state-own enterprises as an option. The system should identify organizations as small, medium, or large; women owned; and other social factors that would enable monitoring and reporting on different forms of organizations.

252. A subscription service—platinum user—is also available. Platinum users can obtain a registration certificate certifying class A legal documents. Class A documents are a standard requirement for all bid responses. With platinum registration, bidders can submit the certificate for any manual bid submission or electronic submission in lieu of notarize copies with each bid saving significant time and money with the preparation of their response.

253. While no document fees are applied to view bidding documents in the system, a procuring agency may apply a bid fee that would need to be paid only by participating bidders. Fees would be paid directly to the agency before bid closing.

254. Bidders can register a proposed joint venture in the system as part of the bid process. All members of the joint ventures must be registered users. One member will be the joint venture's representative and invite members to join it. Each member must acknowledge and accept the invitation and sign the support joint venture document for the joint venture to be registered for the bid. Procuring agencies would be able to view all system profiles for each member of the joint venture. Other bidders will also be able to view the members of the joint venture. The system will correspond with the representative member of the joint venture for any amendments or clarifications.

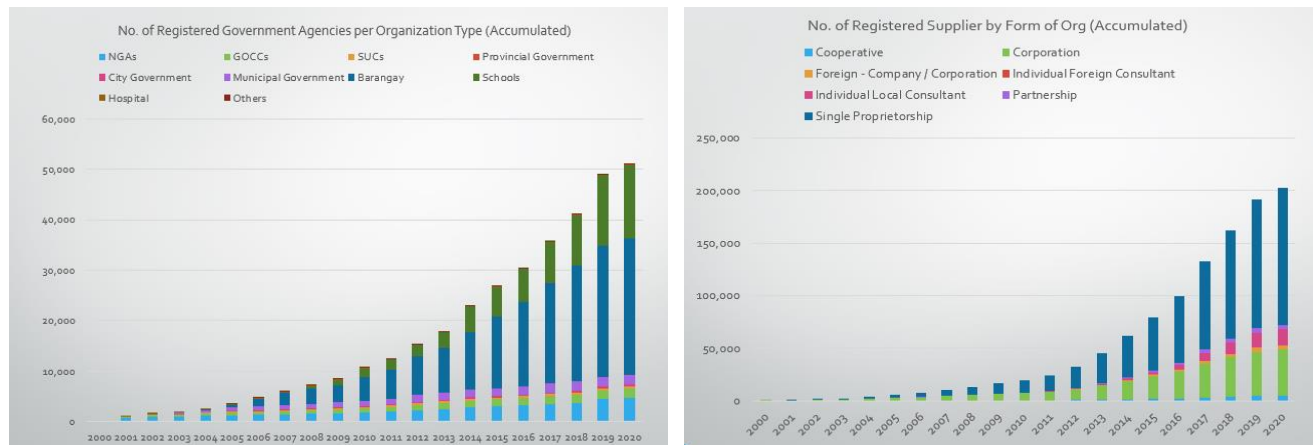
255. PhilGEPS supports procurement of donor-funded packages by allowing agencies to select which guidelines will apply to the packages. PhilGEPS will apply select editorial rules with the definition of tender details based on the rules applied such as minimum advertising periods or if the Approved Budget for the Contract (ABC) is applied as a contract ceiling or not.

256. PhilGEPS does not set rules or guidelines governing the procurement of a specific package. Procurement rules and criteria are established in the bidding document and applied by the procuring agency when opening and evaluating bid responses. PhilGEPS supports the process by displaying the tender details for the package including guidelines to be applied and dates for procurement activities—published date, pre-bid date and time (if applicable), clarification period, and bid closing date and time and open date and time (for e-bidding). PhilGEPS provides access to the bidding documents and will notify registered bidders of any amendments or clarifications issued by the procuring agency. For e-bidding, the system will enforce closing date and time. For manual bidding, the agency must enforce and should record the information in the system.

257. **Sub-indicator 7(b) Use of e-Procurement.** PhilGEPS is the central government procurement system. The system continues to grow each year supporting government procurement entities at all levels of government..

PhilGEPS is supporting 50,000 procuring agencies, publishing an average of 2,000 new tender announcements each day, and more than 200,000 registered suppliers. In 2019, 22,000 procuring entities published 899,407 announcements with over 747,000 individual lots along with 434,000 contract awards, awarded to 33,000 bidders across all 7,880 commodities. In 2019, all notice publication including alternate modes of procurement for small value direct purchase was conducted by just over 7,000 agencies.

Figure 3.2. Number of Registered Government Agencies and Supplier



258. The use of PhilGEPS is mandated under R 9184. All government agencies must register on the system and publish procurement announcements, distribute bidding documents and publish awards resulting from the procurement activity. The system enables the creation of procurement announcements with a schedule of procurement activities—start date and bid closing date and time, procurement rules applied, commodity details, delivery location and schedule, budget and contact information—and facilitates the distribution bidding documents and any amendment or clarification and the publication of results, award notice, and contract details. Agencies are provided with a system dashboard identifying outstanding tasks or incoming requests to manage the procurement process or approve the publication of information. Agencies may also cancel a procurement, declare a failed bid, or award a contract. Despite the functions available in the system, several agencies primarily use the system to publish procurement announcements to comply with the regulations to advertise but do not record award information in the system. Most procurement is conducted with a manual bid submission process as e-submission has not been fully deployed across the system.

259. PhilGEPS was designed to support the Philippine government procurement rules and regulations and procurement guidelines and rules of donor organizations and trade agreements with a broad selection of procurement modes (shopping, public bidding, limited bidding, direct bidding, expression of interest, negotiated procurement/shopping) and other alternate modes of procurement. The procurement rules and processes to be applied are defined in the tender details and the associated bidding documents applied in accordance with the rules associated with the funding source for the procurement. The system will apply default editorial rules based on the procurement regulations applied to ensure all steps of the procurement are defined (publication, pre-bid, clarification period, closing and opening) and minimum advertisement periods are applied. The system supports the distribution of the bidding documents and any clarifications and amendments issued by the procuring agency including any change to the bid closing date which may only be extended.

Key Findings

260. Suppliers and the public had open and free access to all published tender information including current and former tenders and award notices. Suppliers and the public could search tender notices and awards by keyword, commodity classification, and agency. Suppliers could register on the system at no charge and register as a bidder for any open tender to view tender details, download bidding documents, view a list of other suppliers who downloaded documents (when available), and obtain notification of any amendment or clarification issued by the procuring agency. Suppliers could also set up a notification service to be automatically notified of new opportunities that matched their profile. Suppliers have the option to upgrade their registration to a full platinum organization in the National Vendor Registry. Platinum organizations can include all eligibility documents in their Vendor profile which can automatically be applied in any bid submission – electronic or manual submission.

Table 3.3. Number and Value of Award by Procurement Methods

Procurement Methods	Notices	Lots	Total ABC	No. of Award	Total Contracts
Direct Contracting (Sec. 50)	2,680	2,710	PHP 7,459,422,943.52	2,710	PHP 6,746,063,607.44
International Competitive Bidding	116	87	PHP 1,006,070,687.44	12	PHP 860,778,954.41
Limited Source Bidding (Sec. 49)	44	29	PHP 19,687,266,689.70	24	PHP 8,754,315,930.67
National Competitive Bidding	2,982	2,515	PHP 60,225,070,281.21	1,897	PHP 40,571,192,169.39
Negotiated Procurement - Agency to Agency (Sec. 53.5)	900	905	PHP 3,734,175,530.58	905	PHP 3,534,174,811.64
Negotiated Procurement - Community Participation (Sec. 53.12)	2,151	2,206	PHP 2,242,733,765.93	2,206	PHP 2,204,084,039.59
Negotiated Procurement - Defense Cooperation Agreement (Sec. 53.13)	8	8	PHP 680,496,001.99	8	PHP 680,491,781.99
Negotiated Procurement - Emergency Cases (Sec. 53.2)	813	823	PHP 2,492,278,820.95	823	PHP 1,693,129,042.63
Negotiated Procurement - Highly Technical Consultants (Sec. 53)	413	428	PHP 201,907,959.36	428	PHP 173,667,775.93
Negotiated Procurement - Lease of Real Property (Sec. 53.10)	4,060	4,168	PHP 2,880,145,034.83	4,168	PHP 2,739,089,098.36
Negotiated Procurement - NGO Participation (Sec. 53.11)	1,218	907	PHP 721,289,468.55	185	PHP 97,077,499.79
Negotiated Procurement - Small Value Procurement (Sec. 53.9)	359,244	303,120	PHP 82,953,966,592.93	161,674	PHP 28,473,590,338.95
Negotiated Procurement - Two Failed Biddings (Sec. 53.1)	15,450	16,537	PHP 25,203,342,820.50	7,267	PHP 10,965,717,432.23
Negotiated Procurement - United Nations Agencies (Sec. 53.13)	5	5	PHP 1,336,969.44	5	PHP 1,306,794.37
NP - Scientific, Scholarly/Artistic Work, Exclusive Tech. & Media	661	674	PHP 927,203,659.99	674	PHP 807,597,830.41
Public Bidding	288,250	300,471	PHP 1,853,758,842,056.17	184,659	PHP 954,682,184,142.97
Selection based on Consultants Qualification	1,034	378	PHP 938,399,289.04	183	PHP 984,047,542.61
Shopping	113,412	118,278	PHP 18,036,656,616.30	40,560	PHP 4,659,791,088.33
Shopping - Ordinary/Regular Office Supplies & Equipment (Sec. 52.1.a)	24,599	31,686	PHP 4,039,577,543.56	13,047	PHP 1,280,252,752.92
Shopping - Unforeseen Contingency (Sec. 52.1.a)	1,367	1,434	PHP 243,656,509.46	1,434	PHP 205,289,127.52
Grand Total	819,407	787,369	PHP 2,087,433,839,241.44	422,869	PHP 1,070,113,841,762.15

261. PhilGEPS includes a virtual store to support direct purchases of common goods and services available from Procurement Service (PS-DBM) and supports alternate modes of procurement including shopping and negotiated procurement options as provided under the revised procurement regulations.

262. In preparation for electronic submission options, PhilGEPS introduced the national vendor register enabling Vendors to register all eligibility documents in the system through an upgraded platinum paid subscription service. Platinum vendors can submit a PhilGEPS registration certificate in lieu of eligibility documents for either physical or electronic submissions. The paid subscription service would provide PhilGEPS with a foundation to becoming a self-sufficient service for the government.

263. PhilGEPS upgraded the system and system infrastructure in 2018 to support the continued growth and address operational and capacity issues and initiated a project to fully upgrade and replace the platform with a new modernize system, known as mPhilGEPS, to support current and future needs of the PhilGEPS system. The full mPhilGEPS system is expected to be implemented in Q1/Q2 2023. Some components of the new PhilGEPS, such as the virtual store and merchant registry, have already been deployed in 2020. The new mPhilGEPS system will incorporate existing PhilGEPS functions and new system modules for procurement plans, e-submission process, online bid opening, and recording of evaluation results and contract management. The application of the new system should force a broader adoption of e-procurement practices and provide more comprehensive procurement data going forward.

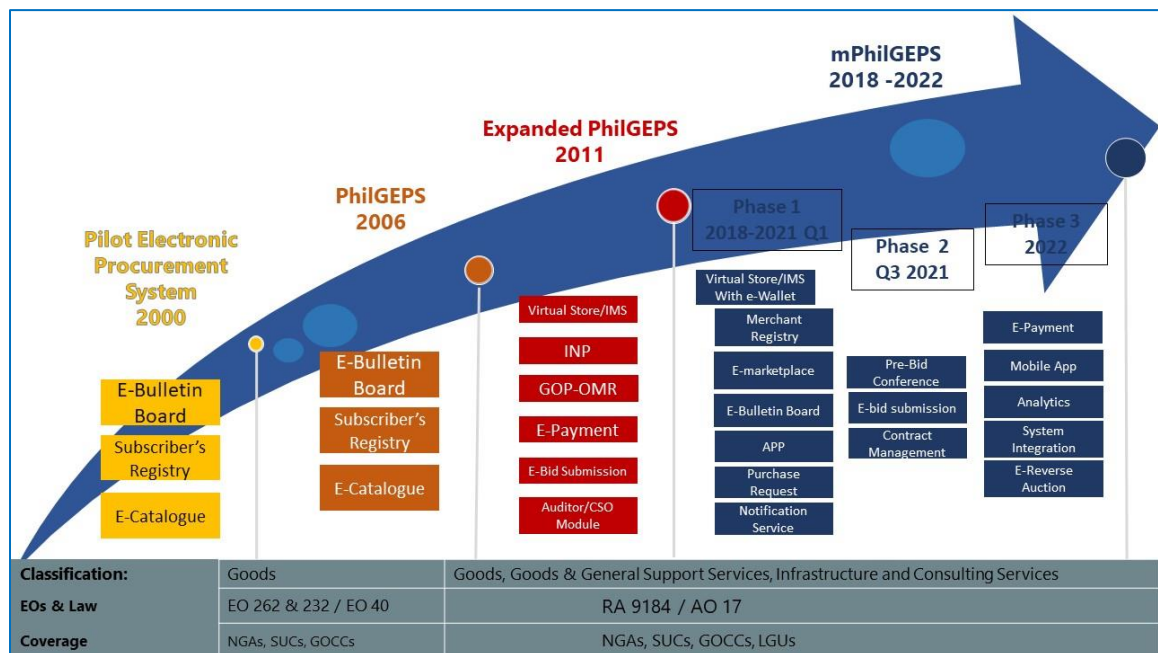
264. **Sub-indicator 7(c): Strategies to manage procurement data.** Despite system limitations, PhilGEPS does collect detail information in the bid notice and award notice. Detailed information includes organization, publish and

closing dates, lot items, budgets, procurement mode, trade agreements, classification, location of project or delivery location, commodity codes (United Nations Standard Products and Services Code -UNSPSC), quantity, units of measure, award date, notice to proceed date and contract details including the name of awardee, contract amount, start date, and end date. Compliance with the full use of the current system with or without e-submission would provide both agencies and government a stronger management and reporting resource to understand and analyze procurement activity and support compliance with the regulations.

265. Within the open data portal, PhilGEPS has been generating infographic reports to provide different views of the procurement with new visualization tools to highlight average time to award and time to publish award along with top commodities purchase and procurement methods applied. The open data system will be expanded in 2021 to incorporate search capabilities to allow users to generate custom reports and datasets for download.

266. The new mPhilGEPS will offer PhilGEPS additional analytic tools to analyze the information collected. mPhilGEPS will also include procurement plans, e-submission, and contract management which will offer more data elements to track and analyze procurement activity.

Figure 3.3. Roadmap for mPhilGEPS



267. PhilGEPS was always envisioned to support the full end-to-end procurement process with APPs, e-bid submission and contract management. The initial system implementations in 2006 (1st release) and 2011 (2nd release) focused on a manual bid submission process in line with the capacity of users and infrastructure at the time. New features and functions such as e-bid submission and procurement plans were to be added in subsequent phases; however, the service provider had difficulty delivering new functions on time and the system began experiencing capacity challenges as the number of agencies and suppliers increased. The system grew from a few thousand agencies and suppliers in 2005 to over 30,000 agencies and 80,000 suppliers in 2010 and more than 50,000 agencies and 200,000 suppliers in 2019. Capacity of the service provider and underlying infrastructure to deliver new modules on time led to the recruitment of a new platform and service provider for the delivery of a new modernized PhilGEPS.

