

PHILIPPINES

ASSESSMENT OF PUBLIC PROCUREMENT SYSTEM

Volume II – Detailed Indicators Assessment Matrices

June 2021

(Updated 15 May 2023, based on ATAG/MAPS Secretariat Non-Objection dated 24 April 2023)



\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

Pillar I. Legal, Regulatory, and Policy Framework

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

1(a) Scope of application and coverage of the legal and regulatory framework  
The legal and regulatory body of norms complies with the following conditions:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	<p><b>Summary:</b> The legal and regulatory framework is adequately recorded and is organized hierarchically with precedence clearly established.</p> <p><b>Constitution:</b> The 1987 Constitution of the Republic of the Philippines<sup>1</sup> is the supreme law. <sup>2</sup></p> <p><b>Legislative enactments:</b> The main sources of Philippine law are the Constitution, legislative enactments passed by Congress<sup>3</sup> <sup>4</sup>, as well as Executive/Presidential issuances. <b>Judicial decisions</b> form part of the legal system of the Philippines<sup>5</sup>. 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, including the Civil Code, Administrative Code, Cooperative Code, Corporation Code and the Local Government Code.<sup>6</sup></p> <p>The key primary legislation on public procurement is <b>Republic Act No.9184</b> Providing for the Modernization, Standardization and Regulation of Procurement Activities of the Government and For Other Purposes (2003) (“<b>GPRA</b>”).<sup>7</sup></p> <p><b>Treaties/international agreements:</b> GPRA s.4 provides that “Any treaty or international or executive agreement signatory affecting the subject matter of the Act to which the Philippine government is a signatory shall be observed.” IRR s.4.2 confirms that “Any Treaty or International or Executive Agreement to which the GoP is a signatory affecting the subject matter of the Act and this IRR shall be observed. In case of conflict between the terms of the Treaty or International or Executive Agreement and this IRR, the former shall prevail.”</p> <p>The key secondary legislation on public procurement is the <b>2016 Revised Implementing Rules and Regulations</b> of Republic Act No.9184 (“IRR”)<sup>8</sup>, available to download from the Government Procurement Policy Board (GPPB) website.</p> <p>The GPPB issues and publishes on its website:</p> <p><b>GPPB Resolutions</b> which can be of general or specific application and include amendments to the IRR, most of which are also published in the Official Gazette or national newspaper</p> <p><b>GPPB Circulars</b> including general and specific guidance, clarifications and notifications on numerous issues many of which are also published in the Official Gazette</p> <p><b>GPPB Guidelines</b> such as 2018 “Guidelines on the Use of the Virtual Store for the Procurement of Common Use Supplies and Equipment”, published in a national paper or Official Gazette</p> <p><b>GPPB Policy Matter Opinions</b> The last GPPB Policy Matter Opinion dates from 2015.</p> <p><b>Non-Policy Opinions</b> (“NPM”) in response to requests from contracting authorities and other stakeholders for opinions on specific questions.</p>		Criterion Met		

<sup>1</sup> <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

<sup>2</sup> 1987 Constitution, A.8.

<sup>3</sup> Republic Acts, Commonwealth Acts, Acts, Presidential Issuances/Directives, Presidential Decrees, Batas Pambans and Executive Orders.

<sup>4</sup> 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.

<sup>5</sup> 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”.

<sup>6</sup> 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.

<sup>7</sup> [https://www.gppb.gov.ph/laws/laws/RA\\_9184.pdf](https://www.gppb.gov.ph/laws/laws/RA_9184.pdf)

<sup>8</sup> This assessment references the revised updated version of the IRR in force when the primary legal review was undertaken, being the IRR dated 19 February 2020, which included amendments to 10 December 2019. [https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR\\_2020\\_19Feb2020rev.pdf](https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR_2020_19Feb2020rev.pdf) accessed 27 October 2020 An updated version of the IRR, dated 31 March 2021, is now available from the GPPB-TSO website [https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR\\_31%20March%202021.pdf](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).

	<p>The GPPB also prepares and publishes generic and specific procurement Manuals (“GPM”), standard Bidding Documents (Philippine Bidding Documents, “PBD”), sample forms and a Green Technical Specifications guide.</p> <p>In addition, there are Guidelines, Executive and other Issuances and implementing rules and regulations, including issuances published by government departments and other governmental organizations, such as the Procurement Service<sup>9</sup>, Department of Health<sup>10</sup>, Department of Trade and Industry<sup>11</sup> and Public Private Partnership Center<sup>12</sup>.</p>				
<b>(b) It covers goods, works and services, including consulting services for all procurement using public funds.</b>	<p><b>Summary:</b> The legal and regulatory framework covers the procurement by procuring entities of goods, works and services, including consulting services, for procurement using public funds.</p> <p><b>GPRA s.4</b> provides that the GPRA applies to “the Procurement of Infrastructure Projects, Goods and Consultancy Services, regardless of source of funds”. The defined terms in GPRA s.5 clarify the coverage: Definition of <b>Procurement</b> GPRA s.5(n) - refers to the “acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity”. Procurement shall also include the lease of goods and real estate. Procurement of real property is also defined.</p> <p>IRR s.5(aa) adds that that in the case of projects involving mixed procurements, the nature of the procurement is determined based on the primary purpose of the contract.</p> <p>Definition of <b>Infrastructure Projects (works)</b> GPRA s.5(k): Infrastructure Projects are broadly defined to cover what is generally understood to mean “works” : they “ include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings and other related construction projects of the government. ...”. IRR s.5(u) provides that for the purposes of, and throughout the IRR, “Infrastructure Projects” shall have the same meaning as, and shall be used interchangeably with, “civil works” or “works”.</p> <p>Definition of <b>Goods</b> GPRA s.5(h): are broadly defined. The definition refers to “all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of the public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, ...”.</p> <p>Definition of <b>Services</b> GPRA s.5(h): There is no separate definition of services falling within the scope of the GPRA. Instead, these services, apart from consulting services, are covered in the definition of “Goods”. The definition refers to: “general support services, except consulting services and infrastructure projects, which may be needed in the transaction of the public businesses or in the pursuit of any government undertaking, project or activity, .....including non-personal<sup>13</sup> or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services.” IRR s.5(r) confirms that the term “related” or “analogous” services” “shall include, but is not limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity”. The Generic Procurement Manual Vol.2 p.9 provides examples of related or analogous services: “rental of venues and facilities, catering services, conduct of trainings and seminars, short term services not considered as consulting services.” (see also LGU Manual s2, p.70).</p> <p><b>Consulting Services</b> GPRA s.5(f): The definition is as follows: “.....services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional experts that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management.”</p> <p><b>Exemptions</b> IRR s.4.4 lists three activities to which the IRR do not apply. These are, in summary; (1) Procurement of Goods, Infrastructure Projects and Consulting Services funded from Foreign Grants<sup>14</sup>;</p>		<b>Criterion Met</b>		

<sup>9</sup> <http://ps-philgeps.gov.ph/home/index.php/about-ps/legal-bases> accessed 28 October 2020

<sup>10</sup> <https://dmas.doh.gov.ph/> accessed 28 October 2020

<sup>11</sup> <https://ciap.dti.gov.ph/publications> accessed 28 October 2020

<sup>12</sup> <https://ppp.gov.ph/guidelines-and-issuances/> accessed 28 October 2020

<sup>13</sup> Clarification provided by GPPB-TSO February 2020 in response to question from WB: “Personal services” refer to work carried out on a regular or routine basis that is necessary, desirable, and essential to the conduct of business of the agency concerned; or those being performed by regular personnel of the agency, and where the ensuing arrangement partakes the nature of hiring personnel rather than procurement of services (GPPB Policy Matter (PM) No. 02-2012 dated 21 November 2012.). The procurement of non-personal services is governed by RA No. 9184, whereas the engagement of personal services under Job Order or Contract of Service are subject to the applicable COA and Civil Service rules.

<sup>14</sup> This exclusion applies to Foreign Grants “covered by R.A. 8182, as amended by R.A. 8555, entitled “An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and Optimize the Utilization of ODA Resources, amending for the Purpose Paragraph 1, Section 2 of R.A. 4860, As Amended,” unless the GoP and the foreign grantor/foreign or international financing institution agree otherwise;”.

<p>(2) acquisition of real property<sup>15</sup>, and;</p> <p>(3) public-private sector infrastructure or development projects and other procurement covered by RA 6957, as amended (the Amended BOT Law). This is subject to the proviso that for the portions financed by the Government of the Philippines, in whole or in part, the provisions of the GPRA and IRR apply.</p> <p>In addition, IRR s.4.5 states that “the following are not procurement activities under RA 9184 and this IRR”:</p> <p>a) Direct financial or material assistance given to beneficiaries in accordance with the existing laws, rules and regulations, and subject to the guidelines of the concerned agency;</p> <p>b) Participation in local or foreign scholarships, trainings, continuing education, conferences, seminars or similar activities that shall be governed by applicable COA, CSC, and DBM rules;</p> <p>c) Lease of government-owned property as lessor for private use;</p> <p>d) Hiring of Job Order Workers;</p> <p>e) Joint Venture under the revised NEDA Guidelines (GOCC and Private Entities), and Joint Venture Agreements by LGU with Private entities; and</p> <p>f) Disposal of Property and Other Assets of the Government.</p> <p><b>Infrastructure projects implemented by the Administration:</b> IRR Appendix 1 Revised Guidelines for the Implementation of Infrastructure Projects by Administration: covers the situation where an infrastructure project is carried under the administration and supervision of the concerned agency through its own personnel. This is permitted, subject to conditions, for any project costing twenty million ₱ or less and in specified cases for higher value projects with requirements to obtain prior authority from the Secretary of Public Works and Highways or the President (depending on the value of the project). No contract shall be used by the procuring entity, directly or indirectly, for the works and public bidding is required for the procurement of tools and construction equipment. Manual labour may be undertaken in-house, by job-order or through the <i><b>pakyaw</b></i> contracting system involving use of local labour.</p> <p><b>Defence procurement:</b> There is no general exclusion for defense procurement from the application of the GPRA/IRR. IRR s.4.1 states that it shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the Government of the Philippines (GoP). However, when <b>Treaties or International or Executive Agreements</b>, 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, which may include defense projects, then RA No. 9184 will not apply (see below).</p> <p><b>Defense procurement under GPRA/IRR:</b> IRR s.53.8 <b>Negotiated Procurement Defense Cooperation Agreement; Defense Inventory-Based Items.</b> IRR s.53.8<sup>16</sup> (a) allows the Department of National Defense (DND) to directly negotiate with an agency or instrumentality of another country with which the Philippines has entered into a Defense Cooperation Agreement or otherwise maintains diplomatic relations. This mode of procurement may be resorted when the DND procurement involves major defense equipment or materiel and/or defense-related consultancy services, provided that (a) the Secretary of National Defense has deemed it necessary to protect the interest of the country; (b) the expertise or capability required is not available locally; and (c) the defense equipment or materiel and/or defense-related consultancy services to be procured under this modality is included in the Armed Forces of the Philippines (AFP) Modernization Program previously approved by the President of the Philippines. IRR s.53.8(b) allows the DND to directly negotiate with a supplier or manufacturer in procuring inventory-based items, which pertain to major defense equipment or materiel as contemplated in IRR s.53.8(a) subject to specified conditions.</p> <p>RA No. 7898 (as amended) otherwise known as “An Act Providing for the Modernization of the AFP and for Other Purposes” mandates the application of RA No. 9184 and its IRR for the procurement of infrastructure and other construction contracts, capability building, materiel and technology development component, and consultancy services under any of the component programs and projects of the Armed Forces of the Philippines (AFP) Modernization Program.</p> <p>Appendix 13 <b>Guidelines on Implementation of Infrastructure Projects undertaken by AFP Corps of Engineers (AFPCOE).</b> This provides for the AFP Corps of Engineers to deliver DND-AFP Infrastructure Projects, End-user infrastructure projects in high security risk areas and special projects directed by the President or related to civil defense/disaster relief. AFPCOE is required to abide by GPRA/IRR in procurement of goods, supplies and services- but it can directly hire labor.</p> <p>See commentary at sub-indicator 1(b)(b) on <b>Alternative Methods of Procurement</b> including where Direct Contracting and Negotiated Procurement without competition is permitted.</p> <p><b>Procuring entities</b></p>				
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<sup>15</sup> This exclusion applies to acquisition of real estate property “which shall be governed by R.A. 10752, entitled “An Act Facilitating the Acquisition of Right-Of-Way Site or Location for National Government Infrastructure Projects,” and other applicable laws, rules and regulations

<sup>16</sup> As amended by GPPB Resolution No.23-2018

	<p>GPRA s.4 provides that the GPRA applies to procurement “by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138.”</p> <p>IRR s.4 [elaborates on this coverage and] confirms that the IRR applies to “any branch, agency, department, bureau, office, or instrumentality of the GoP, including government owned and/or-controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).”</p> <p>The defined terms in GPRA s.5/IRR are consistent with GPRA s.4. GPRA s.5(o) defines “<b>Procuring Entity</b>” as “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.....” .</p> <p><b>Procuring entity: Local Government Units:</b> The term local government unit include provinces, cities, municipalities and barangays (local level government units).</p> <p><b>Procuring entity: Government-owned or controlled companies (GOCCs):</b> are defined in the Administrative Code 1987 (Executive Order 292) Introductory Provisions s.2 (13) as: “any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.”</p> <p>The central policy making and regulatory (oversight/monitoring) authority for GOCCs is the Governance Commission for Government Owned or Controlled Corporation<sup>17</sup> (“GCG”), which is attached to the Office of the President. GOCCs are classified into five types: Development/Social Corporations; Proprietary Commercial Corporations; Government Financial, Investment and Trusts Institutions; Corporations with Regulatory Functions; and Other as may be determined by GCG. A full list of GOCCs is available from the Office of the Government Corporate Counsel<sup>18</sup>. The list includes GOCCs active in the transport, gas and water sectors. Not all utilities fall within the definition of GOCCs and those utilities are not all subject to the public procurement legal regime.</p>				
<p><b>(c) PPPs, including concessions, are regulated.</b></p>	<p><b>Summary:</b> PPPs, including concessions are regulated. The legal framework applying to PPPs is fragmented. There is no single definition of what constitutes a concession. PPP Center has identified adoption of a new PPP Law as a priority.</p> <p>The term “PPP” covers a range of delivery models, including a variety of build-operate-transfer (BOT) type schemes, joint ventures and hybrid models. There are a number of legal bases for implementing PPPs regulated variously by primary legislation, executive order, guidelines and, at 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.<sup>19</sup> 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.<sup>20</sup></p> <p><b>PPP - Contractual infrastructure and development projects involving private participation:</b> these are primarily regulated by RA. No. 6957 as amended by RA No. 7718 “Amended BOT Law”<sup>21</sup> and Implementing Regulations (BOT Law IRR)<sup>22</sup>. This provides for [a range of] build-operate-transfer (BOT) schemes and build-and-transfer schemes, including third party financing. The definition of BOT schemes provides for the contractor to operate the facility over a fixed term and charge facility users appropriate, tolls, fees, rental and charges sufficient to enable the contract to recover its operating and maintenance expenses and its investments in the project plus a reasonable rate of return. In general, ownership of the asset remains with the Government. The Amended BOT Law is supported by the BOT Law IRR and Resolutions and Guidelines issued by the PPP Governing Board<sup>23</sup>. GOCCs wishing to award BOT PPPs are subject to the provisions of the Amended BOT Law.</p> <p><b>PPP – Hybrid PPPs:</b> The legal framework also allows for “Hybrid PPPs” which are arrangements “whereby components of an infrastructure project are taken on by the government through official development assistance (OCA), through local public financing, or a combination therefor, while the rest of the components (if applicable) and the O&amp;M are done through</p>		<p><b>Criterion Partially Met</b></p> <p>PPP legislation is fragmented, and BOT Law is old (1990 with no recent revisions).</p>		<p>Prepare a new consolidated, fit-for-purpose PPP legal framework.</p> <p>The MAPS assessment supports the proposals for a new PPP Act as the first step towards a consolidated framework.</p>

<sup>17</sup> <https://gcg.gov.ph/site/aboutus>

<sup>18</sup> <http://ogcc.gov.ph/gocc/>

<sup>19</sup> Confirmed by PPP Center in discussions with MAPS team on 20 October 2020.

<sup>20</sup> Confirmed by PPP Center in discussions with MAPS team on 20 October 2020.

<sup>21</sup> 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).

<sup>22</sup> 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](https://ppp.gov.ph/wp-content/uploads/2019/06/BOT_IRR_2012_2017_2.pdf)

<sup>23</sup> See Executive Order no.136 series of 2013 for functions of the PPP Governing Board



	<p>a PPP contract”.<sup>24</sup> The PPP Center has published PPP Greenfield Hybrid PPP Guidelines aimed to guide implementing authorities on key considerations in developing and implementing hybrid PPP projects.<sup>25</sup></p> <p><b>PPP - Joint Ventures:</b> both contractual and corporate, provide another framework for the implementation of PPPs, in accordance with decisions of the Supreme Court and provisions of the Civil Code on partnerships. JV agreements allow the private sector to take over the undertaking of projects in its entirety after the government divests itself of any interest in the JV.</p> <p>Executive Order No. 423 of 2005, s.8 provides for the preparation of guidelines on joint ventures for government-owned and controlled corporations. There are NEDA (National Economic and Development Authority) Revised Guidelines and Procedures for entering into Joint Venture (JV) Agreements Between Government and Private Entities” 2013<sup>26</sup> <sup>27</sup>. GOCCs can use the NEDA guidelines but may adopt their own JV procurement guidelines when following a mandate to dispose of government assets/properties.</p> <p><b>PPP – Local government PPP:</b> For Local Government, the Department of the Interior and Local Government has published “Guidelines for the Implementation of Public-Private Partnerships for the People Initiative for Local Governments (LGU P4)” (2016).<sup>28</sup> s.35 Local Government Code of 1991 (Republic Act No. 7160) may be used by local government units as alternative legal basis for PPPs at the local level. The PPP Center has published a Local Government JV Guidebook 2019.<sup>29</sup> The PPP Center Annual Report 2019 highlights the Local PPP Strategy as top priority for 2019.<sup>30</sup></p> <p>The <b>PPP Center</b> (formerly the Build-Operate and Transfer Center), attached to the National Economic and Development Authority (NEDA), is mandated<sup>31</sup> to facilitate the implementation of the country’s PPP Program and Projects. (see indicator 1 1(l)(c) for more information on the PPP Center).</p> <p><b>Right to challenge and appeal procurement and award of PPP</b> There is no independent specialist review body dealing with challenges concerning decisions made during the procurement of PPPs and award of PPP contracts. BOT Law IRR s.5.5<sup>32</sup> provides disqualified prospective proponents with the right to appeal (motion for reconsideration) the disqualification decision to the Head of the Agency and, in the case of national projects, to the Head of the DILG unit/authorized representative for local projects. Time periods and process for this appeal are specified in the BOT Law IRR 5.5 and the bidding process is suspended while the appeal is evaluated. The decision of the Head of Agency/ Head of the DILG unit/authorized representative is final and immediately executory. A similar provision applies in the case of disqualification in the context of direct negotiation (BOT Law IRR 9.1). No further right of appeal is specified. After conclusion of the internal appeal procedure, the subsequent right of review available to proponents/bidders is to the Regional Trial Court. An action issued in the Regional Trial Court is an original action and not appellate in nature as it seeks to correct errors of jurisdiction.</p> <p><b>Proposals for reform:</b> 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. The passage of a new PPP Act is identified in the Annual Report as one of the most urgent policy reforms that the Center will push to institutionalize best practice and lessons learned.<sup>33</sup> <sup>34</sup> 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<sup>35</sup>. Proposals for reform do not currently include proposals for significant reforms to the rules concerning bid protest, right of challenge or create an independent specialist appeals body.</p>				
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<sup>24</sup> PPP Governing Board Resolution No.2019-07-02

<sup>25</sup> [https://ppp.gov.ph/wp-content/uploads/2019/10/PPPC\\_PPPGB\\_Reso-Managing-Greenfield-Solicited-Hybrid-PPPProjects.pdf](https://ppp.gov.ph/wp-content/uploads/2019/10/PPPC_PPPGB_Reso-Managing-Greenfield-Solicited-Hybrid-PPPProjects.pdf)

<sup>26</sup> [neda.gov.ph/wp-content/uploads/2017/09/2013-Revised-JV-Guidelines.pdf](http://neda.gov.ph/wp-content/uploads/2017/09/2013-Revised-JV-Guidelines.pdf)

<sup>27</sup> In 2019, NEDA published an announcement of a public consultation process concerning further amendments to the Revised JV Guidelines <http://www.neda.gov.ph/public-consultation-for-the-draft-proposed-amendments-of-the-guidelines-and-procedures-for-entering-into-joint-venture-agreements/>

<sup>28</sup> [https://www.dilg.gov.ph/PDF\\_File/issuances/memo\\_circulars/dilg-memocircular-201698\\_ba7870f62a.pdf](https://www.dilg.gov.ph/PDF_File/issuances/memo_circulars/dilg-memocircular-201698_ba7870f62a.pdf)

<sup>29</sup> <https://ppp.gov.ph/publications/guidebook-on-joint-venture-for-local-government-units-lgus/>

<sup>30</sup> [https://ppp.gov.ph/wp-content/uploads/2020/09/PPPC\\_REP\\_2019-Annual-Report-2020Sept11.pdf](https://ppp.gov.ph/wp-content/uploads/2020/09/PPPC_REP_2019-Annual-Report-2020Sept11.pdf)

<sup>31</sup> Executive Order no.8 series of 2010 as amended by Executive Order no.136 series of 2013.

<sup>32</sup> Amended BOT Law RA 7718 s.5.5-A 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](https://ppp.gov.ph/wp-content/uploads/2019/06/BOT_IRR_2012_2017_2.pdf)

<sup>33</sup> <https://ppp.gov.ph/publications/annual-report-2019-investing-in-the-future-of-the-filipino/?so=0>

<sup>34</sup> House Bill/Resolution No.HB05452, full title: “An Act authorizing public-private partnerships (PPP) appropriating funds therefor, and for other purposes”, filed November 13 2019, referred to Committee on Public Works and Highways on November 18 2019, accessed 26 October 2020 [http://congress.gov.ph/legisdocs/basic\\_18/HB05452.pdf](http://congress.gov.ph/legisdocs/basic_18/HB05452.pdf)

<sup>35</sup> Meeting between PPP Center and WB MAPS Team on 19 October, 2020 - the PPP Center confirmed that work on the new draft PPP Act is progressing with anticipated adoption in 2021.

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<p><b>(d) Current laws, regulations and policies are published and easily accessible to the public at no cost</b></p>	<p>A comprehensive collection of documents is published on the GPPB website<sup>36</sup>. Some of the sections/pages on the website are, to a degree, searchable. The documents can be downloaded free of charge.</p> <p>An updated version of the IRR was published in February 2020 by the GPPB and is available from the GPPB website<sup>37</sup>. The latest version incorporates amendments made to 19 December 2019.</p>	<p><b>Criterion Met</b></p> <hr/>	<p>Suggestion for improvement</p> <p><i>Current laws, regulations and policies are published and easily accessible free of charge from the GPPB website. The search function could be improved to further enhance the accessibility of documents and to allow all users to more readily identify relevant documents. 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 using the GPPB search page would be of assistance.<sup>38</sup></i></p> <p><i>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, Procurement Service, PPP</i></p>
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### Sub-indicator 1 (b) – Procurement Methods

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	<p><b>Summary:</b> The legal framework provides for a range of procurement methods, with the default method being open competitive bidding. Other methods may be used exceptionally and the legal framework sets out the conditions under which each method may be used and financial thresholds, where relevant.</p> <p><b>Competitive bidding:</b> GPRA s.10 provides that “All Procurement shall be done through Competitive Bidding” except as provided for in GPRA Article XVI on Alternative Methods of Procurement”. GPRA s.5(e) defines Competitive Bidding as a “method of procurement which is open to participation by any interested party and which consist of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluation of bids, post - qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.</p> <p>IRR s.48.2 confirms that “as a general rule, the Procuring Entities shall adopt competitive bidding as the general method of procurement”. It further states that “Alternative methods of procurement shall be resorted to only in highly exceptional cases provided for in this Rule.” Open competitive bidding is thus the default method of procurement<sup>39</sup>.</p> <p>GPRA Article XVI sets out Alternative Methods of Procurement and their conditions for use. The Alternative Methods of Procurement are described in GPRA s.48/IRR s.48, with more detailed provisions in the following sections: s.49 Limited Source Bidding, s.50 Direct Contracting, s.51 Repeat Order, s.52 Shopping and s.53 Negotiated Procurement.</p> <p>In all cases the use of an alternative method of procurement is subject to prior approval of the Head of the Procuring Entity or his duly authorized representative. In addition to specific conditions applying to the use of each method, there is a general requirement that “the Procuring Entity shall ensure that the most advantageous price for the government is obtained”. The conditions for use of Alternative Methods of Procurement are elaborated in IRR ss.49 to 53 and Annex H Consolidated Guidelines.</p>		Criterion Met		

<sup>36</sup> <https://www.gppb.gov.ph/index.php>

<sup>37</sup> GPPB website accessed 01 March 2020

[https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR\\_2020\\_19Feb2020rev.pdf](https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR_2020_19Feb2020rev.pdf)

<sup>38</sup> At a meeting with the GPPB-TSO on 23 October 2020 the GPPB-TSO indicated that they have made some improvements and are continuing to look at enhanced functionality of the GPPB-TSO website.

<sup>39</sup> GPPB Resolution No.39-2017 Revised Agency Procurement Compliance and Performance Indicators: Procuring entities are required to report on level of use of procurement methods and in the event that the level of public bidding is less than 70% they must explain the reasons for this

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

<p><b>(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.</b></p>	<p><b>Summary:</b> the procurement methods include competitive and less competitive procedures, with 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.</p> <p>GPRA/IRR s.3 set out <b>governing principles applying to all government procurement</b> being, in summary: transparency in the procurement process and implementation of contracts; competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding; streamlined procurement processes; accountability and public monitoring.</p> <p>In addition to specific conditions applying to the use of each of the alternative methods of procurement, there is a general requirement that “the Procuring Entity shall ensure that the most advantageous price for the government is obtained”. In practice, except in the case of consultancy services, [most] contracts are awarded on the basis of lowest cost bid (LCB).</p> <p>The <b>Competitive Bidding (or public bidding<sup>40</sup>) method</b>, which is the default method for procurement, is defined in the GPRA as a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluations of bids, post-qualification, and award of contract. Two stage bidding is permitted and there are specific processes to be followed for the award of consulting services. IRR s.10 provides that all procurement shall be done through competitive bidding except as provided for in IRR Rule XVI Alternative Methods of Procurement. There are specific provisions concerning more complex contracts or those where there is international participation. <b>International Competitive Bidding</b> is a mode of procurement for foreign funded projects using rules and guidelines other than GPRA - such as RA No.7718 (BOT Law) and those of development partners.</p> <p><b>Alternative Methods of Procurement (AMP)</b></p> <p>GPRA s.48 lists five <b>Alternative Methods of Procurement (AMP)</b> which are less competitive procedures than competitive bidding. In some cases, they are non-competitive procedures. IRR s.48 provides that, as a general rule the Procuring Entity shall adopt competitive bidding as the general method of procurement. AMP “shall be resorted to only in exceptional cases provided for in [IRR Rule XVI]”. The five AMPs are: limited source bidding; direct contracting; repeat order; shopping and negotiated procurement. GPRA s.54 provides that the specific terms and conditions, including the limitations and restrictions for the application of each of the AMP shall be specified in the IRR.</p> <p><b>Publication of notices concerning AMP: (1) Advertisement/posting of opportunity</b> - For AMP there is a general provision that Procuring Entities may dispense with advertisement in newspaper/s (where relevant) and posting requirements (IRR s.54.2). This is subject to a requirement, in certain cases, to post the invitation or request for submission in the PhilGEPS website, the website of the Procuring Entity, if available, and in a conspicuous place reserved for the purpose at the Procuring Entity for at least 3 calendar days. These cases are (1) Limited Source bidding (2) Shopping for ordinary office supplies and equipment not available from the Procurement Service for (ABC above ₱ 50,000) (3) Negotiated procedure where there have been two failed biddings; (4) Negotiated procedure for Small Value Procurement (for ABC above ₱ 50,000); and (5) Negotiated procedure - NGO Participation. <b>(2) contract award</b> - In all instances of AMP for contracts above ₱ 50,000, the notice of award, contract or purchasing order (including notice to proceed if necessary) shall be posted in the PhilGEPS website, the website of the Procuring Entity, if available, and in a conspicuous place reserved for the purpose at the Procuring Entity within 10 days of issue (IRR Annex H, s.L). There are also requirements in a number of cases for PhilGEPS supplier registration as a condition for award of the contract.</p> <p><b>AMP - Limited Source Bidding</b> GPRA/IRR s.49 (also known as selective bidding): applies only to the procurement of Goods and Consulting services. The process involves direct invitation to bid by the Procuring Entity from a list of pre-selected suppliers or consultants. Pre-selected suppliers or consultants are those appearing in a list maintained by the government authority that has the requisite expertise. Lists must be updated periodically and a copy submitted to the GPPB. The GPPB publishes the lists on its website<sup>41</sup>. It may be used for procurement of highly specialized goods and consulting services where only a few suppliers or consultants are known to be available; or for procurement of major plant components where it is deemed advantageous to limit the bidding for quality and performance reasons. GPPB has issued Guidelines amending the pre-selection procedure</p> <p><b>AMP - Direct Contracting</b> GPRA/IRR s. 50 (or single source procurement): applies only to the procurement of Goods. It does not require elaborate Bidding Documents; The Supplier is simply asked to submit a price quotation or a pro-forma invoice together with conditions of sale. This offer may be accepted immediately or be subject to negotiation. Direct Contracting may be used for (a) procurement of goods of a proprietary nature available only from the proprietary source; or (b) procurement of critical components from a specific supplier is a condition precedent for a contractor guarantee; or (c) exclusive dealership situation and no suitable substitute can be obtained a more advantageous term.</p>		<p><b>Criterion Partially Met</b></p> <p><b>Competitive Procurement procedure not suitable for more complex requirements and high value procurement.</b></p> <p>We note that at IRR 30.3 there is provision for a two-stage bidding process for Goods which provides for a meeting/discussion with bidders who have submitted initial proposals in order to draw up a final specification against which bidders submit costed tenders. We also note the provisions on Request for Quotation (RFQ) and IRR 33 permitting negotiation with the highest rated bidder for consulting service.</p> <p>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 prior to submission of final tenders. This may be appropriate in some cases in order to achieve optimum outcomes in the procurement, for example, for complex service delivery or IT.</p> <p>There is no prequalification procedure for large and complex contracts, such as large infrastructure projects. This 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.</p>		<p>Legal framework to provide for a competitive bidding process (not an alternative method of procurement) which, in specified cases, permits negotiation with bidders on a range of issues as part of the bidding process prior to submission of final tenders, prequalification or other suitable procedures for complex or high value procurement.</p>
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<sup>40</sup> IRR s.5(h) provides that “For purposes of, and throughout this IRR, the terms “Competitive Bidding” and “Public Bidding” shall have the same meaning and shall be used interchangeably”. PhilGEPS datasets on award notices posted identifies National Competitive Bidding, International Competitive Bidding and Public Bidding as different line items

<sup>41</sup> GPPB Website page Pre-selected list of suppliers, accessed 1 March 2020 <https://www.gppb.gov.ph/preselectedSuppliers.php>



	<p><b>Direct contracting for water, electricity, telecommunications and internet service providers:</b> The GPPB has published Guidelines for the procurement of water, electricity, telecommunications and internet service providers (GPPB Resolution No. 019-2006 dated 6 December 2006 (as amended). The Guidelines provide (in summary): For <b>water and electricity services</b>, procurement is by means of direct contracting under IRR s.50. This is due to the fact that service providers for these services are granted exclusive franchises to operate within a specific territory<sup>42</sup>. For existing <b>telecommunications (landline and cellular phones)</b> contractual relations previously entered into shall be respected, subject to an annual assessment of quality and cost or a cost benefit analysis. If the outcome of the annual assessment does not favour the existing service provider, then the procuring entity should use competitive public bidding where there is more than one service contractor operating in the area or direct contracting where there is only one service provider operating in the area. For new telecommunications the procuring entity should use competitive public bidding where there is more than one service contractor operating in the area or direct contracting where there is only one service provider operating in the area. Similar provisions apply for <b>Internet Service Providers</b>.</p> <p><b>AMP - Repeat Orders</b> GPRA/IRR s.51: applies only to the procurement of Goods. It is direct procurement from the previous winning bidder where a need arises to replenish goods procured under a contract previously awarded through a Competitive Bid, subject to post-qualification process described in the Bidding Documents and provided all of four conditions are met; price must be equal or lower to that in the original contract, repeat order does not result in splitting of requisitions or purchase orders, it is (generally) within 6 months of the notice to proceed with the original contract and it shall not exceed 25% of the quality of each item of the original contract.</p> <p><b>AMP - Shopping</b> GPRA/IRR s.52: applies only to the procurement of Goods. may be used for unforeseen contingency requiring immediate purchase, provided that value shall not exceed amounts specified in Annex H<sup>43</sup>, or procurement of ordinary or regular office supplies and equipment not available from the Procurement Service (the central purchasing body) not exceeding amounts specified in Annex H<sup>44</sup>, provided that it does not result in the splitting of contracts and at least three price quotations from bona fide suppliers are obtained.</p> <p><b>AMP - Negotiated Procedure</b> GPRA/IRR s.53: may be used for the procurement of Goods, Infrastructure Projects and Consulting services. It involves direct negotiation with a technically, legally and financially capable supplier, contract or consultant. <b>GPRA s.53 refers to five instances</b> where use of the negotiated procedure is permitted, with related conditions: These are, in summary: two failed biddings; emergency cases - such as in the case of imminent danger to life or property during a state of calamity; take-over of contracts which have been rescinded of terminated; where the subject contract is adjacent or continuous to an ongoing infrastructure project; and purchase of goods from another agency of government (agency-to-agency). IRR s.53 elaborates on these provisions, listing <b>14 cases</b> where use of the Negotiated Procedure is permitted. These are: two failed biddings; emergency cases<sup>45</sup>; take-over of contracts; adjacent or contiguous infrastructure project or consulting services where the consultants have unique experience or expertise; agency to agency (see below); scientific scholarly or artistic work, exclusive technology and media services; highly technical consultants; defense cooperation agreement/defense inventory-based items; small value procurement; lease of real property and venue; NGO participation pursuant to an appropriation law or ordinance (see below) ; community participation (see below); UN Agencies, International Organizations or International Financing Institutions (see below); and Direct retail purchase of petroleum fuel, oil and lubricant products and airline tickets<sup>46</sup>. The following instances are highlighted for comment:</p> <p>IRR s.53.5 permits use of negotiated procedure for <b>“Agency-to-Agency”</b> arrangements, being the procurement of Goods, Infrastructure Projects and Consulting Services by one agency from another agency of the Government of the Philippines.<sup>47</sup> All GOCCs fall within the definition of an Agency for the purposes of agency to agency arrangements permitted under IRR s.53.5.<sup>48</sup> Annex H Sets out Guidelines for Agency-to-Agency procurement which includes conditions for use - including that the arrangement is more efficient and economical than procurement and the “servicing “agency” has the mandate to deliver the requirements. All procurement by the Servicing Agency must comply with GPRA/IRR.</p> <p>IRR s.53.12 permits use of negotiated procedure for <b>Community Participation</b>. It provides that “Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected projects, or its components, to call for participation of local communities in the delivery of goods, including non-consulting services, and simple infrastructure projects, subject to the Community Participation Procurement Manual (CPPM) issued by the GPPB.” The CPPM sets guidelines for community participation in government procurement drawing lessons from experiences in community-based/community driven development (CDD) projects. It focuses on how the community can participate in managing procurement by being involved in planning,</p>				
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<sup>42</sup> IRR does not provide for a list of service providers who have been granted exclusive franchises or similar arrangements. GPPB written response to question from WB, February 2020, to question from WB.