268. After 20 years of operation, PhilGEPS has experienced a variety of challenges associated with the delivery and maintenance of a complex, critical IT system. The continuous expansion of functionality and growth in the number of users and transactions outgrew the underlying system infrastructure and the capacity of service provider

to deliver key functions. The PhilGEPS team experienced six changes in government administration, each with its own views and commitments to procurement reform and support for the electronic procurement system. After a series of delays tied to changes in administration, approvals for funding allocations, failed procurements for the recruitment of a new service provider, PhilGEPS has moved forward with the full expansion of the system to a new modernized system platform, mPhilGEPS, to resolve capacity and functional issues of the PhilGEPS system. The new service provider is in place and a new system infrastructure to support current and future system capacity needs has been established. The new modernized PhilGEPS will support all existing system features and functions and incorporate APPs, e-submission, and contract management as well as an enhanced virtual store, a new e-marketplace for registered merchants to list goods and services available, e-payment gateway, pre-bid conferences, expanded merchant registry, integration with the budget management system and other government systems, and a payment gateway to provide a full end-to-end system. The new mPhilGEPS is currently being piloted by select agencies. The new vendor registry, virtual store and e-marketplace have been implemented. The full mPhilGEPS is scheduled to be fully implemented by Q2 2023.

Overview of substantive gaps with risk and recommendations. Risk classification (Low - L, Medium - M, or High- H) is given below.


✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 7(a)(a) Easy accessibility of information	<p>Many agencies have not published award information. Agencies that have published may have done that many months after the award was issued.</p> <p>Procurement plans on the GPPB portal are published as documents and are not linked to procurement activity in PhilGEPS.</p>	L	<p>PhilGEPS is in a period of transition to the new mPhilGEPS that is expected to be implemented in Q2 2023.</p> <p>The use of mPhilGEPS should improve data collection for awards and contracts. However, PhilGEPS and GPPB must still develop proper communication and training to ensure agencies are fully compliant with directives.</p> <p>With the new mPhilGEPS system, GPPB and PhilGEPS should review policies related to managing blacklisting and filing protests to ensure all information is incorporated in the system.</p>
Sub-indicator 7(a)(b) Integrated information system	Award information is not published on time or at all. About 50% of transactions do not have award information.	H	<p>GPPB and PhilGEPS need to improve compliance of agencies to post information on time for all transactions.</p> <p>The integration of e-submission and contract management in mPhilGEPS should assist in collecting information on time. Enforcing contract payment only through the system will ensure compliance.</p>
	Ability to deliver features on the current PhilGEPS system on time by the old service provider led to the creation of alternate approaches to support some required functions. GPPB created a separate blacklisting sub-portal for agencies to file requests for blacklisting	M	Procurement plans, blacklisting, and protest should be part of the e-procurement process. These processes should be revisited with the implementation of mPhilGEPS. mPhilGEPS will include an APP module. mPhilGEPS should also include workflows for managing blacklist and protest.

Sub-indicator	Substantive Gap	Risk	Recommendations
	and to allow agencies to publish an APP. GPPB attempts to record protest filed with the courts; however, information is not updated and is incomplete as GPPB is not informed of all protest filings or the resolution. Results of blacklisting are recorded as a document in PhilGEPS.		
	ABC is a budget ceiling for contract awards. Agencies create workarounds to publish contracts with value greater than ADB by recording a separate contract value.	H	GPPB should review this condition for the publication of award information. The system should support a workflow to either obtain approval for the contract if greater than ABC or have the bid cancelled. The system should not encourage procuring agencies to create workarounds. The system allows agencies to record the actual contract amounts and create monitoring reports for the agency head, GPPB, or COA to review and follow up.
	The current PhilGEPS system does not support a payment gateway for any bidding document fees that may be applied by agencies.	H	If any fees are applied, fees should be collected and managed in the system. mPhilGEPS should have a payment gateway to support any fees associated with the procurement process. GPPB should have policies to manage the application of any fees including any administration fees applied by PhilGEPS for managing the fees.
	Security of the e-submission process. At this time, it is not possible to see how the privacy and security of submission documents is managed by the system.	M	Rules must be in place to protect proprietary and confidential information submitted to the government for evaluation. Access to information should be restricted to evaluators, auditors, and authorities that may oversee a process. Any outside access should be denied without written authority of the bidder. For bid opening, only standard public bid information may be viewable to attendees such as name of bidder, total of price bid, bid security. For details of bid, the system should only list that duly signed documents were submitted to comply with submission requirements.
Sub-indicator 7(a)(c) Information system to provide for publication key procurement steps	Procurement plans, protest, and blacklisting are managed outside of PhilGEPS. Plans published on the GPPB website are not linked or verified with activity in PhilGEPS. Protest information in GPPB is only included up to 2016.	L	The releases of mPhilGEPS will incorporate procurement plans and contract management information in PhilGEPS. After the release of mPhilGEPS, GPPB should revisit how different sources of information would be published on each portal. PhilGEPS should serve as the official source for all procurement data including plans, filing for blacklisting, protest, and contract performance.

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 7(a)(d) Open data records	<p>Not all information is uploaded by procuring agencies in a timely and complete manner.</p> <p>Evaluation reports, contract documents, and other supporting documents are only available if uploaded by the procuring agency. Due to current system issues, some uploaded documents are currently not available.</p> <p>Open data records do not identify the level of competition on a procurement or source of bidders (country, province).</p>	M	<p>Additional data elements could be included in datasets to support more analytics. For awardees, country of firm; type of firm - small, medium, large, women owned; city; province; type of goods - green product or not; tenders - green procurement; target (small business, large business, women); downloaded bid documents; registered bidders; submitted bids.</p> <p>Processes in the system should ensure full compliance and completeness of information.</p> <p>mPhilGEPS should solve quality, completeness, and timeliness issues.</p>
Sub-indicator 7(b)(b) Capacity of government officials	<p>The are several players guiding the management and delivery of PhilGEPS as a government service.</p> <p>The delays tied to the service providers for delivering the service over the past 15 years would create cause for concern regarding the ability to manage and deliver e-procurement.</p> <p>The implementation of mPhilGEPS over the last few years has taken its toll on the organization. PhilGEPS has lost most of the senior team members and the director in last two years. The loss of senior members will create a significant loss of knowledge and could create challenges going forward without replacement with capable resources.</p>	H	<p>PS-PhilGEPS, as an organization, should be viewed as a centralized national government business service operation supporting 50,000 government organizations and over 200,000 suppliers. In addition to defining system requirements for the features and functions to be delivered in support of the directives and regulations issued by GPPB, GPPB and PhilGEPS should also be focused on continued growth of the service, adding new supplier to system to help create a more competitive procurement environment for government procurement.</p> <p>PhilGEPS needs to be able to react to and manage the growth and development of the system by building stronger internal capacity to develop and implement new features. It needs to be able to review and acquire new technology that could benefit the service offering or recruit new employees or service providers as needed. There had been previous consideration for making PhilGEPS a separate independent organization outside of PS-DBM with its own funds collected from service fees to make it a sustainable service operation and not reliant on government funds to maintain the operations.</p> <p>PhilGEPS has grown to a significant operation that the government should revisit the organization structure for PhilGEPS to ensure long-term sustainability.</p>

Sub-indicator	Substantive Gap	Risk	Recommendations
			<p>The government should review the organization structure to ensure PhilGEPS is suited and supported to move forward.</p> <p>PhilGEPS is not the prime business objective of PS-DBM which is focused on providing common goods and services to agencies and supporting centralized procurement for agencies when needed.</p> <p>Other governments, Georgia and Indonesia, have placed their e-PS delivery with the policy organization to support the delivery of policy.</p>
Sub-indicator 7(b)(c) Skill of procurement staff	<p>Based on the percentage of awards published in PhilGEPS compared to original notices, assigned staff in government agencies may not be as skilled as should be for using the system. Many functions in the existing system are not properly applied. Training and messaging on the use of the system would likely need to be improved.</p> <p>Transitioning from PhilGEPS to mPhilGEPS will not be a straightforward task given the complexities of the system and the large number of users and daily transactions processed in the system.</p>	H	<p>Expand the use of e-learning and the development of an online knowledge base to let users learn on their own and supplement e-learning with integrated online support services to communicate with users.</p> <p>PhilGEPS should also improve monitoring tools to quickly identify agencies not using the system as best as they can to provide additional capacity development and support.</p> <p>Capacity development of PhilGEPS trainers and support personnel should be provided to improve the overall training program and development of training and support material.</p> <p>To ensure compliance in mPhilGEPS, PhilGEPS will need to re-examine training procedures and devise a communication plan to support transition activities.</p>
Sub-indicator 7(b)(d) Supplier data	<p>Bidder details recorded with bid submission and award records do not enable analysis of the type of bidders participating in the procurement activity (size of bidder, women owned or other socio-economic factors). Bidder data should be expanded to support analytics of the type of bidders participating and winning contracts, including location and size.</p>	M	<p>PhilGEPS needs to transition to mPhilGEPS to assess procurement activity with e-submission. Activity details should incorporate forms of organization (small, medium, large, local, or foreign) to facilitate the analysis of socioeconomic activity in PhilGEPS.</p>

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 7(b)(e) e-Procurement roadmap	<p>PhilGEPS is in a transition period for two years now. mPhilGEPS is targeted for Q2 2023</p> <p>While PhilGEPS is an existing operating system supporting the procurement process, mPhilGEPS is a new platform that cannot be assessed at this time.</p>	H	<p>A follow-up assessment should be conducted on mPhilGEPS to determine how the system supports the procurement process and improves the issues with the current system.</p>
Sub-indicator 7(c) ((a), (b), (c)(d)) Strategy to manage procurement data Sub-indicator 7(c)(d) Analysis of information is routinely carried out, published, and fed back into the system. <div>  Red flag </div>	<p>The current procurement data are not validated against any budget or financial management system. The lack of e-submission limits the data available in the system as the collection of data is dependent on procuring agencies to record all submission records and results in the system versus just the award announcement.</p> <p>The current information in PhilGEPS is insufficient to provide input to substantiate measurements to GDP or government expenditure.</p> <p>Dependency on the user to record all data inhibits the quality and completeness of the information.</p> <p>The quality and completeness of the information is dependent on the officer completing all functions in the system. Only 40–50% of transactions have award information.</p>	H	<p>PhilGEPS and GPPB should examine options for expanding some data to facilitate the measurement of transactions toward socioeconomic goals to support small and medium business, compliance with trade agreement, and green procurement initiatives.</p> <p>The implementation of full e-procurement through mPhilGEPS should help expand the information available and improve the quality and completeness.</p> <p>The system should be able to adopt new data elements with the detail information collected to support future monitoring and analysis of procurement activity. A data option to consider is the evaluation method applied to a package/award - quality, quality cost, low cost, LCC (green procurement).</p> <p>Better training and messaging programs need to be developed to ensure procuring entities apply full system to the process. The transition to mPhilGEPS should provide the opportunity to reinforce the use of e-procurement.</p> <p>The merchant registry should identify the types of bidders (small, medium, large) or other socioeconomic factors. Tender and award details should incorporate other socioeconomic factors if a package is limited to a group or green procurement factors are applied to track and monitor policies.</p>

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

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

Findings, Substantive Gaps, And areas for Improvement

270. **Sub-indicator 8(a) and 8(b): Recognition of procurement as a profession, training advice and assistance:** As per section 16 of Revised IRR of 2016, GPPB is required to establish a sustained training program to develop the capability of BACs, BAC Secretariats, TWGs, and the Procurement Units of Procuring Entities, and professionalize the same. The HoPE is required to ensure that the BAC, its Secretariat and TWG members, including other relevant procurement personnel are sent to attend procurement training or capacity development program. Within six months of designation, the BAC, its Secretariat, and TWG members should have satisfactorily completed such training or program conducted, authorized, or accredited by GPPB-TSO. The HoPE is also encouraged to attend similar training and capacity development activities.

271. As per GPPB-TSO, with the goal of procurement eventually becoming a regulated profession, it is working with its agency partners to identify, develop, and institutionalize the competencies and quality standards for procurement practitioners as part of the groundwork toward procurement professionalization.

272. As per s.63 of RA 9184 on organization and functions, GPPB is required to ensure that procuring entities regularly conduct training programs and prepare a procurement operation manual for all offices and agencies of the government. Based on the situation in end March 2021, the training activities are summarized – in Box 3.3.

273. Based on APCPI data of 2019, 67.94 percent of procurement staff participated in training or professional development plan.

274. **Sub-indicator 8(a)(c) Advisory/Help Desk Functions.** GPPB-TSO has provided several channels for advisory services or help desk such as through SMS and designated e-mail, and in view of the COVID-19 situation instead of physical walk-in it has advised all users that “For discussion on several issues or in need of a more in-depth assistance, book a digital walk-in consultation by emailing your preferred schedule at legal.helpdesk.gppb@gmail.com.”

275. **Sub-indicator 8(c) Monitoring performance to improve the system.** The evaluation of the effectiveness of the public procurement system, from individual procurement to the system as a whole, can be a major driver of performance improvements. The results of the procurement process should periodically and consistently be assessed to measure the performance, effectiveness, and savings in procurement system. The country has established a system of APCPI. APCPI of 2018 is provided by GPPB-TSO. Data Analytics of June 2019 (PhilGEPS RAS) (permission given on March 24, 2021 to use data) provides several policy options on procurement strategy to bring savings.

Box 3.3. Summary of Training Activities as of end-March 2021

- **Public Procurement Specialist Certification Course.** To forge a stronger partnership for the implementation of the Public Procurement Specialist Certification Course, a Partners Night with SUCs was held in Makati City on February 13, 2020, where the Memorandum of Agreement between GPPB and the Partner SUCs has been renewed. Palawan State University, a new partner of SUC, also attended the activity. In addition, despite the challenges in 2020 on capacity development, 2 of the 15 Partner SUCs for the implementation of the Public Procurement Specialist Certification Course were able to conduct the course through digital platforms.
- Shift to digital learning due to public health condition and restrictions brought about by COVID-19.
- Notable digital learning programs launched in 2020 include series on government procurement also to cover LGUs, private sector, emergency procurement, online training on simplified bidding document, procurement for COVID-19 related goods, and overview of APCPI.
- A total of 7,710 participants were able to attend capacity-building activities of GPPB-TSO of which 6,983 (91%) was through webinar.
- Before imposition of the lockdown in March 2020, the Capacity Development Division conducted the 2nd Annual Procurement Forum on January 14, 2020, which was attended by 727 participants from 236 NGAs.
- In addition to scheduled capacity-building programs, there were other initiatives, of which 114 requests as resource speaker were handled by the Capacity Development Division. GPPB-TSO also accommodated study visits and online bilateral discussions (like from Ethiopia and Indonesia).

Source: GPPB-TSO.