<sup>43</sup> Annex H: Unforeseen contingency thresholds vary according to the type and size of procuring entity, ranging from ₱ 50,000 (fifty thousand) in the case of barangays, to ₱ 200,000 for national government agencies and other specified procuring entities.

<sup>44</sup> Annex H: Ordinary or regular office suppliers and equipment thresholds vary according to the type and size of procuring entity, ranging from ₱ 50,000 (fifty thousand) in the case of barangays, to ₱ 1,000,000 (one million) for national government agencies and other specified procuring entities.

<sup>45</sup> IRR s 53.2 defines emergency cases as being where there is or when time is of the essence arising from natural or man-made calamities or other cases where immediate action is necessary to prevent damage to or loss of life or property or to restore infrastructure facilities, or other public utilities. See also GPPB Circular 04-2016 Clarification on Negotiated Procurement under Emergency Cases.

<sup>46</sup> GPPB has issued Guidelines on Index-based Pricing for Procurement of Petroleum, Oil and Lubricant Products (Appendix 22, Revised IRR 2016, issued February 2020)

<sup>47</sup> There are specific rules on Government Printers and purchase of Common Use items through the Procurement Services (see Annex H) and also on mandatory use of the virtual store for the procurement of common-use supply and equipment (see IRR Appendix 30).

<sup>48</sup> GOCC-TSO response to clarification questions, from WB, received July 24, 2020.

	<p>procurement, and implementation, and on how the community can participate as contractors or service providers under negotiated procurement through community participation.</p> <p>Projects may be procured through Negotiated Procurement under IRR s.53.12 where the participation of local communities are desirable for project sustainability or to achieve certain specific social objectives. Use of this method is subject to maximum thresholds set out in the CPPM which are on a sliding scale, ranging from ₱ 500,0000 to ₱ 5,000,000 000 according to the type of procuring entity.<sup>49</sup></p> <p>When using the negotiated procedure, the Procuring Entity must, in accordance with IRR s.54.2 and 54.3, post the invitation or request for submission or price quotations/proposals in the PhilGEPS website, the Procuring Entity’s website (if available) and at the premises of the Procuring Entity for a period of at least 3 calendar days and follow procedural requirements set out CPPM. IRR s.53.11 permits use of negotiated procedure for <b>NGO Participation</b>. IRR, Appendix 14 provides that “As a general rule, all procurement shall be done through competitive public bidding. However, when an appropriation law earmarks an amount for projects to be specifically contracted out to NGOs, it is the intent of Congress to give due preference to NGOs.”</p> <p>Annex 14 Guidelines on Non-governmental Organization Participation in Public Procurement sets out allowable modes of selecting an NGO in case an appropriation law or ordinance specifically earmarks and amount for projects to be specifically contracted out to NGOs. The Procuring Entity may use competitive bidding – limiting the bidding to NGOs - or negotiated procurement under IRR s.53.11. When using the negotiated procedure the Procuring Entity must, in accordance with IRR s.54.2 and 54.3, post the invitation or request for submission or price quotations/proposals in the PhilGEPS website, the Procuring Entity’s website (if available) and at the premises of the Procuring Entity for a period of at least 3 calendar days and follow procedural requirements set out in Annex 14.</p> <p><b>AMP – International organizations/institutions:</b> IRR s.53.13 permits use of negotiated procedure for procurement from specialized agencies of United Nations Agencies, International Organizations or International Financing Institutions “...of any of the following: (a) small quantities of off-the-shelf goods, primarily in the fields of education and health; (b) specialized products where the number of suppliers is limited, such as but not limited to vaccines or drugs; or (c) Goods, Infrastructure Projects and Consulting Services, involving advanced technologies, techniques and innovations not locally available as certified by the HoPE, when it is most advantageous to the government.</p>				
<b>(c) Fractioning of contracts to limit competition is prohibited.</b>	<p><b>Summary:</b> IRR s.54.1 prohibits splitting of contracts for the purpose of evading or circumventing requirements of the legal framework. IRR s.54.1 provides that “Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of GoP contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR, particularly the necessity of competitive bidding and the requirements for the alternative methods of procurement.” The Annual Procurement Plan 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 Annual Procurement Plan submitted to the GPPB.</p>		<b>Criterion Met</b>		
<b>(d) Appropriate standards for competitive procedures are specified.</b>	<p><b>Summary:</b> The GPRA requires use of open Competitive Bidding as the default procedure but permits public bodies to use other competitive procedures subject to meeting conditions set out in the GPRA/IRR described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned</p>		<b>Criterion Met</b>		

<sup>49</sup> GOCC-TSO response to clarification questions, from WB, received July 24, 2020. Refers to these thresholds being under review.

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).</b>	<p><b>Summary:</b> the legal framework requires all invitations to bid to be advertised publicly unless conditions set out in the legal framework are met, permitting award without advertisement.</p> <p>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.....”. s21 then sets out a non-exhaustive list of where to advertise, including posting in the Procuring Entity's premises, PhilGEPS<sup>50</sup> and the website of the Procuring Entity, if available. The details and mechanics of implementation are provided in IRR s.21.</p> <p>IRR s.21.2 requires that the Invitation to Bid/Request for Expression of Interest is (1) posted at any conspicuous place reserved for this purpose in the Premises of the Procuring Entity for a period of seven calendar days; (2) posted continuously in the PhilGEPS website, the website of the Procuring Entity and website prescribed by the foreign government or international financing institution for a period of 7 days starting on the date of advertisement. and be advertised in a national newspaper where the Procuring Entity cannot post its opportunities in the PhilGEPS for justifiable reasons.</p> <p>GPRA s.54 Alternative Methods of Procurement sets out circumstances where advertisement is not required.</p> <p><b>Contract award notices:</b> IRR s.37.1.6 requires in relation to <b>competitive bidding</b>, the BAC through the Secretariat, to post, within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPS, the website of the Procuring Entity, if any, and any conspicuous place in the premises of the Procuring Entity.</p> <p>IRR s.54.3 provides that <b>in all instances of alternative methods of procurement</b>, the BAC, through the Secretariat, shall post, for information purposes, the notice of award, contract or purchase order, including notice to proceed if necessary, in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity, except for contracts with ABC of Fifty Thousand ₱ (₱50,000.00) and below.</p> <p>See also commentary at Indicator 4 on Transparency Seal requirements concerning publication by procuring entities of annual procurement plans, which provides advance notification for bidders of planned procurements.</p>		<b>Criterion Met</b>		
<b>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.</b>	<p><b>Summary:</b> The legal framework sets out recommended minimum and maximum time periods for various stages of the procurement including the stage when potential bidders obtain/access documents and respond to the advertisement and for submission of bids/proposals. These minimum and maximum time periods vary according to the nature and complexity of the procedure and the requirement to use longer time periods in the context of international competition is acknowledged.</p> <p><b>Time limits for advertised competitive procedure:</b> 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...”.</p> <p>The legal framework does not specify fixed minimum time limits for use in particular procurement procedures. Rather, as provided for in IRR s.38.2, Annex C of the IRR set out the recommended earliest possible time for action and the maximum permitted periods in respect of specific procurement activities.</p> <p>Annex C contains three tables, for procurement of (1) goods and services; (2) infrastructure projects; and (3) consulting services. Each table lists the recommended earliest possible time and maximum period allowed for each stage of the procurement process. In the case of goods and services the total time period ranges from 26 to 136 calendar days; for infrastructure projects it is 26 to 156 calendar days and for consulting services it is 36 to 180 calendar days. IRR s.48.2 provide that when using alternative methods of procurement, procuring entities shall ensure that the procurement program allows sufficient lead time for such competitive bidding.</p> <p>The minimum recommended and maximum permitted calendar days from the last day of advertisement/Posting of invitation to bid to the deadline for submission also vary according to the nature and value of the procurement. The GPPB has a procurement timeline calculator page on its website (accessible from the GPPB homepage)<sup>51</sup></p>		<b>Criterion Met</b>		

<sup>50</sup> 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.  
<sup>51</sup> <https://www.gppb.gov.ph/procurement-timelines.php> accessed 13 December 2019

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	<p>IRR s.38 provides that the procurement process from the opening of bids to the award of contracts shall not exceed three months, or a shorter period to be determined by the procuring entity.</p> <p>There are specific provisions concerning more complex contracts or those where there is <b>international</b> participation. For example, IRR s.22.2 provides that for contracts over a specified threshold<sup>52</sup>, it is mandatory to conduct a “Pre-bid conference” to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the Bidding Documents. A prospective bidder may also request a pre-bid conference. A pre-bid conference must usually be held at least 12 calendar days before the deadline for submission and receipt of bids. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.</p> <p>For some alternative methods of procurement procuring entities are required to post the invitation or request for submission of price quotations/proposals in the PhilGEPS website, the website of the procuring entity, if available and at any conspicuous place reserved for this purpose in the premises of the procuring entity for a period of at least 3 calendar days (IRR s54.2)</p>				
<b>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).</b>	<p>Summary: publication of open competitive bidding is required on the PhilGEPS website as well as at the premises of the Procuring Entity and the website of the Procuring Entity (if available). The PhilGEPs website is easily accessible at no charge.</p> <p>IRR s.21.2 requires that the Invitation to Bid/Request for Expression of Interest is (1) posted at any conspicuous place reserved for this purpose in the Premises of the Procuring Entity for a period of seven calendar days; (2) posted continuously in the PhilGEPS website, the website of the Procuring Entity and website prescribed by the foreign government or international financing institution for a period of 7 days starting on the date of advertisement. The general requirement for advertisement in a national newspaper set out in GPRA s.21.2.1(c) ceased to have effect from 29 October 2018. However, the Invitation to Bid/Request for Expression of interest must still be advertised in a national newspaper where the Procuring Entity cannot post its opportunities in the PhilGEPS for justifiable reasons<sup>53</sup>. GPRA s.54 Alternative Methods of Procurement sets out circumstances where advertisement is not required.</p>		<b>Criterion Met</b>		
<b>(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.</b>	<p><b>Summary:</b> the content published is sufficient to allow potential bidders to determine whether they are able to submit a bid and interested in submitting one.</p> <p>GPRA s.21 lists the minimum information to be included in the Invitation to Bid. IRR s.21 elaborates on these requirements. The minimum information to be included in the Invitation to Bid comprises, in summary; a brief description of the subject matter of the procurement, a general statement on the criteria for eligibility, shortlisting, in the case of Procurement Consulting Services the examination and evaluation of Bids, and post-qualification; date time and place of deadlines for submission, approved budget, period of availability of Bidding Documents and where available, contract duration and other information deemed necessary by the Procuring Entity.</p> <p>Where competitive bidding is used, the required information is published in the Opportunities section of the PhilGEPS website which is publicly available and can be accessed without prior registration.<sup>54</sup></p>		<b>Criterion Met</b>		

1(d) Rules on participation  
The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.</b>	<p><b>Summary:</b> the legal framework provides that eligibility requirements provide fair and equal access to all prospective bidders.</p> <p>GPRA s.24 sets out basic principles and requirement 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”.</p>		<b>Criterion Met</b>		

<sup>52</sup> Contracts with an ABC of ₱ 1,000,000 (one million) or more.  
<sup>53</sup> GPRA s.21.2.1 final paragraph (sunset provision) and GPPB Resolution 22-2018  
<sup>54</sup> <https://www.philgeps.gov.ph/GEPSNONPILOT/Tender/SplashOpenOpportunitiesUI.aspx?ClickFrom=OpenOpp&menuIndex=3> Website accessed 3 December 2019.

	<p>The term “exclusion” or “exclusion grounds” are not used. However, some of the provisions regarding “eligibility” and on “disqualification” would cover grounds for exclusion referred to in the MAPS assessment criteria – such as fraud.</p> <p>IRR ss. 23 &amp; 24 set out in detail the eligibility requirements and documentary evidence to be provided in support, for the procurement of Goods (including services) and infrastructure projects (IRR s.23) and consultancy services (IRR s.24). The procurement Manuals provide further detail on these provisions (see below).</p> <p><b>Post-qualification:</b> GPRA s.34/IRR s.34 provides for Post-Qualification which is the stage where bidder with the Lowest Calculated Bid, in the case of Goods and 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. (see IRR s.34 for detail including non-discretionary criteria listed at s.34.3)</p>				
<b>(b) It ensures that there are no barriers to participation in the public procurement market.</b>	<p><b>Summary:</b> “Eligibility” criteria defined in GPRA and IRR ss.23 and 24 and which primarily deals with Filipino ownership/participation and registration (licensing) requirements, creates barriers to participation for foreign bidders.</p> <p><b>Eligibility</b> <b>Foreign bidders</b> IRR Appendix 9 confirms that the GPRA adopts as a general principle the preference for Filipino national in the award of Government’s procurement contracts. Government procurement opportunities are only open to foreign bidders in specified, limited, cases.</p> <p>IRR Appendix 9 <b>Guidelines in the Determination of Eligibility of Foreign Suppliers, contractors and Consultants to Participate in Government Procurement Projects:</b> confirms, in summary, at section 1 that in line with the economic policies enunciated in the Constitution the GPRA Republic Act No. 9184, adopts as general principle the preference for Filipino nationals in the award of Government procurement contracts. However, 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 (MFN) status and non-discrimination treatments under applicable laws and treaties are complied with. Appendix 9 sets out in more detail the conditions where foreign bidders are eligible to participate.</p> <p>See notes on eligibility criteria at 1(d)(c)</p> <p>It should also be noted that <b>International Competitive Bidding</b> is a mode of procurement limited to foreign funded projects using rules and guidelines other than GPRA - such as RA No.7718 (BOT Law) and those of development partners. The legal framework has specific provisions concerning open competitive bidding for more complex contracts or those where there is <b>international</b> participation (see sub-indicators 1(a)(b) and 1(c)(b) but there are no provisions commonly seen in other systems, for example requiring international advertisement for contracts which are highly complex or over specified thresholds.</p> <p><b>Domestic Preference – 15% price preference for Goods</b></p> <p>GPRA s.43 provides that “the Procuring Entity may give preference to the purchase of domestically-produced and manufacturer goods, supplies and materials that meet the specified or desired quality.” There are no equivalent domestic preference provisions for the procurement of infrastructure projects (works) or Consulting Services. IRR s.43.1.2 provides that the Procuring Entity shall give preference to materials and supplies produced made and manufactured in the Philippines, subject to specified conditions. The award is made to the lowest Domestic Bidder provided his bid is not more than 15% in excess of the lowest Foreign Bid. A Domestic Bidder can only claim preference if it has relevant Department of Trade and Industry (DTI) certification. Reciprocity rules apply.</p>		<p><b>Criterion Not Met</b></p> <p>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.</p> <p>Philippines has an observer status at WTO-GPA as announced on June 26, 2019 where GoP is committed to “taking steps to create a transparent, open and fair procurement system founded on a sound legal framework which includes initiatives to open procurement to foreign suppliers”</p> <p>Government has announced legislative agenda to promote competition that includes amending of the Foreign Investment Act of 1991(RA 7042) also to address “procurement restrictions and lengthy procedures that hamper foreign investment and participation of foreign bidders in local procurement”</p>	Yes	<p>In the next review of the procurement legal framework, the Government should 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, achieving best value for the public money spent and supporting major reforms in the Philippines<sup>55</sup>, in particular the aim to improve business environment, continue the efforts of easing and removing restrictions in the services sector and pursue reforms to open the sector to foreign participation and encourage competition. In this context, the government should also consider whether the procurement legal framework could be clearer with respect to meeting obligations deriving from international treaties and international agreements. The government should also consider whether international competitive bidding under the GPRA should be mandatory in specified circumstances such as highly complex or particularly high value contracts.</p>
<b>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for</b>	<p><b>Summary:</b> Eligibility requirements: the term “eligibility requirements” in the Filipino procurement system is slightly different from the common meaning and application found in other jurisdictions. It encompasses “eligibility criteria” (Filipino</p>		<p><b>Criterion Partially Met</b></p>		

<sup>55</sup> See Box 2.2. in this Report, Volume I referring to Updated National Development Plan 2017-2022



<b>administrative debarment under the law, subject to due process or prohibition of commercial relations.</b>	<p>nationality requirements and establishment), commercial requirements (incorporation of bidder, license, etc.) and qualification requirements of the bidder (Net Financial Contracting Capacity, Single Largest Completed Contracts, similar past experience, etc.).</p> <p><b>Exclusion for criminal and corrupt activities:</b> There are no provisions in the GPRA/IRR referring specifically to exclusion from participation in a public procurement process, in line with the MAPS wording, on the grounds that a firm or individuals have been the subject of a 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.</p> <p><b>Debarment/Blacklisting:</b> Exclusion from government contracting applies where a potential bidder is debarred or blacklisted by the Government of the Philippines or any of its agencies, offices, corporations or local government units and also by foreign government/foreign or international financing institution whose blacklist is recognized by the GPPB. See further comment below on the debarment/blacklisting process.</p> <p><b>Eligibility requirements</b> <b>Eligibility Criteria</b> IRR s.23.4.1 lists the <b>Eligibility criteria for the procurement of Goods and supporting documents.</b> Eligibility requirements concern establishment, experience and financial standing. They require, in summary: <b>Establishment:</b> that the prospective bidder is a duly licensed Filipino citizen/sole proprietor or a partnership, corporation or joint venture with at least 60% Filipino interest/ownership or cooperative duly organized under the law of the Philippines. Foreign bidders may be eligible to participate in specified circumstances in accordance with Guidelines issued by the GPPB, set out in Appendix 9. The circumstances specified are, in summary; where provided for under Treaty or International or Executive Agreement as provided for under GPRA s.4 and the IRR; where reciprocal rights or privileges have been granted; where goods are not available from local suppliers, or; where there is a need to prevent situations that defeat competition or restrain trade. <b>Experience:</b> Completion of a similar contract (Single Largest Completed Contract (SLCC)) whose value, adjusted to current prices, must be at least 50% of the Approved Budget for the Contract (ABC) which is the subject matter of the procurement (25% in the case of Expendable Supplies.) There are provisions permitting the Procuring Entity to use different measures of experience where it has been established at the outset after conducting market research that imposing the 50% requirement is likely to result in failure of bidding or monopoly. <b>Financial Standing:</b> Net Financial Contracting Capacity (NFCC) at least equal to the ABC to be bid, or in the case of Good, a committed Line of Credit from a Universal or Commercial Bank at least equal to 10% of the ABC. Further detail together with required documents is set out in IRR s.23</p> <p>IRR s.23.4.2 lists the <b>Eligibility criteria for the procurement of Infrastructure Projects.</b> Eligibility requirements concern establishment, licensing, experience and financial standing. They require, in summary: <b>Establishment:</b> that the prospective bidder is a duly licensed Filipino citizen/sole proprietor or a partnership, corporation or joint venture with at least 60% Filipino interest/ownership or cooperative duly organized under the law of the Philippines<sup>56</sup>. Foreign bidders may be eligible to participate where provided for under Treaty or International or Executive Agreement as provided for under s4 GPRA and the IRR. <b>Licensing:</b> the prospective bidder may participate in competitive bidding if he has been issued with a license by the Philippine Contractors Accreditation Board (PCAB) to engage or act as a contractor.<sup>57</sup> <b>Experience:</b> Completion of a similar contract (Single Largest Completed Contract (SLCC)) whose value, adjusted to current prices, must be at least 50% of the Approved Budget for the Contract (ABC) which is the subject matter of the procurement. Evidence of satisfactory completion is required. For smaller value contracts similar experience is not necessary if the cost of the contract is not more than the Allowable Range of Contract Cost of their registration based on PCAB Guidelines. For Foreign-funded Procurement the Government of the Philippines and foreign government/international financing institution may agree on another track record. <b>Financial Standing:</b> Net Financial Contracting Capacity (NFCC) at least equal to the ABC to be bid, with provisions on how this is calculated by reference to both domestic and foreign prospective bidders.</p> <p><b>Documentary evidence of eligibility for Procurement of Goods and Infrastructure projects:</b> IRR s.23.1 lists the documents to be provided by bidders for determining eligibility, being <i>Class A Documents - Legal Documents</i> (registration certificates, Mayor’s/Business permits and tax clearance all of which are also covered by PhilGEPS Certificate of Registration); <i>Class A Documents – Technical Documents</i> being information on ongoing government and private contracts, the bidder’s Single Largest Completed Contract and, in the case of procurement of Infrastructure projects, a valid PCAB license od Special PCAB license in the case of JVs; and Class A – Financial Documents being audited</p>		<p><b>Eligibility requirements:</b> It is a mix of “eligibility criteria”, commercial and qualification requirements of the bidder. For example, there is no provision under the Eligibility Requirements provisions of IRR ss. 23 &amp; 24 on prohibition of blacklisted/debarred firms to participate though Appendix 17 Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants (“Blacklisting Guidelines”), prohibit blacklisted firms/individuals from participating in procurement activities. Also, there is no clarity as to how the Contractor’s Performance Rating is used in determining the eligibility of the bidder.</p> <p><b>Exclusion for criminal and corrupt activities:</b> 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.</p>	<p><b>Eligibility requirements:</b> In the next round of reforms, 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.</p> <p><b>Exclusion for criminal and corrupt activities:</b> 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.</p>
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<sup>56</sup> Amended by GPPB Resolution 06/2019

<sup>57</sup> At the end of August 2020, the Supreme Court published its decision in the case of Philippine Contractors Accreditation Board (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 No.4566 (IRR of RA 4566) reserving regular licenses to contractor firms of Filipino sole proprietorship or partnership/corporation with at least 60% 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. The impact of the Supreme Court decision on the wider procurement legal framework is still to be determined. -28 October 2020]. In parallel, the Philippines has observer status to the committee of the WTO’s Government Procurement Agreement (GPA), with effect from 26 June 2019<sup>57</sup> and has announced and recently confirmed, interest in joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) <sup>57</sup>.

	<p>financial statements and Net Financial Contracting Capacity Computation. There are additional Class B documents for JV arrangements.</p> <p>IRR s.24.3 lists the <b>Eligibility Criteria for Consulting Services</b>. Eligibility criteria concern establishment, registration/licensing and financial standing. They require, in summary:</p> <p><b>Establishment:</b> that the prospective bidder is a duly licensed Filipino citizen/sole proprietor or a partnership, corporation or joint venture with at least 60% Filipino interest/ownership or cooperative duly organized under the law of the Philippines.</p> <p><b>Registration:</b> when the types and fields of consulting services required involve the practice of professions regulated by law IRR s.24.3.2 requires that those who will actually perform the services to be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions. Foreign consultants may be hired in the event Filipino consultants do not have sufficient expertise and capability, subject to submission of specified registration and/or license documents issued by authorities/bodies in the Philippines<sup>58</sup>. The documentary evidence to be provided to demonstrate eligibility are listed at IRR s.24.1</p> <p>IRR Appendix 9 sets out Guidelines in the Determination of Eligibility of Foreign Suppliers, Contractors and Consultants to Participate in Government Procurement Projects.</p> <p>GPRA s.65 (b) <b>Offenses and Penalties</b> includes offenses and penalties applicable to private individuals, (which may include bidders) concerning collusive and anti-competitive bidding practices. As well as attracting the penalty of imprisonment, convictions for these offences lead to the penalty of permanent disqualification from transacting business with the government</p> <p>GPRA s.42 provide those rules and guideline for the implementation and termination of contracts awarded pursuant to the GPRA shall be prescribed in the IRR. IRR Annex I Guidelines on Termination of Contracts includes, at section D, grounds for termination for unlawful acts including corrupt, fraudulent, collusive and coercive practices.</p> <p>GPRA s.47 <b>Disclosure of relations</b> requires all bidding documents to be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity (included in the Omnibus Sworn Statement). Failure to comply with this provision is a ground for automatic disqualification of the bid.</p> <p><b>Omnibus Sworn Statement:</b> The Omnibus Sworn Statement is included in the standard Philippine Bidding Documents and is submitted by bidders in the form of an affidavit. The bidder is required to confirm, amongst other things, that is it not blacklisted, that it complies with all existing labor laws and standards and that specified conflicts of interest do not exist. The bidder must also confirm that it “did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.” (Omnibus Sworn Statement paragraph 9). Standard Philippine Bidding Documents include provisions in the Instructions to Bidders for rejection of proposal for award if the Bidder is engaged in any corrupt, fraudulent, collusive or coercive practices (which are defined)<sup>59</sup>. See, for example, Bidding Document for Goods section A, paragraph 3. These provisions are reflected in requirements placed on contractors in the General Conditions of Contract and the right of the procuring entity to reject bidders in these circumstances: s2 Corrupt, fraudulent, collusive and coercive practices</p> <p>In addition, all bidders found to have conflicting interests shall be disqualified See, for example, Bidding Document for Goods section A, paragraph 4.</p> <p><b>Administrative debarment/blacklisting – GPRA /IRR s.69</b></p> <p>The legal framework allows for the suspension and blacklisting of suppliers, contractors or consultants (“contractors”). GPRA s.69 provides that the Head of the Procuring Entity shall impose on a bidder or prospective bidders the administrative penalty of suspension for one year for the first offense and two years for the second offense from participating in the bidding process for violations listed in GPRA s.69(a) and for “all other acts that tend to defeat the purpose of Competitive bidding.” The Head of the Procuring Entity may delegate to the BAC the authority to impose these penalties. The procedure for suspension or blacklisting must be in accordance with IRR Appendix 17 Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants (“Blacklisting Guidelines”).</p> <p><b>The grounds for blacklisting arising during the procurement stage</b> are listed at s.4.1 of the Blacklisting Guidelines. 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 purpose of 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.</p> <p>In addition to the penalty of suspension and blacklisting the bid security is also forfeited.</p>					<p><b>Grounds for blacklisting:</b> Some of the grounds for blacklisting, particularly in relation to contract implementation stage, are more appropriate and proportionate as disqualification criteria relating to the award of a specific contract (e.g. bidders failing to sign a contract can be penalized through recalling of the bid security instead of blacklisting).</p> <p><b>Decentralized system:</b> Blacklisting decisions are made at procuring entity level with limited or no review available of the process, decisions and reasons for decision. This does not ensure independence and impartiality.</p> <p><b>Information gap:</b> A lack of centrally collated, coordination and detailed information on the decision-making process means that it is not possible to assess whether blacklisting grounds are applied consistently.</p> <p>Blacklisting during the procurement process could potentially impact on the confidentiality of the procurement process.</p>	<p><b>Grounds for blacklisting.</b> 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.</p> <p><b>Right of appeal against blacklisting decisions/decentralized system/information gap.</b> Consider requiring reporting by procuring agencies to GPPB, if so decided, more detailed information on blacklisting decisions and reasons for those decisions. This is in order</p>
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<sup>58</sup> IRR s37.1.4(iv)): in summary, aSecurities and Exchange Commission Certificate of Registration and/or authorization or license issued by the appropriate Government of the Philippines professional regulatory body if the foreign professionals engaging in the practice of regulated professions and allied professions, where applicable.

<sup>59</sup> See, for example, Bidding Document for Goods section A, paragraph 3.

	<p><b>The grounds for blacklisting arising during the contract implementation stage</b> are listed at s.4.2 of the Blacklisting Guidelines. They 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 services arising from his 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.</p> <p><b>Procedure for suspension and blacklisting during the competitive bidding stage</b> The procedure for suspension and blacklisting during the bidding process is set out in s.5 Blacklisting Guidelines. Time scales 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 Committee (BAC). The BAC may also initiate the suspension procedure. Procuring Entities may charge a reasonable fee for the suspension and blacklisting procedure<sup>60</sup>. The procedure involves initial consideration by the BAC of the application. The BAC is required to notify the contractor in writing of the complaint and the contractor has a right to provide a written response and request an oral hearing. Time scales are specified and are reasonably short. Where the BAC recommends suspension and forfeiture to the Head of the Procuring Entity, the Head of the Procuring Entity must issue and communicate his decision to the contractor within 15 calendar days. <b>Right to file a motion for reconsideration to Head of Procuring Entity:</b> The contractor has three calendar days from receipt of the decision to file a motion for reconsideration. The Head of the Procuring Entity must make a final resolution within specified timescales and immediately send the contractor a copy of the final resolution. If the contractor does not file a motion for reconsideration within three calendar days of receipt, the decision becomes final. The Head of the Procuring Entity then issues a “Blacklisting Order” disqualifying the erring contractor from participating in the bidding of all government contracts. <b>Finality of decision.</b> The Blacklisting Guidelines s5.9 provide that “The decision of the agency shall become 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.” <b>Right of appeal against decision to deny the motion for reconsideration<sup>61</sup>:</b> The Blacklisting Guidelines s.5.8 provide that a suspended contractor whose motion for consideration has been denied may file an appeal with the “appellate authority”, upon payment of a fee. The “Appellate Authority” is defined in the Blacklisting Guidelines s.3.1 as: “..department, office or government unit exercising general and/or administrative supervision/control over the blacklisting agency. Department level agencies shall exercise appellate authority over offices, agencies, bureaus, government units, GOCCs and SUCs under their jurisdiction.” 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.</p> <p><b>Procedure for suspension and blacklisting during the contract implementation stage</b> The procedure for suspension and blacklisting during the contract implementation process is set out at s6 Blacklisting Guidelines. <b>Contract termination:</b> Upon termination of contract due to the default and/or unlawful acts of the contractor, the Head of the Procuring Entity issues within 7 calendar days a Blacklisting Order which immediately disqualifies the contractor from participating in the bidding of all government projects. <b>Other circumstances:</b> Where contract termination is not possible but the contractor commits acts or causes which may constitute grounds for blacklisting, the Head of the Procuring Entity initiates the blacklisting procedure by written notification to the contractor including specified information. The contractor has 7 calendar days to show cause why he should not be blacklisted. If the contractor fails to show cause within 7 calendar days the Head of the Procuring Entity issues a Blacklisting Order <b>Right of appeal:</b> There is no express right of appeal set out in the Blacklisting Guidelines against a decision to suspend and blacklist during the contract implementation stage.<sup>62</sup> <b>GPPB Consolidated Blacklisting Report</b> The blacklisting agency (procuring entity) must submit information concerning the blacklisting decision to the GPPB within 7 calendar days of issuing the Blacklisting Order<sup>63</sup>, using a standardized form. The GPPB publishes the</p>		<p><b>Fees:</b> IRR provides for a fee to be imposed on bidders or observers bringing up or initiating a blacklisting proceeding, which can disincentivize bidders from bringing up possible misconduct or violations during procurement process.</p>		<p>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.</p> <p><b>Fees.</b> Consider removing the application of a fee as requirement for commencing a blacklisting proceeding brought by bidders or observer, in order to facilitate greater accountability.</p>
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<sup>60</sup> Uniform Guidelines for Blacklisting s.5.1

<sup>61</sup> Prior to the 2017 amendments, reference was to the right to file a “protest” under IRR s.55.3 (the bid protest provisions) which does then, potentially allow for appeal to the courts, but this was changed. The right is now expressed to be a right to “appeal” not a “protest”. GPPB Resolution 40-2017 explains that this change in terminology is deliberate, to avoid confusion with bid protest mechanism.

<sup>62</sup> GPPB-TSO response to WB clarification question received 24 July 2020 notes that blacklisted entities resort to available provisional remedies through the courts (1997 Revised Rules of Court) and the GPPB and its TSO have been receiving temporary restraining orders, preliminary injunctions and similar provisional remedies issued by judicial courts directing the removal of the names of Blacklisted Entities from the published blacklist.

<sup>63</sup> And GPPB Resolution 40-2017, Circular 10-2017

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	Consolidated Blacklisting Report on its website <sup>64</sup> and the Report is updated every quarter. The Consolidated Blacklisting Report lists the blacklisted entity, the blacklisting agency, the project, offenses, sanction and period of sanction. The GPPB delists those whose sanctions are lifted automatically after serving the given penalty. There are also provisions covering delisting orders.				
<b>(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.</b>	IRR s.23.5 provides that government-owned and/or-controlled corporations (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) are not attached agencies of the Procuring Entity. IRR s.23.5 goes on to refer to promulgation by the GPPB of the necessary guidelines to support this provision. No guidelines have been published. <sup>65</sup>		<b>Criterion Partially Met</b>  IRR s.23.5 refers to promulgation by the GPPB of the necessary guidelines to support this provision. No guidelines have been published. Guidelines are often very helpful in this context to highlight to procuring entities ways to avoid favorable treatment of GOCCs which participate as bidders for government contracts.		<b>Recommendation</b>  Consider publishing Guidelines for Procuring Entities on how to promote fair competition and avoid favorable treatment of GOCCs participating as bidders for government contracts.
<b>(e) It details the procedures that can be used to determine a bidder’s eligibility and ability to perform a specific contract.</b>	GPRA ss. 23 & 24 set out basic principles and requirement concerning eligibility to participate in government procurement for goods, infrastructure projects and consulting services. IRR ss. 23 & 24 set out in detail the eligibility requirements and documentary evidence to be provided. The Philippines Bidding Documents set out the procedures and requirements. GPRA s.34 <b>Objective and Process of Post-Qualification</b> covers the process for verification and validation of the successful bidder.		<b>Criterion Met</b>		

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.</b>	GPRA s.5(c) defines Bidding Documents as “documents issue by the Procuring Entity as the basis for Bids, furnishing all information necessary for the prospective bidder to prepare a bid for the Goods, Infrastructure Projects and Consulting Services to be provided”. GPRA s.17 lists the Form and Contents of Bidding Document. Requirements for Bidding Documents are elaborated in IRR and also in IRR Annexes such as Annex G Guideline for procurement and implementation of contracts for design and building infrastructure projects.  Procuring entities are required to upload bidding documents to their websites and the PhilGEPS website and potential bidders may access PDF versions of those documents. GPRA s.17 provides that procuring entities may ask bidders to pay for bidding documents to recover the cost of their preparation and development in accordance with Appendix 8 Guidelines on the Sale of Bidding Documents. A sliding scale applies to the maximum cost specified in the Guidelines.  See also indicator 2 2(b) referring to use of Philippines Standard Bidding Documents		<b>Criterion Met</b>  _____		Suggestion for improvement  See Indicator 2(b) referring to Philippines Standard Bidding Documents
<b>(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.</b>	<b>Summary:</b> There is no provision of general application in the GPRA or IRR requiring the use of neutral specifications or requiring citing of international norms where possible. There are, however, prohibitions on use of brand names save in specified circumstances. There specific provisions in the Generic Procurement Manuals on use of Philippine Standards for goods and international standards in infrastructure projects. The legal framework provides for the use of functional specifications where appropriate. <sup>66</sup>  GPRA s.18 Reference to Brand Names: sets out the general principles that specifications for the Procurement of Goods “shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed”. IRR s.18 repeats this general principle and then includes a caveat that reference to brand names is permitted for items or parts that are compatible with existing fleet or equipment of the same make and brand to maintain the		<b>Criterion Partially Met</b>  GPRA & IRR provides that reference to brand names is not generally allowed. Whilst there are provisions in the Generic Procurement Manuals and Standard Bidding Documents concerning the use of standards there is no clear provision of general application in the GPRA or IRR, requiring the use of neutral		<b>Recommendation</b>  Add a clear provision of general application in the GPRA or IRR, requiring the use of neutral specifications or requiring citing of international norms when possible.

<sup>64</sup> <https://www.gppb.gov.ph/blacklistedsuppliers.php> accessed 3 December 2019. 90 entities are listed as Blacklisted Entities. Re-accessed 7 August 2020. 72 entities are listed as Blacklisted Entities

<sup>65</sup> Response from GPPB in February 2020 to request from WB for copy of relevant guidelines and confirmed in meeting with GPPB-TSO on 23 October 2020.