Overview of substantive gaps with risk and recommendations. Risk classification (Low - L, Medium – M, or High- H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 8(b)(a) - Procurement is recognized as a specific function, with procurement positions defined at different professional levels and job descriptions and the requisite qualifications and competencies specified. ✓ Red flag	<p>It is not clear if the country's public service recognizes procurement as a profession (as for example accountancy) and if procurement positions are defined at different professional levels and job description and requisite qualifications and competencies specified.</p> <p>Provision of personal liability for actions and decision taken in the conduct of official duties on behalf of the government is a deterrent to join procurement profession</p>	H	<p>Update the strategy and the roadmap for public procurement professionalization. This can build on the study 'Developing a Career Stream for Public Procurement Practitioners' by Sec. Boncodin, under the Professionalization of Public Procurement Practitioners and Functions grant. Provide an enabling environment for informed use of well-documented discretion by procurement professionals to get results and improve service delivery.</p> <p>Consider how to provide protection from personal liability for actions and decisions taken in the conduct of official duties on behalf of the government to encourage and motivate qualified persons to join procurement profession.</p>

Sub-indicator	Substantive Gap	Risk	Recommendations
Sub-indicator 8(a)(d) A strategy well integrated with other measures for developing the capacity of key actors involved in public procurement	<p>Based on a long-term strategy, adequacy of training and funding to be reviewed.</p> <p>As per s.63 of RA 9184 on organization and functions, GPPB is required to ensure that procuring entities regularly conduct training programs and prepare a procurement operation manual for all offices and agencies of the government.</p> <p>Based on APCPI data of 2019, 67.94% of procurement staff participated in training or professional development plan.</p> <p>There are initiatives like Implementation of the Public Procurement Specialist Certification Course, a Partners Night with SUCs, and focus by GPPB-TSO on use of digital platform for training.</p> <p>However, it is not clear if these are sufficient on a long-term basis.</p>	M	<p>Consider if capacity building and training strategy is in place for developing the capacity of key actors involved in public procurement and if based on available resources, procurement training meets the needs of the system on a sustainable and long-term basis.</p> <p>There should be routine evaluation and periodic adjustment of training programs based on feedback and need. The curricula of the existing programs should be based on 'skills gap inventory' to match the needs of the system sufficient in terms of content and frequency, and there should be an evaluation of training programs and monitoring of progress in addressing capacity issues.</p>

Pillar III. Public Procurement Operations and Market Practices

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

The analysis presents pillar-wise summary, strength and for each indicator key findings, substantive gaps and areas of improvement, before finally presenting a tabulation on overview of substantive gaps with risk and recommendations, with identification of “red flags”

Summary for Pillar III

Indicator 9: Empirical evidence on how procurement principles, rules, and procedures formulated in the legal and policy frameworks are implemented in practice (based on sample of procurement transactions)

277. The thrust of the government has been to improve and reform the public procurement system to adhere to the principles of competition, transparency, efficiency, economy, and accountability and how these principles, rules, and procedures are implemented in practice. Pillar III - Indicator 9 provides a walkthrough on the processes and practices actually adopted by procuring entities (the 17 sample participants) relative to the contracts identified during the assessment, starting from needs identification, planning, and budgeting; submission of bids, evaluation, selection

and award of contract; to contract implementation and closeout—essentially, this part of the assessment shows the real score between the ‘law as written’ versus the ‘law in action’.

278. **‘Traditional procurement’ in the Philippines boasts of a singular legal framework** that governs the procurement of goods, civil works, and consulting services by NGAs, GFIs, GOCCs, SUCs, and LGUs. The implementation of the law is supported by an inter-agency policy-making body—GPPB—that protects national interest in all matters affecting public procurement and conducts review of the effectiveness of the law.¹⁰¹

279. **Competitive bidding¹⁰² is the primary mode of procurement** and is supported by the mandatory use of standard PBDs and generic procurement manuals issued by GPPB. A structured step-by-step and multistage competitive bidding process for the procurement of goods, civil works, and consulting services is institutionalized through (a) conduct of pre-procurement conference; (b) advertisement of the invitation to bid/request for expression of interest; (c) pre-bid conference; (d) submission, receipt, and opening of bids; (e) bid evaluation; (f) post-qualification; and (g) award of contract, coupled with strict confidentiality in the evaluation and post-qualification of bids and information pertaining to the bidders, such that once bid evaluation commences, the bidders cannot communicate with the selection committee until award is made and vice versa, except for clarifications relating to the evaluation and post-qualification of bids for which the bidders should heed.

280. **Alongside transparency, the system is supported by PhilGEPS** as the “single portal that shall serve as the primary source of information on all government procurement . . . and shall serve as the primary and definitive source of information on government procurement.”¹⁰³ PhilGEPS thus provides the platform for the posting of the invitation to bid, bid/supplemental bulletin, notice of award, and notice to proceed. Procuring entities, through the BAC, are mandated to invite observers from the COA, the Supreme Auditing Institution of the country, private sector organizations, and NGOs¹⁰⁴ or CSOs in all stages of the competitive bidding process.

281. **Procurement can be both centralized and decentralized depending on the nature of procurement**, amount of the ABC and complexity per determination of the HoPE as s/he creates the selection committee, also known as the BAC.¹⁰⁵ Accordingly, it could be that all procurement of a certain department be made through the central office only or the regional offices of such department may be given authority to procure at their levels under specific amounts or thresholds. However, acquisition of common use supplies and equipment is centrally procured through the PS-DBM.¹⁰⁶

282. **The preparation of the Project Procurement Management Plans (PPMPs) by the end users in the 17 participating procuring entities along with the crafting of the budget for the succeeding year and the consolidation of the PPMPs into one APP supports the conduct of needs identification, prioritization, and planning by procuring entities.** Out of the 186 sample contracts, 167 contracts or 89 percent were procured through competitive bidding. The Assessment Team, however, observed that the adoption of ‘competitive bidding’ is based primarily on the ‘default’ mandate of the GPRA and its 2016 revised Implementing Rules and Regulations (IRR), which provides that “all procurement shall be done through competitive bidding,” and is not a product of market scanning, research, analysis, or a strategic determination of the fit-for-purpose procurement modality to address the needs of the procuring entity in an efficient and timely manner. Neither did the adoption of the procurement mode look into the nature of the goods, civil works, and consulting services to be procured, the size of the contract or opportunity to

¹⁰¹ Sec. 63, RA 9184.

¹⁰² Sec. 10, Id.

¹⁰³ Sec. 8, Id.

¹⁰⁴ Sec. 13, Id.

¹⁰⁵ Sec. 12, Id.

¹⁰⁶ Sec. 53.5, Id. and Letter of Instructions No. 755, dated October 18, 1978, entitled “Relative to the Establishment of an Integrated Procurement System for the National Government and Its Instrumentalities”.

package the project into reasonable lots, availability of the goods, quantity, and time. In addition, the PPMPs, and ultimately the APPs, are not accompanied by the technical documents or specifications at the time the project was proposed.

283. **GPP was recently (2017) put in place through a ‘stepwise’ approach toward gradual inclusion of products as the conduct of procurement by government progresses.** Initially, 10 common use and 10 non-common use supplies and equipment were identified to be procured with ‘green core criteria’ in the technical specifications, including the documents and tools for their verification. Aspects of ‘sustainability’ are present in contract documents contained in the standard bidding documents such as the recognition and entitlement of workers to rightful wage, hours of work, safety, and health standards. It should be noted, however, that a systematic approach and link in the implementation of a sustainable public procurement regime remains an overall thrust alongside full implementation of GPPB-approved Philippine Green Public Procurement Roadmap.

284. **Standard bidding documents approved and issued by GPPB provide an excellent guide for bidders to prepare responsive bids as the step-by-step procedures and the necessary documents for submission are outlined in the tender documents.** It was noted, however, that notwithstanding measures for transparency and predictability in the conduct of public procurement, participation of market operators remains low. Out of 3.85 bidders participating in competitive bidding, only 3.14 are declared responsive in the 156 contract samples with available and verifiable information. The implementation of the non-discretionary pass/fail criterion is recognized but is seen as reason for lesser participation of market operators, coupled by lack of incentives for early accomplishment of work, services, and delivery of goods.

285. **In the main, contract implementation and management remains a challenge.** Delay in the delivery and completion of projects is a cause for concern. Out of the 111 contracts reviewed, 75 contracts or 68 percent were completed beyond the delivery period thereby dampening the timeliness of the contract award when the whole of the procurement exercise is put to scrutiny. Delivery of goods, civil works, and consulting services were inspected, reviewed, and examined before they were accepted; it must be put to fore, however, that the members of the inspection and acceptance team, who are often ad hoc, should have sufficient knowledge of the requirements of the project, enough to support a genuine, not mere token, inspection and acceptance exercise.

286. **Timely payment after submission of complete supporting documents by the bidder must be made.** In the 87 contracts reviewed with complete information on payments, 36 contracts or 41 percent were paid beyond the identified time in the bidding documents—within 60 days for goods and 28 days for civil works. Although timely payments were made for 51 contracts or 59 percent, the number of payments made after the deadline is a cause for concern due to the stability of market participation in government opportunities; delayed payments will give rise to lesser bidder participating due to unrealizable profit, worse, exponential increase in interest.

287. **Statistics are not mere numbers; they tell stories, much more when they are published and made readily available for review and scrutiny to support procurement reforms and policy determinations.** PhilGEPS is an excellent platform to lodge procurement statistical data that will provide bases for innovative procurement measures or even changes in the procurement legal framework. Existing for quite some time in PhilGEPS website in partnership with the Open Data Philippines, this statistical information is no longer available, but it is beneficial to revive such a platform to provide the essential procurement and market information that are beneficial to both the government and the private sector.

288. **Participation of NGOs or CSOs as observers in the relevant stages of the procurement process has dwindled over the years.** Though invitations in writing are being sent, actual attendance in the procurement activities is less than promising. It was also observed that for competitive bidding, attendance would be confined only on pre-bid conferences and bid openings despite the fact that observers are invited at all stages of the procurement process. In

most cases, observers are invited in writing, which is the requirement of the procurement law, but they do not attend any of the activities. Out of the 87 contracts reviewed, 42 contracts or 48 percent had no observers attending, while 45 or 52 percent have attended the bid opening.

289. **Record-keeping and management have not been substantially and seriously taken care of**, as no single procurement was found to have the complete documentations and files for the 186 contracts reviewed, starting from needs identification and planning, project selection, and contract implementation.

Indicator 10: Market practices including evidence based on private sector survey

290. A GPPB-TSO-led consultation workshop was held with the private sector on December 12, 2019, in Manila with participation of 36 representatives of the private sector to seek their feedback to improve the public procurement system of the Philippines. A total of 21 questions were given to participants and anonymous written responses received in the consultation workshop.

Box 3.4. Voices from the Private Sector - Constraints Faced Based on Survey Response

- Payment not being received in time as per provisions of contract.
- One of the written feedback from private survey participants states that “delays in payment for various reasons must be addressed including for contractor to impose penalty (translated claim interest/financing charges on delayed payment) considering that contractors are penalized for late delivery.”
- Lack of clarity in the bidding document on liability of the contractor/supplier/consultants on government taxes.
- Right of away acquisition not over at the time of procurement action.
- Absence of a separate body that should hear appeal and disputes other than the procuring entity.
- Need for paperless procurement.
- Need for levelling the playing field between domestic and foreign bidders.
- Need for adopting procurement methods that are proportionate to the risk and value of contract.
- Cancellation of bids in the middle of evaluation.
- Capacity of procuring entity - professionalization of procurement practitioners.
- Terms of reference/technical specification are not well prepared.
- Need for simplification document submission.

Indicator 10: Demand-supply gap of contractors

291. Procurement analytics were carried out to identify and evaluate the circumstances and factors behind the issue—“focusing on the extent of procurement competition and the demand-supply situation concerning contractors at the PG level,” through data analysis, interviews, and field visits, which revealed the following (Box 3.5).

Box 3.5. Demand-supply situation concerning contractors at the provincial government level

- Overall, considering both government and private projects, there is a **big shortage of 22,617 licensed contractors** to carry out the huge number of construction contracts—133,000 per year, equivalent to 33,250 sets of 4 contracts/contractor per year. This results in a demand-supply ratio of 3.1 to 1.
- This overall demand-supply mismatch is replicated for **government contracts, especially at the province level**. Only 51% (5,400) of the 10,633 PCAB-licensed contractors deal with the government and 33% (3,540) deal with projects of DPWH and provincial governments. They cannot cope with the huge volume of government projects—58,400 contracts equivalent to 14,600 sets of 4 contracts per contractor per year. This gives a demand-supply ratio of 2.5 to 1.

- There are **major limitations or constraints in the licensing, eligibility, and qualification requirements**, which hamper efforts to increase the supply and participation of capable contractors for government contracts.
- **Initial measures to address these limitations** are presented in the report to enhance the involvement of contractors, particularly in province-level projects.
- Other important factors—particularly **collusive and irregular practices**—hinder competitive procurement market and dampen the interest of contractors in bidding for provincial government projects. This, however, is covered by a separate report.

Source: Technical Assistance to DILG (The World Bank).

Indicator 10: Based on CPSD of World Bank and IFC in March 2020

292. There is lack of competition in most infrastructure markets. Firms trying to enter markets are discouraged by the complexity of regulatory procedures, administrative burdens on startups, and regulatory protection of incumbents. The economic landscape is dominated by national conglomerates, especially in non-tradable sectors such as retail, banking, telecommunications, infrastructure, utilities, real estate, and transport.

293. Reducing bureaucratic restrictions and promoting competition would allow new businesses to enter markets, lower input prices, and support the generation of better-quality jobs.

294. The recent passage of key legislation (for example, to address competition, ease of doing business, digital payments) could be the momentum needed for the GoP to generate reforms that would unlock private sector markets.

295. Data analytics was carried out earlier (separate from this MAPS exercise) based on contracts awarded in 2014–2018 as a RAS by the Bank for PhilGEPS. Some important feedback from the data analytics of PhilGEPS (June 2019) is as follows.

- Monopolies and oligopolies of public procurement markets had a substantial impact on prices paid by the government. In fact, we estimate that the GoP could save 3.4 percent with a more diversified supplier base, which requires breaking up some monopolies and oligopolies. Our recommendation is to approach these markets with customized strategies to foster competition and new entrants to public procurement.
- Specialized suppliers are an important aspect in public procurement. The idea would be that specialized suppliers are manufacturers or else specialists in a specific market. Specialized suppliers could offer higher quality products and perhaps at more economical prices, by eliminating middlemen. However, data from the Philippines showed that specialized suppliers offered higher prices. Our model estimates that the GoP could save 0.2 percent by procuring from less specialized suppliers. This result came as a surprise and deserves more research, perhaps to understand the level of competition faced by specialized suppliers and whether specifications were neutral.
- Small and medium-size companies offered more economical prices than large companies according to data for 2014–2018. Our model estimates savings of 1.6 percent by increasing participation of medium-size companies in public procurement.

296. Based on the 2019 APCPI data of 17 agencies and its comparison with the 2010 data of CPAR 2012, the participation by bidders in bidding opportunities has decreased as given in Table 3.4.

Table 3.4. Decreasing Trend in Bidder's Participation

Competitiveness of the Bidding Process	2010	2019
Average number of bidders who acquired bidding documents	7	2.25
Average number of bidders who submitted bids	5	2.07
Average number of bidders who passed bid evaluation	3	1.72

297. Therefore, based on all the evidence, there is lack of competition and serious gaps between the demand and supply of contractors, affecting the 'Build, Build, Build' program of the government and its development objectives.

Strengths under Pillar III

298. **Contracts reviewed from 17 participating procuring entities show that practices during the bidding stage of the procurement process have good compliance with the GPRA and its allied rules and issuances.** Procurement documents provide clear requirements through the technical specifications, detailed architectural and engineering design, and terms of reference, in line with clear delivery schedules and identified contract completion dates. Out of 186 procurement activities, projects procured for the first time accounted for 158 contracts or 90 percent, while 18 contracts or 10 percent were awarded after the first try. Procuring entities, along with the budget preparation for the succeeding fiscal year, do prepare their indicative APP containing specific projects and the proposed budget for the contract. However, this practice does not include any structured and comprehensive approach to procurement planning to inform the decision on the suitable approach to market and optimal procurement methods that would help procuring entities achieve fair level of competition and value for money.

299. **The indicative APP contains the consolidated PPMP of each end user** in the procuring entity that apart from the proposed budget likewise contains the method of procurement to be employed in the course of the acquisition process. Once the GAA for the current fiscal year is passed by Congress, the procuring entity shall finalize its PPMPs and APPs to come up with the final APP for the current fiscal year. The final APP is then recommended by the BACs to the HoPE for approval. The APP and the PPMP, pursuant to the need of procuring entities, may be updated from time to time as may be necessary.

300. **For openness and transparency, the procurement legal framework mandates the invitation of the observers from the COA, private sector group, and NGOs.** In practice, procuring entities do comply with this provision and the proactive participation of these observers provides a third lens looking at how procurement is being conducted by the selection committee.