<sup>66</sup> GPPB-TSO TSO response to WB clarification question received 24 July 2020 notes that while there is no GPRA or IRR provision of general application requiring the use of neutral specifications or citing international norms the provision in the Generic Procurement Manual and Philippines Bidding Documents would suffice as a legal basis on this matter pursuant to GPRA s.6 and IRR relative to the mandate on the GPPB to develop generic procurement manuals and standard bidding forms the use of which, once issued, shall be mandatory on all procuring entities

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



	<p>performance, functionality and useful life of the equipment. IRR also extends the application of this provision to apply to goods component of Infrastructure Projects and Consulting Services.</p> <p>Generic Procurement Manual Vol.2 <b>Goods</b> (and services) (page 10 of 128) requires that a generic description on the product or service must be used and, as a rule <b>Philippine standard, as specified by the Bureau of Product Standards, must be followed</b>. For products where there are no specified Philippine standards, the standards of the country of origin or other international body may be considered.</p> <p>It also provides that In determining the technical specifications of the goods it will procure, the procuring entity must consider the objectives of the project or the procurement at hand, and identify the standards that should be met by the goods in terms of function, performance, environmental interface and/or design. It must also conduct a market survey that will include a study of the available products or services, industry developments or standards, product or service standards specified by the authorized government entity like the Bureau of Product Standards, ISO9000 or similar local or international bodies.</p> <p>Generic Procurement Manual Vol. 3 <b>Infrastructure Projects</b> (page 11 of 113) requires that 1. ) Standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement; 2.) As far as possible, the Procuring Entity should specify <b>internationally accepted standards</b> such as those issued by the International Standards Organization with which the equipment or materials or workmanship should comply, except that where such international standards are unavailable or are inappropriate, national standards may be specified; and 3.) In all cases, the bidding documents should state that equipment, material or workmanship meeting other standards, “which promise at least substantial equivalent”, should also be accepted.</p>		specifications or requiring citing of international norms when possible.		
<b>(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.</b>	<p><b>Standard Philippines Bidding Documents</b><sup>67</sup> also provide for the inclusion of Special Conditions of Contract or the Technical Specifications concerning “Equivalency of Standards and Codes” and provide, in summary, the latest standards and codes shall apply unless otherwise expressly stated in the contract, that where such standard and codes are national or relate to a particular country or region, other authoritative standards that ensure substantial equivalence will be acceptable, and require that where use of brand names and catalogue numbers is unavoidable, they should be followed by the words “or equivalent.”</p> <p>Generic Procurement Manual Vol.2 <b>Goods</b> (and services) (page 10 of 128) requires that a generic description on the product or service must be used and, as a rule Philippine standard, as specified by the Bureau of Product Standards, must be followed. For products where there are no specified Philippine standards, the standards of the country of origin or other international body may be considered. In this context, Footnote 1 refers to the acceptance of offers for goods which have similar characteristics to branded goods and which are “substantially equivalent”.</p> <p>Generic Procurement Manual Vol. 3 <b>Infrastructure Projects</b> (page 11 of 113) requires that as far as possible, the Procuring Entity should specify internationally accepted standards and, in all cases, the bidding documents should state that equipment, material or workmanship meeting other standards, “which promise at least substantial equivalent”, should also be accepted.</p>		<b>Criterion Met</b>		
<b>(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)</b>	<p>Potential bidders are allowed to request clarification of the bidding document and the procuring entity is required to respond in a timely fashion and communication the clarification to all potential bidders.</p> <p>GPRA s.22.5 provides that requests for clarification on any part of the Bidding Documents or for an interpretation must be made in writing and submitted to the BAC at least 10 calendar days before the deadline for submission of bids. The BAC is required to respond to a clarification request. A “Supplemental”/”Bid Bulletin” may be issued at least 7 days before the deadline for receipt of bids and it must be published on the Phil-GEPS website the website of the Procuring Entity, if available and at the premises of the Procuring Entity.</p> <p>GPRA s.22 provided for Pre-Bid Conferences to be held to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the Bidding Documents. Pre-bid conferences are mandatory for contracts of ₱ 1 million or more and discretionary for contract below that value. A pre-bid conference may also be conducted upon request of any prospective bidder. GPRA s.22 and IRR s.22 set out details concerning the timing and conduct of the pre-bid conference. Minutes of the Pre-Bid Conference and decisions amending any provisions of the Bidding Documents must be issued in writing through a “Supplemental”/”Bid Bulletin”<sup>68</sup>.</p> <p>The possibility of Supplemental/Bid Bulleting and Pre-Bid Conference are referred to in the <b>Standard Philippines Bidding Documents</b><sup>69</sup>.</p>		<b>Criterion Met</b>		

<sup>67</sup> Sampled: Standard Philippines Bidding Document for Goods, 6<sup>th</sup> edn., Section VII Technical specifications.

<sup>68</sup> See GPPB Resolution 03/2018 and GPPB Circular 02/2018 Conduct of Pre-bid conferences, as amended by GPPB Resolution No.04 of 2021.

<sup>69</sup> Sampled: Standard Philippines Bidding Document for Goods, 6<sup>th</sup> edn., Section II Instructions to Bidders.



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1(f) Evaluation and award criteria  
The legal framework mandates that:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.</b>	<p><b>Summary:</b> Evaluation criteria must be precisely specified in advance in the procurement documents and award must be made on the basis of the stipulated criteria.</p> <p>GPRA s.21 Advertising and Contents of Invitation to Bid requires a general statement concerning the criteria to be used for examination and evaluation of Bids for Consulting Services to be included in the Invitation to Bid.</p> <p>GPRA s.17 Form and content of bidding documents requires the Bidding Documents to include criteria for bid evaluation. The standard Philippines Bidding Document for Goods requires that the procuring entity specifies in the Bid Data Sheet the bid award criteria to be used.<sup>70</sup> The Philippines Bidding Documents for Consultancy Services includes sections for the award criteria and methodologies to be applied with minimum and maximum weightings for financial proposal specified for quality-cost based evaluation, in line with IRR s.33.2.</p>		<b>Criterion Met</b>		
<b>(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.</b>	<p><b>Summary:</b> the use of price and non-price attributes is permitted. Life-cycle cost may be used, in particular in the context of preparation of green technical specifications for common-use supplies and equipment.</p> <p>For the procurement of Goods (including services) and Infrastructure Projects (works) the award criterion used is the “Lowest Calculated Responsive Bid”. Non-price attributes are assessed in order to ensure that the bid is responsive, meeting all technical and other requirements but there is no price-quality scoring. Quality based evaluation and quality-cost based evaluation is applicable only to procurement of Consulting Services.</p> <p>GPRA s.34 provides that “in all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid in the case of Goods and Infrastructure or Highest Rated Responsive Bid in the case of Consulting Services.</p> <p>Green/sustainable issues and life-cycle cost is 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 (CSE) and further green technical specifications planned for CSE and non CSE procurement, in accordance with the Philippine Green Public Procurement Roadmap.</p> <p>Quality based evaluation and quality-cost based evaluation is only applicable to the procurement of Consulting Services. IRR s.33 sets out how these evaluation methods are to be used.</p> <p><b>Domestic Preference – 15% price preference for Goods</b></p> <p>GPRA s.43 provides that “the Procuring Entity may give preference to the purchase of domestically-produced and manufacturer goods, supplies and materials that meet the specified or desired quality.” There are no equivalent domestic preference provisions for the procurement of infrastructure projects (works) or Consulting Services. IRR s.43.1.2 provides that the Procuring Entity shall give preference to materials and supplies produced made and manufactured in the Philippines, subject to specified conditions. The award is made to the lowest Domestic Bidder provided his bid is not more than 15% in excess of the lowest Foreign Bid. A Domestic Bidder can only claim preference if it has relevant Department of Trade and Industry (DTI) certification. Reciprocity rules apply.</p>		<b>Criterion Partially Met</b>  Use of life-cycle costing in evaluation is not provided for in the procurement legal framework  Also refer to sub- Indicator 2(b) on Model Procurement Documents - PBD does not provide use of LCC as a factor in economic evaluation of bids		Include specific provisions in the legal framework providing for the possibility of use of life-cycle costing and sustainability criteria in evaluation of bids, supported by practical guidelines.
<b>(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.</b>	<p><b>Summary:</b> Quality is a major consideration for consulting services and clear procedures are defined.</p> <p>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 evaluation is used is limited to a maximum of 40%.</p> <p>IRR s.34 sets out the procedures and methodologies for assessment of technical capacity and quality issues. The Philippines Bidding Documents for Consultancy Services includes sections for the award criteria and methodologies to be applied with minimum and maximum weightings for financial proposal specified for quality-cost based evaluation.</p>		<b>Criterion Met</b>		
<b>(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.</b>	<p>Consulting Services: IRR s.34 sets out the methodologies for assessment on the basis of quality-price and includes requirements on minimum and maximum weightings for the financial proposal.</p> <p>The Philippines Bidding Documents for Consultancy Services includes sections for the award criteria and methodologies to be applied with minimum and maximum weightings for the financial proposal specified for quality-cost based evaluation.</p>		<b>Criterion Met</b>		
<b>(e) During the period of the evaluation, information on the</b>			<b>Criterion Met</b>		

<sup>70</sup> Sampled: Standard Philippines Bidding Document for Goods, 6<sup>th</sup> edn, section III Bid Data Sheet

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	GPRA s.9 provides that G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include features providing an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of systems at all times. These requirements are further elaborated in IRR s.9 and in guidelines. IRR s29 Bid Opening requires the BAC to ensure the integrity, security and confidentiality of all submitted bids.  There is no provision in the legal framework addressing the requirement to take into account the legitimate needs for protection of trade secrets and proprietary information of bidders (see Indicator 1(g)(d) for comment and GAP)				
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1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	GPRA s.29 <b>Bid Opening</b> requires public opening of bids at the time, date and place specified in the Bidding Documents. Minutes of the bid opening shall be made available to the public on payment of a fee. 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”  Guidelines on Electronic Bidding (s.11, Appendix 3, Revised IRR 2016, issued February 2020) sets out in further detail the processes to be followed in the opening of bids received both electronically and manually including requirements concerning timing, encryption, recording of bid submissions.		<b>Criterion Partially Met.</b>  <b>Indicator 1 1(g) Bid opening</b> It is unclear from reading the combined provisions of the GPRA and IRR precisely who is entitled to be present at bid opening and, in particular, whether the general public have a right to attend.		Recommendation Provide further clarity in the GPRA and/or IRR on who may be present at bid opening.
(b) Records of proceedings for bid openings are retained and available for review.	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. <sup>71</sup>  Guidelines on Electronic Bidding (s.11, Appendix 3, Revised IRR 2016, issued February 2020) provides for electronic records of proceedings of bid openings in the form of the Preliminary Examination Report facility.		<b>Criterion Met</b>		
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	GPRA s.9 provides that G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include features providing an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of systems at all times. These requirements are further elaborated in IRR s.9. IRR s.29 Bid Opening requires the BAC to ensure the integrity, security and confidentiality of all submitted bids. Guidelines on Electronic Bidding (Appendix 3, Revised IRR 2016, issued February 2020) include provision on security and confidentiality including encryption and unlocking of bids.		<b>Criterion Met</b>		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	There are general confidentiality requirements such as IRR s.29 Bid opening which obliges the BAC to ensure the integrity, security and confidentiality of all submitted bids. There are, however, no specific provisions in the procurement legal framework regulating the disclosure and protection of specific sensitive information.		<b>Criterion Not Met</b>  There are no specific provisions in the procurement legal framework regulating the disclosure and protection of specific sensitive information		Prepare appropriate regulatory provisions on handling and non-disclosure of specific sensitive information.
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	GPRA s.25/IRR s.25 Submission and Receipt of Bids set out clear provisions concerning the submission and receipt of bids. GPRA s.25 allows for innovative procedures for submission receipt and opening of bids through PhilGEPS. Guidelines on Electronic Bidding (s.11, Appendix 3, Revised IRR 2016, issued February 2020) concerns procurement by electronic means and PhilGEPS and includes provisions concerning uploading and submission of bids.		<b>Criterion Met</b>		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Participants in procurement proceedings have the right to	<b>General note on Indicators 1 (h): Right to challenge and appeal, and 13: Procurement appeals mechanisms are effective and efficient.</b>		<b>Criterion Met</b>		

<sup>71</sup> GPPB-TSO TSO response to WB clarification question received 24 July 2020, comments that based on queries made to the Public Assistance Team of the GPPB-TSO, procuring entities have been receiving requests for minutes of bid opening.

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

challenge decisions or actions taken by the procuring entity.	<p><i>Indicators 1(h) and 13 are closely linked. They both address the right of 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.</i></p> <p><i>Indicator 1(h) requires that the legal framework should provide for the right to appeal a decision, following a first review/challenge (bid protest in this case), to an independent body (appeals body) within specified timescales, including in cases where the procuring entity has failed to issue a decision. Indicator 1(h) provides that the independent body may be an administrative or judicial review body, thus allowing for use of the regular courts. Where there is no specialised administrative/judicial review body and judicial review by the courts is not appellate in nature, as in the case of the Philippines, no further assessment is undertaken [of the availability and operation of the judicial review procedure]</i></p> <p><b>Summary:</b> Participants in procurement proceedings have the right to challenge decisions taken by the BAC at all stages of the procurement by way of request for reconsideration followed by a bid protest procedure. The bid protest procedure is, in most cases, a procedure conducted internally by the procuring entity which is the subject of the bid protest.</p> <p><b>Right to challenge – Bid protest:</b> 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.</p> <p>Participants in procurement proceedings have the right to challenge decisions taken by the BAC at all stages of the procurement (bid protest).<sup>72</sup> Prior to submitting a bid protest a participant must file a request for reconsideration of the contested decision with the BAC which conducted the procurement process concerned. In the event that a request for reconsideration is denied by the BAC the participant is entitled to file a bid protest with the Head of the Procuring Entity.</p> <p><b>Suspension/Resolution of bid protest prior to contract award:</b> GPRA/IRR s.57 provides that issuing of a bid protest under Article XVII shall not stay or delay the bidding process. However, bid protests must be resolved prior to award of the contract.</p> <p>There is no independent specialist review body dealing with challenges concerning decisions made during the procurement of PPPs and award of PPP contracts.</p>		<hr/> <p><i>However, there are “Suggestion for Improvements” by the Assessment Team as in italics</i></p> <p><i><b>Comment:</b> 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 to review and respond to challenges of their decisions, and it does not require extra efforts or review since they have all the information.</i></p> <p><i><b>Recommendation:</b> Reconsider the application of fees to be paid by bidders for review at the Procuring Entity level.</i></p>		
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.	<p><b>Summary:</b> There is no specialist independent administrative appeal/review entity and thus no possibility to respond to a challenge by means of administrative review. 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.</p> <p><i>The note below on judicial review is provided for information purposes, to assist understanding of the nature of the current involvement of the courts in the context of the Gap identified and recommendation to support the establishment of an independent administrative procurement review body.</i></p> <p><b>Information Note on judicial review</b><sup>73</sup> After conclusion of the bid protest procedure, the subsequent right of review is to the Regional Trial Court. An action issued in the Regional Trial Court is, however, an original action and not appellate in nature as it seeks to correct errors of jurisdiction. GPRA/IRR s.58 <b>Resort to Regular Courts:</b> provides that court action may be resorted to only after the protests have been completed. Cases that are filed in violation of the process specified in Article XVII (ss. 55-58 GPRA) shall be dismissed for lack of jurisdiction.</p> <p><b>Rules on applications for review by Regional Trial Court and time frames</b><sup>74</sup>: There are rules on applications for review by Regional Trial Courts and timelines for submission of application.Resort to the Regional Trial Court shall only be made once the Head of the Procuring Entity has resolved the bid protest with finality. The rules on filing an application for review (petition for certiorari<sup>75</sup>) at the Regional Trial Court are governed by the 1997 Rules of Civil Procedure (as amended) Courts actions are governed by Rule 65 of the 1997 Rules of Civil Procedure. Section 4 of Rule 65 of the 1997 Rules of Civil Procedure states that a petition for certiorari under Rule 65 shall be filed not later than sixty (60) days from notice of the judgement, order or resolution.</p>		<p><b>Criterion Not Met</b> As there is no specialist independent administrative appeal/review entity and thus no possibility to respond to a challenge by means of administrative review</p>	Yes	<p>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.</p>

<sup>72</sup> GPPB-TSO TSO response to WB clarification question received 24 July 2020, confirms that in this context “participant” may include prospective bidders where the decision of the BAC is one made during the pre-bid conference or the stage prior to bid submission. Bid protest is not available to other stakeholders such as CSOs, who may use other routes for complaint.

<sup>73</sup> Commentary on appeal/judicial review and remedies/relief is based on information provided by GPPB-TSO in their response to WB clarification questions, received February 2020 and 24 July 2020.

<sup>74</sup> Based on information from GPPB-TSO - TSO response to WB clarification questions, received February 2020

<sup>75</sup> Put simply, “certiorari” is a court process to seek judicial review of a decision of a lower court or administrative agency.

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	<p><b>Remedies/relief on review by the courts:</b> The Regional Trial Court determines the just and equitable reliefs that will be awarded to the petitioner, which may include annulling the resolution of the Head of the Procuring Entity on the bid protest. The Regional Trial Court may also, subject to prohibitions in relation to government infrastructure projects outlined below, issue injunctive reliefs, temporary restraining orders or a writ of preliminary injunction for the preservation of the rights of the parties pending the court proceedings.</p> <p>RA No. 8975 has prohibited the Regional Trial Courts and other lower courts from issuing temporary restraining orders or injunctions to ensure the timely implementation and completion of government infrastructure projects. The prohibition applies in all cases, disputes or controversies initiated by a party, including the bidders or those claiming to have rights through bidders involving specific contracts/projects. The Supreme Court is the only one mandated by this law to issue such reliefs.</p>				
<b>(c) Rules establish the matters that are subject to review.</b>	<p>GPRA s.55/IRR s.55.1 Protests on Decisions of the BAC provides that “decisions of the BAC in all stages of procurement may be protested” in writing by filing a position paper and paying a non-refundable protest fee. See commentary at Indicator 13(a)(d) on the requirement for payment of a non-refundable bid protest fee.</p> <p>Decisions which may be challenged include decisions of the BAC made during the pre-bid conference and the stage of the procurement process prior to bid submission.<sup>76</sup></p>		<b>Criterion Met</b>		
<b>(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.</b>	<p>This sub-indicator refers to both challenges and appeals. Rules relating to challenges are assessed. There are no rules to be assessed concerning appeals.</p> <p><b>Challenges: Rules and time frames on submission of bid protest to procuring entity:</b> There are rules establishing time frames for submission of requests for reconsideration by the BAC and submission of bid protests to the procuring entity and for issuance of decisions.</p> <p><b>Request for reconsideration:</b> IRR s.55.1 requires that prior to filing of a bid protest, a bidder files a request with the BAC for reconsideration of the contested BAC decision. The bidder must file the request for reconsideration within 3 calendar days of written notice or verbal notification of the decision. The BAC has 7 calendar days from receipt of the request to make a decision.</p> <p><b>Bid Protest:</b> IRR s.55 In the event that the request for reconsideration is denied by the BAC, the bidder is then entitled to file a bid protest with the Head of the Procuring Entity and must do so within 7 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 and verified by an affidavit. The bidder must also certify under oath various issues concerning the absence or status of other actions.</p> <p><b>Appeals:</b> There is no specialist independent administrative appeal/review entity and thus no possibility to respond to a challenge by means of administrative review. Thus there are no rules establishing time frames concerning appeals, as required by this sub-indicator.</p>		<b>Criterion Partially Met</b>  <b>Challenges: Criterion met</b> <b>Appeals (review): Criterion not met</b> as there is no specialist independent administrative appeal/review entity	Yes	As at 1(h)(b)
<b>(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.</b>	<p><b>Appeals:</b> There is no specialist independent administrative appeal/review entity and thus no possibility to respond to a challenge by means of administrative review. Thus there are no relevant applications for appeal for the purposes of this sub-indicator.</p> <p><b>Challenge:</b> Information on bid protests from 2009 to 2016 are available on the GPPB website. There is no central source of information concerning bid protests from 2017 onwards, as the requirement on procuring entities to provide statistical information on bid protests was removed from the IRR.<sup>77</sup></p>		<b>Criterion Not Met</b> as there is no specialist independent administrative appeal/review entity  <b>Comment</b> <i>This sub-indicator refers to publication of applications for appeal and decisions on appeal, not challenges (bid protest). However, the lack of information about challenges (bid protest) reduces transparency of the procurement system. A recommendation is therefore included concerning publication of information relating to bid challenges, (bid protest) to improve transparency relating to the operation of the challenges (bid protest system)</i>	Yes	As at 1(h)(b)  <b>and</b> <i>Consider reintroducing the requirement on procuring entities to submit information to the 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).<sup>78</sup></i>
<b>(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).</b>	<p>There is no independent appeals body fulfilling the requirements of sub-indicator 1(h)(b) and thus no higher level review to be assessed for the purposes of this sub-indicator 1(h)(f).</p>	Yes	<b>Criterion Not Met</b>	Yes	As at 1(h)(b)

<sup>76</sup> Based on information from GPPB-TSO TSO response to WB clarification question, received 24 July 2020

<sup>77</sup> Information from GPPB TSO in response to WB clarification question, received 24 July 2020.

<sup>78</sup> **Information on bid protests /challenges from 2009 to 2016** are available on the GPPB website. There is no central source of information concerning bid protests for 2017 onwards, as the requirement on procuring entities to provide statistical information on bid protests was removed from the IRR.



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			as there is no specialist independent administrative appeal/review entity whose decisions can be subject to higher-level review		
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### 1(i) Contract management

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,</b>	Procuring Entities are responsible for implementation and termination of contracts. GPRA s.42 provides that the rules and guidelines for the implementation and termination of contracts shall be prescribed in the IRR and that these shall include standard general and special conditions for contracts. IRR includes three annexes containing detailed contract implementation guidelines for Procuring Entities, for Goods, supplies and materials (Annex D), Infrastructure projects (Annex E) and Consulting Services (Annex F).		<b>Criterion Met</b>		
<b>(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.</b>	The Philippines standard Bidding Documents (PBD) contain provisions on contract amendments which must always be in writing. IRR includes three annexes containing detailed contract implementation guidelines for Procuring Entities, for Goods, supplies and materials (Annex D), Infrastructure projects (Annex E) and Consulting Services (Annex F). These include extensive provisions on contract amendments. Extension of contracts: Revised Guidelines on the Extension of Contracts for General Support Services (Appendix 24, Revised IRR 2016, issued February 2020). The starting point is that as a general policy, extensions of contracts for general supplier services are discouraged. The Guidelines identify the conditions for permitting contract extension and prescribe the governing rules and procedures. If the proposed contract extension exceeds 6 months it must be reported to the GPPB. Contract Variation: As regards contract variation, the Guidelines do not require procuring entities to report variation orders approved by them. Under the existing rules, in exceptional cases, procuring entities are allowed to issue variation orders up to ten per cent (10%) or beyond but not more than twenty per cent (25) of the contract price. GPPB has yet to issue guidelines on this matter. GPPB has also issued Revised Guidelines for Contract Price Escalation in extraordinary circumstances (Appendix 15, Revised IRR 2016, issued February 2020) <sup>79</sup>		<b>Criterion Met</b> <hr/>		<i>Suggestion for improvement</i>  <i>Use of price adjustment provision for large and complex contract to reflect fair allocation of risk and to increase competition (See recommendation)</i>  <i>Need for including price adjustment for large and complex contracts involving delivery of goods or completion of contract beyond 18 months to include price adjustment provisions to reflect any changes (upwards or downwards in major cost component of the contract such as labor, equipment, material and fuel. Use of for Contract Price Escalation in extraordinary circumstances may be contentious and administratively difficult to operate in a transparent manner</i>  <i>This step shall be as per international practices/FIDIC conditions and expected to increase competition.</i>
<b>(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.</b>	GPRA s.59 provides that any and all disputes arising from implementation of a contract covered by the GPRA shall be submitted for arbitration in accordance with the provisions of the Arbitration Law (RA No.876). Disputes within the competence of the Construction Industry Arbitration Commission are to be referred to that body. Parties may by mutual agreement in writing resort to alternative modes of dispute resolution. An arbitral award of any decision rendered in accordance with GPRA s.59 may be appealed by way of petition on questions of law, to the Court of Appeals  IRR Annex I sets out Guidelines on Termination of Contracts. This includes sections on Grounds for Termination by the Procuring Entity and the Contractor/Consultant, procedures for termination and consequences of termination.		<b>Criterion Met</b>		
<b>(d) The final outcome of a dispute resolution process is enforceable.</b>	The Arbitration Law (RA No.886) provides for enforcement of Domestic Arbitration award through the courts. Parties to international commercial awards may also petition the courts for enforcement.		<b>Criterion Met</b>		

<sup>79</sup> GPPB-TSO TSO response to WB clarification question received 24 July 2020

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



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	The Republic of the Philippines is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards <sup>80</sup>				
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1 (j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.</b>	<p>The procurement legal framework provides allows and, in some cases, mandates the use e-procurement covering various aspects of the public procurement cycle. IRR s.8.3 states that “All Procuring Entities are mandated to fully use the PhilGEPS in accordance with the policies, rules, regulations, and procedures adopted by the GPPB and embodied in this IRR”. All Procuring Entities are required to register with PhilGEPS and take measures to ensure access to an online networks.</p> <p>DBM Circular 2011-6 (and 6A) mandates procuring entities to use PhilGEPS for all bid opportunities, notices, awards and/or results of bids or contracts as required by GPRA/IRR. Electronic bidding is not yet mandatory or available to all procuring entities.<sup>81</sup> It also provides that “All concerned units shall 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.</p> <p>GPRA s.8 mandates all Procuring Entities to utilize the Government e-procurement system (PhilGEPS) for the procurement of common supplies. Common use supplies and equipment are included in the PhilGEPS electronic catalogue. GPRA s.21 requires Procuring Entities to publish all competitive bidding Invitations to Bid on PhilGEPS, as well as their own website, where available.</p> <p><b>PhilGEPS</b> GPRA s.8 provides that “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 serve as the primary source of information on all government procurement.” This portal is PhilGEPS (also sometimes referred to as “G-EPS”). Key features of PhilGEPS are:</p> <ul style="list-style-type: none"><li>• Electronic Bulletin Board for posting procurement opportunities, Invitations to Bid, awards and reasons for award.</li><li>• Central electronic database registry of Manufacturers, suppliers, distributors, contractors and consultants. Registration and updating may be done on-line or physically at the PhilGEPS and registration is an eligibility requirement.</li><li>• Centralized electronic catalogue for all common use items and some non-common use items</li><li>• Virtual store</li></ul>		<b>Criterion Met.</b>		
<b>(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.</b>	<p>GPRA s. 9. Security, Integrity and Confidentiality provides that “The G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include feature that provides for an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time. IRR s.9 elaborates on those provisions.</p>		<b>Criterion Met.</b>		
<b>(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.</b>	<p>Use of electronic procurement for publication of procurement opportunities and bidding documents is mandated. IRR Appendix 3 Guidelines on electronic bidding require procuring entities to indicate in the Bidding Documents whether Electronic Bidding is available. There are provisions in the legal framework covering the situation where both manual and electronic bids are received. In practice, a very high percentage of procedures use paper-based procurement.</p>		<b>Criterion Met.</b>		

<sup>80</sup> <http://www.newyorkconvention.org/countries>

<sup>81</sup> GPPB-TSO TSO response to WB clarification question received 24 July 2020: at present procuring entities conduct manual bidding as the e-Bidding facility is yet to be made available for use of all procuring entities. The Guidelines for e-Bidding will be presented to the IAWTG and GPPB for recommendation and approval. Nevertheless, due to the COVID-19 pandemic, The GPPB issued Resolution No.09-2020 dated 7 May 2020 that authorizes procuring entities to accept electronic bid submissions upon compliance with that Resolution.

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.</b>	IRR s.14 requires the BAC Secretariat/Procurement Unit to ensure that all procurements are properly documented. There is no single comprehensive list of procurement records and documents to be kept at operational level which includes an outline of what is available for public inspection.  PhilGEPS however 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, the award announcement, awardee, award amount, award date, notice to proceed date and contract date and any supporting documents uploaded		<b>Criterion Not Met.</b>  There is no single comprehensive list of procurement records and documents to be kept at operational level which includes an outline of what is available for public inspection	Yes	Here and for assessment criteria 1(k)(b) and 1(k)(c), it is important to include clear provisions in the IRR as to the list of minimum procurement records/documents to be retained by the procuring entity, the period for retention, and security protocols.
<b>(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.</b>	There is no specific document retention policy for public procurement. The National Archives of the Philippines (NAP) General Circular No.2 <sup>82</sup> provides for different periods of retention by the BAC of various procurement documents in accordance with RA No.9470 National Archives of the Philippines Act 2007 <sup>83</sup> and its IRR <sup>84</sup> .		<b>Criterion Not Met.</b>  There is no specific document retention policy for public procurement.	Yes	See above 1(k)(a)
<b>(c) There are established security protocols to protect records (physical and/or electronic).</b>	IRR does not specifically require the establishment of security protocols for records management. NAP General Circular No.1 and its IRR mandates all government agencies to establish a records and archive management program for the creation, utilization, retention and disposal of public records. The procuring entities are to establish their respective internal protocols on safe-keeping their physical and/or electronic procurement records. <sup>85</sup>		<b>Criterion Not Met</b> IRR does not specifically require the establishment of security protocols for records management.	Yes	See above 1(k)(a)

1(l) Public procurement principles in specialized legislation

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.</b>	<b>Defense procurement:</b> There is no general exclusion for defense procurement from the application of the GPRA/IRR. See indicator 1(1)(b) for further information on exemptions and use of negotiated procedures for defense related procurement.  <b>Utilities:</b> GPRA s.4 provides that the GPRA applies to procurement “by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138.” IRR s.4 [elaborates on this coverage and] confirms that the IRR applies to “any branch, agency, department, bureau, office, or instrumentality of the GoP, including government owned and/or-controlled corporations (GOCCs)....”. A full list of GOCCs is available from the Office of the Government Corporate Counsel <sup>86</sup> and the list includes entities active in the transport, gas and water sectors.		<b>Criterion Met</b>		

<sup>82</sup> Circular [https://ppsc.gov.ph/mediafiles/pdf/NAP\\_Circular\\_1\\_2\\_and\\_GRDS\\_2009.pdf](https://ppsc.gov.ph/mediafiles/pdf/NAP_Circular_1_2_and_GRDS_2009.pdf)

<sup>83</sup> Republic Act 9470 <https://www.officialgazette.gov.ph/2007/05/21/republic-act-no-9470/>

<sup>84</sup> Implementing rules [https://ppsc.gov.ph/mediafiles/pdf/IRR\\_of\\_R.A.\\_9470.pdf](https://ppsc.gov.ph/mediafiles/pdf/IRR_of_R.A._9470.pdf) approved January 24 2008

<sup>85</sup> GPPB-TSO TSO response to WB clarification question received 24 July 2020

<sup>86</sup> <http://ogcc.gov.ph/gocc/>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

<b>(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.</b>	<p>PPPs are generally not subject to the public procurement law. They are covered by a separate and fragmented legal framework covering a range of modes of PPP delivery including, but not limited to, build-operate- transfer and similar arrangement and joint venture arrangements (JV) (see summary at indicator 1(a)(c).</p> <p>In some cases of “Hybrid PPPs” the public procurement law may apply to part of the PPP procurement, such as where the procuring entity procures and funds construction and then hands over a facility to a private sector partner.</p> <p>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 (see examples below) but overarching principles applying to <u>all</u> PPPs are lacking.</p> <p>Non-JV <b>PPPs</b> are regulated by RA. No. 6957 as amended by RA No. 7718 “Amended BOT Law”<sup>87</sup>. The Amended BOT Law is supported by Resolutions and Guidelines issued by the PPP Governing Board<sup>88</sup>.</p> <p><b>Advance notification:</b> The Amended BOT Law requires all concerned agencies, including GOCCs and local government units to include in their development programs those priority projects that may be financed, constructed, operated and maintained by the private sector under the provisions of the Amended BOT Law, which states that” It shall be the duty of all concerned government agencies to give wide publicity to all projects eligible to financing under this Act, including publication in national and, where applicable, international newspapers of general circulation once every six (6) months and official notification of project proponents registered with them.”</p> <p><b>Publication of opportunities:</b> Amended BOT Law s.5 requires the Public Bidding of Projects with publication of the opportunity in newspapers. Bidders must satisfy minimum financial, technical, organizational and legal standards. Public bidding is to be conducted under a two envelope/two stage system: the first envelope to contain the technical proposal and the second envelope the financial proposal.</p> <p><b>Unsolicited proposals (USP):</b> Amended BOT Law s.4A allows for unsolicited proposals provided that three conditions are met, including the requirement to publish notices in newspapers requesting comparative or competitive proposals, allowing 60 working days for submission of those proposals.<sup>89</sup></p> <p>See also Department of the Interior and Local Government “Guidelines for the Implementation of Public-Private Partnerships for the People Initiative for Local Governments (LGU P4)” (2016).<sup>90</sup> s.35 Local Government Code of 1991 (Republic Act No. 7160) may be used by local government units as alternative legal basis for PPPs at the local level. The PPP Guidelines for NGAs confirms that the goal of the procurement process “is to choose the private partner in an open, competitive, fair and efficient manner, and within the expected timeline”.</p> <p>According to information provided by the PPP Center, in 2019 there were a total of 61 PPP projects in the pipeline, of which 25 are solicited projects and 39 are unsolicited projects.<sup>91</sup></p> <p><b>Joint Ventures</b>, both contractual and corporate, provide another framework for the implementation of PPPs. Under Executive Order No.8 2010<sup>92</sup> s.2, 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 National Economic and Development Authority (NEDA) has published revised “Guidelines and Procedures for entering into joint ventures between government and private entities” 2013 (“Revised JV Guidelines”).</p> <p>Joint Ventures may be procured by way of competitive selection or unsolicited proposals (“competitive challenge”). The Revised JV Guidelines requires that Competitive Selection, contract award and approval is conducted in the manner stipulated in Annex A of those guidelines. All activities during competitive selection award and approval must be conducted “in a transparent and competitive process that promotes accountability and efficiency” with “competitive selection parameters” clearly defined.<sup>93</sup></p> <p>The PPP Guidebook on Joint Ventures for LGUs refers to the use of “clear, fair and transparent” eligibility requirements and rules for disqualification. Eligibility requirements are set out in Annex A, section IV and concern, in particular legal requirements – concerning establishment, technical requirements – experience, financial capability. Bidders deemed ineligible have a right to appeal against that decision.</p> <p>Annex B sets out detailed guidelines for negotiated JV and Competitive Challenge which involves publication of an invitation to bidders to submit comparative proposals, with the procedure used to be that set out in Annex A.</p>		<b>Criterion Partially Met</b>	<p>The legal framework covering PPPs is fragmented and lacking in consistency. It is difficult to establish whether public procurement principles (e.g. competitive procedures, transparency, fairness, value for money decisions) apply across the entire PPP spectrum.</p>	<p>MAPS Assessment Team notes PPP Center proposals for a new consolidated PPP law and recommends as follows: Prepare 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.</p>
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<sup>87</sup> 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).

<sup>88</sup> See Executive Order no.136 series of 2013 for functions of the PPP Governing Board

<sup>89</sup> See also PPP Governing Board Resolution No.2017-08-03 Guidelines on Managing Unsolicited Proposals.

<sup>90</sup> [https://www.dilg.gov.ph/PDF\\_File/issuances/memo\\_circulars/dilg-memocircular-201698\\_ba7870f62a.pdf](https://www.dilg.gov.ph/PDF_File/issuances/memo_circulars/dilg-memocircular-201698_ba7870f62a.pdf)

<sup>91</sup> Spreadsheet provided to assessment team by PPP Center, received 6 May 2021: Three years of data provided by the PPP Center indicates the following:2017 Solicited projects listed - 13, Unsolicited projects listed- 3, total -16 projects. During 2018: Solicited projects initiated - 6, unsolicited projects received – 9, total – 15 new projects. During 2019: Solicited projects initiated -16, unsolicited projects received – 13, total – 29 new projects

<sup>92</sup> <https://ppp.gov.ph/wp-content/uploads/2015/01/ExecutiveOrderNo8.pdf>. See also Resolution no. 2018 of the PPP Governing Board

<sup>93</sup> ADB PPP Monitor May 2019 , p.549, comments on the impact of foreign ownership restrictions on the developing PPP Market: “While much has been achieved in developing the PPP market in the Philippines, challenges remain. One challenge is the current limit of 40% of foreign ownership in the PPP project company in infrastructure projects where the operation requires a public utility franchise. This may restrict competition and, in some ways, can inhibit Philippine infrastructure development. However, the incumbent government has indicated that this issue will be addressed when amendments to the 1987 Constitution are made during the current political term.”

	<p>In 2019 NEDA published an announcement of a public consultation process concerning further amendments to the Revised JV Guidelines.<sup>94</sup></p> <p><b>Probity Advisers:</b> For large and complex PPP projects Procuring Entities are required to appoint Probity Advisers whose role includes ensuring that the process is impartial and fair to all bidders, with no bidder given an advantage over another or unfairly discriminated against.<sup>95</sup></p> <p><b>Proposals for reform:</b> 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. The passage of a new PPP Act is identified in the Annual Report as one of the most urgent policy reforms that the Center will push to institutionalize best practice and lessons learned.<sup>96</sup> <sup>97</sup> 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<sup>98</sup>. Proposals for reform do not currently include proposals for significant reforms to the rules concerning bid protest, right of challenge or create an independent specialist appeals body.</p>				
<b>(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.</b>	<p>The PPP Governing Body (PPPGb) is the overall policy making body for all PPP related matters. It is responsible for setting the strategic direction of the PPP Program and creating and enabling policy and institutional environment for PPPs in the Philippines. The PPPGB is chaired by the Secretary of Socio-Economic Planning, vice-chair is Secretary of Finance and members are the Secretary of Budget and Management, Secretary of Trade and Industry, Executive Secretary and Private Sector Co-Chairman of the National Competitiveness Council.<sup>99</sup> Executive Order No.136 amending Executive Order No.8 (S.2010) sets out the functions of the PPPGB and enumerates the members of the PPPGB.</p> <p>The PPP Center (formerly the Build-Operate and Transfer Center), attached to the National Economic and Development Authority (NEDA), is mandated<sup>100</sup> to facilitate the implementation of the country’s PPP Program and Projects. Under Executive Order No.8 2010<sup>101</sup> s.2 (as amended), 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 acts as the Secretariat of the PPPGB pursuant to Executive Order No.136 amending Executive Order No.8 (S.2010).</p> <p>The PPP Center serves as the central coordinating and monitoring agency for all PPP projects. It champions the country’s PPP program in all aspects of project preparation, managing of the Project Development and Monitoring Facility (a revolving fund for preparation of business case, pre-feasibility and feasibility studies and tender document for PPP programs and projects), providing projects advisory and facilitation services, monitoring and empowering agencies through various capacity building exercises.<sup>102</sup></p> <p>The PPP Center/PPPGb publishes documents including Guidebooks, flyers and brochures, both to support procuring entities and encourage investment.<sup>103</sup></p> <p>The PPP Center has collaborated with the Department of Budget and Management (DBM) for the issuance of the Joint Memorandum Circular No. 2018-01 for the Reporting of PPP Project Spending and Contingent Liabilities<sup>104</sup>, which took effect in February 2019. According to the PPP Center Annual Report this was issued to standardize the reporting and monitoring of public and private sector spending on PPPs and contingent liabilities arising from PPP projects. The aim is that the resulting standardized reporting will improve and regularly update the Center’s project database on PPPs, and help improve government’s ability to monitor spending on PPP projects and more proactively assess potential contingent liabilities</p>		<b>Criterion Met</b>		

<sup>94</sup> <http://www.neda.gov.ph/public-consultation-for-the-draft-proposed-amendments-of-the-guidelines-and-procedures-for-entering-into-joint-venture-agreements/>

<sup>95</sup> [https://ppp.gov.ph/wp-content/uploads/2018/04/PPP\\_GBRESO\\_Appointment-Probity-Advisors.pdf](https://ppp.gov.ph/wp-content/uploads/2018/04/PPP_GBRESO_Appointment-Probity-Advisors.pdf)

<sup>96</sup> <https://ppp.gov.ph/publications/annual-report-2019-investing-in-the-future-of-the-filipino/?so=0>

<sup>97</sup> House Bill/Resolution No.HB05452, full title: “An Act authorizing public-private partnerships (PPP) appropriating funds therfor, and for other purposes”, filed November 13 2019, referred to Committee on Public Works and Highways on November 18 2019, accessed 26 October 2020 [http://congress.gov.ph/legisdocs/basic\\_18/HB05452.pdf](http://congress.gov.ph/legisdocs/basic_18/HB05452.pdf)

<sup>98</sup> Meeting between PPP Center and WB MAPS Team on 19 October - the PPP Center confirmed that work on the new draft PPP Act is progressing with anticipated adoption in 2021.

<sup>99</sup> <https://ppp.gov.ph/what-is-pppgb/>

<sup>100</sup> Executive Order no.8 series of 2010 as amended by Executive Order no.136 series of 2013.

<sup>101</sup> <https://ppp.gov.ph/wp-content/uploads/2015/01/ExecutiveOrderNo8.pdf>. See also Resolution no. 2018 of the PPP Governing Board

<sup>102</sup> PPP Center website: <https://ppp.gov.ph/about-the-ppp-center/>

<sup>103</sup> <https://ppp.gov.ph/knowledge-management/publications/> accessed 02 December 2019.

<sup>104</sup> [https://ppp.gov.ph/wp-content/uploads/2019/10/PPPC\\_POL\\_JMC-Reporting-of-PPP-Project-Spending.pdf](https://ppp.gov.ph/wp-content/uploads/2019/10/PPPC_POL_JMC-Reporting-of-PPP-Project-Spending.pdf)



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2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	The IRR, Annexes and Appendices supplement and detail the provisions of the GPRA		Criterion Met		
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	The IRR, Annexes and Appendices are clear and comprehensive and are available to download in a consolidated version (8 <sup>th</sup> edition) from the GPPB website <sup>105</sup> .  An updated version of the IRR was published in February 2020 by the GPPB and is available from the GPPB website <sup>106</sup> . The latest version incorporates amendments made to 19 December 2019.		Criterion Met		
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	GPRA s.63 provides that the GPPB is established to undertake a number of functions, including “formulate and amend, whenever necessary, the IRR and corresponding standard forms for Procurement”. The IRR are updated regularly and the last consolidated version of the IRR was published in February 2020.		Criterion Met		

2(b) Model procurement documents for goods, works, and services

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	There are model procurement documents – Philippine Bidding Documents (PBD) for use in competitive bidding process for the procurement of Goods, Infrastructure Projects (works) and Consulting Services. IRR s.6 mandates use of the Generic Procurement PBDs by procuring entities. The current versions of the PBDs are 6 <sup>th</sup> Edition (2020) for Procurement of Goods and Procurement of Infrastructure works and 5 <sup>th</sup> Edition (2016) for Procurement of Consulting Services.  There are no model procurement documents for specialized procurements, such as IT, pharmaceuticals, medical/technical devices or textbooks, for which a tailored approach is appropriate or for alternative bidding methods		<b>Criterion Partially Met</b>  There are no model procurement documents for specialized procurements, such as Infrastructure, 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 alternative methods of procurement (AMP). This runs counter to the governing procurement principles of transparency and simple streamlined procurement expressed in GPRA article I, section 3.		Consider developing model procurement documents 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 and for alternative methods of procurement.
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	IRR s.6 mandates use of the Generic Procurement Manuals and PBDs by procuring entities. Model procurement documents are used in the <b>competitive bidding process</b> . The 6 <sup>th</sup> editions of the PBDs for Procurement of Goods and Procurement of Infrastructure Works (2020) are intended to be simplified versions of the previous (5 <sup>th</sup> edition). Revisions in the 6 <sup>th</sup> edition remove out of date provisions in the 5 <sup>th</sup> edition and content has been reduced. However, in reducing content of the SBD there is increased incorporation of provisions by means of cross references in to GPRA, IRR and other documents, rather than a comprehensive set of self-contained clauses This creates the possibility for significant uncertainty for both procuring entities and bidders as to which provisions apply in practice  For example, PBD for Procurement of Goods (6th Edn.) includes a general statement in Section II, Instructions to Bidders, under the heading Bidding Requirements, that “The Bidding for the Project shall be governed by all the provisions of RA No. 9184 and its 2016 revised IRR, including its Generic Procurement Manuals and associated policies, rules and regulations as the primary source thereof, while the herein clauses shall serve as the secondary source thereof.” The		<b>Criterion Partially Met</b>  The use of “incorporation by reference” by way of general references, rather than detailed provisions in line with GPRA and IRR, creates the possibility for significant uncertainty for both procuring entities and bidders as to which provisions apply in practice. 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 who may not have the ability or		Consider returning to the earlier format of the PBDs 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.  There is a need to incorporate Sustainable Public Procurement Criteria and use of Life Cycle Costing Principles in PBDs.

<sup>105</sup> <https://www.gppb.gov.ph/downloadables.php>

<sup>106</sup> GPPB website accessed 01 March 2020  
[https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR\\_2020\\_19Feb2020rev.pdf](https://www.gppb.gov.ph/assets/pdfs/Updated%202016%20IRR_2020_19Feb2020rev.pdf)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



	<p>Instructions to Bidders rely heavily on cross referencing to provisions in the IRR with limited explanation of those provisions.</p> <p>Incorporating RA, IRR, Generic Procurement Manual and “associated policies, rules and regulations” by reference, rather than including detailed provisions and/or explanation which guide and inform the bidders as to how prepare and submit the bids and to understand how bids will be evaluated creates the possibility for significant uncertainty for both procuring entities and bidders as to which provisions apply in practice. This approach places the burden on the bidders who would be pressed to understand and be up to date with the full content of all the documents references and all developments in primary legislation, assuming they would be able to interpret which provisions apply to the tender they are bidding for.</p> <p><b>Applicability of same PBDs for diverse Infrastructure Projects:</b> As per PBDs, the document is based on BOQ/Item Rate Contract for civil works, but it is applicable for all range of procurement activities <i>including construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, <u>railways, airports, seaports, communication facilities</u>, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, <u>sewerage and solid waste management systems</u>, shore protection, <u>energy/power and electrification facilities</u>, national buildings, school buildings, hospital buildings, and other related construction projects of the government. Also referred to as civil works or works. (2016 revised IRR, Section 5[u])</i>. Many of the above procurement activities are quite specialized in nature and are subject to industry standards and good practices that should be considered for better results. For example, contracts for developing power facilities, construction and operation of water sewerage and sold waste management, etc. using unit rate contracts may not be in the best interest of the Government in terms of cost, attracting a variety of innovative solutions, attracting qualified bidders, and keeping the risks/costs under control.</p>		<p>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 article I, section 3.</p> <p>There are provisions in the PBDs that reflect the procurement legal framework. They relate to eligibility of bidders, imposition of Approved Budget in the Contract (ABC), etc. However, the PBDs, including contract conditions, fall short in addressing topics such as: use of Life Cycle Costing as evaluation criteria, reference to green procurement in technical specifications, abnormally low bids, 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, but also it does not recognize the price fluctuations in the market which are a reality in long term and large infrastructure projects.</p>		<p>Consider expanding the scope of the PBDs to include some or all of the identified topics which have the potential to enhance competition, achieve value for money and implement the sustainability objectives that the Government has adopted.</p>
<p><b>(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.</b></p>	<p>GPRA s.63 provides that the GPPB is established to undertake a number of functions, including “formulate and amend, whenever necessary, the IRR and corresponding standard forms for Procurement”. The standard bidding documents (PBDs) have been updated regularly. The most recent, 6<sup>th</sup> editions, of the PBDs for Procurement of Goods and Procurement of Infrastructure works were published in summer 2020, for use from October 2020.</p>		<p><b>Criterion Partially Met</b></p> <p>No comprehensive and regular update</p>		<p>Need for a Comprehensive Review to bring it in line with international practices</p>

2 (c) Standard contract conditions

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<p><b>(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.</b></p>	<p>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 the GPPB. PBDs include Sections with standard contract conditions but in recent (6<sup>th</sup>) editions of PBDS for Goods and Infrastructure Works “incorporation by reference” is the approach used which is less than optimal solution, creating the possibility of considerable uncertainty as to which contract conditions apply to a particular procurement (see below).</p> <p>The current conditions of contract under competitive bidding (the only type of standard procurement documents) includes a very limited number of provisions, adopting “incorporation by reference” by way of general references to GPRA, IRR and other procurement documents, rather than detailed provisions of the contract. This creates the possibility for significant uncertainty for both procuring entities and bidders as to which provisions apply in practice and places the burden on the bidders who bidders who would be pressed to understand and be up to date with the full content of all the documents referenced and all developments in primary legislation, assuming they would be able to interpret which contractual provisions apply to the tender they are bidding for. . Especially when it comes to contractual provisions, it is paramount to specify with clarity what the conditions of the specific contract apply.</p> <p>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 SBD there is increased incorporation of contract provisions by means of cross references in to GPRA, IRR and other documents, rather than a comprehensive set of self-contained contract clauses This creates the possibility for significant uncertainty for both procuring entities and bidders as to which contractual provisions apply in practice</p>		<p><b>Criterion Partially Met</b></p> <p>The use of “incorporation by reference” by way of general references, rather than detailed contractual provisions in line with GPRA and IRR, creates the possibility for significant uncertainty for both procuring entities and bidders as to which contractual provisions apply in practice. This reduces the utility and transparency of the SBDs (including contract conditions) in practice and presents the possibility of increased misinterpretation and misunderstanding on the intent and content of the SBDs (including contract conditions), thus the possibility for disputes/challenges. It also places a significant burden on bidders who may not have the ability or capacity to undertake the cross-referencing process necessary to establish which provisions apply.</p>	<p>Yes</p>	<p>Consider returning to the earlier format of the PBDs which were self-standing and self-contained, including consider adopting contract conditions that set out clearly the terms and conditions, obligations and rights, remedies and other matters applicable to the contract in question.</p>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	<p>For example, PBD for Procurement of Goods (6th Edn.) provides that contract conditions are “inferred” and “all provisions” of the GPRA, IRR, Generic Procurement Manual and “associated issuances” are expressed to “constitute the primary source for the terms of conditions of the Contract”. Section IV. General Conditions of Contract comprises six clauses (less than 2 pages), as follows: 1. Scope of Contract; 2. Advance Payment and Terms of Payment; 3.Performance Security; 4. Inspection and Tests; 5. Warranty; and 6. Liability of Supplier. Clause 1. Scope of contract is of particular risk of creating uncertainty and reads as follows:</p> <p>"This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. All the provisions of RA No. 9184 and its 2016 revised IRR, including the Generic Procurement Manual, and associated issuances, constitute the primary source for the terms and conditions of the Contract, and thus, applicable in contract implementation. Herein clauses shall serve as the secondary source for the terms and conditions of the Contract.</p> <p>This is without prejudice to Sections 74.1 and 74.2 of the 2016 revised IRR of RA No. 9184 allowing the GPPB to amend the IRR, which shall be applied to all procurement activities, the advertisement, posting, or invitation of which were issued after the effectivity of the said amendment.</p> <p>Additional requirements for the completion of this Contract shall be provided in the Special Conditions of Contract (SCC). The documents required in Section 37.2 of the 2016 revised IRR of RA No. 9184 shall form part of the Contract. Additional Contract documents are indicated in the BDS".</p>		<p>This runs counter to the governing procurement principles of transparency and simple streamlined procurement expressed in GPRA article I, section 3</p>		
<p><b>(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.</b></p>	<p>The content of contract conditions (which are scattered in various legal documents, such as: GPRA, IRR, procurement manual and all other acts) and to the extent were possible to be identified as part of MAPS assessment, appear to be generally consistent with international accepted practices. However, for the reasons set out in the analysis in 2(c)(a) it cannot be guaranteed that bidders will fully comprehend which contract conditions apply in practice.</p> <p>Additional or more sophisticated clauses, for example concerning allocation of risks under the contract and price adjustment provision for large, longer term contracts would improve alignment with international practice</p>		<p><b>Criterion Partially Met</b></p> <p>See 2(c)(a)</p>		<p>See 2(c)(a)</p> <p>Suggestion for improvement</p> <p>Consider including in the contract conditions 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 (e.g. FIDIC conditions), and is expected to increase competition.</p>
<p><b>(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.</b></p>	<p>PBDs include Sections with standard contract conditions but in recent (6<sup>th</sup>) editions of PBDS for Goods and Infrastructure Works “incorporation by reference” is the approach used which is less than optimal solution, creating the possibility of considerable uncertainty as to which contract conditions apply to a particular procurement (see 2(b)(a) for analysis and explanation).</p>		<p><b>Criterion Partially Met</b></p> <p>See 2(c)(a)</p> <p>Se</p>		<p>See 2(c)(a)</p>

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<p><b>(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.</b></p>	<p>There is a four volume Generic Procurement Manual covering: Procurement systems and organizations (Vol.1), Procurement of goods and services (Vol.2), Procurement of Infrastructure Projects (Vol.3) and Procurement of Consulting Services (Vol.4). These detail the procedures for correct implementation of procurement regulations and laws. The most recent version (2<sup>nd</sup> Edition) dates from November 2017 <sup>107</sup>. The Generic Procurement Manuals can be downloaded from the GPPB website<sup>108</sup>.</p> <p>There are two additional manuals downloadable from the GPPB website: Community Participation Procurement Manual and Local Government Unit Procurement Manual.</p>		<p><b>Criterion Met</b></p>		
<p><b>(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.</b></p>	<p>GPRA s.6 mandates the GPPB to prepare generic procurement manuals the use of which once issued shall be mandatory upon all Procuring Entities.</p> <p>The first edition of the GPM was published in 2006, for use from January 2007. The GPM was updated in 2017.</p>		<p><b>Criterion Partially Met</b></p> <p>Needs review as part of SBDs review</p>		<p>Needs a comprehensive review</p>

<sup>107</sup> GPPB Resolution 34-2017.

<sup>108</sup> <https://www.gppb.gov.ph/downloadables.php>

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

3(a) Sustainable Public Procurement (SPP)

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.</b>	<p>The Philippines Green Public Procurement Roadmap was published in 2017 and adopted by GPPB Resolution 25-2017, together with Green Public Procurement specifications for priority product groups of common-use supplies and equipment.</p> <p>GPPB Resolution 08-2020<sup>109</sup> approves the GPPB to act as the Steering Committee to decide on matters and issue policies pertaining to the implementation of GPP in the Philippines, with the IATWG (Inter Agency Technical Working Group) to act as the technical committee to provide technical support to the Board. It also provides that the GPPB and OATWG will invite other relevant government agencies and private entities as resources on matters relating to the implementation of GPP in the Philippines.</p>		<b>Criterion Met</b>		
<b>(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.</b>	<p>The Philippines Green Public Procurement Roadmap 2017 (“Green PP Roadmap”) was developed with the support of the European Union with advice and assistance from the EU-SWITCH Policy Support Component Philippines expert team. The Green GPP Roadmap includes a workplan for the short, medium and long term with an allocation of distinct tasks and time table which include measures to operationalize, facilitate and monitor.</p>		<b>Criterion Met</b>		
<b>(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.</b>	<p>The Green PP Roadmap identifies the current legal and regulatory framework as sufficient for the incorporation of green public procurement considerations into procurement. The Green PP Roadmap identifies a step-by-step approach with the initial focus on the preparation and use of technical specifications which address green issues including life-cycle cost, supported by other measures such as communication, training and awareness raising, primarily to be undertaken by GPPB-TSO. Medium- and long-term plans aim to broaden the scope of green criteria. The Green PP Roadmap refers, in section 6.1.3 Long term perspectives, to consideration of options that go beyond those which are possible in the existing public procurement legislation and procedures. The ambition is to progress from Green Public Procurement to Sustainable Public Procurement, whilst acknowledging the complexity and potential burden of the inclusion of social criteria. Life cycle costing and total cost of ownership are also identified for further consideration.</p> <p>A Green Public Procurement Bill is currently before Congress, establishing a GPP program for all departments, bureaus, offices and agencies of government.<sup>110</sup></p>		<b>Criterion Partially Met</b> <p>Green/sustainable issues and life-cycle cost is 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 (CSE) and further green technical specifications planned for CSE and non CSE procurement, in accordance with the Philippine Green Public Procurement Roadmap. But there is no provision on use of life-cycle costing including efficiency of equipment, operation and maintenance cost as part of evaluation criteria. Section VII on preparation of technical specification in PBDs do not mention the requirement of incorporating Green Public Procurement criteria.</p> <p>The primary focus is on “green” i.e. environmental issues. 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.</p>		<p>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.</p>
<b>(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.</b>	<p>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 such as technical specifications. The GPPB has published “Green Public Procurement Technical Specifications for Priority Product Groups” as an annex to the Green PP Roadmap.<sup>111</sup> The primary focus is on “green” i.e. environmental issues.</p>		<b>Criterion Partially Met.</b> <p>Green/environmental aspects of sustainability are currently addressed through other means than evaluation criteria and provisions in the legal and regulatory framework allowing for economic and social criteria to be incorporated at all stages of the</p>		As 3(a)(c)

<sup>109</sup> <https://www.gppb.gov.ph/issuances/Resolutions/GPPB%20Resolution%20No.%2008-2020.pdf>

<sup>110</sup> <http://congress.gov.ph/legisdocs/?v=billsresults#18>

<sup>111</sup> <https://www.gppb.gov.ph/downloadables.php#GPP> House of Representative House Bills and Resolutions page\_accessed and searched 28 October 2020: HB06954 An Act Establishing a Green Public Procurement Program for all Branches of Government

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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			procurement lifecycle do not appear to be fully addressed.		
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3(b) Obligations deriving from international agreements

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) clearly established</b>	<p>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 Asian Development Bank, Asia-Pacific Economic Cooperation, East Asia Summit, World Bank Group, World Health Organization, and the World Trade Organization, among others.</p> <p>The Philippines is a signatory to the ASEAN Agreements on Trade in Goods (ATIGA) (in force June 14, 2010)<sup>112</sup> and Trade in Services (ATISA) (in force April 5, 2021)<sup>113</sup> as well as a number of bilateral trade agreements through its membership of ASEAN and, also, direct bilateral trade agreements. The ASEAN ATIGA and ATISA agreements do not contain dedicated chapters or annexes on public procurement.</p> <p>The Philippines is a signatory to the Regional Comprehensive Economic Partnership (RCEP) (signed 15 November 2020)<sup>114 115</sup>, a proposed free trade agreement between the ten member states of ASEAN and its six free trade agreement partners: Australia, China, India, Japan, New Zealand and Republic of Korea. The target for implementation is early 2022. Chapter 16 of RCEP is a short dedicated chapter on Government Procurement implemented by central government entities.<sup>116</sup></p> <p>The Philippines has observer status to the committee of the WTO’s Government Procurement Agreement (GPA), with effect from June 26, 2019 <sup>117</sup>. Philippines has announced and confirmed interest in joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Negotiations for an EU-Philippines trade and investment agreement were launched on December 22, 2015 and the EU-Philippines Framework Agreement on Partnership and Cooperation entered into force in March 2018.<sup>118 119</sup></p> <p>The Philippines has ratified 38 International Labour Organization (ILO) Conventions, including all of the 8 Core Conventions.<sup>120</sup></p>		<b>Criterion Met</b>		
<b>(b) consistently adopted in laws and regulations and reflected in procurement policies.</b>	<p>s.4 GPRA s.4/R.4 IRR provides that any treaty or international or executive agreement affecting the subject matter of the GPRA shall be observed. s. 43 GPRA/(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, however, subject to domestic preference in the interest of availability, efficiency and timely delivery of goods and other general domestic preference provisions.</p> <p>The PBDs for infrastructure projects include provisions on ILO standards compliance.</p>		<b>Criterion Met</b>		

<sup>112</sup> <https://asean.org/our-communities/economic-community/trade-in-goods/>

<sup>113</sup> <https://asean.org/our-communities/economic-community/services/>

<sup>114</sup> <https://rcepsec.org/legal-text/>

<sup>115</sup> At 21 October 2021 nine countries have ratified RCEP and Philippines is in the process of ratification.

<sup>116</sup> RECEP Chapter 16 recognises the role of government procurement in furthering economic integration, promoting growth and employment. There are provisions on transparency, including concerning availability of laws/regulations and publication of tender opportunities. There are requirements concerning cooperation and information sharing, with a view to achieving better understanding of each Party’s respective government procurement systems.

<sup>117</sup> [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm)

<sup>118</sup> <https://ec.europa.eu/trade/policy/countries-and-regions/countries/philippines/>  
[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A1222\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A1222(01)&from=EN)

<sup>119</sup> Philippines enjoys enhanced trade preferences with the EU under the EU’s Generalised Scheme of Preferences plus (GSP+)

<sup>120</sup> <https://www.ilo.org/manila/areasofwork/international-labour-standards/lang--en/index.htm>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



Pillar II. Institutional Framework and Management Capacity

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

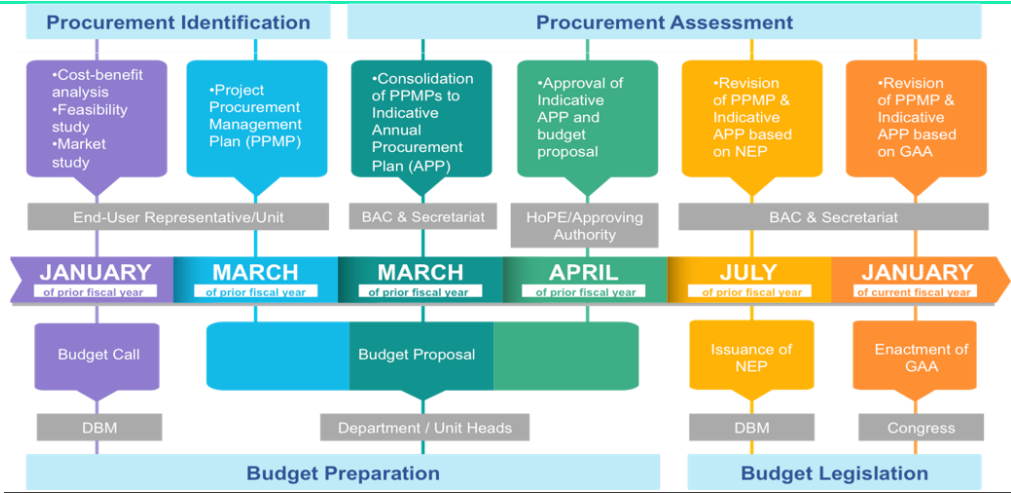
4(a) Procurement planning and the budget cycle

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.</b>	<p>GPRA s.7 Procurement planning and budget linkage 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 Annual Procurement Plan (APP). No government procurement shall be undertaking unless it is in accordance with the APP and the APP must be consistent with the Procuring Entity’s approved yearly budget. IRR s.7 sets out detailed provisions concerning preparation of the indicative APP and final APP as well as amendments to the published APP.</p> <p>GPRA s.5 Definition of Terms, Approved Budget for the Contract (ABC) - refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.</p> <p>As per IRR s.5 Definition of Terms: For multi-year contracts, for which a Multi-Year Obligational Authority (MYOA) or an equivalent document is required, the ABC shall be that incorporated in the project cost reflected in the MYOA or equivalent document.</p> <p>Section 93 of the General Appropriations Act of FY 2012 requires all government agencies to maintain a Transparency Seal on their websites. This requirement is reiterated in National Budget Circular No. 542 of the Department of Budget and Management. Transparency seal requirements include annual procurement plan, contracts awarded and name of contracts/suppliers/consultants<sup>121</sup></p>		<b>Criterion Met</b>		
<b>(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).</b>	<p>In accordance with IRR s.7.1 on Procurement Planning and Budget Linkage: “All procurement shall be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan (APP). For purposes of this IRR, a procurement project shall be considered crucial to the efficient discharge of governmental functions if it is required for the day-to-day operations or is in pursuit of the principal mandate of the Procuring Entity concerned. The APP shall include provisions for foreseeable emergencies based on historical records. In the case of Infrastructure Projects, the APP shall consider the appropriate timing/phasing of related project activities, such as, engineering design and acquisition of right-of-way site or location, to reduce/lower project costs”. Appendix 1 of GPPB handbook provides a Revised Guidelines for the Implementation of Infrastructure Projects by the Administration (which is a procedure where implementation is carried out under the administration and supervision of the concerned agency through its own personnel).</p> <p>Appendix 2 of the handbook, GPPB Circular 08-2015 on preparation of the annual procurement plan (APP) specifies that APP among others must contain information on: (i) Name of the project/procurement; (ii) Project management office/end-user unit; (iii) General description of the project/procurement; (iv) Procurement methods to be adopted; (v)Time schedule for a) advertisement/posting; b) submission and receipt/opening of bids; c) award of contract; d) contract signing; <u>(vi) Source of funds; and (vii) Approved Budget for the Contract</u></p> <p><u>Linkage between Procurement Plan and Budget</u></p>		<b>Criterion Met</b>		

<sup>121</sup> [DBM Transparency Seal Compliance to Good Governance Condition](#) (Updated on Dec 30, 2020 Accessed on Jan 05, 2021).

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

					
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	<p>Based on PEFA (June 2016) as per PFM Indicator/Dimension 11.4 on Investment Project Monitoring “Executive Order No. 93, amending EO No. 376 (series of 1989) also known as “establishing the regional project monitoring and evaluation system and for other purposes”, provides a scheme for monitoring and evaluating projects at the national, regional, provincial/city, and municipal level. The main objective of regional project M&amp;E system is to expedite implementation of the project and devolve project facilitation and monitoring and evaluation to the regional and sub-regional levels. The regional project M&amp;E system was established to ensure continuous monitoring of funds earmarked for each activity, 43 and prescribed reports are to be accomplished by the monitoring units. Under NEDA, Regional Project Monitoring Committees (NEDA Regional Offices serve as Secretariat to RPMCs) also prepare quarterly and annual accomplishment reports on the physical and financial status of ongoing government programs and projects. In addition, an annual Official Development Assistance Portfolio Review Report is submitted by NEDA to the Congress by June 30, and also published on the NEDA website. The PPP Center also monitors the implementation of PPP projects as mandated under Section 14.1 of the BOT Law Implementing Rules and Regulations; and the PPP governing board has approved a policy circular on PPP monitoring framework and protocols. 3.79. The transparency seal<sup>122</sup> also requires each agency to disclose the status of implementation and program/project evaluation and/or assessment reports on quarterly basis as well as the major programs/project categorized in accordance with the five key results areas as required in EO No. 43, series 2011. Agencies are also mandated by the National Economic and Development Authority to update information in CIIP. Compliance with these requirements is generally done but with delays. <u>The score for Dimension 11.4 is assessed at “B” as monitoring for major projects exists, standard rules are in place, and information on implementation is at least published annually”.</u></p>		<b>Criterion Partially Met</b>  Feedback mechanism/reporting on completion of major contracts are available with delays as per PEFA		To ensure timely reporting on execution of major contracts and effectiveness of feedback system

4(b) Financial procedures and the procurement cycle

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	<p>GPRA s.7/ IRR s.7 provides that no government procurement shall be undertaken unless it is in accordance with the APP, which must be aligned with the procuring entity’s budget. As per IRR s. 7.2. “No procurement shall be undertaken unless it is in accordance with the approved APP, including approved changes thereto. The APP must be consistent with the duly approved yearly budget of the Procuring Entity and shall bear the approval of the HoPE or second-ranking official designated by the HoPE to act on his behalf”.</p> <p>As per IRR s.7.3.1 “The APP shall be formulated and revised only in accordance with the following guidelines: 7.3.1. Upon issuance of the budget call in the case of NGAs, SUCs, Constitutional Commissions or Offices, or similar document for GOCCs, GFIs and LGUs, the Procuring Entity shall prepare its indicative APP for the succeeding calendar year to support its proposed budget taking into consideration the budget framework for that year in order to reflect its priorities and objectives”</p>		<p><b>Criterion Met.</b></p> <p><i>However, there are “Suggestion for Improvements” by the Assessment Team as in italics</i></p> <p><i>There appears to be an apparent gap as per given criteria, as solicitation of tender takes place based on approved APP (which is an intention that funds will be available), but commitment in terms of signing of contract is done after enactment/approval of GAA, corporate budget or</i></p>		

<sup>122</sup> DBM Transparency Seal Compliance to Good Governance Condition (Updated on Dec 30, 2020 Accessed on Jan 05, 2021).