301. **Procurement training had been the thrust of GPPB-TSO since the enactment of the procurement law in 2003.** The establishment of a composite team of trainers that eventually rolled out procurement training nationwide was further strengthened by the establishment of a procurement professionalization program composed of basic,

intermediate, and advance courses with a total of 15 modules¹⁰⁷ presently lodged in 10 SUCs¹⁰⁸ offering the same to both government and private sector procurement practitioners.

Indicator 9: Public procurement practices achieve stated objectives

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

Findings, Substantive Gaps, and Areas for Improvement

303. **Sub-indicator 9(a) Planning, Sub-indicator 9(b) Selection and Contracting and Sub-indicator 9(c) Contracts management in practice:** Reliable data from actual procurement contracts and documents must be obtained to arrive at a reasonable assessment of how the processes and procedures contained in the procurement law, its associated rules and regulations, are actually implemented on the ground. Apart from the actual data, information must be secured from various sources across the jurisdiction to have a good picture of how procurement is conducted from planning, selection, until contract implementation, with a view to providing “enough information to arrive at conclusions that can be regarded as valid at an aggregate level.”¹⁰⁹

304. To achieve the foregoing objectives, the MAPS Assessment Team (a) identified and selected contracts from different levels and various agencies of government; (b) reviewed, studied, and assessed actual procurement contracts to generate necessary data and information; and (c) discussed with procurement officials, personnel, and practitioners to be able to validate and verify the information gathered in the course of the contract review.

305. Taking off from the coverage of application in the procurement law¹¹⁰ and the above-mentioned assessment approach, the MAPS Team, with assistance from GPPB-TSO, requested for sample contracts posted by NGAs,¹¹¹ GOCCs,¹¹² GFIs, SUCs,¹¹³ and LGUs¹¹⁴ with PhilGEPS¹¹⁵ for 2016, 2017, and 2018. From the list provided by PhilGEPS,

¹⁰⁷ **Basic (56 hrs.)** - 1) Principles and Practices of Public Procurement (4 hours); 2) Legal and Administrative Environment of Philippine Public Procurement (4 hours); 3) Procurement Organization Framework (4 hours); 4) The Philippine Government Electronic Procurement System (PhilGEPS) (4 hours); 5) Procurement Planning (8 hours); 6) Procurement of Goods (24 hours); 7) Contract Management and Administration for Goods (4 hours); and, 8) Ethics in Procurement (4 hours).. **Intermediate (60 hrs.)** - 1) Public Expenditure Management (8 hours); 2) Public Procurement Audit (4 hours); 3) Procurement Fraud (8 hours); 4) Procurement of Infrastructure Projects (16 hours); 5) Contract Management and Administration for Infrastructure Projects (4 hours); 6) Procurement of Consulting Services (16 hours); and, 7) Contract Management and Administration for Consulting Services (4 hours); and, **Advance (56 hrs.)** - 1) Procurement of ICT (16 hours); 2) Measuring and Monitoring Procurement Performance (16 hours); 3) Incentivizing Good Procurement Performance (8 hours); and, 4) Leadership and Negotiation in Procurement (16 hours).

¹⁰⁸ SUCs - 15 SUCs (University of the Philippines, Bicol University, Cagayan State University, Cavite State University, Central Luzon State University, Kalinga State University, Mariano Marcos State University, Palawan State University, Pamantasan ng Lungsod ng Maynila, Polytechnic University of the Philippines, Cebu Normal University, West Visayas State University, Sultan Kudarat State University, Western Mindanao State University, University of Southeastern University)

¹⁰⁹ Section I, Par. 28, MAPS User’s Guide, p. 9.

¹¹⁰ Sec. 4, Scope and Application, RA 9184 and the 2016 Revised IRR.

¹¹¹ (a) Department of Education (DepED) - Main; (b) Department of Education (DepED) - Tagum City; (c) Department of Social Welfare and Development (DSWD); (d) DOTr; (e) DPWH Main; (f) DILG.

¹¹² (a) Landbank of the Philippines (LBP); (b) Philippine General Hospital (PGH); (c) Philippine Heart Center (PHC).

¹¹³ (a) University of the Philippines System (UP); (b) Cagayan State University (CSU); (c) West Visayas State University (WVSU).

¹¹⁴ (a) City of Pasig, Metro Manila; (b) City of San Fernando, Pampanga; (c) Municipality of Ayungon, Negros Oriental; (d) Municipality of La Trinidad, Province of Benguet; (e) Province of Aklan.

¹¹⁵ Republic Act No. 9184, Sec. 8. Procurement by Electronic Means. “To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. **Accordingly, there shall be a single portal that shall**

an aggregate of 120 goods, civil works, and consulting services contracts were selected. A total of 17 procuring entities/participating agencies were included in the sampling.¹¹⁶

306. The MAPS Assessment Team examined and reviewed actual physical contracts when they visited DepED Main, DSWD, DOTr, DPWH Main, LBP, PGH, PHC, and the City of Pasig. However, due to the seriousness of the COVID-19 spread and contamination, coupled with the government-imposed lockdowns, travel restrictions, and multistage community quarantines, the MAPS Team, with assistance from GPPB-TSO, agreed to upload the remaining procurement contract documents in a cloud created for the purpose. Availability of these contracts for uploading likewise posed a challenge due to access to the actual contracts and documents; ingress and egress to the respective offices; and the work-from-home or skeletal work arrangement implemented by various authorities.

307. Eventually, a combined 100 goods, civil works, and consulting services contracts from the original 120 contracts were examined either physically or downloaded by the assessor from the cloud. Due to the challenges brought by the COVID-19 malady, the MAPS Assessment Team agreed to add 86 civil works contracts that were taken from the DPWH Civil Works Application/Registry, the DPWH Project and Contract Management Application, and the DPWH-eNGAS. A total of 186 contracts were reviewed and assessed with the following breakdown in terms of the nature and the modality of procurement.

Table 3.5. Breakdown of Sample cases by Type of Contract and Procurement Method

	Competitive Bidding	Negotiated Procurement - Lease of Venue	Negotiated Procurement - Agency-to-Agency	Negotiated Procurement - Small Value Procurement	Negotiated Procurement - Two Failed Biddings	Negotiated Procurement - Adjacent and Contiguous	SSS	Total
Goods	37	1	3	4	4	0	—	49
Civil works	124	0	0	0	3	3	—	130
Consulting services	6	0	0	0	0	0	1	7
Total	167	1	3	4	7	3	1	186

308. In the course of the review and assessment and due to the difficulties encountered during the COVID-19 pandemic, data and information that would have been otherwise made available by participating agencies cannot be obtained or accessed. For this reason, sample contracts with lacking or unverifiable information were excluded from the computation of the average. Hence, there were occasions where out of 186 contracts only 177 (compliance with publication requirements) or 87 (CSO involvement) were included in the analysis.

309. Procurement contract documents examined and assessed during the MAPS exercise include those used in the planning, selection, and contract implementation stages that cover the following: APP, PPMP, purchase requests; invitation to bid, supplemental/bid bulletin; minutes of the pre-bid conference; instructions to bidders; bid datasheet; general conditions of the contract; special conditions of the contract; technical specifications; terms of references; minutes of the bid opening; abstract of bids as read; bid evaluation result; abstract of bids as evaluated; post-qualification results through the bids awards committee; resolution recommending award of contract; bidding documents submitted by the winning bidder; notice of award; contract/purchase order; notice to proceed; inspection

serve as the primary source of information on all government procurement. The G-EPS shall serve as the primary and definitive source of information on government procurement... (Emphasis supplied)."

¹¹⁶ DepED Negros Oriental, DPWH Negros Oriental, DPWH Davao del Norte and DBM-PS were originally included, but due to the challenges brought by COVID-19, numerous lockdowns, travel restrictions, and the growing number of COVID-19 cases in the country, access to these agencies' procurement contract documents became a serious challenge.

and acceptance report/certificate of inspection and acceptance; certificate of completion; certificate of acceptance; invoices; progress billings; disbursement vouchers; journal entry vouchers; procurement monitoring reports and other allied procurement documentations that would assist in the confirmation and validation of the data and information provided during the assessment. Alongside the procurement contract review, the MAPS Assessment Team also held interviews and discussions with the members of the BACs, the BAC Secretariat, and TWG to verify, clarify, and validate data and information gathered during the assessment.

310. **Procurement-related results based on 186 sample contracts** (not all information was available or relevant for all 186 samples).

- Of the 170 contracts reviewed with available and verifiable information, 142 contracts or 84% are included in the APP, while 28 contracts or 16% were not found in the APP.
- From a total of 156 samples where information and data are available, an average of 3.85 bidders participated in the competitive bidding process, and out of these, only 3.14 were declared responsive.
- The average time to procure goods (105 calendar days), civil works (134 calendar days), and consulting services (175 calendar days) falls within the maximum allowable period to procure.
- On average, it takes 129 days before a contract is signed, reckoned from the date of advertisement.
- Share of processes that have been conducted in full compliance with publication requirements is 87% or 154 out of 177 contracts with verifiable data, leaving 13% or 23 contracts non-compliant.
- Of the 111 contracts assessed with verifiable information, 75 or 68% were completed late, while 36 or 32% were delivered on time.
- Out of 87 contracts reviewed with verifiable information, 36 contracts or 41% were paid late, while 51 contracts or 59% were paid on time.
- There is no requirement to publish contract amendments, out of 171 contracts reviewed with available and verifiable information 77 contracts or 45% were amended, leaving 94 contracts or 55% unamended.
- Out of 87 contracts, 42 contracts or 48% had no observers attending while 45 or 52% have attended the bid opening stage only; attendance in the other stages of the procurement process was not complied with.
- Of the 100 contracts actually reviewed, none contain complete compilation of procurement contract documents from planning, selection, up to contract implementation.

311. **Sub-indicator 9(a) Planning 9(a)–(c).** Although most of the contracts reviewed are contained in the APP, there were procured projects that were not included in the APP. It was observed as well and confirmed during the assessment that not all projects in the APP are procured within the fiscal year because there are more projects to procure relative to the absorptive capacity of procuring entities. Of the 170 contracts reviewed with available and verifiable information, 142 contracts or 84 percent are included in the APP, while 28 contracts or 16 percent were not found in the APP. Needs are identified and the goods, works, and services selected to satisfy them are included in the APP. However, the choice of procurement method adopted is not a product of detailed market analysis or research but mostly dictated by the default procurement modality provided under the procurement law and the rules, that is, competitive bidding, though there can be other appropriate procurement modalities that may be adopted.

312. Although aspects of sustainability—social, economic and environment—are adopted and spread throughout the procurement documents, the ‘sustainability regime’ is yet to be organized to make it more systematic and programmatic in approach for a more meaningful, efficient, effective, and cohesive application of sustainability principles across the public procurement spectrum to achieve best value for money.

313. **Sub-indicator Indicator 9(b)(b), (f), (h), (i) and (j) Selection and Contracting and 9 c)(a)-(g) on contract management in practice.** Despite the use of standard bidding documents that provides for stability and predictability in the procurement process; facilities for bidders to understand the requirements through the pre-bid conference; a platform to learn about procurement opportunities through PhilGEPS and procuring entity websites, among others; participation from bidders remains a challenge thereby affecting the competitiveness of the acquisition process. From 156 samples where information and data are available, an average of 3.85 bidders participated in the competitive bidding process, and out of these, only 3.14 were declared responsive. Though 3.14 responsive bids may be treated as sufficient to have a competition, this is still a small number and the reasons for the non-responsiveness of the offer and non-participation of market operators should be determined.

314. Although there are ample parameters and techniques employed under the procurement law and the implementing rules and regulations to conform with the criteria contained in the bidding documents, there are innovative procurement mechanisms that can be adopted or can be drawn from international best practices of procurement to further enhance efficiency, economy, transparency, competition, and accountability in government contracting.

315. In the enforcement of stipulations, covenants, and agreement in the contract, compensation, penalties, or sanctions may be employed to serve as deterrent for similar future actions or omissions. However, there must be an equivalent incentive for early delivery or completion in lawful form possible to encourage and entice participation of market operators.

316. The average time to procure goods (105 calendar days), civil works (134 calendar days), and consulting services (175 calendar days) falls within the maximum allowable period to procure under the rules per Annex C of the 2016 Revised IRR. However, the number of market operators participating in the procurement opportunities, about 3.85, where only 3.14 are responsive is a cause for concern as the number of participants is still less than the desired number to arrive at a good competition.

317. Although the contract was awarded earlier, the actual contract was signed at a much later time, thereby affecting contract commencement, implementation, and delivery. On average, it takes 129 days before a contract is signed, reckoned from the date of advertisement.

318. It can be gleaned from the results of the assessment relative to the publication requirement that more than a majority of the contracts complied with the publication and posting requirements. However, still a considerable number of opportunities did not comply with advertisement and posting. Share of processes that have been conducted in full compliance with publication requirements is 87 percent or 154 out of 177 contracts with verifiable data, leaving 13 percent or 23 contracts non-compliant.

319. At the core of the procurement exercise is the satisfaction of the procuring entities' needs, not only in terms of quality, quantity, and price but also the timeliness of the delivery of the goods, works, and consulting services. Delivery must be given utmost importance as it is reflective of a successful procurement exercise. There may be valid reasons to support a request for time extension, nonetheless, there remains a failure to satisfy the needs on time. Finding delays in 68 percent of the contracts reviewed with 84 days in average time overrun is a cause for concern, apart from not being able to address the needs of the procuring entities on time, wastage in resources, and opportunity lost likewise set in. Of the 111 contracts assessed with verifiable information, 75 or 68 percent were completed late, while 36 or 32 percent were delivered on time.

320. The Inspection and Acceptance Team members are often ad hoc and comprise members drawn from different offices within the procuring entity without the corresponding training, knowledge base, and experience on the goods to be inspected except the specification provided in the bidding documents. It must be pointed out that

members of the Inspection Team must have sufficient knowledge of the goods and services being procured and ample training on how to conduct an effective inspection, testing, and review before the goods or deliverables are accepted.

321. A considerable number of contracts were paid beyond the time allowed per the bidding documents, that is, not later than 60 days from receipt of billing for goods, 28 days for civil works, and 60 days for consulting services. Out of 87 contracts reviewed with verifiable information, 36 contracts or 41 percent were paid out of time, while 51 contracts or 59 percent were paid on time. It was observed that earliest time of payment was three calendar days and the longest time an invoice got paid was 793 calendar days. In addition, contract amendments were not published as there is no provision in the law requiring the publication of any amendment to the contract. Out of 171 contracts reviewed with available and verifiable information, 77 contracts or 45 percent were amended, leaving 94 or 55 percent unamended.

322. Procurement statistics are not readily available despite the existence of PhilGEPS to provide for data and information to measure and improve procurement practices.

323. Despite invitation to observe all stages of the procurement process, observers attend only the pre-bid conference and bid opening, but not in all the other stages of the acquisition exercise. It is noted that out of 87 contracts, 42 contracts or 48 percent have no observers attending, while 45 or 52 percent have attended the bid opening stage only; attendance in the other stages of the procurement process was not complied with.

324. Of the 100 contracts actually reviewed, none contain complete compilation of procurement contract documents from planning, selection, up to contract implementation. Though there were complete file folders containing planning and selection documents, the contract execution documents are lodged in different offices, specifically the requests for extension of time, request for variation order, inspection and acceptance report, certificate of inspection, certificate of completion and certificate of acceptance, invoices and payments.

325. As required by the Concept Note, there is a need to find a faster way of capacitating LGUs given the Mandanas decision of the Supreme Court which will come into effect in 2022, resulting in an increase in the funds and workload of LGUs. Based on sample of contracts from LGUs a 'Snapshot of LGU Procurement and Capacity Development' is given as Annex of Volume III.

326. In the identification and satisfaction of their needs, procuring entities must conduct actual market research and scanning to understand and determine market capacity and readiness, product availability, actual market prices, procurement packaging, and appropriate procurement modality to be adopted, considering price movements and factors that drive market prices, alongside sound principles of planning and budgeting link.

327. The PPMP that feeds into the APP should be accompanied by draft technical specifications, scope of work, and terms of references to serve as basis for the budget estimate formulated by the procuring entity.

328. Procuring entities shall develop their requirements to coincide with the market research, budget preparation, and procurement planning to support accurate and detailed specifications and references that form part of the bidding documents to (a) enable an accurate preparation of budget estimate, (b) allow for early detection of errors or inaccuracies in the specifications; and (c) provide time and opportunity to review the entire bidding documents and all its components for better understanding and guidance of prospective bidders.

329. Implement the Green Public Procurement Roadmap as developed and approved by GPPB, to include the procurement of 10 common and 10 non-common use supplies and equipment by the DBM-PS and procuring entities, respectively. Follow up on the short-, medium-, and long-term goals to include additional goods with 'green core criteria' with a view to expanding the list of common and non-common use supplies and equipment.

330. Although there are techniques applied to determine compliance with the criteria in the bidding documents to achieve value for money, there are still areas for improvement that can be introduced.

- Inclusion of 'disposal mechanisms' within the public procurement regime to achieve value for many and adhering to a more focused governance relative to dealing with disposal of government properties that reached the end of their useful life.
- Full utilization of Framework Agreement presently available in the rules.
- Subject to meaningful parameters that will show clear adoption of procurement principles, authorize procuring entities to take advantage of a successful procurement conducted by another procuring entity, and allow a reordering arrangement subject to the capacity of the winning bidder and upon the same parameters and limitations as in the originally awarded contract.
- Though it will entail the amendment of the procurement law, establish a bid matching mechanism in the rules to arrive at best offer.
- Allow for pre-eligibility review of eligibility documents to be conducted by the BAC Secretariat to minimize, if not totally obviate, declaration of ineligibility and non-responsiveness of offers.

331. Grounds for the disqualification and declaration of ineligibility of bidders, including the determination of the non-responsiveness of bids, must be revisited alongside use of pass/fail criterion as the number of market operators participating in the procurement process may still increase given a more favorable condition and predictable parameters, which would ultimately benefit competition.

332. For the immediate commencement, implementation, and completion of the project, and considering that the notice of award has been issued by the HoPE, once the contract bearing the signature of the winning bidder is returned together with the performance security, the HoPE shall sign the same within three days and the notice to proceed issued within the same period of time to address delays experienced in the past.

333. Ease the posting and publication requirements to 'unload' or 'unburden' procurement practitioners. Although the requirement to advertise in a newspaper of general nationwide circulation is no longer mandated as substituted by the accessibility of PhilGEPS, there remains at least three more posting requirements for the invitation to bid or request for expression of interest, that is, posting at (a) procuring entities' website, if any; (b) a conspicuous place in the premises of the procuring entity; and (c) PhilGEPS website. Given the current state of technology and advances in communication, access by almost everyone to the internet has become extensive. In this regard, it is recommended to use the PhilGEPS portal to the fullest for posting and advertisement and to exclude other posting requirements under the rules thereby capitalizing on PhilGEPS as the central and primary source of information on government procurement opportunities per mandate of the law.

334. Fast-track the modernization and development of the modernized PhilGEPS, or mPhilGEPS, alongside the thrust of the GPRA that it includes features that would adapt to the changes in the procurement environment, including the institution and adoption, among others, of e-reverse auction; e-shopping; cashless transactions through fund transfers alongside requirement of Letter of Instruction No. 755,¹¹⁷ dated October 18, 1978, entitled 'Relative to the Establishment of an Integrated Procurement System for the National Government and Its Instrumentalities' or other viable modalities of fund transfer; applicable OCDS; and the use of machine-readable file formats, for example,

¹¹⁷ Sec. 10. "An amount equivalent to the procurement requirements of an agency maybe withheld by the Ministry of the Budget from Quarterly Allotments and transferred to the Service, subject to the concurrence of the agency head concerned. The amounts thus withheld and/or remitted shall constitute deposits against which agencies may withdraw corresponding value in supplies and materials."

open data format, JavaScript object notation, comma-separated value, or open spreadsheets, for ready access to information, portable and capable of being readily analyzed.

335. Although the existing procurement legal framework contains provisions on planning, budgeting, selection process, and contract implementation, a robust and structured contract and procurement management team must be established at the procuring entity level to guide in the acquisition of goods, works, and consulting services from project inception up to contract implementation.

336. Contract management through the monitoring of project accomplishments, delays, and completion must be seriously embedded in the procurement system, much as the selection process is afforded serious attention, through the promulgation by GPPB of sound contract implementation and monitoring platforms and strategies.

337. The modernization of PhilGEPS and all its subsequent improvements shall include not only innovative and efficient features that will benefit procurement transactions but also valuable references and statistics to observe price movements, improvements on specifications, market sources, market readiness, and so on, to assist in the overall determination of procuring entities' requirements, preparation of accurate cost estimates, and historical narratives to support or justify a particular procurement, specification, quantity, and cost, including market matching. Cooperation with the Philippine Statistics Authority shall likewise be explored to allow for currency of data information regarding price indexes in all regions in the country. The reintroduction of the Open Data Philippines containing procurement statistics must be seriously considered. (This was previously lodged in www.philgeps.gov.ph/data/html and in www.philgeps.gov.ph/notices/html.)

338. The observer provision in the GPRA strongly supports transparency in public procurement but this noble thrust has remarkably dwindled through the years; to achieve the noble goal, government must device mechanisms to incentivize participation of CSOs/NGOs and the private sector group apart from inviting them.

339. Similar to the present review, make available a link in PhilGEPS or the procuring entity website where selected procurement and contract documents can be reviewed post facto by observers for a 'continuing transparency context'.

340. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium - M, or High- H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendation
Sub-indicator 9(a)(a) Planning, needs analysis	Lack of market research and needs analysis for optimum procurement strategies. Of the 170 contracts reviewed with available and verifiable information, 142 contracts or 84% are included in the APP, while 28 contracts or 16% were not found in the APP.	H	Procuring entities must conduct actual market research and scanning to understand and determine market capacity and readiness, product availability, actual market prices, procurement packaging, and appropriate procurement modality to be adopted. Procuring entities must identify and define their needs that will have to be addressed and satisfied in the short-, medium-, and long-term periods to allow for needs prioritization based on their hierarchy and the availability of resources.

Sub-indicator	Substantive Gap	Risk	Recommendation
			The APP shall only include what can be procured in the fiscal year given the size, nature, and extent of the procurement opportunities relative to the absorptive capacity of the procuring entities.
Sub-indicator 9(a)(c) Sustainability criteria	Sustainability criteria not used to arrive at value for money procurement.	M	Institutionalize a more focused, systematic, and programmatic sustainable public procurement regime.
Sub-indicator 9(b)(b) Selection and contracting, clear and integrated procurement document	Integrated procurement documents do not encourage broad participation.	H	The bases or reasons used to declare a bidder pass or fail deserve a careful reexamination relative to the appreciation of the attending circumstances by the selection committee.
Sub-indicator 9(b)(f) Appropriate technique applied to determine best value for money	Applicable techniques are not used to determine best value for money during bid evaluation.	M	Adopt alternative mechanisms, based on international best practices of procurement to enhance efficiency and economy in government procurement. That includes use of Life-Cycle Costing and appropriate use of framework agreement to obtain value for money
Sub-indicator 9(b)(h) Contract clauses contain sustainability provisions	Lack of systematic sustainability provisions in contracts	H	Advance green approach to sustainable public procurement—GPP to sustainable public procurement.
Sub-indicator 9(b)(i) Contract clauses to provide incentives for exceeding targets	Contract clauses do not provide incentives for exceeded targets.	M	Provide incentives to encourage participation of market operators. GPPB may institutionalize incentives through, but not limited to, the following: <ul style="list-style-type: none"> • Bidder recognition • Reputational boost • Grading and classification of bidders that need not submit 'eligibility documents' • Free registration with PhilGEPS for a certain period of time.
Sub-indicator 9(b)(j) The selection and award process are carried out effectively, efficiently and in a transparent way	Selection and award process do not give rise to an effective, efficient, and transparent procurement. From 156 samples where information and data are available, an average of 3.85 bidders participated in the competitive bidding process, and out of these, only 3.14 are declared responsive.	H	Reexamine the understanding and application of the non-discretionary pass/fail criterion by the selection committee to broaden market participation. Determination of non-compliance or non-responsiveness should focus on the legal, technical and financial capacity or ability of the bidder to undertake and complete the project being procured.
Sub-indicator 9(c)(a) Non-timely	Non-timely implementation of contracts;	H	Establishment of a formal Contract/Project Management Team or System in procuring

Sub-indicator	Substantive Gap	Risk	Recommendation
implementation of contracts	Finding delays in 68% of the contracts reviewed with 84 days in average time overrun is a cause for concern, apart from not being able to address the needs of the procuring entities on time, wastage in resources, and opportunity lost likewise set in. Of the 111 contracts assessed with verifiable information, 75 or 68% were completed late, while 36 or 32% were delivered on time.		entities to handle not only Contract Administration but the more holistic approach of Contract Management—managing procurement from needs identification up to contract implementation.
Sub-indicator 9(c)(b) on inspection and quality control	Inspection, quality control, and acceptance not exercised to the fullest. The Inspection and Acceptance Team members are often ad hoc and comprise members drawn from different offices within the procuring entity without the corresponding training, knowledge base, and experience on the goods to be inspected except the specification provided in the bidding documents.	M	Inspection Team must have sufficient knowledge of the goods and services being procured and ample training on how to conduct an effective inspection, testing and review before the goods or deliverables are accepted.
Sub-indicator 9(c)(c) on timely payment of invoices ✓ Red flag	Billings and invoices are not paid on time.	H	Standardize and define stages and steps in the payment process, including exact timelines to stabilize and make efficient the timely payment of claims/bills.
Sub-indicator 9(c)(d) on contract amendments	Contract amendments are not published.	M	Conduct appropriate market research and scanning to address amendments to contracts.
Sub-indicator 9(c)(e) on procurement statistics	Procurement statistics is not in place.	M	Reestablish features and systems in PhilGEPS to allow access to data and statistics to observe price movements, improvements on specifications, market sources, market readiness, and so on. Recast PhilGEPS as a self-sustaining electronic platform that will not need budget for its upkeep and maintenance from the national government but would be developed and advanced with a built-in resource generation approach, strategy, and mechanism.

Sub-indicator	Substantive Gap	Risk	Recommendation
Sub-indicator 9(c)(f) on involvement of external stakeholders	<p>Direct involvement of external stakeholders in procurement is not maximized.</p> <p>Despite invitation to observe all stages of the procurement process, observers attend only the pre-bid conference and bid opening, but not in all the other stages of the acquisition exercise. It is noted that out of 87 contracts, 42 contracts or 48% have no observers attending, while 45 or 52% have attended the bid opening stage only; attendance in the other stages of the procurement process was not complied with.</p>	M	<p>Government, through GPPB, should incentivize participation of observers in the conduct of the procurement process.</p> <p>Given the dwindling participation of NGOs, private sector group, and COA, attendance in all stages of the procurement process is strongly recommended to witness the integrity of the documentary submissions made by the bidders and the transparency of the proceedings.</p>
Sub-indicator 9(c)(g) The records are complete and accurate and accessible in a single file. ✓ Red flag	<p>Efficient and effective record filing and management are not practiced.</p> <p>Of the 100 contracts actually reviewed, none contain complete compilation of procurement contract documents from planning and selection up to contract implementation.</p>	H	<p>Establish and formalize procurement record-keeping and management in every agency of government to allow ready access to and retrieval of procurement documents.</p> <p>Procuring entities shall provide good physical facilities and equipment to keep, store, protect, access, and archive procurement contract documents within the timeframe provided by law and rules.</p> <p>Adequate capacity development on records management and filing methodology must be mandated to guide records custodian on the handling, safekeeping, and security of procurement contract documents for the duration mandated by law.</p>

Indicator 10: The public procurement market is fully functional

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

Findings, Substantive Gaps, and Areas for Improvement

342. **Sub-indicator 10(b) Private sector's organization and access to public procurement market.** 'Voices from private sector' based on GPPB-TSO-led consultation workshop on December 12, 2019, is given in a box 3.4 the summary of Pillar III and full details of survey and a presentation is given in Annex 3 of the Assessment Report. Related to Indicator 10, important feedback is in following paragraphs

343. In response to a question "Does the government get in touch with private association to communicate changes to procurement framework/laws/regulations?", it was seen that the evidence of an open dialogue with the private associations including a transparent and consultative process when formulating changes to public procurement framework is lacking for 37 percent of the respondents In response to the survey question "Do you think that the following conditions in the public procurement market are met for participation in competition for public contracts? (1) Access to financing; (2) Procurement methods that are proportionate to the risk and value in question; (3) Are procurement rules simple and flexible; (4) Contracting provisions that help distribute risk fairly (specifically those risks associated with contract performance); (5) Payment provisions are fair, and (6) Effective mechanism for appeals and dispute resolution", the response was 'No' in 48 percent of cases.

344. **Sub-indicator 10(b)(b) Based on feedback from private sector, there are major limitations or constraints in the licensing, eligibility, and qualification requirements,** as explained under Pillar I, which hamper efforts to increase the supply and participation of capable contractors for government contracts.

345. **Sub-indicator 10(b)(b) Major systemic constraint: Delays in payment of invoices.** There is lack of published business standards for processing time for invoices by agencies that meet obligations under the contract. There is no provision for paying financing/interest charges to contractors for late payments.

346. It appears bidders are deciding not to bid (average number of bidders who submitted bid based on APCPI data of 2019 was 2.07 out of which 1.72 was the average number of responsive bids) due to the imposed ceiling of ABC. This number of around 2 bidders is also an indicator of biased technical specification and/or possibility of collusive practices/bid rigging.

347. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium – M, or High - H) is given below.