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

	<p>In accordance with IRR s. 7.6 “To facilitate the immediate implementation of procurement of Goods, Infrastructure Projects or Consulting Services, even pending approval of the GAA, corporate budget or appropriations ordinance, as the case may be, and notwithstanding Section 7.2 hereof, the Procuring Entity may undertake the <u>procurement activities short of award</u>. NGAs, SUCs, Constitutional Commissions or Offices are encouraged to start their procurement activities immediately after the National Expenditure Program (NEP) has been submitted by the President to Congress, provided that the HoPE has approved the corresponding indicative APP. This will facilitate the awarding of procurement contracts after the enactment of the GAA, enabling the timely implementation and completion of programs and projects. For a contract with a period not exceeding one (1) year, the ABC shall be based on the amount in the indicative APP as included in the proposed national budget submitted by the President to Congress; for GOCCs, on budget levels as proposed to the governing board; or for LGUs, on budget levels as proposed in the executive budget submitted to the Sanggunian. <u>In the case of multi-year contracts</u>, for which a MYOA or an equivalent document is required, the ABC shall be the amount reflected in the MYOA or equivalent document. No award of contract shall be made until the GAA, corporate budget or appropriations ordinance, as the case may be, has been approved or enacted”</p> <p>Therefore, the procurement activities like inviting tender could start in accordance with approved APP, but contract shall be signed after the enactment of GAA including those contracts which are multi-year.</p> <p><b>As per GPPB-TSO Resolution No. 14-2019, Early Procurement Activity (EPA)</b> shall refer to the conduct of procurement activities, from posting of the procurement opportunity, if required, until recommendation of the Bids and Awards Committee (BAC) to the HoPE as to the award of the contract, for goods to be delivered, infrastructure projects to be implemented and consulting services to be rendered in the following fiscal year, pending approval of their respective funding sources. The award of contract for Procurement Projects undertaken through EPA may be made only upon: (a) approval and effectivity of their respective funding sources, to wit: (i) GAA; (ii) Corporate Budget; (iii) Appropriations Ordinance; or (iv) loan agreement in the case of FAPs; or (b) the reenactment of the previous year’s budget which constitutes the current year’s authorized budget, when authorized by the Constitution, law or rules. 3.3 PE’s are encouraged to undertake EPA to ensure the timely delivery of goods, implementation of infrastructure projects and rendition of consultancy services. The conduct of EPA for nationally-funded Procurement Projects may commence as early as the submission of the NEP to Congress, usually in July. No EPA may be conducted without an indicative APP duly approved by the HoPE and the Multi-Year Contracting Authority (MYCA) issued by the DBM, in the case of multi-year projects.</p>		<p><i>appropriations ordinance, as the case may be. The Assessment Team considers that the existing provisions enable expediting the procurement process and project implementation in particular for multi-year infrastructure contracts</i></p> <p><u>However, the Procuring Entity shall prepare its indicative APP for the succeeding calendar year to support its proposed budget taking into consideration the budget framework for that year in order to reflect its priorities and objectives”</u></p>		
<p><b>(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*</b></p>	<p>Based on discussions with DBM, cash- based budgeting, there is better predictability on agencies meeting their obligation to pay. This is also monitored by DBM through quarterly reporting and the information is available on the website of DBM. As per DBM, Approved Budget for Contract (ABC) was instituted for transparency, predictability and to fight corruption</p> <p><i>Based on Technical Notes on 2020 Proposed National Budget<sup>123</sup></i></p> <p><b>“Bolstering the PFM System through the Budget and Treasury Management System:</b> The Budget and Treasury Management System (BTMS) was conceived and adopted through the joint efforts of the DBM, the Bureau of the Treasury (BTr), and the Commission on Audit (COA), with the objective of improving convenience, efficiency, accuracy, and timeliness in fiscal reporting and management.</p> <p>A modern, integrated, accurate, reliable, and secure Financial Management Information System for the public financial management (PFM) processes of the government, the BTMS aims to revolutionize the PFM system and achieve better transparency and accountability among national government agencies (NGAs), while providing more reliable and timely financial information.</p> <p>The BTMS is a response to the country’s need, as pointed out by the World Bank, for an integrated financial management information system (IFMIS) in order to have a more efficient PFM system in place. This will ensure fiscal responsibility, provide a more accurate and transparent view of the government’s financial performance, and improve the management of public funds.</p> <p>The establishment of the BTMS is a cornerstone in the government’s program to strengthen PFM and accountability systems through the development and eventual institutionalization of an IFMIS for the country.</p> <p><b>Improving and Simplifying PFM Processes:</b> The BTMS was developed to fundamentally suit a wide range of public financial requirements. It covers the budget execution and budget utilization phases of the National Budget cycle. Under the System, government financial information is collected and organized through an integrated central database that supports crucial PFM functions, such as: 1) Budget Management; 2) Commitments and Obligations Management; 3)</p>		<p><b>Criterion Partially Met</b></p> <p><b>Evidence of timely payment as per contract</b></p> <p>Based on data 9 (c) (c), sample cases Out of 87 contracts reviewed with verifiable information, 36 contracts or 41% were paid out of time, while 51 contracts or 59% were paid on time. It was observed that earliest time of payment was 3 calendar days, and the longest time an Invoice was paid 793 calendar days</p> <p><b>Evidence if</b> Approved Budget for Contract (ABC) has led to better competition and Value-for- Money</p> <p>One of the key challenges is the absence of an integrated system from budgeting to procurement to recording of transactions. 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 BTMS/MGEPS IFMIS when it is complete and comprehensively rolled out.</p>	Yes	<p>Regarding 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, forum where contractor/supplier 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> <p>To expedite implementation of mPhilGEPS which is an integrated system from budgeting to procurement to payment by recording all transactions.</p>

<sup>123</sup> [https://www.dbm.gov.ph/?page\\_id=4273](https://www.dbm.gov.ph/?page_id=4273)

	<p>Payments Management; 4) Receipts Management; 5) Cash Management; 6) Property, Plant, and Equipment; and 7) Accounting and Fiscal Reporting.</p> <p>In addition to this, manually-prepared forms such as Purchase Request (PR); Purchase Order (PO), Goods Received/Return Note (GRN); Obligation Request (ObR); Disbursement Voucher (DV); Revenue Voucher (RV); Revenue Receipt Voucher (RRV); Journal Entry Voucher (JEV); and Budget Control Update Voucher (BCUV) are created and transacted in digital form in the system to simplify such processes and cut duplication of these processes”</p> <p>Also, as per <i>Technical Notes on 2020 Proposed National Budget</i><sup>124</sup> “Under Section 7.6 of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 or the Government Procurement Reform Act, government agencies are authorized to undertake procurement activities, short of award. <b>Helps Attract Reputable Private Sector Contractors and Suppliers. By assuring prompt payment of goods and services – within the fiscal year or at least not beyond the three-month Extended Payment Period</b> – government agencies will attract more reputable suppliers and contractors, thereby promoting a reliable and efficient business environment. <b>Fosters Faster Service Delivery to the Public.</b> Most importantly, with CBS, the general public can expect faster delivery of goods and services since government agencies will be pushed to implement their programs and projects within the one-year horizon” .....<b>Shifting Gears: Adopting the Cash Budgeting System</b> The Philippine Government adopted the Cash Budgeting System (CBS) in the preparation of the 2019 Proposed National Budget, and in its execution following the approval by Congress of the 2019 General Appropriations Act in April 2019. This was the first time that the CBS was implemented in the country and marked the beginning of the shift from the obligation-based budget system that was used prior to Fiscal Year 2019. The move aims to speed up budget utilization, promote faster delivery of government services, and foster discipline among agencies through better planning and management of their programs and projects, including early procurement. (<i>Early procurement activities (EPA) refers to the conduct of procurement activities by the national government agencies, government-owned and/or -controlled corporations, and local government units for goods to be delivered, infrastructure projects to be implemented, and consulting services to be rendered in the following fiscal year pending approval of the GAA. EPA shall commence from the posting of the procurement opportunity, if required, until recommendation to the Head of the Procuring Entity as to the award of the contract</i>).</p> <p>As per Budget and Treasury Management System (BTMS), Rollout Progress Report (as of June 30, 2020), the accelerated rollout starting 2018 was carried out in view of the priority direction to roll-out the fully developed and operational modules in compliance with recommendations provided by international development partners such as the World Bank. The BTMS Budget Utilization Module has been fully rolled out 12 oversight and spending national government agencies (NGAs)</p> <p>As of date, aside from the 12 NGAs, the BTMS has been introduced to a total of 108 NGAs which are already in various roll-out stages in 2019 and 2020. The details of the agencies covered by the BTMS in FYs 2017-2019 as well as the targets for rollout from FYs 2020-2025 are found in Annexes A and B. Annexes C-1 and C-2 provide the details of the rollout stages of the NGAs in 2018 and 2019. Aside from the Top 10 spending Departments, it was the goal to institutionally prepare all NGAs to use BTMS within the year 2019 through interventions for trainings, Security Access Matrix (SAM) workshops and data migration. FY 2019 is a transition year for NGAs and come 2020 onwards, it is envisaged that the BTMS will be fully implemented as NGAs continue to build up their beginning budgetary and account balances and migrate all necessary information to the BTMS. The BTMS implementation roadmap in agencies will also include the empowering first of the Central Offices of NGAs, particularly the respective agencies’ BTMS Implementation Teams, Power Users and End Users. Said teams and users will be responsible for replicating rollout interventions to the regional offices and lowest operating units starting 2020.</p> <p>Further, it is targeted that the BTMS rollout will expand its reach to include the phased implementation for the Go-Live NGAs’ regional offices and lowest operating units of all spending agencies.</p>		<p>Not possible for the contractors, suppliers and consultant to access through BTMS/ IFMIS to know the status of invoices.</p> <p>(This would be through PhilGEPS if at all).</p> <p>Linkage of PhilGEPS (or mPhilGEPS) with BTMS/IFMIS No link at present but MGEPS system is expected to be finalized in end of 2021 (implementation delayed) and should have the appropriate linkages between BTMS and MGEPS as agreed during RAS project.</p> <p>Based on data on Sample Cases under Indicator-9, 36 contracts or 41% were paid out of time.</p> <p>Also as per private sector survey one of the major constraint for a competitive market place as indicated by 48% of the participants is 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 (<i>translated claim interest/financing charges on delayed payment</i>) considering that contractors are penalized for late delivery"</p>		
<p>// Minimum indicator // *</p> <p>Quantitative indicator to substantiate assessment of sub-indicator 4(b)</p> <p>Assessment criterion (b):</p> <p>- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).</p> <p>Source: PFM systems.</p>	<p>Based on data on Sample Cases under Indicator-9, Out of 87 contracts reviewed with available and verifiable information, 36 contracts or 41% were paid out of time, while 51 contracts or 59% were paid on time.</p> <p>Timely payment of invoice expressed by 48% of the survey participants for the private sector</p>	Please see information the left column			

<sup>124</sup> [https://www.dbm.gov.ph/?page\\_id=4273](https://www.dbm.gov.ph/?page_id=4273)



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

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.</b>	<p><b>GPPB</b></p> <p>GPRA s.63 establishes the Government Procurement and Policy Board (GPPB) and assigns functions to that board. The GPPB is an independent inter-agency body located within the Department of Budget and Management (DBM). The GPPB includes members from various government departments as well as a representative from the private sector. The GPPB may invite representative from the COA or from other relevant Government agencies and privates sectors as “resource persons” (IRR s.64). The GPPB Service Charter sets out vision, mission and objectives</p> <p>The functions are to: (a) protect national interest in all matters affecting public Procurement, having due regard to the country's regional and international obligations; (b.) formulate and amend, whenever necessary, the IRR and the corresponding standard forms for Procurement; (c) ensure that Procuring Entities regularly conduct Procurement training programs and prepare a Procurement operations manual for all offices and agencies of government; and (d) conduct an annual review of the effectiveness of the GPRA and recommend any amendments thereto, as may be necessary.</p> <p>IRR elaborates on the provisions in GPRA s.63. The functions, duties and responsibilities are listed in IRR s.63 as follows:</p> <p>a) To protect national interest in all matters affecting public procurement, having due regard to the country’s regional and international obligations;</p> <p>b) To formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary, this IRR;</p> <p>c) To prepare a generic procurement manual and the standard bidding forms for procurement;</p> <p>d) To ensure the proper implementation by Procuring Entities of the GPRA, IRR and all other relevant rules and regulations pertaining to public procurement;</p> <p>e) 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 and for Procuring Entities; and</p> <p>f) To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.</p> <p><b>Technical Support Office (TSO):</b> IRR s.63 also provides that the GPPB shall create a technical support office (TSO) which shall provide support to the GPPB in the performance of its duties. It provides research, technical support and administrative support to the GPPB, including::</p> <p>a) Research-based procurement policy recommendations and rule-drafting;</p> <p>b) Development and updating of generic procurement manuals and standard bidding forms;</p> <p>c) Management and conduct of training on procurement systems and procedures;</p> <p>d) Evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures;</p> <p>e) Monitoring the compliance to the GPRA and assisting Procuring Entities improve their compliance;</p> <p>f) Monitoring the implementation and effectiveness of the PHILGEPS; and</p> <p>g) Secretariat support.</p> <p>The GPPB and GPPB-TSO Service Charters on the GPPB website<sup>125</sup> provide further detail on the services provided.</p>		<p><b>Criterion Partially met</b></p> <p>The legal framework (GPRA s.63) establishes the Government Procurement and Policy Board (GPPB) as a statutory, independent inter-agency body, with full control over the budget it receives from the national government. The 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.</p> <p>The functions of the GPPB are set out in the legal framework and are, in summary, to: protect national interest in all matters affecting public procurement, having 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.</p> <p>IRR s.63 also provides that the GPPB shall create a technical support office (TSO) which shall provide support to the GPPB in the performance of its duties. It provides research, technical support and administrative support to the 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 the compliance to the GPRA and assisting Procuring Entities improve their compliance; monitoring the implementation and effectiveness of the PHILGEPS; and Secretariat support. The GPPB and GPPB-TSO Service Charters on the GPPB website <sup>126</sup> provide further detail on the services provided.</p>	Yes	<p>GPPB to consider ways to strengthen further the effectiveness of GPPB-TSO as an organization to lead the procurement reform at country level with all required resources and technology support</p> <p>Please see the part implementation of PhilGEPS under <b>Indicator -7</b> in particular <b>7(a)(f)</b> Responsibility for the management and operation of the system is clearly defined.</p>

<sup>125</sup> GPPB-TSO service Charter 2019 1st edn

[https://www.gppb.gov.ph/about\\_us/pdf/1252019%20External%20Updated%20GPPB-TSO%20Service%20Charter%20Handbook.pdf](https://www.gppb.gov.ph/about_us/pdf/1252019%20External%20Updated%20GPPB-TSO%20Service%20Charter%20Handbook.pdf)

[https://www.gppb.gov.ph/about\\_us/pdf/2017%20Service%20Charter%20\(Updated\).pdf](https://www.gppb.gov.ph/about_us/pdf/2017%20Service%20Charter%20(Updated).pdf)

<sup>126</sup> GPPB-TSO service Charter 2019 1st edn

[https://www.gppb.gov.ph/about\\_us/pdf/1252019%20External%20Updated%20GPPB-TSO%20Service%20Charter%20Handbook.pdf](https://www.gppb.gov.ph/about_us/pdf/1252019%20External%20Updated%20GPPB-TSO%20Service%20Charter%20Handbook.pdf)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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			<p>As earlier under indicator 1(h) and indicator 13, there is no central source of information concerning bid protests for 2017 onwards, as the requirement on procuring entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR.<sup>127</sup> Also, there is lack of information on the current state and functioning of the complaints review mechanism at the Regional Trial Court levels, all of which make it not possible to assess the efficiency, timeliness, and credibility of the complaints review mechanism, both challenge and appeal, in a reliable and meaningful way.</p> <p>Equally importantly, this means that the 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, or through appeals mechanism, in order to assess and if needed, improve the overall operation of the procurement system. Similarly, the GPPB-TSO has 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 review and monitoring of challenges and appeals as well as in the review of blacklisting decisions may inadvertently impair their monitoring role to ensure compliance of the procuring entities with the procurement legal framework.</p>		
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#### 5(b) Responsibilities of the normative/regulatory function

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) providing advice to procuring entities</b>	GPPB-TSO Service Charter. Legal and Research Division “Issues non policy matter opinions, letter and email response in response to requests by government agencies/procuring entities and private entities and “attend to walk-in clients and complex phone-in queries”		<b>Criterion Met</b>		
<b>(b) drafting procurement policies</b>	GPPB function IRR s.63.1 b) To formulate and amend <u>public procurement policies</u> , rules and regulations, and amend, whenever necessary, the IRR; GPPB-TSO Service Charter. Legal and Research Division “Drafts policy matter opinions for issuance by the GPPB in response to requests by government agencies/procuring entities and private entities.” Conducts research studies for procurement policy recommendations to the GPPB.		<b>Criterion Met</b>		
<b>(c) proposing changes/drafting amendments to the legal and regulatory framework</b>	GPPB function IRR s.63.1 b) To formulate and amend public procurement policies, <u>rules and</u> regulations, and amend, whenever necessary, the IRR;		<b>Criterion Met</b>		
<b>(d) monitoring public procurement</b>	GPPB function IRR s.63.1 d) To ensure the proper implementation by Procuring Entities of the Act, IRR and all other relevant rules and regulations pertaining to public procurement; GPPB-TSO function IRR s.63.3 e) Monitoring the compliance to the GPRA and assisting Procuring Entities improve their compliance. GPPB-TSO Service Charter -Performance Monitoring Division – monitors compliance with procurement laws, rules and regulations. Reports on monitoring of compliance with Agency Procurement Compliance and Performance Indicators (APCPI) are published on GPPB website. Monitors performance and effectiveness of Phil-GEPS		<b>Criterion Met</b>		
<b>(e) providing procurement information</b>	GPPB-TSO Service Charter – Information Management Division		<b>Criterion Met</b>		
<b>(f) managing statistical databases</b>	PhilGEPS function - including provision of open data website				

<sup>127</sup> Based on information from GPPB-TSO response to WB clarification question, received 24 July 2020

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<b>(g) preparing reports on procurement to other parts of government</b>	GPPB function GPRA s.63 (d) conduct an annual review of the effectiveness of the GPRA and recommend any amendments thereto, as may be necessary.		<b>Criterion Met</b>		
<b>(h) developing and supporting implementation of initiatives for improvements of the public procurement system</b>	GPPB IRR s.63.1 d) To ensure the proper implementation by Procuring Entities of the GPRA, IRR and all other relevant rules and regulations pertaining to public procurement; GPPB-TSO IRR s.63.3 e) Monitoring the compliance to the GPRA and assisting Procuring Entities improve their compliance GPPB-TSO IRR s.63.3 b) Development and updating of generic procurement manuals and standard bidding forms; GPPB-TSO Conducts research studies for procurement policy recommendations to the GPPB.		<b>Criterion Met</b>		
<b>(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement</b>	GPPB IRR s.63.1 c) To prepare a generic procurement manual and the standard bidding forms for procurement; e) 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 and for Procuring Entities;		<b>Criterion Met</b>		
<b>(j) supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)</b>	GPPB-TSO IRR s.63.1 c) Management and conduct of training on procurement systems and procedures; GPPB-TSO Service Charter –Capacity Development Division function include to Manage the implementation of the Professionalization Program for Public Procurement Practitioners by partner State Universities and Colleges (SUCs) Establishes and implements a procurement course and certificate programs.		<b>Criterion Met</b>		
<b>(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate</b>	<b>Procurement Service</b> Mandate of the Procurement Service is operation of a government wide procurement system, price monitoring of common use supplies, materials and equipment, identification of supplies, materials and such other items which can be economically purchased through central procurement, identify sources of supply which are able to offer the best prices, terms and other conditions, continuous evaluation, development and enhancement of the Procurement Service procurement system, coverage and procedure; and Management and Maintenance of the Government Electronic Procurement System – PhilGEPS.		<b>Criterion Partially Met</b>  PhilGEPS as ancillary unit of Procurement Services is not effective to work as an integral part of procurement reform and working in silos	Yes	PhilGEPS to be made more effective with adequate resources and personnel to work as an integral part of procurement reform

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.</b>	The GPPB is an independent inter-agency government body chaired by the Secretary of the Department of Budget and Management (DBM). It is a statutory body established under RA 9184. Its technical support office (GPPB-TSO) is attached to and under the supervision of the DBM.		<b>Criterion Met</b>	Yes	In combination with 5(a and 5(b) it is a red flag
<b>(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.</b>	The GPPB-TSO is receiving its own budgetary support from the national government for its identified programs, projects and activities, as authorized under the general appropriations act.  As per GPPB-TSO, even if the GPPB-TSO is an attached agency of the Department of Budget and Management, it has full control over the budget it receives from the national government. The Executive Director is authorized to determine what programs, projects and activities that will be implemented in line with the mandate and functions of the office. The information provided by GPPB-TSO on its funding is as under:		<b>Criterion Met</b>		

	<p>Below is a summary of the annual new appropriations of the GPPB-TSO from 2016 to 2020:</p> <table><tr><th>Year</th><th>Personal Services</th><th>Maintenance and Other Operating Expenses</th><th>Financial Expenses</th><th>Capital Outlays</th><th>Total New Appropriations</th></tr><tr><td>2016<sup>1</sup></td><td>18,752,000</td><td>16,603,000</td><td>1,000</td><td>847,000</td><td>36,203,000</td></tr><tr><td>2017<sup>2</sup></td><td>22,667,000</td><td>10,299,000</td><td>1,000</td><td>-</td><td>32,967,000</td></tr><tr><td>2018<sup>3</sup></td><td>27,032,000</td><td>18,140,000</td><td>-</td><td>203,300,000</td><td>248,472,000</td></tr><tr><td>2019<sup>4</sup></td><td>30,052,000</td><td>16,246,000</td><td>-</td><td>35,000</td><td>46,333,000</td></tr><tr><td>2020<sup>5</sup></td><td>32,640,000</td><td>65,028,000</td><td>-</td><td>121,600,000</td><td>219,268,000</td></tr><tr><td>2021<sup>6</sup></td><td>40,798,000</td><td>24,736,000</td><td>-</td><td>30,903,000</td><td>96,437,000</td></tr></table> <p><sup>1</sup> <a href="https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2016/VOLUME%20I-A/DBM/B.pdf">https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2016/VOLUME%20I-A/DBM/B.pdf</a> <sup>2</sup> <a href="https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2017/Volumel/DBM/B.pdf">https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2017/Volumel/DBM/B.pdf</a> <sup>3</sup> <a href="https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2018/Volumel/DBM/B.pdf">https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2018/Volumel/DBM/B.pdf</a> <sup>4</sup> <a href="https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2019/Volumel/DBM/B.pdf">https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2019/Volumel/DBM/B.pdf</a> <sup>5</sup> <a href="https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2020/Volumel/DBM/B.pdf">https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2020/Volumel/DBM/B.pdf</a> <sup>6</sup> <a href="https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2021/Volumel/DBM/B.pdf">https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2021/Volumel/DBM/B.pdf</a></p> <p>The above funding is considered sufficient to meet the mandate</p>	Year	Personal Services	Maintenance and Other Operating Expenses	Financial Expenses	Capital Outlays	Total New Appropriations	2016 <sup>1</sup>	18,752,000	16,603,000	1,000	847,000	36,203,000	2017 <sup>2</sup>	22,667,000	10,299,000	1,000	-	32,967,000	2018 <sup>3</sup>	27,032,000	18,140,000	-	203,300,000	248,472,000	2019 <sup>4</sup>	30,052,000	16,246,000	-	35,000	46,333,000	2020 <sup>5</sup>	32,640,000	65,028,000	-	121,600,000	219,268,000	2021 <sup>6</sup>	40,798,000	24,736,000	-	30,903,000	96,437,000				
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(c) The institution’s internal organisation, authority and staffing are sufficient and consistent with its responsibilities.	<p>The staffing position as provided by GPPB-TSO on March 16, 2021 is as under, which is considered sufficient and consistent with its responsibilities</p> <p><b>Staffing Pattern of the GPPB-TSO</b></p> <p>Currently, the GPPB-TSO has a total of <b>92 plantilla</b> positions strategically distributed among its eight (8) divisions, namely:</p> <ol style="list-style-type: none"><li>1. Office of the Executive Director;</li><li>2. Administrative Division;</li><li>3. Finance Division;</li><li>4. Capacity Development Division (A and B);</li><li>5. Information Management Division;</li><li>6. Legal and Research Division (A and B);</li><li>7. Performance Monitoring Division (A and B);</li><li>8. Secretariat Division.</li></ol> <p>The TSO is headed by Executive Director V supported by two Deputy Executive Directors IV, and ten (10) division chief level officers.</p>		Criterion Met																																												

5(d) Avoiding conflict of interest

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*  * Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):	As indicated in CPAR 2012, it was considered that there was possible conflict in GPPB’s duty to review contracts for negotiated procurement and it was recommended to review and amend EO 423 delegating contract review responsibilities to GPPB. This has been addressed by removing such review power from the GPPB through Executive Order No. 34, dated July 17, 2017, entitled “Further Amending Executive Order No. 423 (S. 2005), as Amended,	Please see data on the left	Criterion Met		

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



[Type here]

- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.	<p>Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts, Pursuant to Republic Act No. 9184. Otherwise Known as the ‘Government Procurement Reform Act of 2003’”.<sup>128</sup> Therefore GPPB-TSO is not involved in any procurement transaction.</p> <p>In response to a Survey question: Is there a problem with conflicts of interests around procurement in the normative/regulatory institution or procuring entity in your country?</p> <div><table><tr><th>Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>NO</td><td>17</td><td>53%</td></tr><tr><td>YES</td><td>15</td><td>47%</td></tr><tr><td>Total</td><td>32</td><td>100%</td></tr></table> <table><tr><th>YES - Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>Unclear separation of duties between institutions</td><td>5</td><td>9%</td></tr><tr><td>Unclear competencies of officials</td><td></td><td></td></tr><tr><td>An official position is used improperly for private advantage and improper personal gain</td><td>8</td><td>14%</td></tr><tr><td>An official's family or other personal relations</td><td>8</td><td>14%</td></tr><tr><td>An official's political affiliates</td><td>4</td><td>7%</td></tr><tr><td>Others</td><td>1</td><td>2%</td></tr><tr><td>Total</td><td>26</td><td>47%</td></tr></table></div> <p>Based on the majority response, this issue is not considered as a substantive gap (as a learning, it is seen that questions should be framed separately for the regulatory body and for the procuring entity for a more specific response)</p>	Answer Choices	Responses	%	NO	17	53%	YES	15	47%	Total	32	100%	YES - Answer Choices	Responses	%	Unclear separation of duties between institutions	5	9%	Unclear competencies of officials			An official position is used improperly for private advantage and improper personal gain	8	14%	An official's family or other personal relations	8	14%	An official's political affiliates	4	7%	Others	1	2%	Total	26	47%				
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6. Procuring entities and their mandates are clearly defined

6(a) Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Procuring entities are clearly defined.</b>	<p><b>Procuring entities</b> GPRA s.4 provides that the GPRA applies to procurement “by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138.” IRR s.4 [elaborates on this coverage and] confirms that the IRR applies to “any branch, agency, department, bureau, office, or instrumentality of the GoP, including government owned and/or-controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).”</p> <p>The defined terms in GPRA s.5/IRR are consistent with GPRA s.4. GPRA s.5(o) defines “<b>Procuring Entity</b>” as “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.....” .</p> <p><b>Procuring entity: Local Government Units:</b> The term local government unit include provinces, cities, municipalities and barangays (local level government unit). <b>Procuring entity: Government-owned or controlled companies (GOCCs):</b> are defined in the Administrative Code 1987 (Executive Order 292) Introductory Provisions s.2 (13) as: “any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.”</p>		<b>Criterion Met</b>		

<sup>128</sup> See: <https://www.officialgazette.gov.ph/downloads/2017/07jul/20170717-EO-34-RRD.pdf>, last accessed on May 2, 2021.

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

	The central policy making and regulatory (oversight/monitoring) authority for GOCCs is the Governance Commission for Government Owned or Controlled Corporation <sup>129</sup> (“GCG”), which is attached to the Office of the President. GOCCs are classified into five types: Development/Social Corporations; Proprietary Commercial Corporations; Government Financial, Investment and Trusts Institutions; Corporations with Regulatory Functions; and Other as may be determined by GCG. A full list of GOCCs is available from the Office of the Government Corporate Counsel <sup>130</sup> . The list includes GOCCs active in the transport, gas and water sectors.												
(b) Responsibilities and competencies of procuring entities are clearly defined.	IRR s.5(f) and (b)(b), 11-14 provide legal reference for organizational structure. The Generic Procurement Manual Volume 1 Guidelines on the Establishment of Procurement Systems and Organizations covers the organization, role and responsibilities of the Procuring Entity and the Procurement Unit/Office, BAC and BAC secretariat, Technical Working Group and Observers. Functions of the Head of the Procuring Entity in the context of government procurement are also clearly defined.		Criterion Met										
(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*  // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities with a designated, specialised procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.	<p>Generic Procurement Manual Volume 1 Guidelines on the Establishment of Procurement Systems and Organizations – Procurement Unit/Office. See also Guidelines in the Organization and Staffing of Procurement Units, National Budget Circular 2015-558.</p> <p><b>Table Sub-indicator 6(a) (c) – Procuring entities with a designated, specialized procurement function</b></p> <table><tr><th>Period</th><th>Total number of procuring entities</th><th>procuring entities with a designated, specialized procurement function</th><th>% of total number of procuring entities</th></tr><tr><td>Last completed Fiscal ( 2019)</td><td>49,095</td><td>49,095*</td><td>100%</td></tr></table> <p>All agencies have a designated Bids and Awards Committee responsible for conducting procurement activity. While officers will have access to training from GPPB-TSO of legal aspects and from PhilGEPS on use of the system, there is no information to support specialized training or capacity in procurement.</p> <p>Source: e- GP Portal</p>	Period	Total number of procuring entities	procuring entities with a designated, specialized procurement function	% of total number of procuring entities	Last completed Fiscal ( 2019)	49,095	49,095*	100%	Please see table on the left	Criterion Met		
Period	Total number of procuring entities	procuring entities with a designated, specialized procurement function	% of total number of procuring entities										
Last completed Fiscal ( 2019)	49,095	49,095*	100%										
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	Generic Procurement Manual Volume 1 Guidelines on the Establishment of Procurement Systems and Organizations – Procurement Unit/Office. See also Guidelines in the Organization and Staffing of Procurement Units, National Budget Circular 2015-558.		Criterion Met										
(e) Accountability for decisions is precisely defined.	Generic Procurement Manual Volume 1 Guidelines on the Establishment of Procurement Systems and Organizations – Procurement Unit/Office. See also Guidelines in the Organization and Staffing of Procurement Units, National Budget Circular 2015-558.		Criterion Met										

6(b) Centralized procurement body

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	<p>See 6(b)(b) The Philippines has a centralized procurement function – the DBM Procurement Service - with functions including the procurement and supply of common use items and non-common use items. All departments, bureaus, offices and instrumentalities of all branches in the government, including State Universities and Colleges (SUCs), government owned or control corporations a(GOCCs) and Government Financial Institutions and local government units (LGUs) are mandated to use the PS for purchase of common-use supplies, materials and equipment (CSE) , save in the case of emergency.<sup>131</sup></p> <p>Government agencies, including LGUs may procure their CSE through shopping method under IRR s.52 if the CSEs they intend to procure are not available through PS. In practice,</p>		Criterion Met		

<sup>129</sup> <https://gcg.gov.ph/site/aboutus>

<sup>130</sup> <http://ogcc.gov.ph/gocc/>

<sup>131</sup> LOI No.755 and Executive Order No.359 of 1989 s.3. Executive Order No.40 of 2001.

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

	<p>government agencies procure their CSEs from the PS through the Virtual store. <sup>132</sup> IRR Appendix 30 Guidelines on the use of the virtual store for the procurement of common-use supply and equipment provide at s.4 that all Agencies are mandated to fully use the Virtual Store feature of PhilGEPS for the procurement of CSEs. There is requirement on all procuring entities to identify in their annual procurement plan.</p> <p>For specialized sectors such as in the health sector, the Philippine Pharma Procurement Inc. (PPPI) (formerly PITC Pharma, Inc) is designated as the central procurement arm for all government agencies for the <i>importation</i> of drugs and medicines, except for specific programs and instances allowed by the Department of Health pursuant to IRR of RA No.9502. PPPI is a GOCC. IRR s.58 of RA No.9502<sup>133</sup> provides for the establishment of a common facility for pooled procurement of medicines in compliance with RA 9184. However, guidelines for pooled procurement is still being studied by the Department of Health.</p> <p><b>Framework agreements:</b> IRR Appendix 32 sets out Guidelines on the establishment and use of Framework Agreement by all Procuring Entities (Framework Agreement Guidelines 2019). Appendix 32 was issued through GPPB Resolution No.27-2019 dated 10 December 2019, published in the Official Gazette on 30 December 2019 and supersedes the “Revised Guidelines on the use of Ordering Agreement”. The Framework Agreement Guidelines 2019 provide that framework agreement may be used by procuring entities 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, and for the procurement of goods which are not advisable to be carried in stock. Framework agreements are to be set up using competitive bidding (Framework Agreement Guidelines 2019 s.7). They may be single year single or multi-year (not exceeding 3 years) and there are provisions for framework agreements with a single supplier or multiple suppliers.</p>			
<p><b>(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:</b></p> <ul style="list-style-type: none"><li>• Legal status, funding, responsibilities and decision-making powers are clearly defined.</li><li>• Accountability for decisions is precisely defined.</li><li>• The body and the head of the body have a high-level and authoritative standing in government.</li></ul>	<p><b>Procurement Service Basis of establishment</b><sup>134</sup></p> <p>The Procurement Service (PS) was created on October 18, 1978 by virtue of Letter of Instructions (LOI) No. 755 which directed the establishment, funding and responsibilities of an integrated procurement system for the national government and its instrumentalities. Executive Order No. 28 of 1987 abolished the General Services Administration and transferred the procurement and price monitoring functions of the Supply Coordination Office to the PS. Executive Order No. 359 of 1989 prescribed the systematic expansion of the PS through a network of regional depots under a governing Procurement Policy Board<sup>135</sup>. Executive Order 40 of 2001<sup>136</sup> consolidated procurement rules and procedure for all national government agencies, GOCCs and Government Financial Institute and required the use of the Government Electronic Procurement System, together with Implementing Rules and Regulations<sup>137</sup>. The PS sits within the Department for Budget and Management.</p> <p>PS mandate is the operation of a government wide procurement system, price monitoring of common use supplies, materials and equipment, identification of supplies, materials and such other items which can be economically purchased through central procurement, identify sources of supply which are able to offer the best prices, terms and other conditions, continuous evaluation, development and enhancement of the Procurement Service procurement system, coverage and procedure; and Management and Maintenance of the Government Electronic Procurement System – PhilGEPS.</p>	Criterion Met		

<sup>132</sup> Confirmed in GPPB-TSO TSO response to WB clarification question received 24 July 2020

<sup>133</sup> PPPI website <http://pitcpharma.com.ph/aboutus.html> : RA 9502 [https://www.doh.gov.ph/sites/default/files/policies\\_and\\_laws/RA9502.pdf](https://www.doh.gov.ph/sites/default/files/policies_and_laws/RA9502.pdf) , IRR of RA 9502 <https://www.officialgazette.gov.ph/2008/06/06/republic-act-no-9502/>

<sup>134</sup> Legal bases for Procurement Service listed on website: <http://ps-philgeps.gov.ph/home/index.php/about-ps/legal-bases>

<sup>135</sup> Explanation provided on website page: <http://ps-philgeps.gov.ph/home/index.php/about-ps/legal-bases>

<sup>136</sup> [http://ps-philgeps.gov.ph/home/images/legalbases/EO\\_40-2001.pdf](http://ps-philgeps.gov.ph/home/images/legalbases/EO_40-2001.pdf)

<sup>137</sup> [http://ps-philgeps.gov.ph/home/images/legalbases/IRR-EO\\_40.pdf](http://ps-philgeps.gov.ph/home/images/legalbases/IRR-EO_40.pdf)


<b>(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.</b>	PS unit also manages PhilGEPS. which is not an appropriate and effective organization structure	<b>Criterion Partially Met</b> This unit also manages PhilGEPs that impacts budget allocation which adversely affects staffing consistent with the responsibilities

(Please see Indicator 7)

## 7. Public procurement is embedded in an effective information system (quantitative data may be given in the second column after completing the write-up on qualitative analysis)

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.</b>	<p>PhilGEPS provides open and free access to all tender opportunities and awards from all government organizations as well as links and access to government procurement guidelines and regulations. The system publishes procurement opportunities and corresponding awards. The system allows bidders to register and download bidding documents and obtain notifications of any amendment or change to the tender information. PhilGEPS includes an open data portal providing access to summary reports on participating agencies and registered merchants and procurement activity. The open data portal also provides access to data sets for all transactions since 2000 that users can download and analyze.</p> 	See the column on the left	<b>Criterion Partially Met</b> <p>Many agencies have not published award information. Agencies that have published can be many months after the award was issued.</p> <p>Procurement Plans on GPPB portal are published as documents and are not linked to procurement activity in PhilGEPS.</p>		<p>PhilGEPS is in a period of transition to the new mPhilGEPS 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 protest to ensure all information is incorporated in the system.</p>
<b>(b) There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.</b>	<p>PhilGEPS is the official government portal for all procurement notices, bidding documents and award notices for all public procurement agencies in the Philippines. One central merchant registry allows registered bidders to participate in any government procurement opportunity. The registered merchant directory now includes over 200,000 organizations including individual consultants, contractors, service providers, manufactures across all industries. There are more then 2000 new notices published daily on PhilGEPS.</p> <p>All procurement data published on PhilGEPS is available at no cost. PhilGEPS provides merchants interested in participating in government procurement 2 registration options – Red registration at no cost and platinum for an annual subscription. The platinum level registration is an option available for an annual fee of PHP 5000. Platinum level registration includes the submission and verification of legal A documents as part of their organization profile. Platinum users can submit a copy of their PhilGEPS registration as part of any submission – manual or electronic – in lieu of notarized Legal A document with each response. Platinum registration provides significant time and cost savings to frequent bidders who no longer need to certify and submit Legal A documents with each bid. No other fees are currently applied by PhilGEPS.</p> <p>Agencies may apply a bid form fee for bidding document fees. Copy of the bidding document is available for download from PhilGEPS at no cost. Only participating bidders are required to pay the document fee. These fees are paid directly to the procuring agency prior to bid closing not through PhilGEPS.</p> <p>PhilGEPS is a stand-lone system and does not integrate with any other government system.</p> <p>Note: A new mPhilGEPS is being implemented in 2021 which will be integrated with other systems including the BTMS.</p>		<b>Criterion Partially Met</b> <p>Award information is not published in a timely manner or at all. About 50% of transactions do not have award information.</p>		<p>GPPB and PhilGEPS need to improve compliance of Agencies to post information in a timely manner for all transactions.</p> <p>mPhilGEPS will improve compliance with the inclusion of e-submission and contract management. Supporting contract payment through mPhilGEPS will all contract data is collected.</p>