✓ Red flag, if any

Sub-indicators	Substantive Gap	Risk	Recommendation
Sub-indicator 10(a)(a): The government encourages - open dialogue with the private sector.	In response to a question "Does the government get in touch with private association to communicate changes to procurement framework/laws/regulations?", it was seen that the evidence of an open dialogue with the private associations including a transparent and consultative process when formulating changes to public procurement framework is lacking for 37% of the respondents. A GPPB-TSO-led consultation workshop was held with the private sector on December 12, 2019, in Manila with participation of 36 representatives of the private sector to seek their feedback to improve the public procurement system of the Philippines and this gap was confirmed.	M	Establish a formal mechanism available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system.
Sub-indicator 10(a)(b): The government has	In response to the survey question "Does the government help you keep pace with procurement reforms? Are you aware of capacity	M	Step up training programs on building capacity of private sector and small businesses including on how to bid for

Sub-indicators	Substantive Gap	Risk	Recommendation
programs to build capacity among private sector, SMEs	building programs being run by the government for private contractors and for Micro, Small and Medium Enterprises (MSMEs)?", 56% of participants were not aware of such capacity-building program and the remaining 44% of participants stated that it was not effective.		government contracts including training on ethics and integrity rules on government procurement.
Sub-indicator 10(b)(a): The private sector is competitive, well organized, willing and able to participate in the competition for public procurement contracts	<p>In response to the survey question "Do you think that the following conditions in the public procurement market are met for participation in competition for public contracts? (1) Access to financing; (2) Procurement methods that are proportionate to the risk and value in question; (3) Are procurement rules simple and flexible; (4) Contracting provisions that help distribute risk fairly (specifically those risks associated with contract performance); (5) Payment provisions are fair, and (6) Effective mechanism for appeals and dispute resolution", the response was 'No' in 48% of cases. The issues and constraints listed by those who answered "No" (48% of responses):</p> <ul style="list-style-type: none"> • Lack of competition based on data analytics, sample cases, and APCPI data • Existence of monopolies and oligopolies in public procurement markets as per Data Analytics of June 2019 • Existence of ABC inhibiting competition • Overall demand-supply mismatch. 	H	<p>Review the existence of ABC, as this might be one of the factors for lack of competition.</p> <p>Establish a formal mechanism available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system.</p> <p>Remove constraints on payment not being received in time as per provisions of contract.</p> <p>Identify key sectors associated with the public procurement market to improve competitive effectiveness of local construction companies to respond to the focus on building infrastructure (Build, Build, Build).</p> <p>Modernize standard bidding document, make these user friendly for the market participants, and consider green/sustainable procurement in technical specification and use of LCC as evaluation criteria for complex facilities, as reflected in recent revisions by development partners.</p> <p>Simplify submission of eligibility/qualification documents by participants to reduce cost of doing business and improve competition.</p> <p>Expedite passage of Amendment of the Foreign Investment Act of 1991(RA7042) which also addresses procurement restrictions on participation of foreign bidders in local procurement.</p>
Sub-indicator 10(b)(b): There are no major systemic	Procurement methods and procedures are not proportionate to risk and value in question (it appears there is lack of market research to guide a	H	Modernize standard bidding document, make these users friendly for the market participants, and consider green/sustainable procurement in

Sub-indicators	Substantive Gap	Risk	Recommendation
constraints inhibiting private sector access to the public procurement market	proactive identification of optimal procurement strategies). Absence of prequalification for large and complex contracts.		technical specification and use of LCC as evaluation criteria for complex facilities, as reflected in recent revisions by development partners. Simplify submission of eligibility/qualification documents by participants to reduce cost of doing business and improve competition.
Sub-indicator 10(c)(a)(b) Key sector and strategy ✓ Red flag	Based on the government's priority spending areas—key sectors associated with procurement of goods, works, and services—there is no identification of key sectors to secure collaboration with sector market participants in a meaningful way.	H	Identify key sectors associated with the public procurement market to improve competitive effectiveness of local construction companies to respond to the focus on building infrastructure (Build, Build, Build). Carry out study on share of public procurement contracts SMEs and steps being taken by the government to increase their share of business. Have a strategy to break monopolies and oligopolies and encourage SMEs.

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

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

The analysis presents pillar-wise summary, strength and for each indicator key findings, substantive gaps and areas of improvement, before finally presenting a tabulation on overview of substantive gaps with risk and recommendations, with identification of “red flags”

Summary of Pillar IV

349. **Related to Pillar IV, the Assessment Team was able to get substantive feedback from consultations with CSOs based on electronic survey from selected CSOs** (nine responses received by June 22, 2020) followed by videoconferencing on July 20, 2020, in which 10 representatives of CSOs participated. The COA also provided detailed feedback on the effectiveness of control and audit system. However, related to Indicator 13 on effectiveness and efficiency of procurement appeals mechanism, Indicators 1(h) and 13 are closely linked. They both address the right to challenge and appeal concerning decisions or actions by procuring entities in the context of public procurement. In the Philippines, as in many countries, the procuring entity is in charge of responding to an application for a first

review (challenge) using the ‘bid protest’ procedure. Where Indicators 1(h) and 13 refer to the right to ‘challenge’, responses are provided by reference to the bid protest procedure.

- **Challenges: Bid Protest IRR s.55.** Where a bidder request for reconsideration is denied by the BAC, the bidder is then entitled to file a bid protest with the HoPE and must do so within seven calendar days of receiving notification from the BAC that its request has been denied. The protest must be made by filing a position paper covering specified information including a brief statement of facts, the issue to be resolved, and such other matter information pertinent and relevant to the resolution of the protest. The position paper must be verified by an affidavit. The bidder must also certify under oath various issues concerning the absence or status of other actions.
- **GPRA s.56 Resolution of Protests/IRR s.56** provides that the bid protest shall be resolved strictly on the basis of records of the BAC.
- **Appeals against decisions on bid protest.** As explained earlier, the Regional Trial Court has jurisdiction over the final decision of the HoPE but the action is not appellate in nature.

350. **Related to Indicator 14, on the ethics and anti-corruption measures,** while it was possible to find out the status on legal definitions on prohibited practices, conflict of interest, and provisions of fraud and corruption in procurement document, reporting channels for allegations of fraud and corruption, there were no published or available data on enforcement of anti-corruption framework, stakeholder support to strengthen integrity in procurement, or data on number of officials involved in public procurement who filed financial disclosure forms.

351. **As a result, in the absence of data and information, there are several criteria which are either partially met or not met related to enforcement of legal framework.**

352. **Feedback from independent organization/citizens on implementation of emergency procurement post-COVID situation.** As indicated earlier in Pillar I, the Assessment Team has prepared a note on this topic in Annex 3 of Volume III of the Assessment Report. Box 3.6 summarizes the feedback from independent organization/citizens on implementation.

Box 3.6. Strengthening Procurement in the Time of a Pandemic: Evidence from the Philippines

The coronavirus pandemic has tested the resilience of procurement systems around the world, as governments try to deliver critical public goods while mitigating the risks of relaxing procurement rules to cope with the demands of this emergency. What lessons might we learn from the experience of the Philippines? We construct and open for public use a novel dataset on coronavirus-related government contracts worth PHP 20 billion (US\$400 million), representing nearly 60% of the total value of publicly available contracts as of August 2020. Using this item-level dataset, we find that (a) medical and social amelioration goods comprise 99% of the value of our sampled contracts, (b) the typical (median) procurement from award date to reported delivery took 9 days, (c) around 71% of items were procured at high prices and which warrant a second look from authorities, (d) more than 60% of items by value had data quality issues, and (e) more than 66% of items by value did not have sufficient descriptions or specifications to warrant price comparisons. Learning from the literature on social accountability movements, we propose ways for civil society, government, journalists, business, and the academe to collaborate to systematically verify and improve the quality of procurement data, so procuring entities can buy better and be more responsive to people’s needs in the next rounds of coronavirus purchases and in future emergencies.

Source: WeSolve and Citizens’ Budget Tracker, funded and supported by Hivos Southeast Asia’s Open Up Contracting Program. Accessed May 18, 2021.

353. It is recommended that GoP/GPPB-TSO engages with the civil society and independent organization to account for citizen's voice in improving the procurement system in the time of pandemic.

Strengths under Pillar IV

354. **The legal and regulatory framework provides for the good practice of enforcing public oversight and enhancing accountability** of public procurement processes through the participation of representatives of the COA, NGOs, and CSOs as observers during the pre-award procurement processes.

355. **The 1987 Constitution provides for an independent COA that has the power to audit all accounts pertaining to government funds nationwide**, including procurement-related transactions. The Government Auditing Code (PD 1445)¹¹⁸ empowers the COA to determine policies, promulgate rules and regulations, and prescribe standards governing the performance of its powers and function.

356. **Section 1, Article IX, A. of the 1987 Constitution provides that "The Constitutional Commissions, which shall be independent, are Civil Service Commission, the Commission on Elections, and the Commission on Audit."** Section 3.D under the same article provides that "No law shall be passed exempting any entity of the Government or its subsidiary on any guise whatever, or any investment of public funds from the jurisdiction of the Commission on Audit." Presidential Decree No. 1445 otherwise known as the 'Government Auditing Code of the Philippines'¹¹⁹ establishes the jurisdiction and power of the COA over all matters relating to auditing procedures, systems, and controls, as well as examination of all claims owing from the government and its instrumentalities.

357. **The COA, as the country's Supreme Audit Institution, regularly conducts procurement audit as part of the annual regular audit of the transactions of the government agencies.** With the COA's adoption of the International Standards of Supreme Audit Institutions (ISSAI) on compliance and performance audits, government procurement will be considered as one of the prioritized subject matters for audit.

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

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

Findings, Substantive Gaps, and Areas for Improvement

359. **Sub-indicator 11(a), an enabling environment for public consultations and monitoring, Sub-indicator 11(b) Adequate and timely access to information by public and Sub-indicator 11(c) Direct engagement of civil society.** An electronic survey was carried out to seek feedback from selected CSOs (nine responses received by June 22, 2020) followed by videoconferencing on July 20, 2020, in which 10 representatives of CSOs participated. The event was led by GPPB-TSO.

360. **Based on response received from nine participants, the summary of response to three questions is as follows:**

¹¹⁸ [PD1445.pdf](#).

¹¹⁹ [PD1445.pdf](#).

- Question 1: Is there a transparent and consultative process when changes are formulated to the public procurement system? Yes: 33.3%; No: 66.7%.
- Question 2: Are CSOs permitted or encouraged to act as observers in procurement proceedings? Yes: 77.8%; No:22.2%.
- Question 3: Are there programs in place to build capacity of CSOs to support participatory public procurement? Yes: 44.4%; No:56.6%.

361. The feedback from CSO consultation was as follows:

- Based on a study carried out by ADB around 2012, there was active participation of CSOs in the early 2000s and dwindling of CSO engagement thereafter.
- As per GPPB-TSO, there were several consultations with stakeholders including CSOs; major changes were initiated that resulted in the 2016 Revised IRR of RA 9184.
- Regarding transparency of consultative process, one of the participants described it as 'opaque' and 'not consistent as supposed to be'. Some of the procuring entities would expect CSO observers to be a part of 'irregular processing' and just get a 'seal of approval' for compliance.
- Despite anti-corruption agenda and open government partnership, there is 'lack of space' for observers to act and contribute.
- Regarding building capacity of CSO, it appears that volunteers have 'run out of steam' and they are not motivated to learn as was the case at the time of Procurement Watch when there were physical visits to schools under 'Textbook Watch' and participation was meaningful. In certain cases, like medical equipment, drugs, and pharmaceuticals or other specialized items of procurement, there has to be a degree of expertise.
- GPPB-TSO indicated that post the COVID-19 situation, procurement transactions, training, and consultations are progressively using digital platform.
- GPPB-TSO has prepared learning modules and is conducting webinars. GPPB-TSO has also prepared a Procurement Dashboard. It intends to revisit some of the procurement rules and suitable consultation with CSOs shall be carried out.
- Based on the definition in RA 9184 and IRR 2016, the involvement of observers appears to cover procurement process as part of the BAC. This does not cover involvement of observers in procurement planning/needs assessment and in contract implementation.
- CSO involvement required in planning process, for example, large-scale or environmentally or socially sensitive procurement.
- For other AMPs, observers may be invited by the procuring entity as it may deem necessary. In fact, transparency may be an issue in negotiated procurement, direct contracting, or single source procurement.
- It is not clear what incentives or remunerations are provided to observers and if they are covered under Section 15 on Honoraria of BAC - Appendix 7 relates to Honoraria to government personnel.

- There is a list of suggested observers on the GPPB-TSO website. But it is not clear when and how these observers were involved. There is no report on involvement of CSO in the procurement process or if there were cases where observers could alert authorities like Ombudsman on any lack of compliance or irregularity.
- Based on the definition in RA 9184 and IRR 2016, the involvement of observers appears to cover procurement process as part of BAC. This does not cover involvement of observers in procurement planning/needs assessment, bid opening, and in contract implementation. It should be clarified how it works in practice.
- Based on feedback, involvement in the procurement process, as defined currently, is not working.
- The involvement of observer appears to be at the discretion of BAC - not clear if involvement of CSO is mandated as per RA and IRR.

362. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium – M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendation
Sub-indicator 11(a)(b) programs in place to build capacity of relevant stakeholders to understand, monitor and improve public performance	<p>It is not clear what incentives or remunerations are provided to observers.</p> <p>There is a list of suggested observers on GPPB-TSO website. But it is not clear when and how these observers were involved. There is no report on involvement of CSO in the procurement process or if there were cases where observers could alert authorities like Ombudsman on any lack of compliance or irregularity.</p>	M	<ul style="list-style-type: none"> • There should be pool of experts and interested champions who could monitor at local levels. Based on the feedback, CSOs felt that they are ready to help, but the initiative should come from the government. There is a need for creating an inclusive environment and strong presence of CSO volunteers at the local level. • Increase use of electronic means and digital platform while changing policies and procedures, conducting training for CSOs, and monitoring of procurement. • List of CSO observers may be prepared with the area of their expertise. • GPPB-TSO to implement OCDS and engage experts to analyze integrity and transparency of procurement process. This is possible with increasing use of digital platforms. • GPPB-TSO to update the list of CSOs and conduct special training for them on the RA and IRR and on roles and responsibilities of CSOs against a clear term of reference, especially on new procurement guidelines, mPhilGEPS, roles of BAC observers, monitoring of public contracts, and other areas that are relevant to the advocacies of CSOs. • Finally, GPPB-TSO to create an enabling environment to attract and retain motivated and qualified CSOs for improving integrity and transparency of procurement process from the planning/needs assessment, procurement

Sub-indicator	Substantive Gap	Risk	Recommendation
			process and in contract implementation through the use of digital platform, taking post-COVID-19 situation as an opportunity.
Sub-indicator 11(c)(a) participation of citizens in planning (consultation), bid/proposal opening (observation), evaluation and contract award (observation), contract management and completion (monitoring)	Based on the definition in RA 9184 and IRR 2016, the involvement of observers appears to cover procurement process as part of the BAC. This does not cover involvement of observers in procurement planning/needs assessment and in contract implementation.	M	<ul style="list-style-type: none"> Consider CSO involvement in planning process, for example, large-scale or environmentally or socially sensitive procurement. CSO may be permitted to be officially involved in monitoring the performance and contract completion, for example, through the application of innovative techniques such as geotagging or in the context of social audit. Procurement Watch (or similar initiative) to be revived in particular for education sector and health sector (such as medical equipment and pharmaceuticals), more so in post-COVID-19 situation through involvement of experts. Consider CSO involvement in AMPs. In fact, transparency may be an issue in negotiated procurement, direct contracting, or single source procurement.
Sub-indicator 11(c)(a) citizen/CSO participation ✓ Red flag	For other AMPs, observers may be invited by the procuring entity as it may deem necessary. In fact, transparency may be an issue in negotiated procurement, direct contracting, or single source procurement.	H	<ul style="list-style-type: none"> Consider CSO involvement in AMPs.
Sub-indicator 11(c)(a) citizen/CSO participation ✓ Red flag	Based on feedback, involvement in procurement process, as defined currently, is not working. The involvement of observer appears to be at the discretion of BAC - not clear if involvement of CSO is mandated as per RA and IRR.	M	<ul style="list-style-type: none"> Ensure the integrity and transparency of the procurement process, issues on the sustainability of CSO funding, which is beyond the sphere of public procurement and participation need to be addressed, including their qualification requirements under the GPRA; the training, registration, and mapping of CSOs to maximize deployment; and compliance with the submission of observers' reports as a feedback mechanism. It is recommended that GoP/GPPB-TSO and procuring entities engage with the civil society and independent organization to account for citizen's voice in improving the procurement system in the time of pandemic.

Indicator 12: The country has effective control and audit systems

363. The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For this indicator, 'effectiveness' means

the expediency and thoroughness of the implementation of auditors' recommendations. The assessors should rely, in addition to their own findings, on the most recent PEFA assessments and other analyses that may be available. This indicator has four sub-indicators (a-d) to be assessed.

Findings, Substantive Gaps, and Areas for Improvement

364. **Sub-indicator 12(a) legal framework, organization and procedures of the control system.** The revised Implementing Rules and Regulations on Republic Act No. 9184, otherwise known as the 'Government Procurement Reform Act', prescribes the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the GoP. Other regulations with the same purpose include the following:

- (a) GPPB issuances (circulars) related to procurement
- (b) Administrative Order No. 278, dated April 28, 1992,¹²⁰ directing the strengthening of the internal control systems of government offices, agencies, GOCCs, including GFIs and LGUs
- (c) Administrative Order No. 70 dated April 14, 2003,¹²¹ strengthening the internal control systems of government offices, agencies, GOCCs, GFIs, SUCs and LGUs
- (d) DBM Circular Letter No. 2008-5 dated April 14, 2008¹²² prescribing the Guidelines on the Organization and Staffing of an Internal Audit Service Unit and Management Division/Unit in Departments/Agencies/GOCCs/GFIs concerned
- (e) Commission on Audit Circulars and Memoranda prescribing the guidelines in the conduct of audit of procurement and contracts review¹²³:
 - (i) Memorandum No. 2016-009 dated March 18, 2016 - Updated Guide in the Audit of Procurement (Second Update - December 2014) with focus on Infrastructure Implementation)¹²⁴
 - (ii) Circular 2009-001 dated February 12, 2009 - Restatement with amendment of COA Circular 87-278 and GOA Memorandum 2005-027 re: submission of copy of government contracts, purchase orders and their supporting documents to the COA¹²⁵
 - (iii) GOA Memorandum No. 76-34 dated March 10, 1976 - Transfer of additional duties of Auditors, Highways/Public Works Engineering Districts to regional Offices; Guidelines/Procedures prescribed in the audit of transactions pertaining to infrastructure projects

365. **Sub-indicator 12(a)(b) internal controls and audit mechanism.** Internal controls on government procurement are the responsibility of the management of the audited agencies. In fact, one of the functions of the Internal Audit Service/Internal Audit Unit stated under DBM Circular 2008-005, dated April 14, 2008, is the review and appraisal of systems and procedures/processes, organizational structure, asset management practices, financial and management records, reports and performance standards of the agencies/units covered.¹²⁶

¹²⁰ [Administrative Order No. 278, s. 1992 | Official Gazette of the Republic of the Philippines](#)

¹²¹ [Administrative Order No. 70, s. 2003 | Official Gazette of the Republic of the Philippines](#)

¹²² [cl2008-5.pdf \(dbm.gov.ph\)](#)

¹²³ [Untitled \(coa.gov.ph\)](#)

¹²⁴ [Untitled \(coa.gov.ph\)](#)

¹²⁵ [COMMISSION ON AUDIT CIRCULAR NO. 2009-001 - February 12, 2009 \(coa.gov.ph\)](#)

¹²⁶ [cl2008-5.pdf \(dbm.gov.ph\)](#)

366. On the part of the COA, the audit mechanisms and functions including reporting to management on compliance, effectiveness, and efficiency of procurement processes are part of the regular compliance and performance audits being carried out by the audit groups/audit teams.

367. This is an agency-level control, which is the responsibility of the management of the procuring agencies. The role of the COA is to ensure that internal control mechanisms are in place and implemented as planned for timely and efficient decision-making and adequate risk mitigation. COA Circular No. 2018-003, dated November 21, 2018, prescribes the use of both the Internal Auditing Standards and Internal Control Standards for the Philippine Public Sector.¹²⁷

368. Section 4, Article IX-0 of the 1987 Constitution provides that “The Commission shall submit to the President and the Congress, within the time fixed by law, an annual report covering the financial condition and operation of the Government, its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations, and non-governmental entities subject to its audit, and recommend measures necessary to improve their effectiveness and efficiency.”

369. These COA audit reports that contain the results of the audit of procurement transactions are furnished to the oversight bodies including the Senate and Congress for decision-making.

370. COA Memorandum No. 2014-002, dated March 18, 2014,¹²⁸ prescribes the enhanced monitoring of compliance with recommendations in the annual audit report through the Agency Action Plan and Status of Implementation (AAPSI) form and Action Plan Monitoring Tool (APMT). The annual audit report also includes the ‘Status of Implementation of Prior Years’ Audit Recommendations’. The audit teams follow up the audit findings by following the APMT. The AAPSI combines both an action plan and status of implementation of the previous year’s recommendations

371. **Sub-indicator 12(b) Coordination of controls and audits of public procurement.** The COA is required to conduct legal, auditorial, and technical review of contracts as a result of the procurement conducted by the procuring entity. Any deficiencies noted, which can be attributed to any phase of the procurement process, coupled with corresponding recommendations are communicated to the procuring entity.

372. Internal audit is provided by the procuring entity whereas the external audit is provided by the COA.

373. The COA developed the ‘Handbook on Philippine Internal Auditing Standards for the Public Sector’¹²⁹ to provide applicable guidelines essential for the professional practice of internal auditing and guidance for establishing, implementing, and maintaining effective internal control in all government agencies. Manuals on Compliance and Performance Audits are currently under approval by the COA Commission Proper for adoption and application. These will guide the auditors in the conduct of compliance and performance audits of the government procurement.

374. In the case of the COA as external auditor, the audit of government procurement is part of the regular audit of the accounts and transactions of the audited agency. ISSAI.

375. Section 99 of the General Provisions in the GAA, FY2019 and prior years’ provisions of the GAA prescribe that within 60 days from receipt of the COA annual audit report, agencies concerned shall submit to the COA, either in printed form or by way of electronic document, a status report on the actions taken on said audit findings and recommendations using the prescribed form under GOA Memorandum No. 2014-002 dated March 18, 2014. They shall likewise furnish the DBM, the Speaker of the House of the Representative, the President of the Senate of the

¹²⁷ [COA C2018-003.pdf](#)

¹²⁸ [COMMISSION ON AUDIT \(studylib.net\)](#)

¹²⁹ [Philippine Government Internal Audit Manual \(dbm.gov.ph\)](#)

Philippines, the House Committee on Appropriations, and the Senate Committee on Finance, either in printed form or by way of electronic documents, a copy of said reports.

376. With the adoption by the COA of the Manuals on Compliance and Performance Audits, separate reports on the compliance and or performance audit/s of government procurement shall also be issued, in accordance with the reporting requirements of the ISSAI.

377. **Sub-indicator 12(c) Enforcement and follow-up on findings and recommendation.** It is the present practice that the time frame for the implementation of the audit recommendations is dependent on the commitment made by management or the target implementation date as evidenced in the AAPSI.

378. **Sub-indicator 12(d) Qualification and training to conduct procurement audit.** Trainings/seminars on the government procurement laws, rules and regulations, as well as on the conduct of compliance and performance audits, are included in the regular training programs of GOA for its auditors. Auditors are required to attend various trainings such as (a) Law on Procurement (RA 9184) and PBDs; (b) Technical Review and Inspection on the Procurement Projects; and (c) Technical Review and Inspection of Consulting Services.

379. The selection of auditors working on procurement audits requires not only that they have adequate knowledge but that they should also be able to demonstrate that acquired sufficient knowledge. The condition that “if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants” would defeat the purpose of the objective of this indicator which is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task.

380. Most of the auditors who are tasked to conduct procurement audits are not well equipped with relevant seminar/trainings on procurement, laws and regulations, and processes.

381. The COA has policies and procedures, including qualification standards, in place for hiring auditors. There are also pending COA resolutions on the Adoption of the Guidelines on Assessment of the Audit Engagement Team’s competency and on the Adoption of the Competency Framework for COA Personnel conducting Financial, Compliance, and Performance Audit. Section 18 Chapter 1, Title 1 of PD 1445 provides for the establishment of Technical Service Office performing the following functions, among others, (a) render consultancy services related to the discharge of government auditing functions and (b) review and evaluate contracts and inspect and appraise infrastructure projects . The Information Technology Audit Office was also created to assist auditors in IT-related audits. The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.

Sub-indicator 12(a)(a) Suggestions for Improvement by COA

- Circular 2009-001 dated February 12, 2009 - Restatement with amendment of COA Circular 87-278 and GOA Memorandum 2005-027 resubmission of copy of government contracts, purchase orders and their supporting documents to the COA.¹³⁰
- Include contract implementation under circular 2009-001 dated February 12, 2009, to check if contract was completed within time, without cost overrun, and if facilities are effectively meeting the employer’s requirements/performance and technical specification parameters to ensure value for money.

¹³⁰ [COMMISSION ON AUDIT CIRCULAR NO. 2009-001 - February 12, 2009 \(coa.gov.ph\)](http://coa.gov.ph)

- Check as per handy guide ‘open competition is the basis for efficient public procurement’, there is evidence of overestimated and excessive ABC.

382. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium – M, or High- H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendation
Sub-indicator 12(a)(b) internal control and oversight of procurement	Role of the COA as observer in bidding process (Sec 13 RA 9184 and Section 13, IRR): As per CPAR 2012 “A potential conflict of interest in the role of the COA auditor as an observer during the bidding process. Some COA auditors are reluctant to participate in the bidding process, as this may conflict with their post-audit functions. However, the Supreme Court of the Philippines has ruled that the COA is not prevented from questioning previous acts of government officials, including procurement activities, if these are erroneous or irregular.”	L	Review the current practice on the effectiveness and requirement of this practice for involvement of the COA as observer (COA in the validation workshop on May 17, 2021, has clarified that its role is only to check procedural aspects and not to participate in decision by BACs).
Sub-indicator 12(b)(c) - evidence of internal and external audit	Number of specialized procurement audits carried out compared to total number of audits (in %). Based on APCPI reporting of 2019 for 17 agencies, Internal Audit Unit that performs specialized procurement audit was fully compliant for 12 agencies, substantially compliant for 1 agency, partially compliant for 2 agencies, and non-compliant for 2 agencies and there was 90–100% compliance on agency action on prior year’s audit recommendations on procurement-related transaction) However, based on feedback received from the COA, by the Assessment Team, these specialized procurement audits are yet to be included in the overall strategic audit plan of the COA to be cascaded to the audit sectors/offices/audit groups.	L	Need for clarity on the understanding and implementation of ‘specialized procurement audits’.
Sub-indicator 12(c)(a): recommendation implemented within the timeframe	Based on feedback from COA: <ul style="list-style-type: none"> • The auditees are required to submit to the COA auditors the AAPSI of the audit recommendations after 60 days from receipt of the annual audits report. The GOA auditors monitor and validate the status of 	L	It was suggested by the COA that the target date of implementation using the AAPSI be adopted in the MAPS for the assessment of the implementation of audit recommendations as these are being validated by the auditors using the APMT.

Sub-indicator	Substantive Gap	Risk	Recommendation
	<p>implementation of the audit recommendations contained in the AAPSI by accomplishing the APMT.</p> <ul style="list-style-type: none"> On finding irregular, unnecessary, and illegal procurement transactions, the auditors disallow the related payments and issue notice of disallowance. Disposition on the disallowances follows the GOA revised rules of procedure on the settlement of accounts. 		
Sub-indicator 12(d)(a) established program to train internal and external auditor	Based on feedback from the COA, there are no established program to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.	L	For efficient and effective conduct of the audit, the COA should consider constituting dedicated offices/audit groups/audit teams, as appropriate, for the compliance and performance audits of government procurement.

Indicator 13: Procurement appeals mechanisms are effective and efficient

Findings, Substantive Gaps, and Areas for Improvement

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

384. The Assessment Team faced constraints to fully assess the efficiency, timeliness, and credibility of the complaints review mechanism (challenge/bid protest) in a reliable and meaningful way due to lack of central sources of information and data, as clarified by GPPB-TSO on several occasions. There is no specialist independent administrative appeal/review entity to review the complaints (challenge/bid protest) as This is due, in particular, to the following factors:

- Bid challenges/protests are dealt with in a decentralized manner at the procuring entity level with the HoPE as the decision-making authority. There is no central source of information concerning bid protests for 2017 onward, as the requirement of procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR.
- The decision of the HoPE on Bid protest can be ‘appealed’ to the Regional Trial Court as provided by s.65 of the Rules of Civil Procedure but the action is not appellate in nature. Against the backdrop of lack of reliable information or data, and the non-existence of appeal to an independent review body, it is not possible to fully assess the Sub-indicators 13(a)(c), 13(b)(c) to (g), 13(c)(b)-(d) in terms of qualitative or quantitative indicators. The Assessment Team considered that the Assessment Criteria for these sub-indicators are ‘not possible to be assessed due to lack of data’ and/or “criterion not met”.
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385. **Overview of substantive gaps with risk and recommendations:** Risk classification (Low - L, Medium – M, or High - H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendation
Sub-indicator 13(a) to 13(c) ✓ Red flag	<p>Constraints to fully assess the efficiency, timeliness, and credibility of the complaints review mechanism in a reliable and meaningful way due to lack of central sources of information and data, as clarified by GPPB-TSO on several occasions.</p> <p>Regional Trial Courts should conduct cases in accordance with 1997 Rules of Civil Procedure (as amended) and 1989 Rules of Evidence (as amended) - but no data are available.</p>	H	Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with UNCAC recommendations, and international good practices.

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

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

Findings, Substantive Gaps, and Areas for Improvement

387. **Sub-indicator 14(a) Legal definition of prohibited practices, conflict of interests, and associated responsibilities, accountabilities and penalties.** Based on detailed analysis in the Indicator **Matrix (Volume II)** of the Assessment Report, it was possible to assess ‘the law as in books’ for status on legal definitions on prohibited practices, conflict of interest, and provisions of fraud and corruption in procurement document, reporting channels for allegations of fraud and corruption. However, there were no published or available data on enforcement of anti-corruption framework, stakeholder support to strengthen integrity in procurement, or data on number of officials involved in public procurement who filed financial disclosure forms as described in other sub-indicators. Therefore, evidence on enforcement is lacking.

388. **Sub-indicator 14(b) Provisions on prohibited practices in procurement documents.** GPRA s.47 requires all bidding documents to be accompanied by a sworn affidavit of the bidder that s/he or any officer of his or her corporation is not related to the HoPE by consanguinity or affinity up to the third civil degree. The PBDs,¹³¹ use of which is mandated, include detailed definitions consistent with legally binding anti-corruption agreements of ‘corrupt practice’, ‘fraudulent practice’, ‘collusive practices’, ‘coercive practices’, and ‘obstructive practice’. Definition of ‘fraudulent practices’ in the IRR is not the same as in the definition for the goods SPDs. ‘Obstruction’ is included in the SPDs as a misconduct, but it is not defined in the IRR.

389. **Sub-indicator 14(c) Effective sanctions and enforcement system.** An Online Blacklisting Portal is maintained by the ministerial authority of GPPB-TSO which is limited only to the maintenance of the Online Blacklisting Portal, validation of requests for registration, and assistance to procuring entities in case of loss of access or need for updating of its account details (except for agency name and official e-mail address) after registration. Hence, posting and updating of status of blacklisted entities are vested within the procuring entity. There is no requirement under the existing Philippine laws relevant to public procurement for any person who has knowledge of the commission of a crime to report the allegations of fraud, corruption, and other prohibited practices to law enforcement authorities.

¹³¹ Sampled document: SBD for Works, 5th Ed. Part A. General Section 3 Corrupt, Fraudulent, Collusive and Coercive Practices.

There is no evidence that due process is followed on sanctions and enforcement as action is taken by procuring entities without any control of an independent authority. No data government officials are found guilty of fraud and corruption in public procurement.

390. In response to survey question to private sector participants on December 12, 2019, in Manila, “Do you consider that companies are expected to give a gift to secure contract in public sector?” 13 out of 34 (38 percent) stated ‘Yes’.

391. **Sub-indicator 14(d)Anti-corruption framework and integrity training.** The country has in place a comprehensive anti-corruption framework to prevent, detect, and penalize corruption in the government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. However, penalties are stringent, which is a disincentive to serve and take decisions.