	<table><tr><th>Procurement Method</th><th>Avg Days to Pub Awd</th><th>Max Days to Pub Awd</th></tr><tr><td>Direct Contracting (Sec. 50)</td><td>52.06</td><td>617</td></tr><tr><td>International Competitive Bidding</td><td>169.00</td><td>305</td></tr><tr><td>Limited Source Bidding (Sec. 49)</td><td>86.60</td><td>316</td></tr><tr><td>National Competitive Bidding</td><td>130.80</td><td>399</td></tr><tr><td>Negotiated Procurement - Agency to Agency (Sec. 53.5)</td><td>64.22</td><td>957</td></tr><tr><td>Negotiated Procurement - Community Participation (Sec. 53.12)</td><td>55.87</td><td>601</td></tr><tr><td>Negotiated Procurement - Defense Cooperation Agreement (Sec. 53.8)</td><td>106.50</td><td>160</td></tr><tr><td>Negotiated Procurement - Emergency Cases (Sec. 53.2)</td><td>48.46</td><td>728</td></tr><tr><td>Negotiated Procurement - Highly Technical Consultants (Sec. 53.7)</td><td>89.70</td><td>305</td></tr><tr><td>Negotiated Procurement - Lease of Real Property (Sec. 53.10)</td><td>46.31</td><td>586</td></tr><tr><td>Negotiated Procurement - NGO Participation (Sec. 53.11)</td><td>56.78</td><td>229</td></tr><tr><td>Negotiated Procurement - Small Value Procurement (Sec. 53.9)</td><td>65.82</td><td>457</td></tr><tr><td>Negotiated Procurement - Two Failed Biddings (Sec. 53.1)</td><td>67.41</td><td>401</td></tr><tr><td>NP - Scientific, Scholarly/Artistic Work, Exclusive Tech. &amp; Media Service (53.6)</td><td>51.30</td><td>660</td></tr><tr><td>Public Bidding</td><td>97.29</td><td>445</td></tr><tr><td>Selection based on Consultants Qualification</td><td>94.26</td><td>393</td></tr><tr><td>Shopping</td><td>64.72</td><td>456</td></tr><tr><td>Shopping - Ordinary/Regular Office Supplies &amp; Equipment (Sec. 52.1.b)</td><td>74.54</td><td>436</td></tr><tr><td>Shopping - Unforeseen Contingency (Sec. 52.1.a)</td><td>109.58</td><td>767</td></tr><tr><td>Grand Total</td><td>80.12</td><td>957</td></tr></table>	Procurement Method	Avg Days to Pub Awd	Max Days to Pub Awd	Direct Contracting (Sec. 50)	52.06	617	International Competitive Bidding	169.00	305	Limited Source Bidding (Sec. 49)	86.60	316	National Competitive Bidding	130.80	399	Negotiated Procurement - Agency to Agency (Sec. 53.5)	64.22	957	Negotiated Procurement - Community Participation (Sec. 53.12)	55.87	601	Negotiated Procurement - Defense Cooperation Agreement (Sec. 53.8)	106.50	160	Negotiated Procurement - Emergency Cases (Sec. 53.2)	48.46	728	Negotiated Procurement - Highly Technical Consultants (Sec. 53.7)	89.70	305	Negotiated Procurement - Lease of Real Property (Sec. 53.10)	46.31	586	Negotiated Procurement - NGO Participation (Sec. 53.11)	56.78	229	Negotiated Procurement - Small Value Procurement (Sec. 53.9)	65.82	457	Negotiated Procurement - Two Failed Biddings (Sec. 53.1)	67.41	401	NP - Scientific, Scholarly/Artistic Work, Exclusive Tech. & Media Service (53.6)	51.30	660	Public Bidding	97.29	445	Selection based on Consultants Qualification	94.26	393	Shopping	64.72	456	Shopping - Ordinary/Regular Office Supplies & Equipment (Sec. 52.1.b)	74.54	436	Shopping - Unforeseen Contingency (Sec. 52.1.a)	109.58	767	Grand Total	80.12	957																																																																									
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Copy of the governing rules and regulations in the help section, however currently several files have “document not available errors”.</p> <p>PhilGEPS does not include any information on protest or challenges. Blacklisting is managed in the GPPB portal and listing as a document on PhilGEPS. These activities are conducted outside of the system. <b>Procurement Plan not part of PhilGEPS. Based on APCPI and GPPB data of 2019 out of 17 agencies 16 agencies are compliant on preparation of Annual Procurement Plan (94%), but not reflected in PhilGEPS</b></p> <p>The GPPB website provides open access to all rules and regulations guiding public procurement including standard bidding documents and standard bid forms. The site also list annual procurement plans from agencies, Consolidated Blacklisting Report, Pre-Selected Suppliers, List of Observers, Contractor Performance Evaluation Summary, Protest, Negative list. <b>7 (a) (c) compliance is 65%. 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Plans published in the GPPB website and not linked or verified with activity in PhilGEPS and details required under the criteria (c) are not available in a systematic way</p> <p>Protest information in GPPB is only included up to 2016.</p>		<p>The releases of mPhilGEPS will incorporate procurement plans and contract management information in PhilGEPS.</p> <p>mPhilGEPS should serve as the official source of procurement plans, tenders, contracts and blacklisting and protest submitted in the system. The GPPB should only publish supporting information and data collected from mPhilGEPS.</p>
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<p><b>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).</b></p>	<p>PhilGEPS operates on an open data policy, enabling access to all information collected in the system from procuring agencies.</p> <p>Agencies, auditors, and bidders and admin users have full access to all detail information for each tender opportunity including tender details (publish date, closing date and time, opening data and time, award notice date, contract start and end date, budget amount, contract award amount, procurement mode).</p> <p>For Agencies, Auditors and Admin, a detail tracking report will provide a full transactional history for the tender details, bidding documents, amendments and clarification and the bidders that registered to bid, downloaded documents (bidding document and amendments or clarification), who submitted bids (if recorded), evaluation results, publication of award notice and contract details along with any supporting documents. As the system is not fully supporting e-submission, access to e-bid submissions information or documents is limited.</p> <p>Bidders will only be able to view the list of participants and the information published in the tender notice and award notice and with links to any document that will be publicly available including all components of the bidding document package. Bidders will not have access to any electronic submissions or information on other bidders outside of contact information as listed in the bidder’s directory profile.</p> <p><i>Sample Award information available listed below. (note variation between recorded system contract amount and actual amount listed in “reason”.</i></p>		<p><b>Criterion Partially Met</b></p> <p>Not all information is uploaded by Procuring agencies in a timely of complete manner.</p> <p>Evaluation reports, contract documents and other supporting documents are only available if uploaded by procuring agency. Due to current system issues, some uploaded documents are currently not available.</p> <p>Open data records are available for download by internal and external users, such as citizens, who may conduct their own analysis.</p>	<p>Additional data elements could be included in data sets 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)., number of bid documents downloaded, number of registered bidders, number of submitted bids</p> <p>Processes in the system should ensure full compliance and completeness of information.</p>																																																																																																																																					

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e):</p> <p>- Share of procurement information and data published in open data formats (in %).</p> <p>Source: Centralised online portal.</p>	<p>Open Data is published both as published summary reports in PDF formats and downloadable datasets in a structure (xls, CSV) format. Any user can download available datasets to conduct their own analysis. Datasets are available quarterly.</p> <p>Current data is available in the main PhilGEPS portal where users can search by date range, organization, classification codes, funding source and other tender details for opportunities and recent awards.</p> <p>100% of all procurement detail transactions from PhilGEPS are included in the PhilGEPS open data initiative along with Summary Reports highlighting the number of registered agencies and bidders and the number of types of notices published in the system.</p> <table><tr><th>Organization Name</th><th>Reference ID</th><th>Solicitation No.</th><th>Notice Title</th><th>Publish Date</th><th>Classification</th><th>Notice Type</th><th>Business Category</th><th>Funding Source</th></tr><tr><td>BARANGAY FATMA- VILLABA LEYTE</td><td>6279045</td><td>GOODS 09-19-003</td><td>PURCHASE OF</td><td>10-01-2019</td><td>Goods</td><td>Invitation to Bid</td><td>Vehicle</td><td>Government of the Philippines</td></tr><tr><td>MUNICIPALITY OF LAKE WOOD, ZAMBOANGA DEL SUR</td><td>6398790</td><td>2019-08-049</td><td>PROCUREMENT</td><td>10-01-2019</td><td>Goods</td><td>Request for Quotation</td><td>Fuels/Fuel Additives</td><td>Government of the Philippines</td></tr><tr><td>MUNICIPALITY OF KIANGAN, IFUGAO</td><td>6407393</td><td>2019100</td><td>PROPER HUCAE</td><td>10-01-2019</td><td>Civil Works</td><td>Invitation to Bid</td><td>Construction Project</td><td>Government of the Philippines</td></tr><tr><td>MUNICIPALITY OF KIANGAN, IFUGAO</td><td>6407416</td><td>2019099</td><td>BALUNGUNG</td><td>10-01-2019</td><td>Civil Works</td><td>Invitation to Bid</td><td>Construction Project</td><td>Government of the Philippines</td></tr><tr><td>MUNICIPALITY OF KIANGAN, IFUGAO</td><td>6407458</td><td>2019105</td><td>RE-BLOCKING</td><td>10-01-2019</td><td>Civil Works</td><td>Invitation to Bid</td><td>Construction Project</td><td>Government of the Philippines</td></tr><tr><td>SILAY CITY WATER DISTRICT</td><td>6408266</td><td>P.R. 019-0190</td><td>Supply &amp; 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Citizens and external users should continue to have open access to download and use open data

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Procurement information and data published in open data format 100% (65% with award information)

Please see data on the left

Criterion Met

Suggested improvement


Some socio- economic data could be added to datasets to allow future analytics to be conducted

Criterion Met

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

[Type here]

7(b) Use of e-Procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations									
<p><b>(a) E-procurement is widely used or progressively implemented in the country at all levels of government.*</b></p> <p><i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):</i></p> <p><b>uptake of e-Procurement</b></p> <p>- <b>number of e-Procurement procedures in % of total number of procedures</b></p> <p>- <b>value of e-Procurement procedures in % of total value of procedures</b></p> <p><b>Source: e-Procurement system.</b></p>	<p>RA 9184 in 2003 and the revised Implementing Rules and Regulations stipulate that PhilGEPS is the official government eprocurement platform for all government organizations from local barangay to national agencies and they must use PhilGEPS for all public procurement.</p> <p>The system supports over 50,000 registered government organizations representing almost 100% of all public agencies in the Philippines. In 2019 indicate over 1.3 million tenders were advertised in PhilGEPS, averaging 2,000 published notices per day from over 15,000 procuring agencies at all level of government.</p>  <table><tr><th>Year</th><th>Awardees</th><th>No of Awards</th></tr><tr><td>2019</td><td>33,846</td><td>422,869</td></tr><tr><td>Grand Total</td><td>33,846</td><td>422,869</td></tr></table>	Year	Awardees	No of Awards	2019	33,846	422,869	Grand Total	33,846	422,869	<p>Number of e-Procurement procedure in 65 % of total Value awarded PhP 1070.1 Billion ( awarded) USD 21.1 Billion out of total USD 43.6 billion (48.4%) by value</p> <p>See data on the left column</p>	<p><b>Criterion Met</b></p> <p>PhilGEPS has achieved 100% of agency registration. However, not all agencies are processing procurement in the system. 80% of the procurement activity is conducted by 20% of agencies.</p>		<p>Monitoring functions should be included in mPhilGEPS to identify agencies not using the system and ensure the agency have active and trained officers responsible for conducting procurement activity on the system.</p> <p>PhilGEPS and GPPB need to enhance communication and messaging with agencies to ensure levels of activity and growth are maintained and the system is used to its fullest.</p> <p>Training and messaging for the new system must be clear and monitored to ensure compliance.</p>
Year	Awardees	No of Awards												
2019	33,846	422,869												
Grand Total	33,846	422,869												

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

<p><b>(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.</b></p>	<p>Supporting the delivery of PhilGEPS for 20 years is an achievement that is not matched by many other countries. There is a significant benefit to be able to provide a continuity of a service offering.</p> <p>Over 20 years, PhilGEPS has experienced many challenges managing the service delivery of the system from significant development delays with the service provider, stability of the system due to increase system loads with growth of the service and 6 different government administrations taking different levels of interests in the need and support for PhilGEPS.</p> <p>While the PhilGEPS operation team remain relatively constant over 20 years, changes in administration created changes in departmental management overseeing the PhilGEPS operation leaving to different levels of understanding as to what is required to maintain and operate the service and how to move the system forward to continue to meet the needs of government and the users that depend on access to the procurement information.</p> <p>Management changes created significant delays obtain support and funding to replace and upgrade the original PhilGEPS system. There are also delays are obtaining internal approvals for system requirements and new release of the system to move the system forward.</p> <p>PhilGEPS is guided, managed and dependent on 3 organizations. PS-DBM, DBM and GPPB.</p> <p>PS-DBM is responsible for the PhilGEPS operations unit and provides administrative and financial support to the operation since its original pilot release as the government central procurement agency for common goods and services. PhilGEPS provides special operations to PS-DBM with support for the virtual store that is part of PhilGEPS and interaction with the PS-DBM systems. Some members of the PhilGEPS team are a secondment to support other PS-DBM internal IT operations and supplement Bid and Award committee activities having their time and responsibilities split between locations.</p> <p>DBM provides the approval and funding for the service provider delivering the underlying e-procurement platform and day to day service operations to ensure a stable and secure environment for the system. The DBM BAC was responsible for the selection of the service provider to deliver the system.</p> <p>GPPB provides guidance for the functions, information and processes to be supported in the system through its procurement policies, guidelines and regulations. GPPB oversees the operations and delivery of the system by PhilGEPS and will approve any changes and new features to be delivered. GPPB also issues directives and circulars guiding the use of PhilGEPS by government agencies.</p>		<p><b>Criterion Partially Met</b></p> <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>Changes in government administration and support affected the implementation of the mPhilGEPS over the last few years and taken a toll on the PhilGEPS organization. and led to the departure of senior team members. PhilGEPS is staffed primarily by contracted employees with contracts subject to annual renewal. Any change with support under PS-DBM can affect renewal of contracts. The loss of senior members create an erosion of knowledge-base and could create challenges going forward without replacement with capable resources.</p>		<p>PS-DBM and PhilGEPS have different business objectives. PS-DBM is focused on conducting procurement providing common goods and services to agencies. PhilGEPS is not a procurement organization, it is a service organization supporting agencies conducting procurement.</p> <p>The government should review the organization structure for PhilGEPS to ensure PhilGEPS has the independence and support to perform its function, including having full time staff to support the operation.</p> <p>Other government, Georgia and Indonesia have placed their e-procurement service delivery with the policy organization to support the delivery of policy.</p>
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\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



<p><b>(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.</b></p>	<p>All officers in participating agencies are provided training for using the system. However, the level of training may be an issue based on the completeness of all transactions in the system. The number of published tenders without a corresponding award is over 50%.</p> <p>The GPPB and PhilGEPS conduct separate training. One set by GPPB is focused on the law and regulations. PhilGEPS is focused on using the system. Training should provide a level of harmonization to demonstrate how the system is used to support compliance with the law and regulations.</p> <p>The message from the training and communication is associated with publishing a notice to a bulletin board versus using PhilGEPS to support the procurement process including the recording of procurement results in the system to comply with all guidelines and COA.</p>		<p><b>Criterion Partially Met</b></p> <p>Based on the percentage of awards published in PhilGEPS compared to original notices, assigned staff is 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>Expand the use of e-learning and the development of a 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><b>(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*</b></p> <p><b>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):</b></p> <ul style="list-style-type: none"><li>- bids submitted online (in %)</li><li>- bids submitted online by micro, small and medium-sized enterprises (in %)</li></ul> <p>Source: e-Procurement system.</p>	<p>Over 200,000 suppliers have registered in PhilGEPS over the 20 years of operation. Two thirds of the registered organizations are sole proprietorship. The system is open to both national and foreign organizations. 14,000 organizations are platinum users – fully registered with certification of legal A documents in the system which enables them to participate in manual or electronic bidding without the need to submit certified documents with each bid. Only PhilGEPS certification is required.</p> <p>In 2019, 422,869 award notices published were distributed across 33,846 suppliers for 7,886 different commodities. The most common awards were for the procurement goods.</p> <table><tr><th>Year</th><th>Awardees</th><th>Commodities</th><th>No</th></tr><tr><td>2019</td><td>33,846</td><td>7,886</td><td></td></tr><tr><td>Grand Total</td><td>33,846</td><td>7,886</td><td></td></tr></table> <p>** current datasets do not provide sufficient information to fully analyze the type vendors participating in the system.</p> <p>** the limited use of e-submission outside of select pilot tenders also limits to information available.</p>	Year	Awardees	Commodities	No	2019	33,846	7,886		Grand Total	33,846	7,886		<p>Please see data on the left</p> <p>SME data is not available</p>	<p><b>Criterion Partially Met</b></p> <p>Bidder and Award information includes name of bidder and the price and name of awardee. Bidder Data does not enable analysis of the size of bidders participating in PhilGEPS. Data should be expanded to analyze the type of bidders winning include location and size.</p>		<p>The transition to mPhilGEPS should expand the procurement data available with e-submission and e-contract. Activity details should incorporate forms of organization (small, medium, large, local or foreign) to facilitate the analysis of socio-economic activity in PhilGEPS.</p>
Year	Awardees	Commodities	No														
2019	33,846	7,886															
Grand Total	33,846	7,886															
<p><b>(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.</b></p>	<p>PhilGEPS has had 2 major transitions to new system environments and is now about the transition to a new platform to support the initial vision for a full eprocurement system in the Philippines. The system will continue to evolve in the coming years to support the on-going growth of the marketplace and keep the system up to date with an ever-changing information technology industry.</p> <p>The roadmap to support e-BID submissions, procurement plans and contract management have been in place for 15 years. System and development challenges have delayed the full deployment of many functions including e-submission and contract management which affected the adoption of e-procurement system.</p>		<p><b>Criterion Partially Met</b></p> <p>PhilGEPS is in a transition period for 2 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 can not be assessed at this time.</p>		<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>												

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	The new mPhilGEPS is currently being implemented. A new virtual store that includes an agency e-wallet to facilitate payment of goods from the virtual store and a new merchant registry have already been deployed. The first main release of mPhilGEPS to replace the existing PhilGEPS system are targeted for Q2 and Q3 2021.				
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### 7(c) Strategies to manage procurement data

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations																																				
<b>(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.</b>	<p>PhilGEPS has the functions to collect the required procurement information for the procurement of goods, works and services including consulting services.</p> <p>The system collects a broad set of data elements with every tender and award published. Data includes delivery location of project, commodity classification codes, units of mays, length of contract, dates and times for procurement activity and contract, approved budget and contract amount. The tender details will also support multiple line items for multiple lots. The system also supports different implementing rules</p> <p>Most of the data elements are mandatory fields and must be completed when being created and dates are validated against minimum timelines set forth by different implementing rules based on source of funds.</p> <table border="1"> <thead> <tr> <th>Row Labels</th><th>Notices</th><th>No of Lots</th><th>Awards</th><th>Total ABC</th><th>Contract Value</th></tr> </thead> <tbody> <tr> <td>Civil Works</td><td>122,183</td><td>85,759</td><td>66,992</td><td>PHP 1,098,640,691,203.32</td><td>PHP 701,146,045,968.88</td></tr> <tr> <td>Consulting Services</td><td>6,653</td><td>3,801</td><td>2,498</td><td>PHP 30,398,623,611.07</td><td>PHP 15,713,015,228.31</td></tr> <tr> <td>Goods</td><td>661,923</td><td>678,438</td><td>340,733</td><td>PHP 910,975,308,420.52</td><td>PHP 330,869,553,057.55</td></tr> <tr> <td>Goods - General Support Services</td><td>28,648</td><td>19,371</td><td>12,646</td><td>PHP 47,419,216,006.56</td><td>PHP 22,385,227,507.41</td></tr> <tr> <td><b>Grand Total</b></td><td><b>819,407</b></td><td><b>787,369</b></td><td><b>422,869</b></td><td><b>PHP 2,087,433,839,241.44</b></td><td><b>PHP 1,070,113,841,762.15</b></td></tr> </tbody> </table> <p>Based on partial data, public procurement as share of GDP is 6%. Based on MoF data this figure is 12.2 %</p>	Row Labels	Notices	No of Lots	Awards	Total ABC	Contract Value	Civil Works	122,183	85,759	66,992	PHP 1,098,640,691,203.32	PHP 701,146,045,968.88	Consulting Services	6,653	3,801	2,498	PHP 30,398,623,611.07	PHP 15,713,015,228.31	Goods	661,923	678,438	340,733	PHP 910,975,308,420.52	PHP 330,869,553,057.55	Goods - General Support Services	28,648	19,371	12,646	PHP 47,419,216,006.56	PHP 22,385,227,507.41	<b>Grand Total</b>	<b>819,407</b>	<b>787,369</b>	<b>422,869</b>	<b>PHP 2,087,433,839,241.44</b>	<b>PHP 1,070,113,841,762.15</b>	Please see data on the left	<p><b>Criterion Partially Met</b></p> <p>The current procurement data is not validated against 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>Evaluation and awards are conducted outside of the system. Dependency on the officer to record all data in the system for awards limits the quality and completeness of the information.</p>		<p>The implementation of full e-procurement through mPhilGEPS should help expand the information available and improve the quality and completeness.</p> <p>PhilGEPS and GPPB should examine options to expand data collected to facilitate the measurement of transactions towards socio-economic goals for support small and medium business, compliance with trade agreement and green procurement initiatives.</p>
Row Labels	Notices	No of Lots	Awards	Total ABC	Contract Value																																				
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<b>(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.</b>	<p>The system produces 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. 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, the award announcement, awardee, award amount, award date, notice to proceed date and contract date and any supporting documents uploaded.</p> <p>PhilGEPS has the capacity to collect data for the complete procurement process, however it is dependent of the officer to perform all steps in the system to record the information as key functions such as e-submissions, contract management and procurement plans are not currently deployed throughout the system that would facilitate automatic collection of additional data.</p>		<p><b>Criterion Partially Met</b></p> <p>The quality and completeness of the information is dependent of the officer completing all functions in the system. Only 40% - 50% of transactions have award information.</p>		<p>mPhilGEPS should rectify the data collected with the full implementation of e-bidding.</p> <p>mPhilGEPS should be accessed 6 months after implementation to validate the functions and information available.</p>																																				

<p><b>(c) The reliability of the information is high (verified by audits).</b></p>	<p>The completeness and reliability of the data however is dependent on compliance by procuring entities. Presently, only 40%-50% of procurement records include corresponding award information. The system does apply editorial controls with mandatory fields and validation of dates applied to procurement activities to ensure the dates comply with governing implementation rules as established by GPPB, donor rules or treaties.</p> <p>The system infrastructure and application went through a full system test including a 3<sup>rd</sup> party performance test as well as a security audit of the system including 3<sup>rd</sup> penetration testing. These tests were performed during the initial release of the system and conduct once more with a major system release. Donor funding provided PhilGEPS with licenses to HP load runner and IBM AppScan to conduct regular testing as part of on-going operations.</p> <p>The Service Provider was required to provide monthly operational reports including performance load reports and any security incidents. Any abnormal performance or security incidents had to be reported immediately along with approaches to resolve any issue.</p>		<p><b>Criterion Partially Met</b></p> <p>Dependency on officers recording award and contract information in the system, limits the completeness of information in the system. Only 50% of transactions have corresponding awards.</p>		<p>Implementation of mPhilGEPS should improve the information collected in the system. e-Submission and e-contract will be in the system along with opening and evaluation summary reports to fulfill all reporting needs.</p> <p>Will need to assess if a performance and security testing was conducted on mPhilGEPS to ensure it complies with all requirements governing the privacy and security of all information.</p>																																																																																																																																				
<p><b>(d) Analysis of information is routinely carried out, published and fed back into the system. *</b></p> <p><b>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</b></p> <ul style="list-style-type: none"><li>• <b>total number and value of contracts</b></li><li>• <b>public procurement as a share of government expenditure and as share of GDP</b></li><li>• <b>total value of contracts awarded through competitive methods in the most recent fiscal year.</b></li></ul> <p><b>Source: Normative/regulatory function/E-Procurement system.</b></p>	<p>PhilGEPS generates summary reports and datasets of system activity and reports a monthly and / or quarterly basis. The main highlighted issue is the number of awards published against the number of notices published. PhilGEPS and GPPB has attempted to improve compliance with publication of awards and publication of bidding documents, however, metrics still indicate the many organizations do not use the full capacity of the system.</p> <table><tr><th>Procurement Methods</th><th>Notices</th><th>Lots</th><th>Total ABC</th><th>No. of Award</th><th>Total Contracts</th></tr><tr><td>Direct Contracting (Sec. 50)</td><td>2,680</td><td>2,710</td><td>PHP 7,459,422,943.52</td><td>2,710</td><td>PHP 6,746,063,607.44</td></tr><tr><td>International Competitive Bidding</td><td>116</td><td>87</td><td>PHP 1,006,070,687.44</td><td>12</td><td>PHP 860,778,954.41</td></tr><tr><td>Limited Source Bidding (Sec. 49)</td><td>44</td><td>29</td><td>PHP 19,687,266,689.70</td><td>24</td><td>PHP 8,754,315,930.67</td></tr><tr><td>National Competitive Bidding</td><td>2,982</td><td>2,515</td><td>PHP 60,225,070,281.21</td><td>1,897</td><td>PHP 40,571,192,169.39</td></tr><tr><td>Negotiated Procurement - Agency to Agency (Sec. 53.5)</td><td>900</td><td>905</td><td>PHP 3,734,175,530.58</td><td>905</td><td>PHP 3,534,174,811.64</td></tr><tr><td>Negotiated Procurement - Community Participation (Sec. 53.12)</td><td>2,151</td><td>2,206</td><td>PHP 2,242,733,765.93</td><td>2,206</td><td>PHP 2,204,084,039.59</td></tr><tr><td>Negotiated Procurement - Defense Cooperation Agreement (Se</td><td>8</td><td>8</td><td>PHP 680,496,001.99</td><td>8</td><td>PHP 680,491,781.99</td></tr><tr><td>Negotiated Procurement - Emergency Cases (Sec. 53.2)</td><td>813</td><td>823</td><td>PHP 2,492,278,820.95</td><td>823</td><td>PHP 1,693,129,042.63</td></tr><tr><td>Negotiated Procurement - Highly Technical Consultants (Sec. 53)</td><td>413</td><td>428</td><td>PHP 201,907,959.36</td><td>428</td><td>PHP 173,667,775.93</td></tr><tr><td>Negotiated Procurement - Lease of Real Property (Sec. 53.10)</td><td>4,060</td><td>4,168</td><td>PHP 2,880,145,034.83</td><td>4,168</td><td>PHP 2,739,089,098.36</td></tr><tr><td>Negotiated Procurement - NGO Participation (Sec. 53.11)</td><td>1,218</td><td>907</td><td>PHP 721,289,468.55</td><td>185</td><td>PHP 97,077,499.79</td></tr><tr><td>Negotiated Procurement - Small Value Procurement (Sec. 53.9)</td><td>359,244</td><td>303,120</td><td>PHP 82,953,966,592.93</td><td>161,674</td><td>PHP 28,473,590,338.95</td></tr><tr><td>Negotiated Procurement - Two Failed Biddings (Sec. 53.1)</td><td>15,450</td><td>16,537</td><td>PHP 25,203,342,820.50</td><td>7,267</td><td>PHP 10,965,717,432.23</td></tr><tr><td>Negotiated Procurement - United Nations Agencies (Sec. 53.13)</td><td>5</td><td>5</td><td>PHP 1,336,969.44</td><td>5</td><td>PHP 1,306,794.37</td></tr><tr><td>NP - Scientific, Scholarly/Artistic Work, Exclusive Tech. &amp; Media</td><td>661</td><td>674</td><td>PHP 927,203,659.99</td><td>674</td><td>PHP 807,597,830.41</td></tr><tr><td>Public Bidding</td><td>288,250</td><td>300,471</td><td>PHP 1,853,758,842,056.17</td><td>184,659</td><td>PHP 954,682,184,142.97</td></tr><tr><td>Selection based on Consultants Qualification</td><td>1,034</td><td>378</td><td>PHP 938,399,289.04</td><td>183</td><td>PHP 984,047,542.61</td></tr><tr><td>Shopping</td><td>113,412</td><td>118,278</td><td>PHP 18,036,656,616.30</td><td>40,560</td><td>PHP 4,659,791,088.33</td></tr><tr><td>Shopping - Ordinary/Regular Office Supplies &amp; Equipment (Sec.</td><td>24,599</td><td>31,686</td><td>PHP 4,039,577,543.56</td><td>13,047</td><td>PHP 1,280,252,752.92</td></tr><tr><td>Shopping - Unforeseen Contingency (Sec. 52.1.a)</td><td>1,367</td><td>1,434</td><td>PHP 243,656,509.46</td><td>1,434</td><td>PHP 205,289,127.52</td></tr><tr><td>Grand Total</td><td>819,407</td><td>787,369</td><td>PHP 2,087,433,839,241.44</td><td>422,869</td><td>PHP 1,070,113,841,762.15</td></tr></table> <p><b>Based on partial data, public procurement as share of GDP is 6%. Based on MoF data this figure is 12.2 %</b></p> <p><b>Based on total value of contract through competitive bids was PHP 968.8 billion out of total PHP 1070 billion (90.5 %)</b></p>	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 (Se	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.	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	<p>Please see column on the left on public procurement as share of GDP and 5 share of competitive methods</p>	<p><b>Criterion Not Met</b></p> <p>Information reporting is carried out and published on the portal. The lack of award information recorded in the system limits the value of the data to facilitate any policy or financial management decisions.</p> <p>Information collected can only assist in identifying agencies not conducting procurement in the system or posting awards.</p> <p>The current information in PhilGEPS is insufficient to provide input to substantiate measurements to GDP or government expenditure.</p>	<p>Yes</p>	<p>The new mPhilGEPS will help collecting the required data. New, directives and improved training may be needed to ensure officers understand their role in the system.</p>
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8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Poten tial red-flag?	Initial input for recommendations
<p><b>(a) substantive permanent training programmes of suitable quality and content for the needs of the system.</b></p>	<p>As per sec 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 as under:</p> <ul style="list-style-type: none"><li>• Shift to digital learning due to public health condition and restrictions brought about by COVID-19</li><li>• 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, overview of Agency Procurement Compliance and Performance Indicator (APCPI)</li></ul>		<p><b>Criterion Partially Met</b></p> <p>Sustainable ,regular and permanent training to meet the requirement to fill the needs of procurement staff, private sector and CSO lacking</p>		<p>To institute Sustainable regular and permanent training to meet the requirement to fill the needs of procurement staff, private sector and CSO</p>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

	<div><ul style="list-style-type: none"><li>• A total of 7710 participants were able to attend capacity building activities of GPPB-TSO of which 6983 (91%) was through webinar</li><li>• Prior to imposition of lockdown in March 2020, Capacity Development Division (CDD) conducted 2<sup>nd</sup> Annual Procurement Forum on January 14, 2020 which was attended by 727 participants from 236 national government agencies</li><li>• In addition to scheduled capacity building programs, there were other initiatives of which 114 requests as Resource Speaker was handled by CDD. GPPB-TSO also accommodated study visits and online bilateral discussions (like from Ethiopia and Indonesia)</li></ul><p><b>PUBLIC PROCUREMENT SPECIALIST CERTIFICATION COURSE:</b> In order to forge a stronger partnership for the implementation of the Public Procurement Specialist Certification Course, a Partners Night with State of Universities and Colleges (SUCs) was held in Makati City on 13 February 2020 wherein the Memorandum of Agreement between the GPPB and the Partner SUCs has been renewed. Palawan State University, a new partner SUC has also attended the activity. In addition, despite the challenges in 2020 on capacity development, two (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</p><p><b>Statistical Information</b></p><p>The summary of partnering with SUCs on Procurement Specialist Certification Courses and overall training by GPPB-TSO from 2016-2020</p><table><tr><th rowspan="2">Partner SUC</th><th colspan="2">Level I (Basic)</th></tr><tr><th>No. of Batches</th><th>No. of Participants</th></tr><tr><td>Pamantasan ng Lungsod ng Maynila</td><td>1</td><td>63</td></tr><tr><td>Kalinga State University</td><td>1</td><td>22</td></tr></table><p>Total Number of Graduates per PPSCC Level</p><table><tr><th rowspan="2">Year</th><th colspan="3">No. of Participants Per Level</th><th rowspan="2">Total No. of Participants</th></tr><tr><th>Level I (Basic)</th><th>Level II (Intermediate)</th><th>Level III (Advanced)</th></tr><tr><td>2017</td><td>279</td><td>49</td><td>0</td><td>328</td></tr><tr><td>2018</td><td>740</td><td>164</td><td>56</td><td>960</td></tr><tr><td>2019</td><td>423</td><td>233</td><td>67</td><td>723</td></tr><tr><td>2020</td><td>85</td><td>0</td><td>0</td><td>85</td></tr></table><table><tr><td></td><td>1,527</td><td>446</td><td>123</td><td>2,096</td></tr></table><p><b>SUMMARY OF NUMBER OF PARTICIPANTS 2016-2020</b></p><p>In summary, the table below provides total number of participants who attended the training activities and symposia conducted by GPPB-TSO and in collaboration with partner agencies and private institutions from 2016 to 2020:</p><table><tr><th>Year</th><th>Total Number of Participants Trained</th></tr><tr><td>2016</td><td>817</td></tr><tr><td>2017</td><td>1,294</td></tr><tr><td>2018</td><td>3,382</td></tr><tr><td>2019</td><td>4,805</td></tr><tr><td>2020</td><td>7,710</td></tr></table></div>	Partner SUC	Level I (Basic)		No. of Batches	No. of Participants	Pamantasan ng Lungsod ng Maynila	1	63	Kalinga State University	1	22	Year	No. of Participants Per Level			Total No. of Participants	Level I (Basic)	Level II (Intermediate)	Level III (Advanced)	2017	279	49	0	328	2018	740	164	56	960	2019	423	233	67	723	2020	85	0	0	85		1,527	446	123	2,096	Year	Total Number of Participants Trained	2016	817	2017	1,294	2018	3,382	2019	4,805	2020	7,710				
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\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



<b>(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.</b>	<p>Aside from the regular training programs on RA No. 9184 and its IRR, trainings are also conducted on the latest issuances of the GPPB for the information of the public and procurement practitioners. Other training programs conducted are on topics specifically requested by procuring entities to address their particular needs.</p> <p>With the continued imposition of community quarantine and other similar restrictions to travel and mass gathering due to COVID-19, the GPPB-TSO also had to shift the conduct of its capacity development programs to digital and online learning platforms, through the launch of its Digital Learning Series (DLS), to ensure the continuity of capacity building of both government and private sector procurement stakeholders and equip them with the capacity to undertake procurement in the new normal. The launch of the DLS vastly expanded accessibility of the GPPB-TSO's capacity development programs, enabling procurement practitioners even from far away regions to partake in the training programs at no cost.</p> <p>Gaps and needs are identified from the questions gathered from training participants. In addition, questions are referred to the Legal and Research Division to be addressed and the answers subsequently released through Frequently Answered Questions (FAQs).</p> <p>As per feedback from GPPB-TSO in terms of evaluating training programs, the GPPB-TSO Online Training Management System (OTMS) is made available to registered training participants where they could send in their questions, and evaluate the resource persons and the specific topics discussed, and evaluate the training in general.</p> <p>A similar system is also made available via Slido for training participants in general who attend trainings that do not require registration in the OTMS.</p>		<b>Criterion Met</b>		
<b>(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.</b>	<p>GPPB-TSO has provided several channels for advisory services or help desk such as through SMS, designated e-mail and in view of COVID-19 situation instead of physical walk-in they have 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 <a href="mailto:legal.helpdesk.gppb@gmail.com">legal.helpdesk.gppb@gmail.com</a>."</p> <p>As per GPPB-TSO It is worth noting the distinction between a Non-Policy Matter opinion and a Policy Matter opinion.</p> <p>A Non-Policy Matter opinion is one issued by the GPPB-TSO which deals with the interpretation and application of the rules provided in RA No. 9184, its IRR, in relation to other laws, rules, and regulations.</p> <p>On the other hand, a Policy Matter opinion is one issued by the GPPB dealing with substantive policy matters and the interpretation thereof, and the scope and limitations of the powers and functions of the GPPB.</p> <p>A vast majority of opinions issued are Non-Policy Matter opinions that respond to queries of procuring entities on the interpretation and application of existing rules. Policy Matter opinions are only issued as the need arises.</p> <p>In 2021, the GPPB-TSO targets to have an inventory of the issues and queries raised by procuring entities, suppliers, and the public coursed through its Legal and Research Division</p>		<b>Criterion Met</b>		
<b>(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.</b>	<p>As per GPPB-TSO</p> <p>Since 2004, the GPPB-TSO has been maintaining a pool of recognized trainers from key departments and agencies and state universities and colleges to aid in capacitating procurement practitioners, officials and personnel nationwide. The GPPB-TSO regularly conducts trainings for the recognized trainers to maintain the quality and competence of the recognized trainers, and ensure the delivery of accurate and updated information on procurement matters when the trainers themselves conduct trainings.</p> <p>As per sec 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 APCPI data of 2019, 67.94% of procurement staff participated in training or professional development plan. There are initiatives like Implementation of the Public Procurement Specialist Certification Course, a Partners Night with State of Universities and Colleges (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>		<b>Criterion Partially Met</b>  Sustainable and long-term training strategy lacking		To 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

[Type here]

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.</b>	<p>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 Committee (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 6 months upon designation, the BAC, its Secretariat and TWG members should have satisfactorily completed such training or program conducted, authorized or accredited by GPPB-TSO. HoPE is also encouraged to attend similar training and capacity development activities.</p> <p>However, the country’s public service does not recognize procurement as a profession like Accountancy profession. Also, procurement positions are not defined at different professional levels, and job description and requisite qualifications and competencies specified.</p> <p>While procurement is a specific function in government, with procuring entities having designated procurement units, procurement practitioners in the country vary in educational and professional backgrounds.</p> <p>DBM NBC No. 2015-558 provides guidelines on the establishment and strengthening of the organizational structure and staffing of the procurement units of agencies. While functions of each of the procurement organizational level are defined, the qualifications of the staff who shall compose the said units are not defined.</p> <p>To ensure that procurement practitioners are able to specialize in procurement as a profession, the GPPB, through its TSO, has established and regularly conducts training programs to develop the capability of procurement practitioners and professionalize the same.</p> <p>In addition to its regular trainings for procurement practitioners, the GPPB-TSO also manages the Public Procurement Professionalization Course where graduates, after taking and passing a certification exam, become procurement specialists.</p> <p>With the goal of procurement eventually becoming a regulated profession, the GPPB-TSO is working with its agency partners to identify, develop and institutionalize the competencies and quality standards for procurement practitioners as part of the groundwork towards procurement professionalization. This work is done alongside intensifying its capacity development programs, including the Public Procurement Professionalization Course, to further capacitate procurement practitioners towards becoming certified public procurement specialists. Once the competencies and quality standards are set, and practitioners are adequately capacitated, the work towards professionalization can commence.</p> <p>Compliance by procuring entities with Section 16 of the 2016 revised IRR of RA No. 9184 is reflected in Sub-Indicator 10b of the Agency Procurement Compliance and Performance Indicators System (APCPI). 2018 and 2019 APCPI results of the participating agencies are provided.<sup>138</sup></p>		<b>Criterion Partially Met</b> <p>With the goal of procurement eventually becoming a regulated profession, the GPPB-TSO is working with its agency partners to identify, develop and institutionalize the competencies and quality standards for procurement practitioners as part of the groundwork towards procurement professionalization</p> <p>Also, there is reluctance to join procurement profession due to personal liability for decision taken on behalf of the government</p>	<b>Yes</b>	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. To provide an enabling environment for informed use of well documented discretion by procurement professionals to get results and improve service delivery. To 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
<b>(b) Appointments and promotion are competitive and based on qualifications and professional certification.</b>	<p>As per GPPB-TSO</p> <p>As indicated in the preceding section, procurement practitioners vary in educational and professional backgrounds. This being the case, while appointments and promotions are competitive and based on qualifications, said qualifications are based primarily on the minimum educational requirement for the position, and bolstered by the required number of years of relevant practical professional experience.</p> <p>Professional certifications on public procurement serve as further proof of competence and qualification to serve as a procurement practitioner.</p>		<b>Criterion Met</b>		
<b>(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.</b>	<b>Criterion Met</b> <p>GPPB-TSO has clarified</p> <p>Staff performance in terms of meeting performance targets is regularly evaluated against each staff member’s Individual Performance Commitment and Review (IPCR).</p>				

<sup>138</sup> Summary of the 2018 and 2019 APCPI Results of the MAPS Participating Agencies may be accessed through this link: <https://drive.google.com/file/d/17jiiEKgH8pnTwm9BVP4EPNyG3qiQI7D1/view?usp=sharing>.

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<p>The IPCR is part of the Strategic Performance Management System established by the Civil Service Commission (CSC) to measure employee performance and to ensure that individual objectives and performance targets are set and achieved in relation to those set by the organization.</p> <p>In addition to the procurement training or capacity development programs attended by procurement staff within six (6) months of their designation, additional procurement trainings may also be prescribed by the procuring entity through the Individual Development Plan under the Learning and Development framework of the CSC, focused on the development and improvement of competencies required by an employee’s present or future position.</p>
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8(c) Monitoring performance to improve the system

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	. The country has established a system of Agency Procurement Compliance and Performance Indicator (APCPI). APCPI of 2018 provided by GPPB-TSO. Data Analytics of June 2019 ( PhilGEPS Reimbursable Advisory Services) (permission given by GBBP-TSO on March 24, 2021 to use data) that provides several policy options on procurement strategy to bring savings		Criterion Met		
(b) The information is used to support strategic policy making on procurement.	Information of APCPI and Reimbursable Advisory Services is used to support strategic policy making on procurement		Criterion Met		
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	<p>Procuring entities submit a Procurement Monitoring Report (PMR), which is a semestral report on procurement activities specified in the Annual Procurement Plan.</p> <p>Procuring entities also conduct an assessment of its performance and compliance under the Agency Procurement Compliance and Performance Indicators System (APCPI).</p> <p>Based on discussions with GPPB-TSO, data from the PMR and the APCPI are used by the GPPB-TSO in developing evidence-based policy recommendations to improve prevailing procurement rules and systems.</p>		Criterion Met		
(d) Responsibilities are clearly defined.	<p>GPPB-TSO as clarified that RA No. 9184 and its IRR lay down the primary functions of the GPPB-TSO. GPPB-TSO provides technical and administrative support to GPPB that includes <i>interalia</i> functions listed in IRR s.63.3 that includes evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems procedures and monitoring of compliance to the Act and assisting procuring entities in improving their compliance</p> <p>For its part, the GPPB-TSO is composed of several divisions with defined responsibilities in accordance with the primary functions of the GPPB-TSO pursuant to law.</p>		Criterion Met		

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	The Government Procurement Reform Act (GPRA) specifically mandates in Sec. 7 thereof that “[n]o government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan (APP) of the Procuring Entity.” This provision is re-echoed in Sec. 7.2. of the 2016 revised Implementing Rules and Regulations (IRR), thus - “[n]o procurement shall be undertaken unless	Since no procurement can be undertaken unless the project is in the APP, APPs are actually prepared, revised and updated as necessary to include additional projects,	<b>Criterion Partially Met</b>  Although most of the contracts reviewed are contained in the APP,		1. In the identification and satisfaction of their needs, procuring entities must conduct actual market research and scanning, to understand and

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

it is in accordance with the approved APP, including approved changes<sup>139</sup> thereto. The APP must be consistent with the duly approved yearly budget...” On the other hand, Sec. 7.3.2 of the same IRR provides that in the preparation of the APP, or in the preparation of the indicative APP formulated during the prior year and is intended for use in the succeeding fiscal or budget year, the “end-user or implementing units of the Procuring Entity shall prepare their respective Project Procurement Management Plans (PPMPs) for their different programs, activities, and projects (PAPs), and “based on the specific needs, the end-user or implementing units of the Procuring Entity shall be responsible for the preparation of all documents necessary for the procurement activity, including but shall not be limited to, the technical specifications, scope of work, or terms of reference.”

On the other hand, the 5<sup>th</sup> Edition of the Generic Procurement Manual (GPM) issued by the Government Procurement Policy Board (GPPB) contains specific directives pertaining to needs identification and market research that should guide the development of project requirements, including the modality of procurement to be employed at the time of the preparation of the PPMP. Thus, apart from the identification of the needs, end-users are mandated to determine alternative solutions, products or services to address such needs; and in the process they are expected to “conduct the market research and gather as much information about the Goods, Services or expertise required.”<sup>140</sup>

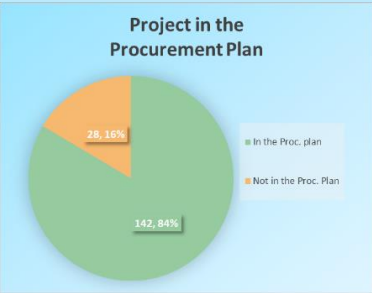
The preparation of the PPMPs, the deliberation of the budget for the succeeding year and the consolidation of the PPMP into one APP show that needs identification were performed by all 17 Procuring Entities which were sample entities reviewed and that procurement planning was conducted in terms of project identification and the preparation of the appropriate budget to be used for these projects. However, the actual technical specifications, project requirements, terms of references and the detailed architectural and engineering design (DAED) are prepared at or near the time that the project is to be procured. Thus, the PPMPs prepared by the End-User Units do not include specific requirements for the project at the time they were submitted for consolidation into one indicative APP, or eventually the final APP. The preparation and development of technical specifications and requirements based on the needs of the procuring entity likewise present a challenge to the end-users.

Moreover, the selection of the procurement modality was not influenced by market research, which would often employ “competitive bidding” as the default mode of procurement, due to adherence to the provisions of the procurement law on the use of competitive bidding – SEC. 10. Competitive Bidding. – **All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.** Out of the 186 sample contracts, 167 contracts or 89% were procured through Competitive Bidding. It can be surmised that the procurement methodology adopted was not influenced by market readiness, availability of goods in the market, or even the market price for an optimal adoption of procurement strategies, but were selected in compliance with the law and the rules, without the adoption of strategic analysis alongside nature of the goods, works or services to be procured; the size of the contract; opportunity to package the project into reasonable lots; source and availability of goods; quantity; and, time and delivery.

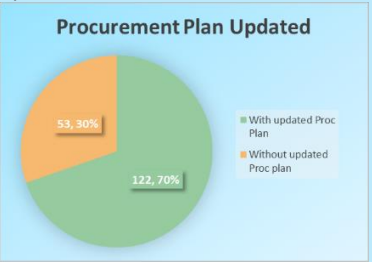
It is observed as well that the use of Competitive Bidding is influenced by the situation that other alternative methods of procurement such as Shopping and Small Value Procurement are limited only to a threshold of Php 1,000,000.00, beyond the same amount, competitive bidding becomes the default procurement modality. Thus, the threshold amount of Php 1,000,000.00 becomes the unwitting limitation, such that, anything beyond the said amount, procuring entities will opt to use the default mode – competitive bidding.

It is noted that although “competitive bidding” is identified as the primary mode of procurement under the GPRA, the same provision of law also recognizes alternative methods of procurement that can be used depending on the attendant circumstances at the time of the acquisition. No less than the Generic Procurement Manual reminds Procuring Entities that the “law recognizes that certain unique circumstances require the use of other methods of procurement”, and that “[t]he selection of the method of procurement is dependent on the presence or absence of specific conditions that justify the use of a particular method.”<sup>141</sup> Once the choice is made as to the method of procurement to be employed, procuring entities comply with the rules, processes and procedures contained in the procurement law and its associated implementing rules and regulations.

change in the amount of the approved budget for the contract (ABC), or change in the procurement modality, to mention a few reasons. 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



On the other hand, 122 APPs or 70% were updated, while 53 APPs or 30% were not updated.



APCPI data of 2019 indicates that out 17 agencies on the Indicator “APP is prepared for all types of procurement” 16 were fully compliant and 1 was non-compliant

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 for reasons that there are more projects *vis-à-vis* the absorptive capacity of procuring entities to procure.

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.

In addition, PPMPs and APP, are not accompanied or supported by Technical Specifications, Detailed Architectural and Engineering Design, or Terms of Reference to support accuracy of the budget estimate.

determine market capacity and readiness; product availability; actual market prices; procurement packaging; and, appropriate procurement modality to be adopted, taking into consideration price movements and factors that drive market prices, alongside sound principles of planning and budgeting linkage;

2. Pursuant to their mandate, duties, functions and responsibilities, Procuring Entities should be able to 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 the hierarchy of the needs and the availability of resources, so that only projects that can be procured within the fiscal year are included in the APP.

3. The APP shall serve as a realistic document that reflects a List of what is needed within the fiscal year, and what can be procured given the size, nature and extent of the procurement opportunities given the absorptive capacity of the procuring entities to handle the entire spectrum of the procurement process from needs identification, planning, selection, award of contract through to contract implementation.

4. As an effective planning and procurement tool, the APP as prescribed by the GPPB must be fully filled-up and accomplished by procuring entities to allow for clear targets and timelines as to when a particular procurement activity shall be commenced and awarded.

5. The Project Procurement Management Plan that feeds into the Annual Procurement Plan should be accompanied by the draft Technical Specifications, Scope of Work and Terms of References to serve as basis for the budget estimate formulated by the procuring entity.

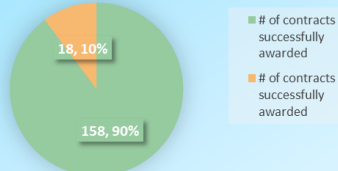
All the above would require suitable regulation, manual and training sample

<sup>139</sup> Sec. 7.4. 2016 revised IRR - Changes to the individual PPMPs and the consolidated APP may be undertaken every six (6) months or as often as may be required by the Head of the Procuring Entity (HoPE).

<sup>140</sup> Generic Procurement Manual 2<sup>nd</sup> Edition, Volume I, Procurement Planning, p. 41.

<sup>141</sup> *Id.*, p. 43.



<b>(b) The requirements and desired outcomes of contracts are clearly defined.</b>	<p>At the time of the assessment, the Assessor had access to and actually reviewed Bidding Documents that followed the form and standard prepared and approved by the GPPB. The Bidding Documents distributed contain Instructions to Bidders, Bid Data Sheet, including Technical Specifications, Scope of Work, Bill of Quantities, and Delivery Schedules that would guide prospective bidders in the preparation and submission of responsive bids.</p> <p>The bidding documents likewise govern the transaction during the selection stage where the rules of engagement are clearly stated to allow for an understanding of the Procuring Entities requirements; the time to submit inquiries through the pre-bid conference; the deadline for submission and opening of bids; the bid evaluation criteria; post-qualification and award of contract. The General and Special Conditions of the Contract forming part of the bidding documents, on the other hand, draw the parameters for the relationship between the winning bidder and the Procuring Entity during contract implementation. In addition, the “eligibility requirements” as regards the legal, technical and financial capacity of the bidder to support the project from start to finish are also well-defined and outlined in the bidding documents.</p> <p>Contracts reviewed have its own approved budget and that certification of availability of funds (CAF) assures the winning bidder that there is a specifically earmarked amount to support the implementation of the project.</p>	<p>Ninety percent (90%) or 158 contracts reviewed were successfully awarded, while 10% or 18 contracts were not awarded during the first attempt to procure.</p> <div><p><b>Contracts Successfully Awarded</b></p><table><tr><th>Category</th><th>Count</th><th>Percentage</th></tr><tr><td># of contracts successfully awarded</td><td>158</td><td>90%</td></tr><tr><td># of contracts not awarded</td><td>18</td><td>10%</td></tr></table></div>	Category	Count	Percentage	# of contracts successfully awarded	158	90%	# of contracts not awarded	18	10%	<p><b>Criterion Partially Met</b></p> <p>As 10% or 18 contracts were not awarded during the first attempt to procure</p>	<p>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 - 1) enable an accurate preparation of budget estimate; 2) allow for early detection of errors or inaccuracies in the specifications; and, 3) provide time and opportunity to review the entire bidding documents and all its components for better understanding and guidance of prospective bidders.</p>
Category	Count	Percentage											
# of contracts successfully awarded	158	90%											
# of contracts not awarded	18	10%											
<b>(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.</b>	<p>Sustainability measures that look at the social, economic and environmental aspects of procurement are laid out in the various documents<sup>142</sup> issued by the GPPB that are used in the course of the procurement activity. Social considerations look at compliance by the bidder with existing labor laws and standards that “ensures the entitlement of workers to wages, hours of work, safety and health and other prevailing conditions of work as established by national laws, rules and regulations.” In the event that the procuring entity or the Department of Labor (DOLE) discovers underpayment or non-payment of workers’ wage and wage-related benefits, the bidder agrees that the performance security or portion of the contract amount shall be withheld in favor of the complaining workers. Bidders shall likewise “comply with occupational safety and health standards, such that in the event of imminent danger, injury or death of the worker, bidder undertakes to suspend contract implementation pending clearance to proceed from the DOLE.</p> <p>For civil works procurement, Annex “A” of the 2016 revised IRR on “Detailed Engineering for the Construction of Infrastructure Projects”, including Vol. III GPM on Infrastructure Projects: mandate that in the preparation of the Detailed Architectural and Engineering Design, the following environmental, social and economic aspects of sustainability shall be considered, among others, thus: 1) Environmental Impact Statement for critical project as defined by the Department of Environment and Natural Resources (DENR); 2) Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered; 3) Value Engineering Studies.</p> <p>Relative to the preparation of the approved budget for the contract (ABC), the principle behind Life Cycle Costing (LCC)<sup>143</sup> is introduced in the GPM to guide procuring entities during the preparation of the budget estimate to consider not only the price of the raw goods itself but also the utilities, maintenance, repairs and allied costs that should be considered during the useful life of the equipment.</p> <p>In 2017, the GPPB approved the “Green Public Procurement (GPP) Road Map”<sup>144</sup> with the identification of 10 Common Use Supplies and Equipment (CSEs)<sup>145</sup> to be procured by the Department of Budget and Management – Procurement Service (DBM-PS); and 10 Non-Common Use Supplies and Equipment (Non-CSEs)<sup>146</sup> to be procured by all procuring entities. The GPPB approved the minimum green parameters or the “core green specifications” for all the 20 products, including the verification parameters to confirm that indeed the product supplied conforms with the identified green criteria, and that “greenwashing” will not be employed. Adopting a “stepwise”<sup>147</sup> approach, the GPPB intends to add more goods to the List, including the green criteria and the verification mechanism to confirm them. After the institutionalization of GPP in the procurement system, the GPPB also looks at advancing the policy and adopt Sustainable Public Procurement (SPP).</p> <p>As regards the GPP Workplan, the GPP Roadmap identified Short, Medium- and Long-Term goals. The Short-Term goal, that is, from 2017-2018, supports the adoption of a solid foundation for a systematic GPP approach, and the green purchasing of the 20 prioritized CSEs and Non-CSEs has been commenced,</p>		<p><b>Criterion Partially Met</b></p> <p>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.</p>	<p>1. Implement the GPP Roadmap as developed and approved by the 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.</p> <p>2. Alongside Sustainable Development Goal 12, Responsible Consumption and Production, particularly target 12.7 - Promote public procurement practices that are sustainable, in accordance with national policies and priorities - institutionalize a more focused, systematic and programmatic Sustainable Public Procurement (SPP) regime for a meaningful, efficient, effective and cohesive application and implementation.</p>									

<sup>142</sup> Sec. 25.3 of the 2016 revised IRR on the submission of the Omnibus Sworn Statement and Annex “A” 2016 revised IRR; Generic Procurement Manuals, 2<sup>nd</sup> Edition, Vol. III (Manual of Procedures for the Procurement of Infrastructure Projects, p. 9); and Clause 6, Philippine Bidding Documents for Goods and Civil Works.

<sup>143</sup> Guidelines on Establishing Procurement Systems and Organizations, 2<sup>nd</sup>. Edition, Vol. 1, p. 41.

<sup>144</sup> GPPB Resolution No. 25-2017, dated May 30, 2017.

<sup>145</sup> 1. Multi-Copy Paper; 2. Toilet Paper; 3. Record Books; 4. Cleaner; 5. Trash Bag; 6. Disinfectant Spray; 7. Chairs; 8. Detergent Powder; 9. Liquid Hand Soap; and 10. LED Lights/Bulbs.

<sup>146</sup> 1. Computer Monitors, Desktop Computers and Laptops; 2. Air Conditioners; 3. Vehicles; 4. Fridges and Freezers; 5. Copiers; 6. Paints and Varnishes; 7. Food and Catering Services; 8. Training Facilities / Hotels / Venues; 9. Toilets and Urinals; and 10. Textiles / Uniforms and Work Clothes.

<sup>147</sup> A stepwise and cautious approach will accelerate green purchasing from first tranches of Common-Use Supplies and Equipment (CSEs), which are centrally purchased through the Department of Budget and Management - Procurement Service (DBM-PS), and Non-Common-Use Supplies and Equipment (non-CSEs) directly purchased by the various government stakeholders. From there, and following the same mechanisms that have guided to select the first items for GPP, the scope will be gradually enhanced. (“The Philippine Green Public Procurement Roadmap: Advancing GPP Until 2022 and Beyond”, Government Procurement Policy Board – Technical Support Office, p. 6)

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<p>such that at the end of 2018, all prioritized items will be governed by GPP.<sup>148</sup> From 2019-2022, the Medium-Term goal, “GPP will be consolidated towards the norm of public procurement in the Philippines. Potentially, all CSEs will be put under the regime of GPP; and more non-CSEs will be included.”<sup>149</sup> As regards the Long-Term goal (beyond 2022), “the ambition will be to progress from GPP to SPP a process by which public authorities seek to achieve the appropriate balance between the three pillars of sustainable development - economic, social and environmental - when procuring goods, services or works at all stages of the life cycle of an item.”<sup>150</sup></p> <p>Considering the planned implementation of GPP in the Philippines and the period covered by the MAPS assessment, that is review of contracts from 2016-2018, no contract for the procurement of goods had been reviewed adopting the GPP “core green criteria”.</p>
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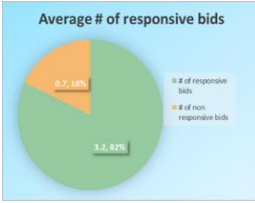
9(b) Selection and contracting

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag ?	Initial input for recommendations
<b>(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.</b>	The public procurement system allows for a multi-stage procurement procedure to ensure that qualified and eligible participants are included in the competitive process. <b>Section 30.3 of the 2016 revised IRR of RA 9184 provides that:</b> 30.3. For the procurement of Goods where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur, a two (2)-stage bidding procedure may be employed. In these cases, the Procuring Entity concerned shall prepare the Bidding Documents, including the technical specification in the form of performance criteria only. Under this procedure, prospective bidders shall be requested at the first stage to submit their respective eligibility requirements if needed, and initial technical proposals only (no price tenders). The concerned BAC shall then evaluate the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards. A meeting/discussion shall then be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the Bidding Documents for purposes of drawing up the final revised technical specifications/requirements of the contract. Once the final revised technical specifications are completed and duly approved by the concerned BAC, copies of the same shall be issued to all the bidders identified in the first stage who shall then be required to submit their revised technical tenders, including their price proposals in two (2) separate sealed envelopes in accordance with this IRR, at a specified deadline, after which time no more bids shall be received. The concerned BAC shall then proceed in accordance with the procedure prescribed in this IRR.		<b>Criterion Partially Met</b> The procurement system allows for the adoption of multi-stage procedure and actually outlines the same step-by-step for use in complex procurement to ensure that qualified and eligible participants are included in competitive process.  However, in practice there was no evidence on application of 2-stage bidding. Also, there is an absence of prequalification process for large and complex contracts		1. Use of 2-stage bidding procedure where technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur 2. Use of prequalification procedure for large and complex contracts so that only qualified and eligible participants are included in the competitive process after Prequalification
<b>(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad</b>	There exist standardized bidding documents for the procurement of goods, civil works and consulting services. Apart from the standardized Philippine Bidding Documents, a Generic Procurement Manual containing four (4) Volumes guide procuring entities and prospective bidders alike in the development and preparation of the procurement opportunity and the preparation of a responsive	All contracts reviewed from the 17 Procuring Entities or a 100% utilized the standardized Philippine Bidding	<b>Criterion Partially Met</b> Despite the standardization of Bidding Documents for goods, civil works and consulting services as provided for under the GPRA and its associated 2016 revised IRR, the		An in-depth study must be undertaken to determine the reasons or grounds for the ineligibility of bidders or the non-responsiveness of their bids. This should be given a second look, and a careful revisitation of the bases used to

<sup>148</sup> *Id.*, p. 49.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* 51.

<p><b>participation from potential competitors.</b></p>	<p>bids, respectively. The procurement law mandates procuring entities to use the standardized bidding documents issued by the GPPB, witness Sec. 17 of RA 9184, thus: “SEC. 17. Form and Contents of Bidding Documents. – The Bidding Documents shall be prepared by the Procuring Entity following the standard forms and manuals prescribed by the GPPB”.</p> <p>Despite the use of standardized bidding documents that provides for stability and predictability in the procurement process, facilities for bidder 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 a total of 136 samples where information and data are available, an average of 3.9 bidders participate in the competitive bidding process, and out of these, only 3.2 are declared responsive. Though 3.2 responsive bids may be treated as sufficient to form a valid competition, the fact remains that 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.</p>	<p>Documents for goods, civil works and consulting services.</p> 	<p>participation of market operators in government procurement opportunities remains low. The identification of the reasons for the disqualification of bidders and the low turnout of market participants must be determined.</p> <p>The current versions of SBDs are inadequate and there is need for preparation of SBD for a broader range of procurement</p>	<p>declare a bidder pass or fail must be reviewed relative to the appreciation of the attending circumstances by the selection committee; and their appreciation, interpretation and application of the law and the rules.</p> <p>Need for preparation of SBD for a broader range of procurement like Plant Design Supply Installation, Design-Build, Design Build Operate Information System, Text Book, Medical Equipment and harmonized with MDBs</p>
<p><b>(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.</b></p>	<p>Under Section 10 of the GPRA, the primary mode of procurement is “competitive bidding”, but Section 48 of the same law recognizes the use of Alternative Methods of Procurement, which are: Limited Source Bidding (Sec. 49); Direct Contracting (Sec. 50); Repeat Order (Sec. 51); Shopping (Sec. 52) and Negotiated Procurement (Sec. 53). Negotiated Procurement, on the other hand, has ten (10) sub-modalities<sup>151</sup> under the revised IRR. The procurement method to be adopted for each procurement is already identified and indicated in the PPMP by the end-users, which will then be consolidated in the APP.</p> <p>Competitive Bidding was adopted in 167 (out of 186) or 89% of the contracts reviewed. The selection of the modalities as previously mentioned was not influenced by market research or analysis of the fit-for-purpose modality given a particular procurement opportunity, but were an offshoot of the default choice pursuant to the provision of the procurement law, or a selection based on the understanding of the rules. Nonetheless, once a procurement modality is selected, the processual and procedural requirements of the law and the rules are complied with by the BAC.</p> <p>On the other hand, it was also explained in the course of the assessment and interview that deference to competitive bidding provides some comfort as the use of this modality is not questioned much by auditors.</p>		<p><b>Criterion Partially Met</b></p> <p>It was observed that 167 or 89% of the contracts were procured through public bidding, and the rest through the other alternative modes. Once the procurement modality has been adopted, the processes and procedures provided in the procurement legal framework and its associated rules are complied with. Predominant use of competitive bidding is done to provide comfort on the use of the modality to avoid questions by auditors. This step may not lead to fit-for-purpose procurement</p> <p><u>, Need for adopting procurement methods that are proportionate to the risk and value of contract.</u></p>	<p>Procuring entities to identify the procurement modality that is “fit-for-purpose” based on the nature, extent, size and scope of the project to be procured as part of needs assessment, procurement planning and strategy and adopt procurement method that are proportionate to the risk and value of the contract, with due documentation and justification</p>
<p><b>(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.</b></p>	<p>The GPRA and its associated 2016 revised IRR provide for clear step-by-step procedures relative to the deadline for submission, receipt and opening of bids. The structured procedure is also contained in the Bidding Documents, particularly in the Instructions to Bidders (ITB) as qualified by the Bid Data Sheet (BDS). Even the manner of preparing, marking and sealing of bids are outlined in the Bidding Documents.</p> <p>Bidders are allowed to attend and participate during the bid opening, and they are also given the opportunity to raise questions, even make suggestions during the pre-bid conference, which is held at least twelve (12) calendar days before the scheduled deadline for submission, receipt and opening of bids.</p>		<p><b>Criterion Partially Met</b></p> <p>The processes and procedures to be observed by the BAC and the bidders alike during bid submission, receipt and opening of bids are provided for in the procurement law and amplified in the accompanying implementing rules and regulations. Prospective bidders and Observers are not only allowed but are invited to attend the Pre-Bid Conference, bid</p>	<p>Government to find out reason for the non-participation of CSOs despite non-attendance be addressed, to enhance transparency of the procurement process</p> <p>(Cross refer to Indicator -11)</p>

<sup>151</sup> 1) Two Failed Biddings; 2) Emergency Cases; 3) Take-Over of Contracts; 4) Adjacent or Contiguous; 5) Agency-to-Agency; 6) Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services; 7) Highly Technical Consultants; 8) Small Value Procurement (SVP); 9) Lease of Real Property and Venue; 10) Direct Retail Purchase of Petroleum Fuel, Oil and Lubricant (Pol) Products and Airline Tickets.