392. Based on feedback from the Ombudsman, there is limited evidence of anti-corruption framework or integrity training associated with public procurement; one of the examples as per Annual Report 2019 of Ombudsman is the Public Accountability Summit. As per this annual report, one of the expected outputs of the SILAK¹³² program (assiduity and diligence) in the fight against corruption is essentially “a collaborative research platform to facilitate knowledge sharing and exchange of timely and relevant studies, insights, and lessons learned among policy makers” which covers synthesis of topics and best practices on (a) the crafting of ways to introduce courses on ethics as elective subjects to reinforce the academic institutions’ role on values formation; (b) the push for programs that can be developed in coupling professional excellence and value-driven public service; (c) revisiting of the procurement rules and systems to offer solutions in making them more efficient and public service-oriented in contrast with merely making them stringent and punitive; (d) the push for awareness on how corruption affects gender discourse and how it possibly curtails the rights of our women and other vulnerable sectors; and (e) advocating for innovative and emerging trends that the new breed of leaders can adopt in trying to curb corruption in local governments.¹³³

393. The part relevant for procurement and underlined above could be useful for providing an enabling environment for informed use of well-documented discretion by procurement professionals to get results and improve service delivery. It should be considered how to provide protection from personal liability for actions and decisions taken in the conduct of official duties on behalf of the government to encourage and motivate qualified persons to join procurement profession (**Refer recommendation under Sub-indicator 8(b)(a) in Pillar II**).

394. There are no statistical data on procurement-related corruption on legal proceedings and convictions, and no special measures are in place for detection and prevention of corruption associated with procurement or any special integrity training program for procurement workforce.

395. The existing database of the Office of the Ombudsman, however, is not capable of segregating the statistics to show how many from the total workload for violation of Section 3(e) of RA 3019 involve irregularities in public procurement. Addressing the deficiency in the statistical data, the Office of the Ombudsman, in its 2019 Annual Report, recounted on the current project undertaken by the office called ‘Enhancement of Existing Systems’ on Complaint and Case Monitoring System.

396. The Office of Ombudsman has reported a mechanism of Integrity Development Review (IDR) which was instituted in 2002.¹³⁴ All the above reports were completed in 2006–2007. No update is available on action taken and

¹³² A Public Accountability Summit (Best Practices in Anti-Corruption) in observance of the International Anti-Corruption Day December 9, 2019.

¹³³ Office of the Ombudsman - Annual Report 2019

¹³⁴ [Integrity Development Review Report | Office of the Ombudsman](#)

no further reports are available. There is no mechanism in place for systematically identifying corruption risks and for mitigating these risks in the public procurement.

397. **Sub-indicator 14(e) Stakeholder support to strengthen integrity in procurement.** Based on input provided by Ombudsman in June 2021, “there are no available data (from survey or interviews) to assess the number of domestic Civil Society Organizations (CSOs) including national offices of international CSOs actively providing oversight and social control in public procurement.” This shows lack of collaboration between CSOs and Ombudsman.

398. Based on feedback sought by the Assessment Team from a list of nine CSOs (refer to Indicator 11), 77.8 percent of participants stated that CSOs are permitted or encouraged to act as observers in procurement proceedings. However, based on the study carried out by ADB in 2012, it was noted that CSO engagement has dwindled over time and in actual operations, the government did not involve CSOs. Some of the participants stated that the involvement was just for getting a ‘seal of approval’ and CSO resources are not being used effectively.

399. The Assessment Team with support from GPPB-TSO, as part of a private sector survey, sought feedback from participants on December 12, 2019, in Manila. In response to the question “Are you or your company aware of any CSO actively providing oversight or social control in public procurement?” 71percent (24 out of 34) stated ‘No’. Obstacles to CSO participation were identified as their association being a cause in delay in procurement process, lack of technical or procurement knowledge, or some officials are opposed to idea of involvement of CSO.

400. The same private sector survey participants were asked to respond on the issue of ‘Measures to Reduce Corruption in Public Procurement’. The results are given in Box 3.7.

Box 3.7. Feedback from Private Sector Participants on ‘Measures to Reduce Corruption in Public Procurement’

- 80% of participants (27 out of 34) identified “Providing information and/or training on what constitutes corruption and how to reduce corruption (i.e., right to know and the duty to be informed and trained” to be somewhat effective or very effective.
- 79% of participants (27 out of 34) identified “Dedicated reporting channel to report misconduct” to be somewhat effective or very effective.
- 88% of participants (30 out of 34) identified “A Code of Conduct (ethical guidelines or similar guidance document) for public and private entities” to be somewhat effective or very effective.
- 80% of participants (28 out of 35) identified “Declaration forms for suppliers to affirm their compliance with anti-corruption rules” to be somewhat effective or very effective.
- 82% of participants (out of) identified “Participation of watchdog organizations” to be somewhat effective or very effective.
- 76% of participants (28 out of 34) identified e-procurement to be somewhat effective or very effective.
- 72% of participants (23 out of 32) identified “Due diligence and risk analysis” to be somewhat effective or very effective.
- 88% of participants (30 out of 34) identified “Strong enforcement system” to be somewhat effective or very effective.
- 62% of participants (19 out of 31) identified “Limitation on post-public employment revolving door phenomenon, ‘cooling-down phase’ for public employees” to be somewhat effective or very effective.

401. The survey participants provided written anonymous feedback to enhance anti-corruption measures that mentioned strict enforcement of procurement procedures including timelines; comprehensive documentation by the HoPE, procuring entity, BAC as to their actions; efficient response mechanism to written queries and not using informal channels of communication; dedicated reporting channel for reporting misconduct; increased use of e-

procurement; penalty for government officials found corrupt while dealing with bidding/procurement process. One of the participants stressed three words ‘transparency, consultation, and uniformity’ as three top priorities to enhance anti-corruption measures.

402. **Sub-indicator 14(f) Secure mechanism to report prohibited practices or unethical behavior.** The Witness Protection, Security and Benefit Act of 1991 under RA 6981 provides a secure mechanism for reporting prohibited practices or unethical behavior. It is a program under the Department of Justice which seeks to encourage a person who has witnessed or has knowledge of the commission of a crime to testify before a court of quasi-judicial body, or before an investigating authority, by protecting him/her from reprisals and from economic dislocation. However, no information is available on the enforcement of these provisions.

403. **Sub-indicator 14(g) Code of conduct/code of ethics and financial disclosure rules.** RA 6713 deals with code of conduct and ethical standards that apply to all public officials and employees. This code of conduct is written in broad general conceptual terms rather than in specific situational or descriptive terms. However, there is no specific provision in the code of conduct that is exclusively applicable for procurement-related behaviors. The application of the code of conduct to all persons in the government service, regardless of the functions performed, shall be guided by the spirit of the law or the broader concept that it intends to express, that is, the clear statement of what type of behavior is expected from the public servants and what type of behavior is unacceptable and sanctioned.

404. The requirement under Section 8 of RA 6713 and Section 7 of RA 3019 for the yearly disclosure by public officials and employees of their assets, liabilities, and net worth, including financial and business interests and positions outside of public service is used to detect conflict of interest or possible source of illegal enrichment from bribes, kickbacks, or other forms of illegal activities.

405. However, no data are available on officials involved in public procurement that have filed financial disclosure forms.

406. **Overview of substantive gaps with risk and recommendations.** Risk classification (Low - L, Medium – M, or High- H) is given below.

✓ Red flag, if any

Sub-indicator	Substantive Gap	Risk	Recommendation
Sub-indicator 14(b)(a) Provisions on prohibited practices in procurement documents - incorporation in the matter in procurement and contract documents	Definition of ‘fraudulent practices’ in the IRR is not the same as definition included in the definition for the goods SPDs. ‘Obstruction’ is included in the SPDs as a misconduct, but it is not defined in the IRR	M	The definitions of misconduct should be consistent across the legal framework to avoid misinterpretation and ensure legal consistency.
14(c)(c) There is a system for suspension/debarment that ensures due process and is consistently applied	There is no evidence that due process is followed as action is taken by procuring entities without any control of an independent authority.	M	The system of suspension and debarment to consider due process by control of an independent authority.
14(d)(a) Anticorruption framework and integrity training	The country has in place a comprehensive anti-corruption framework to prevent, detect, and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility	H	As recommended in the Ombudsman Annual Report there is a need for “Revisiting of the procurement rules and systems to offer solutions in making them more efficient and public service-oriented in contrast with merely making them

Sub-indicator	Substantive Gap	Risk	Recommendation
	and capacity to enable its responsibilities to be carried out. However, penalties are stringent, which is a disincentive to serve and take decisions.		stringent and punitive”. Collaboration needed between Ombudsman, DBM, GPPB-TSO, Ministry of Justice on ways to achieve this objective.
14(d)(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle	No evidence on systematic identification of procurement-related corruption risk and its mitigation	M	Revive system of IDR (as task carried out till 2006) to assist the Office of the Ombudsman, together with its key partners, in the corruption prevention program of the government.
14(d)(c) statistics of procurement related corruption	No statistics on procurement-related corruption	M	Complaint and Case Monitoring System of Ombudsman to identify cases on procurement-related corruption
14(e) stakeholder support to strengthen integrity in procurement	Limited evidence on use of CSOs in strengthening integrity in procurement	H	Need for collaboration between CSOs and Ombudsman to improve transparency and integrity in public procurement
14(f) Secure mechanism to report prohibited practices or unethical behavior	There is no reporting intake system related to procurement cases.	M	Improvement required in the existing database system of the Office of the Ombudsman to follow up on number of investigation and action taken on procurement-related cases
14(g) Code of conduct/code of ethics and financial disclosure rules	There is no specific provision in the code of conduct that is exclusively applicable for procurement-related behaviors. No details are available if conflict of interest and financial disclosure forms are implemented and used by decision-makers to prevent corruption risks throughout the procurement cycle.	M	A code of conduct to be developed as special provisions for those involved in public procurement. Financial disclosure rules to be enforced, statistics on enforcement published, and data/information to be used for decision-making.

Chapter 4: Recommendation for prioritized future reforms initiatives

407. **The recommendations emerging from the application of the MAPS have identified several key areas for improvement, the details of which have been highlighted in the relevant sections and volumes of this Assessment Report.** The present section summarizes the critical areas that need to be improved urgently given their anticipated impacts on enhancing the performance of the Philippines procurement systems in terms of increased competition, efficiency, and transparency. However, setting the sequencing to implement the recommended improvement activities to address substantive gaps would be left to the discretion of the GoP. It is expected that the findings of this assessment would offer the opportunity for the GoP and participating development partners to explore possible ways and means to support the recommended actions plan.

408. The MAPS assessment identified the following seven priorities areas for improvement:

1. **Rules on participation.** In the next review of the procurement legal framework, the government may consider undertaking a critical analysis to assess whether the restrictive eligibility requirements concerning licensing and nationality/establishment deliver the desired outcomes and achieve increased competition, reduced cost of bidding, and best value for money in public procurement. Alternative arrangements can be explored to ensure that Filipino contractors are given ample opportunity to participate while enhancing competition, promoting flow of innovative solutions, and achieving best value for the public money spent. The next reform could also consider provisions that provide for a clear segregation of eligibility criteria (grounds for exclusion), evaluation of bids criteria, and qualifications of the bidder.
2. **Procurement methods.** Consider amending the legal framework to provide for fit-for-purpose competitive procedures for procurements with more complex needs where prequalification and/or carefully structured negotiation, respecting procurement principles, may be beneficial. The key incentive is ensuring increased competition through reducing the cost of doing business where in a prequalification or multistage bidding, cost of preparation of bid could be reduced and participation of genuinely competitive and qualified bidders is increased.
3. **Support to value for money,** a comprehensive review of model procurement document and contract conditions/evaluation criteria. Consider amending the specific provisions in the legal framework that currently prevent procurement processes from achieving best value for money. Consideration should be given to clarifying the various aspects of evaluation of bids including provisions to be included in the bidding documents regarding the disclosure and protection of specific sensitive information of the bidders. There is a need for comprehensive review of PBDs, including contract conditions which fall short in addressing topics such as reference to abnormally low bids; price adjustment for long-term contracts; adopting contract conditions not using incorporation by reference but by setting out clearly the terms and conditions, obligations and rights, remedies, and other contractual matters applicable to the contract in question—also to reflect international practices (for example, FIDIC conditions), all of which is expected to increase competition.
4. **Complaints review mechanism.** Consider establishing an independent administrative procurement review body that would further improve the transparency, efficiency and effectiveness of the system as a whole, in line with UNCAC recommendations, and international good practices.
5. **Sustainable public procurement.** In the next revision of the legal and regulatory framework, consider the incorporation of sustainable public procurement criteria and use of LCC principles at all stages of the procurement cycle including reference to green procurement in technical specifications. This would include

amending Section 31 of RA 9194 and Section 31 of IRR on Ceiling of Bid Price (ABC) which considers automatic disqualification beyond ABC and modifying Section 32 for using LCC as a factor in economic evaluation of bids including use of performance-based specification to deliver maximum value for money for the procuring entity and cost savings to the government over the useful economic life of the asset.

6. **Strategy and enabling environment for professionalization of procurement function.** Update the strategy and the roadmap for public procurement professionalization to provide an enabling environment for informed use of well-documented discretion by procurement professionals to get results and improve service delivery.
7. **E-procurement system.** The government to consider ways to further strengthen the effectiveness of GPPB-TSO as a regulatory and normative organization to lead the procurement reform at the country level with all required resources and technology support, especially PhilGEPS. The implementation of full e-procurement through the new mPhilGEPS platform would yield quick wins of the recommended priority actions in terms of transparency, increased competition, value for money, and cost savings. It should help implement the full procurement process and should serve as the official source for all procurement data including plans, filing for blacklisting, protest, and contract performance, so that the public procurement is embedded in an effective information system in an integrated manner.

409. Based on the recommendations of this assessment in general and the priority areas for improvement in particular, GPPB-TSO could prepare a detailed action plan. It is expected that the findings and recommendations of the assessment shall inform the strategic planning process for future procurement reforms or system development by the GoP.

Chapter 5: Validation Process

410. Chapter 1 of the Report provides a chronology on all consultations and validation till May 17, 2021, when a stakeholder validation workshop was organized virtually. Before the stakeholder validation workshop, several consultations were held with GPPB-TSO and the Assessment Steering Committee, including in virtual mission meetings between October 19 and October 27, 2020. In this virtual mission, the Assessment Team presented the preliminary findings of the indicators that were fully or partially assessed to key stakeholders and sought their feedback.

411. After preparation of the draft Assessment Report, **a validation workshop was held on May 17, 2021, where the Bank jointly with GPPB-TSO and ADB** presented the findings and the recommendations of the Philippines MAPS Assessment to all stakeholders with participation by 7 officials of GPPB-TSO; 14 participating agencies of the government; 3 partner agencies—COA, Ombudsman, PPP Center; 7 representatives of CSOs; and 8 representatives of private sector. The workshop was opened by Ms. Laura Pascua, Undersecretary, DBM and GPPB Alternate Chair and Mr. Achim Fock, Portfolio Manager, World Bank. Positive feedback was received during the validation workshop from stakeholders and further consolidated written feedback and observations from some stakeholders were subsequently submitted by GPPB-TSO. All these observations are already incorporated in the present revised Assessment Report. The validation workshop has broadly validated the assessment findings and recommended reform actions to address remaining challenges for the improvement of the quality and performance of the country's public procurement system. The revised report has also benefited from the feedbacks and guidance from a World Bank internal quality assurance review. All the details on consultations are covered in **Annex in Volume III** of the Assessment Report. Table 4.1 provides the summary.

Table 4.1. Validation Process

#	Description	Outcome	Planned/ Actual date
1	Validation workshop with all stakeholders held	Validation of the assessment findings and recommendations.	May 17, 2021 (Actual)
2.	Decision meeting by the World Bank Management after internal peer review	PH MAPS ASA approval	June 1, 2021 (Actual)
3	Final Draft MAPS Report	Finalized report in view of comments of peer reviewers and feedbacks received from validation workshop, Bank Decision Review Meeting	June 30, 2021 (Actual)
4	Review by Assessment's Technical Advisory Group	ATAG's review of Final Draft Report	July/August 2021 – in progress in -Dec 2022
5 .	Certification by MAPS Secretariat		-April 2023 (Actual)
6	Dissemination/ Publication of Final MAPS Report		June2023 (Planned)