	<p>Under Sec. 13 of the GPRA, the Bids and Awards Committee (BAC) is mandated to invite Observers in all stages of the procurement process, thus: SEC. 13. Observers.</p> <p>– To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization.</p> <p>By reason of this provision, Observers must be invited during the pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, which are the identified stages or processes<sup>152</sup> of competitive bidding under the rules. It must be noted, however, that “The absence of observers will not nullify the BAC proceedings, provided, that they have been duly invited in writing.”<sup>153</sup> Out of the 186 sample contracts, 87 contracts show that CSOs were invited to observe all the stages of the procurement process, but only 45 contracts show actual participation of observers or 52%, which is a matter of concern as there is non-participation of the 3<sup>rd</sup> lens that looks at the conduct of the procurement activities that impacts on the transparency of the procurement process.</p> <p>As provided in the law and the rules, the duty of the BAC is to invite Observers, and the non-attendance of observer shall not nullify the procurement process provided that the Observers were invited in writing. In all these 87 contracts, since Observers were invited, they were given the opportunity to observe and witness the conduct of the procurement activity. Though the Procuring Entities may not be faulted for the non-attendance of Observers in the other 42 contracts, the fact remains that the non-participation impacts on the transparency of the procurement process.</p>		<p>submission, receipt and opening of bids. It is noted, however, that although Observers are invited in all stages of the procurement process, often times the Observers attend the Pre-Bid and Bid Opening only.</p> <p>Based on CSO consultations, regarding transparency of consultative process, one of the participants described it as “opaque” and “not consistent as supposed to be”. The other described the situation of engagement of CSO observers as procuring entities just going through the motion of involving CSO for the sake of formality and “tolerating the presence of CSO observers “and that the presence of CSO and the resources is not being used effectively. Some of the procuring entities, would expect CSO observers to be a part “irregular processing” and just get a “seal of approval” for compliance</p>		
<b>(e) Throughout the bid evaluation and award process, confidentiality is ensured.</b>	<p>Confidentiality of the bid evaluation exercise, including post-qualification up to award of contract is kept in strict confidentiality. In that, the rules employ the so-called “No-Contact Rule” found in Sec. 32.1 of the 2016 revised IRR of RA 9184, thus: 32.1. Members of the BAC, its staff and personnel, Secretariat and TWG, as well as Observers, are prohibited from making or accepting any communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award. However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing.</p> <p>The members of the BAC, its procurement personnel, Secretariat, the Technical Working Group, even Observers are proscribed from initiating or accepting communication with any bidder regarding the conduct of the bid evaluation and post-qualification until the Notice of Award is issued. However, in case there is a need to clarify matters related to a bidder’s offer, the BAC may reach out to the bidder in writing and coursed through the BAC Secretariat. The Bidder, on the other hand, is duty bound to answer the request for clarification, alongside requirements of the rules.</p>		<p><b>Criterion Partially Met</b></p> <p>Confidentiality of bidder’s information – Absence of policy on the protection and/or disclosure of proprietary, commercial, personal, or financial information of a confidential or sensitive nature related to procurement process</p>		Policy required on protection and/or disclosure of proprietary, commercial, personal, or financial information of a confidential or sensitive nature related to procurement process
<b>(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.</b>	<p>Culled from the documents reviewed, the BACs, as reflected in the Minutes of the Bid Opening and the narratives contained in the BAC Resolution recommending award of contract, used a non-discretionary pass/fail<sup>154</sup> criterion or technique in the conduct of the preliminary examination of the bids; bid evaluation and post-qualification following the mandate under the GPRA and its 2016 revised IRR. In the conduct of the bid evaluation, the BAC identifies the Lowest Calculated Bidder by determining the completeness of the bid and using simple arithmetical corrections or re-computations to determine the Lowest Calculated Bid (LCB). The purpose solely of the arithmetical calculations is to “consider computational errors and omissions to enable proper comparison of all eligible bids.”<sup>155</sup> Additionally, the use of a merit or point system or scoring methodology is not allowed in the</p>		<p><b>Criterion Partially Met</b></p> <p>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 remains innovative mechanisms that may be adopted or can be drawn from international best procurement practices to further enhance efficiency,</p>		<p>To implement use of Life-Cycle Costing and appropriate use of framework agreement to obtain value for money</p> <p>Absence of Use of Life Cycle Costing as an economic evaluation criterion for equipment and facilities where bidders could offer better efficiency and lower consumption of fuel/electricity to allow selection of <u>bids offering better value for money</u> through a combination of</p>

<sup>152</sup> Sec. 5(h), 2016 revised IRR.<sup>153</sup> Sec. 13.3, *Id.*<sup>154</sup> Sec. 30.1., 2016 revised IRR.<sup>155</sup> Sec. 32.2.1(b)., *Id.*



	<p>procurement of goods and civil works. After the determination of the LCB, the bid will be considered for post-qualification. During post-qualification, the BAC shall verify, ascertain and validate all the legal, technical and financial representations of the bidder with the LCB to determine the Lowest Calculated and Responsive Bid (LCRB). The LCRB shall then be eligible for the award of contract.</p> <p>For the procurement of goods and civil works, the technique to determine best value for money is confined within the limits provided for in the rules and the bidding documents alongside use of pass/fail criterion in the evaluation and post-qualification of bids. On the other hand, insofar as procurement of consulting services is concerned, apart from the pass/fail criterion, a merit or point system is used to rate the qualification of the consultant alongside Quality Base Evaluation or Quality and Cost Base Evaluation process.</p>		economy, transparency, competition, and accountability in government contracting		<p>lower initial cost plus net present value of operating and maintenance cost over the life of the asset. Therefore the areas of improvements and recommended actions are:</p> <ol style="list-style-type: none"><li>1. 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 vis dealing with disposal of government properties that reached the end of their useful life;</li><li>2. Full utilization of Framework Agreement presents in the current rules;</li><li>3. 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 Re-Ordering Arrangement subject to the capacity of the winning bidder and upon the same parameters and limitations as in the originally awarded contract.</li><li>4. Though it will entail the amendment of the procurement law, establish a bid matching mechanism in the rules to arrive at best offer;</li><li>5. 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.</li></ol> <p>Absence of Use of Life Cycle Costing as an economic evaluation criterion for equipment and facilities where bidders could offer better efficiency and lower consumption of fuel/electricity</p>
<p><b>(g) Contract awards are announced as prescribed.</b></p>	<p>The Lowest Calculated and Responsive Bid for the procurement of goods and civils works; and the Highest Rated and Responsive Bid for the procurement of consulting services are eligible for an award of contract. After the determination of the LCRB/HRRB, the BAC shall recommend to the Head of the Procuring Entity the issuance of a Notice of Award (NOA) in favor of the LCRB/HRRB. Upon receipt of the Notice of Award (NOA), the LCRB/HRRB shall sign the ensuing Contract for the Project, and submit the Performance Security (in the case of goods and civil works procurement) within ten (10) calendar days upon receipt of the Notice of Award. The Head of the Procuring Entity shall likewise sign the Contract within the same 10 calendar day period.</p> <p>The NOA must be posted<sup>156</sup> within three (3) calendar days from its issuance at the PhilGEPS, the website of the Procuring Entity, if any, and any conspicuous place in the premises of the Procuring Entity. In the same manner, the BAC Secretariat shall likewise post a copy of the Notice to Proceed<sup>157</sup> and the approved Contract in PhilGEPS and the website of the Procuring entity within fifteen (15) calendar days from the issuance of the Notice to Proceed.</p> <p>Apart from the LCRB/HRRB being notified of the acceptance of its offer, the NOAs for the contracts reviewed were all posted as required.</p>		<p><b>Criterion Met</b></p> <hr/> <p><i>However, there are “Suggestion for Improvements” by the Assessment Team as in italics</i></p> <p><i>Use of Stand Still Period which provides an opportunity to bidder to examine notification of intention to award and to assess whether it is appropriate to submit a complain</i></p>		

<sup>156</sup> Sec. 37.1.6., *Id.*

<sup>157</sup> Sec. 37.4.2., *Id.*

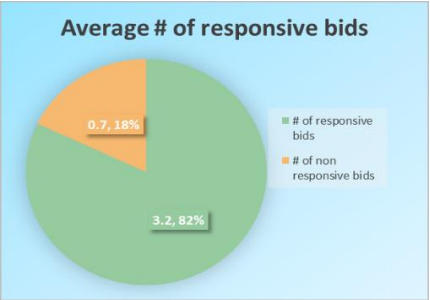
(h) Contract clauses include sustainability considerations, where appropriate.	The social, environmental and economic aspects of Sustainability form part of the procurement contract clauses found in the Bidding Documents and the Generic Procurement Manual covering labor, environment and value for money procurement specifically in the adoption of Life Cycle Costing in the preparation of the approved budget for the contract		Criterion Partially Met		Using a ‘stepwise’ approach, pursuant to the GPP Roadmap, the GPPB should consider advancing the argument from GPP to SPP within the next 5 years by priming the market and industries, and reading the whole of government to transition from Green to Sustainable Public Procurement including use of Life Cycle Costing addressing not only the environmental aspect, but also the social and economic factors.																						
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	Disincentives for poor performance are meted with appropriate sanctions such as the imposition of Liquidated Damages in case of delays in delivery or performance; post-disqualification in a current bidding after a determination by the BAC that the bidder failed to deliver or was in delay in his current contract(s); calling on the Performance Security in case of non-delivery or non-performance; Termination of Contract for Default; Termination of Contract for Unlawful Acts; and penalty of Suspension and Blacklisting.  However, for an advance delivery of goods or completion of works or services made earlier than the agreed contract schedule, no incentive or bonus is recognized. As a matter of fact, there is a provision in the 2016 revised IRR proscribing the grant of bonuses – Sec. 42.5. No incentive bonus, in whatever form or for whatever purpose, shall be allowed. The same is true in terms of delays in payment by government procuring entities, where suppliers, contractors, distributors, merchants and consultants cannot impose and collect interest.		Criterion Partially Met		Areas for Improvement Incentives to bidders for early delivery and completion need not be by way of pecuniary reward so as not to violate provisions of the GPRA, the GPPB may institutionalize incentives through, but not limited to, the following: (i) Recognition;(ii) Reputational Boost;(iii) Grading and Classification of Bidders that need not submit “eligibility documents”; and (iv) Free registration with PhilGEPS for a certain period of time.																						
(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *  *Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j): - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) Source for all: Sample of procurement cases.	As mentioned, there is a step-by-step procurement procedure outlined in the GPRA and its associated 2016 revised IRR that are also contained in the Bidding Documents, by way of the Instructions to Bidders, that would guide prospective bidders in the understanding of the procuring entity’s requirements relative to: preparation of bids; marking and sealing of bids; submission, receipt and opening of bids; preliminary examination of bids; bid evaluation; post-qualification; and, award of contract. The same rules are observed by the Selection Committee - the BAC, in arriving at a determination of the LCRB for the procurement of goods and works, or HRRB for the procurement of consulting services. More than a majority of the reviewed contracts show that the BACs complied with procurement processes and procedures defined and outlined under the GPRA and the 2016 revised IRR from advertisement of the Invitation to Bid/Request for Expression of Interest; pre-bid conference; submission, receipt and opening of bids; bid evaluation; post-qualification; and contract award. It is also notable that the average time to procure goods (105 cd), civil works (134 cd) and consulting services (175 cd) fall within the maximum allowable period to procure under the rules per Annex “C” of the 2016 revised IRR  The following information shows how the selection and award processes are effective, efficient and transparent, thus:  a) <table><tr><td></td><td></td><td>Average Time to Procure (in Days)</td><td>Maximum Period Allowed per Annex “C”, 2016 revised IRR of RA 9184</td></tr><tr><td>1.</td><td>Goods (G)</td><td>105</td><td>136 calendar days</td></tr><tr><td>2.</td><td>Civil Works (CW)</td><td>134</td><td>141 calendar days</td></tr><tr><td>3.</td><td>Consulting Services (CS)</td><td>175</td><td>180 calendar days</td></tr><tr><td></td><td></td><td></td><td></td></tr></table>  ii. Number of days between advertisement and contract signing for each method: <table><tr><td></td><td></td><td>No. of Days Between Advertisement and Contract Signing</td></tr></table>			Average Time to Procure (in Days)	Maximum Period Allowed per Annex “C”, 2016 revised IRR of RA 9184	1.	Goods (G)	105	136 calendar days	2.	Civil Works (CW)	134	141 calendar days	3.	Consulting Services (CS)	175	180 calendar days							No. of Days Between Advertisement and Contract Signing	Please see data on the left	Criterion Partially Met  However, the number of market operators participating in the procurement opportunities, about 3.9, where only 3.2 are responsive is a cause for concern as the number of participants are still less than the desired number to arrive at a good competition.  The grounds for the ineligibility and disqualification of bidders shall also be reviewed alongside use of the pass/fail criterion. The reason for the non-responsiveness of the bid must likewise be revisited.  Based on APCPI data of 2019 the average number of bidders who passed bid evaluation was <b>1.72</b> based on data from 17 agencies	1. 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. In that, 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.  2. 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 3 days and the Notice to Proceed issued within the same period of time to address the delays experienced in the past.  3. Ease up 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 3 more posting requirements for the Invitation to Bid or Request for Expression of Interest, i.e. posting at – a) procuring entities website, if any; b) a conspicuous place in the premises of the
		Average Time to Procure (in Days)	Maximum Period Allowed per Annex “C”, 2016 revised IRR of RA 9184																								
1.	Goods (G)	105	136 calendar days																								
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3.	Consulting Services (CS)	175	180 calendar days																								
		No. of Days Between Advertisement and Contract Signing																									

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

1.	Competitive Bidding	129
2.	Negotiated Procurement	88
3.	Quality Cost Based Eval	195
4.	Single Source Selection	78

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

b) Average number (and %) of Bids that are responsive (for each procurement method): Out of 186 contracts reviewed, 164 had complete information on the responsiveness of submitted bids. On the average, there are 3.2 Bids or 82% that are responsive, and .7 or 18% bids that are non-responsive



On the other hand, the average number (and %) of responsive bids for each of the procurement modalities are as follows:

		Average No. of Bids Received	Average No. of Responsive Bids	% of Responsivene
1.	Competitive Bidding	3.9	3.14	81.5%
2.	Negotiated Procuremen t	2.3	1.75	75%
3.	Quality Cost Based Eval.	1.7	1.33	80%
4.	Single Source Selection	1	1	100%
		3.7	3.0	81.3%

(c) Share of processes that have been conducted in full compliance with publication requirements is 87% or 154 contracts out of a total of 177 contracts with verifiable data, leaving 13% or 23 contracts non-compliant.



At the time relevant to the procurement of the sample contracts (2016-2018), publication of opportunities were done through advertisement of the Invitation to Bid in a newspaper of general circulations; posting at PhilGEPS, website of the procuring entity, if any, and at

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, to exclude all 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.

4. Fasttrack 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 of open contracting data standards and the use of machine-readable file formats for ready access to information.

5. 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 n resource generation approach, strategy and mechanism.


\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

conspicuous place reserved at the procuring entity's premises.<sup>158</sup> 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. *(Cross check with Indicator-7)*

(d) Of the 176 contracts reviewed with available and verifiable data and information, 158 or 90% were successfully awarded, while 18 contracts or 10% were not awarded when the procurement opportunity was first launched. This reflects on the efficiency of the procurement process and the responsiveness of the market to the government's calls for offer.



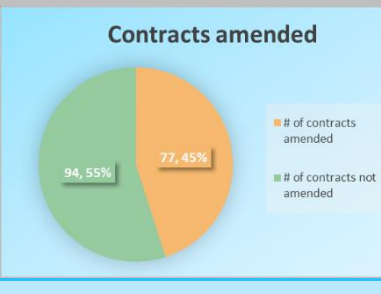



### 9(c) Contract management

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag ?	Initial input for recommendations									
<p><b>(a) Contracts are implemented in a timely manner.*</b></p> <p><b>Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)</b></p>	<p>Although there are contracts implemented in a timely manner, the efficiency and effectiveness of the system is still affected by issues during contract implementation that should be addressed with priority. Out of 111 contracts, 75 or 68% went beyond contract implementation period, while 36 contracts or 32% were implemented on time. The average number of contract time overrun is 84 days. It is duly noted by the assessment exercise That time overrun ranges from a short of 1 day to the longest contract implementation of 1,036 days despite of the fact that the contract completion date is clearly indicated in the contract.</p>	<p>Delays in the delivery of the goods, works and consulting services, needless to say, impact on the delivery of vital public services. Of the 111 contracts assessed with verifiable information, 75 or 68% were completed late, while 36 or 32% were delivered on time.</p>  <table><caption>Contracts with Time Overrun</caption><thead><tr><th>Category</th><th>Count</th><th>Percentage</th></tr></thead><tbody><tr><td># of contracts with time overrun</td><td>75</td><td>68%</td></tr><tr><td># of contracts without time overrun</td><td>36</td><td>32%</td></tr></tbody></table> <p>Ave time overrun = 84 days</p>	Category	Count	Percentage	# of contracts with time overrun	75	68%	# of contracts without time overrun	36	32%	<p><b>Criterion Partially Met.</b></p> <p>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 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% of the contracts reviewed with 84 days in average time overrun is a grave 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 – service to the people is ultimately impaired.</p>		<p>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</p>
Category	Count	Percentage												
# of contracts with time overrun	75	68%												
# of contracts without time overrun	36	32%												
<p><b>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*</b></p> <p><b>Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)</b></p>	<p>Out of 125 contracts, 117 or 94% have been monitored to its full delivery, completion and acceptance. For the delivery of goods, the appropriate Certificate of Inspection and Acceptance (CIA) or Inspection and Acceptance Report (IAR) were issued by the Inspection and Acceptance Committees, the same is true with the Certificate of Completion and Acceptance in the procurement of civil works. However, 8 contracts or 6% of the contracts assessed still show that contracts are delivered without having been inspected, quality-tested against requirements; and accepted to the full satisfaction of the end-user.</p>	<p>Before the goods, civil works and services deliverables are accepted, actual inspection, testing, review and quality control are performed. Out of 125 contracts reviewed 117 or 94% of the contracts are backed up by Certificates of Final Acceptance, while only about 8 or 6% have none.</p>	<p><b>Criterion Partially Met.</b></p> <p>Improvements needed in contract management and supervision</p> <p>Contract management and monitoring are vital aspects of the entire procurement exercise to attain the end-goal or purpose of the acquisition. In that, the supplier, contractor or consultant should be able to deliver what was awarded and what the bidder promised in terms</p>		<p>1. Establishment of a Contract Management System/Team must be prioritized to handle not only contract administration, but also the broader contract management discipline starting from needs</p>									

<sup>158</sup> Sec. 21.2.1., 2016 revised IRR.



		 <p><b>Contracts with Certificate of Final Acceptance</b></p> <ul style="list-style-type: none"> <li>117, 94%: # of contracts with certificate of Final Acceptance</li> <li>8, 6%: # of contracts without certificate of Final Acceptance</li> </ul>	<p>of quality, quantity and time of delivery. More importantly, the system of inspection and acceptance must be well-setup to determine that what is being delivered are the actual goods promised/offered by the winning bidder and in accordance with the identified specifications. 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, works or deliverables are accepted.</p>	<p>identification up to contract implementation.</p> <p>2. Ensure that members of the Inspection and Acceptance Committee/Team have knowledge of what is being procured, the parameters against which the goods delivered are being tested, including the knowledge, information and technique on how to conduct inspection and testing. Advance training courses on inspection, review and testing must be mainstreamed in the capacity development plan of the procuring entities.</p>
<p><b>(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.</b></p> <p><b>Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).</b></p>	<p>The contracts reviewed provide a view of how contract payment system is being implemented. Payment is triggered by the submission of Invoices, progress billings or claims. Together with the attached documentation to support payment, the entire folio or packet will be examined by the end-user who will ultimately endorse the same to the finance and accounting department who shall then examine the validity and completeness of the Invoice, Progress Bilings or Claims, looking at correctness, possible duplication, progress billings that would also recoup advance payments made, availability of funds, presence of inspection and acceptance reports, or requests for replacements and repair before the payment is actually made.</p> <p>The completeness of the documentary submission of the supplier, contractor or consultant will trigger payment. Apart from the period to actually pay the supplier, contractor or consultant, the timeline to “process” a complete set of claim is not clear from the documents submitted. A sizeable number of contracts paid out of time impacts on the participation of market operators due to an unpredictable economic return.</p>	<p>Out of 87 contracts reviewed with available and verifiable information, 36 contracts or 41% were paid out of time, while 51 contracts or 59% were paid on time.</p>  <p><b>Contracts with Timely Payments</b></p> <ul style="list-style-type: none"> <li>51, 59%: # of contracts with timely payments</li> <li>36, 41%: # of contracts with delayed payments</li> </ul>	<p><b>Criterion Partially Met.</b></p> <p>From the sample contracts reviewed with available and verifiable information, 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% were paid out of time, while 51 contracts or 59% were paid on time. It was observed that earliest time of payment was 3 calendar days, and the longest time an Invoice was paid 793 calendar days.</p>	<p><b>Yes</b></p> <p>Apart from the period identified in the Bidding documents for payment, the GPPB may consider identifying a standardized approach by defining stages or steps in the payment process and providing timelines to accomplish each and every stage to stabilize and make efficient the payment of claims for Goods, Civil Works and Consulting Services.</p>
<p><b>(d) Contract amendments are reviewed, issued and published in a timely manner.*</b></p> <p><b>Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)</b></p>	<p>In the event a contract amendment or variation becomes necessary, the appropriate requests, endorsements, and the corresponding approvals were made. The contracts reviewed with amendments include the requests for time extensions and variation orders.</p>	<p>The amendments encountered in the course of the assessment are sizeable at 45 contracts or 45%, while those that do not have amendments cover 94 contracts or 55%.</p>  <p><b>Contracts amended</b></p> <ul style="list-style-type: none"> <li>77, 45%: # of contracts amended</li> <li>94, 55%: # of contracts not amended</li> </ul>	<p><b>Criterion Partially Met</b></p> <p>Contract amendments though monitored and approved are not published. There is no provision in the law requiring the publication of any amendment to the contract.</p>	<p>Publication of contract amendments to be ensured</p>
<p><b>(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.</b></p>	<p>The Philippine Government Electronic Procurement System (PhilGEPS) as the central portal of information on government procurement may provide the necessary statistics relative to Philippine procurement. Procurement statistics are readily available in the Open Data portal. However, at the time of the MAPS assessment (<a href="https://www.philgeps.gov.ph/CmsHomePages/open_data_grid">https://www.philgeps.gov.ph/CmsHomePages/open_data_grid</a>, last accessed on April 18, 2021), the data and information were not available in the PhilGEPS website.</p>		<p><b>Criterion Partially Met</b></p> <p>Although ready procurement statistics were available in the past, the present official site of PhilGEPS no longer shows the statistics under the Open Data Portal.</p>	<p>The modernization of PhilGEPS and all its subsequent improvements shall include not only innovative and efficient features that will benefit procurement transactions, but valuable references and statistics to observe price movements; improvements</p>

				on specifications; market sources; market readiness, etc., 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. The re-introduction of the Open Data Philippines containing procurement statistics must be seriously considered.									
<p><b>(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*</b></p> <p><b>Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation)</b> <b>Source for all: Sample of procurement cases.</b></p>	<p>The GPRA and the associated 2016 revised IRR provide for the opportunity to invite Observers in all stages of the procurement process being representatives from the Commission on Audit (COA), Private Sector Organizations (PSO) and Civil Society Organizations (CSO), the GPRA provision reads: SEC. 13. Observers. – To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.</p> <p>The 2016 revised IRR of the GPRA provides for the detailed requirements in the invitation of the Observers, including the obligation of the latter after each procurement activity.</p>	<p>There is a substantial gap brought about by the non-attendance of CSOs in 42 or 48% of the contracts reviewed as this affects transparency in terms of lost opportunity to be observed, and on the part of the CSOs to provide constructive comments on how observed practices should be sustained, maintained or improved.</p> <div><p><b>Contracts with direct involvement of CSOs in all phases of procurement</b></p><table><tr><th>Category</th><th>Count</th><th>Percentage</th></tr><tr><td># of contracts with direct involvement of CSO</td><td>45</td><td>52%</td></tr><tr><td># of contracts without direct involvement of CSO</td><td>42</td><td>48%</td></tr></table></div>	Category	Count	Percentage	# of contracts with direct involvement of CSO	45	52%	# of contracts without direct involvement of CSO	42	48%	<p><b>Criterion Not Met.</b></p> <p>Per the 2016 revised IRR, there is no requirement to invite Observers during the planning stage. On the other hand, the mandate is to invite Observers, including CSOs/NGOs in all stages of the procurement process.<sup>159</sup> Thus, Observers after due invitation in writing, are permitted to attend “pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and even award of contract.”</p> <p>Unfortunately, though invited in all the above-mentioned stages of the procurement process Observers attend only, if they do attend, the pre-bid conference and bid opening, but not in all the other stages. 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. The attendance in the other stages of the procurement process were not complied with.</p> <p>Although CSOs were allowed to observe the bid submission, receipt and opening of bids, the opportunity to comment, make suggestions and observe the proceedings that would assist the BAC in the improvement of its processes and be made aware of the appropriate and best practices that should be observed, including those where they fell short of the requirements, with a view to constant and continuous improvement of processes, were lost</p>	<p>1. The Observer provision in the GPRA strongly supports transparency and openness in procurement. To achieve the noble goal, government must device mechanisms to incentivize participation of CSOs/NGOs and the Private Sector Group apart from inviting them.</p> <p>2. Similar to the present review, make available a link in PhilGEPS where selected contract documents can be reviewed post-facto by Observers.</p> <p>3. On the part of the COA, attendance in all stages of the procurement process must be desired alongside the acceptance that their presence in the procurement process is not tantamount to doing pre-audit, but to witness the integrity of the documentary submissions made by the bidders and the transparency of the proceedings. (COA v. Villanueva<sup>160</sup>)</p>
Category	Count	Percentage											
# of contracts with direct involvement of CSO	45	52%											
# of contracts without direct involvement of CSO	42	48%											
<p><b>(g) The records are complete and accurate, and easily accessible in a single file.*</b></p> <p><b>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):</b></p>	<p>Available documents for review are accurate insofar as the facts and circumstances they represent.</p> <p>However, not a single procurement contract file contains complete records from planning, selection and contract implementation. The procurement contract files for planning and selection process are compiled together, but for contract implementation documents, such as certificate of inspection and acceptance, certificate of completion, certificate of acceptance, requests for variation order, request for contract time extension, invoices and payments, the same are not filed or compiled together with the main or principal procurement contract file.</p>	<p>Of the 100 contracts actually reviewed, there was absence in all cases 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</p>	<p><b>Criterion Partially Met.</b></p> <p>Record keeping includes the compilation of complete files from procurement planning, selection process and contract implementation. Record keeping does not only entail the actual safekeeping and custody of the procurement contract documents, but also making them available and ready for examination and scrutiny review, assessment and monitoring.</p>	<p>Yes 1. The GPPB, alongside the requirements of the National Archiving Law, shall establish and promulgate a procurement record management and custodial regime for adoption by all procuring entities so that records</p>									

<sup>159</sup> SEC. 5(h), 2016 revised IRR.

<sup>160</sup> The presence of the COA representative, as witness or observer, on the other hand, is fundamental only to the extent of guaranteeing documentary integrity and transparency in the bidding process. (COA v. Villanueva, **G.R. NO. 151987. March 18, 2005**)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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- share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*	variation order, Inspection and Acceptance Report, Certificate of Inspection, Certificate of Completion and Certificate of Acceptance, Invoices and Payments	Thus, a complete file of the procurement contract documents from planning, selection and execution must be kept by procuring entities.	are filed, stored, maintained, preserved, secured and are made available and easily accessible when needed.  Procuring entities shall provide good physical facilities and equipment to keep, store, protect, access and archive procurement contract documents within the time frame provided by law and rules.  2. 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.
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10. The public procurement market is fully functional

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Poten tial red-flag?	Initial input for recommendations																		
<p><b>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):</b> - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.</p>	<p>Based on the results of private sector survey, in response to a question: “Does the government get in touch with private association to communicate changes to procurement framework/laws/regulations?” the response was as under:</p> <table><tr><th>Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>No, not at all</td><td>6</td><td>17%</td></tr><tr><td>No, not really</td><td>7</td><td>20%</td></tr><tr><td>Yes, mostly</td><td>16</td><td>46%</td></tr><tr><td>Yes, always</td><td>6</td><td>17%</td></tr><tr><td><b>Total</b></td><td><b>35</b></td><td><b>100%</b></td></tr></table> <p>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 a summary of constraints faced by them is given at Box 3.4 of the Main Report at criteria “Market practices including evidence based on private sector survey”</p>	Answer Choices	Responses	%	No, not at all	6	17%	No, not really	7	20%	Yes, mostly	16	46%	Yes, always	6	17%	<b>Total</b>	<b>35</b>	<b>100%</b>	Please see in the column on the left	<p><b>Criterion Partially Met</b></p> <p>Based on the responses, it is 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.</p>		To establish a formal mechanism for open dialogue with the private sector to enhance effectiveness of consultative process when formulating changes to the public procurement system
Answer Choices	Responses	%																					
No, not at all	6	17%																					
No, not really	7	20%																					
Yes, mostly	16	46%																					
Yes, always	6	17%																					
<b>Total</b>	<b>35</b>	<b>100%</b>																					
<p><b>(b) The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.</b></p>	<p>In response to the survey question “Does the government help you keep pace with procurement reforms? Are you aware of capacity building programs being run by the government for private contractors and for Micro, Small and Medium Enterprises (MSMEs)?” the response was as under:</p>		<p><b>Criterion Partially Met</b></p> <p>Based on the available information limited opportunity is available to build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.</p>	YES	Step up training program on building capacity of private sector and small businesses including on how to bid for government contracts including training on ethics																		

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	<table><tr><th>Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>No</td><td>19</td><td>56%</td></tr><tr><td>Yes</td><td>15</td><td>44%</td></tr><tr><td>Total</td><td>34</td><td>100%</td></tr></table> <p>Therefore, the majority of respondents are not aware of such capacity building programme And further based on Survey, in If your answer to the immediately preceding question is yes, have you ever participated in such a program or training or information session? If yes, How effective was it?, the response was as under</p> <table><tr><th>Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>NO</td><td>17</td><td>61%</td></tr><tr><td>YES</td><td>11</td><td>39%</td></tr><tr><td>Total</td><td>28</td><td>100%</td></tr></table> <table><tr><th>YES - Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>Very effective</td><td>5</td><td>16%</td></tr><tr><td>Somewhat effective</td><td>6</td><td>20%</td></tr><tr><td>Not really effective</td><td>0</td><td>0%</td></tr><tr><td>Not at all effective</td><td>1</td><td>3%</td></tr><tr><td>Total</td><td>12</td><td>39%</td></tr></table> <p>On the website of GPPB-TSO for training of private sector the following entries: Training on the Government Procurement Reform Act otherwise known as Republic Act 9184 and its Implementing Rules and Regulations for <b>Prospective Bidders/Suppliers/Contractors/Consultants</b> of the National Government Agencies, Government Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges and Local Government Units 1. <u>Program of Activities</u>; 2. <u>Private Sector Invite</u> , which indicates some program for the private sector The above observations were confirmed in 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 in Validation Workshop on May 17, 2021</p>	Answer Choices	Responses	%	No	19	56%	Yes	15	44%	Total	34	100%	Answer Choices	Responses	%	NO	17	61%	YES	11	39%	Total	28	100%	YES - Answer Choices	Responses	%	Very effective	5	16%	Somewhat effective	6	20%	Not really effective	0	0%	Not at all effective	1	3%	Total	12	39%				and integrity rules on government procurement
Answer Choices	Responses	%																																													
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Total	12	39%																																													

10(b) Private sector’s organisation and access to the public procurement market

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations												
<p>(a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):</p> <ul style="list-style-type: none"><li>number of registered suppliers as a share of total number of suppliers in the country (in %)</li><li>share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)</li><li>total number and value of contracts awarded to domestic/foreign firms (and in % of total)</li></ul> <p>Source: E-Procurement system/Supplier Database.</p>	<p>Total Number of suppliers in 2019 was 191, 000, Number of registered suppliers- 14500 with paid subscription and vetted documents (7.5%)</p> <p>Total value of contracts awarded in 2019 was PhP 1070 B representing 33856 firms (100% to domestic firms)</p> <p><b>Lack of competition:</b></p> <p>Based on APCIP data of 2019 and its comparison with 2010 data of CPAR of 2012</p> <table><tr><th>Competitiveness of the Bidding Process</th><th>2010</th><th>2019</th></tr><tr><td>Average number of Bidders who acquired bidding documents</td><td>7</td><td>2.25</td></tr><tr><td>Average number of bidders who submitted bid</td><td>5</td><td>2.07</td></tr><tr><td>Average number of bidders who passed bid evaluation</td><td>3</td><td>1.72</td></tr></table> <p>Based on Feedback from Sample Contracts (Indicator 9) Average Number of Responsive bidder was 3.2</p> <p>Feedback from Data Analytics (Sep 2019)</p> <ul style="list-style-type: none"><li>Monopolies and oligopolies of public procurement markets had a substantial impact on prices paid by the Government. In fact, we estimate that the Government of the Philippines 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.</li><li>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. And, almost half of the suppliers to the Government offered</li></ul>	Competitiveness of the Bidding Process	2010	2019	Average number of Bidders who acquired bidding documents	7	2.25	Average number of bidders who submitted bid	5	2.07	Average number of bidders who passed bid evaluation	3	1.72	<p>Please see column on the left</p>	<p><b>Criterion Partially Met</b></p> <p>Based on APCIP data of 2019, and its comparison with CPAR 2012 it is seen that average number of bidders who submitted bids has decreased from 5 to 2.07, which is an evidence of a trend towards lack of competition.</p> <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 answered “No” (48% of responses).</p> <p>Lack of competition based on Data Analytics, Sample Cases and APCPI Data</p> <p>Existence of monopolies and oligopolies in public procurement markets as per Data Analytics of June 2019</p> <p>Existence of ABC (Approved Budget for Contract) inhibiting competition</p> <p>This overall demand-supply mismatch</p>		<p>To review the existence of ABC, as this might be one of the factors for lack of competition</p> <p>To remove constraints on payment not being received in time as per provisions of contract</p> <p>To 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 (<i>Build, Build, Build</i>)</p> <p>To modernize Standard Bidding Document, to make these users friendly for the market participants also to take into account</p>
	Competitiveness of the Bidding Process	2010	2019														
Average number of Bidders who acquired bidding documents	7	2.25															
Average number of bidders who submitted bid	5	2.07															
Average number of bidders who passed bid evaluation	3	1.72															

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



	<p>products of only one family. Our model estimates that the Government of the Philippines could save 0.2% 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.</p> <ul style="list-style-type: none"><li>Small and medium-sized companies offered more economical prices than large companies according to data for years 2014-2018. Our model estimates savings of 1.6% by increasing participation of medium sized companies in public procurement.</li></ul> <p><b>All contracts are awarded to local firms due to restrictions on participation by foreign firm- Refer Indicator 1 and Indicator 7</b></p> <p>Based on a study carried out <sup>161</sup>, overall, considering both government and private projects, there is a <b>big shortage of 22,617 licensed contractors</b> 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.</p>			<p>green/sustainable procurement in Technical Specification and use of Life Cycle Costing as evaluation criteria for complex facilities, as reflected in recent revisions by Development Partners</p> <p>To simplify submission of eligibility/qualification documents by participants to reduce cost of doing business and improve competition</p> <p>To expedite passage of Amendment of the Foreign Investment Act of 1991(RA7042) which also address procurement restrictions on participation of foreign bidders in local procurement</p>																								
<p><b>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):</b></p> <p><b>- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).</b></p> <p>Source: Survey.</p>	<p>Participation in competition for public contracts depends on many conditions, including some that are controlled by or within the control of the government. As per MAPS methodology (2018), examples that can improve access by the private sector to the government market place are: (i) access to financing; ( ii) procurement methods and procedures that are proportionate to the risk and value in question; (iii) reasonable contracting provisions that are seen to fairly distribute risks associated with performance of contracts; (iv) fair payment provisions that help offset the cost of doing business with the government; (v) effective appeals mechanism and dispute resolution; and (vi) user-friendly and easily accessible e-Procurement systems.</p> <p><b>In response to the survey question:</b> “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 as under:</p> <table><tr><th>Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>NO</td><td>15</td><td>48%</td></tr><tr><td>YES</td><td>16</td><td>52%</td></tr><tr><td><b>Total</b></td><td><b>31</b></td><td><b>100%</b></td></tr></table> <p>The issues listed by those answered “No” (48% of responses) include constraints as payment not being received in time as per provisions of contract, lack of clarity in the bidding document on liability of the contractor/supplier/consultants on government taxes, Right of Away (ROW) 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.</p> <p>Other constraints expressed during the consultations on December 12, 2020 were: Cancellation of bids in the middle of evaluation, Capacity of Procuring Entity – professionalization of procurement practitioners, TOR are not well prepared, bias against local suppliers, need for simplification of submission of documents.</p> <p>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> <p>Further the response to Survey question “Do you think that introduction of e-GP has led to loss of business for Small and Medium Enterprises due to difficulties in submission of bids electronically? Yes or No. “, the response was as under:</p> <table><tr><th>Answer Choices</th><th>Responses</th><th>%</th></tr><tr><td>NO</td><td>13</td><td>59%</td></tr><tr><td>YES</td><td>9</td><td>41%</td></tr><tr><td><b>Total</b></td><td><b>22</b></td><td><b>100%</b></td></tr></table>	Answer Choices	Responses	%	NO	15	48%	YES	16	52%	<b>Total</b>	<b>31</b>	<b>100%</b>	Answer Choices	Responses	%	NO	13	59%	YES	9	41%	<b>Total</b>	<b>22</b>	<b>100%</b>	<p>Please see data in the column on the left</p>	<p>Criteria Partially met</p> <p>Based on the results of private sector survey and further consultation there are several constraints inhibiting private sector access to public procurement market that includes the following Payment not being received in time as per provisions of contract.</p> <ul style="list-style-type: none"><li>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.”</li><li>Lack of clarity in the bidding document on liability of the contractor/supplier/consultants on government taxes.</li><li>Right of away acquisition not over at the time of procurement action.</li><li>Absence of a separate body that should hear appeal and disputes other than the procuring entity.</li><li>Need for paperless procurement.</li><li>Need for levelling the playing field between domestic and foreign bidders.</li><li>Need for adopting procurement methods that are proportionate to the risk and value of contract.</li><li>Cancellation of bids in the middle of evaluation.</li><li>Capacity of procuring entity - professionalization of procurement practitioners.</li><li>Terms of reference/technical specification are not well prepared.</li><li>Need for simplification document submission. Payment not being received in time as per provisions of contract.</li><li>One of the written feedbacks from private survey participants states that “delays in payment for various</li></ul>	<p>To modernize Standard Bidding Document, to make these users friendly for the market participants also to take into account green/sustainable procurement in Technical Specification and use of Life Cycle Costing as evaluation criteria for complex facilities, as reflected in recent revisions by Development Partners</p> <p>To simplify submission of eligibility/qualification documents by participants to reduce cost of doing business and improve competition</p>
Answer Choices	Responses	%																										
NO	15	48%																										
YES	16	52%																										
<b>Total</b>	<b>31</b>	<b>100%</b>																										
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<b>Total</b>	<b>22</b>	<b>100%</b>																										

<sup>161</sup> Source: Technical Assistance to DILG (The World Bank).

<p>Based on the Systematic Country Diagnostics<sup>162</sup>: “The level of domestic credit to the private sector is low compared with regional peers with firms relying heavily on internal funds. At 50 percent of GDP, credit to the private sector in the Philippines is at the level predicted by its income level but substantially lower than the average 119 percent of regional peers (Figure 11). Less than 7 percent of working capital of firms is financed by banks, much lower than the 18 percent in regional peers. Even for the country’s large firms, only 11.6 percent of funds used for investment originate from banks”.</p> <p>As with any infrastructure project, whether PPP or traditional public procurement, early action of government in securing much-needed rights-of-way is critical in fast-tracking completion of facilities<sup>163</sup>.</p>	<p>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.”</p> <ul style="list-style-type: none"> <li>• Lack of clarity in the bidding document on liability of the contractor/supplier/consultants on government taxes.</li> <li>• Right of away acquisition not over at the time of procurement action.</li> <li>• Absence of a separate body that should hear appeal and disputes other than the procuring entity.</li> <li>• Need for paperless procurement.</li> <li>• Need for levelling the playing field between domestic and foreign bidders.</li> <li>• Need for adopting procurement methods that are proportionate to the risk and value of contract.</li> <li>• Cancellation of bids in the middle of evaluation.</li> <li>• Capacity of procuring entity - professionalization of procurement practitioners.</li> <li>• Terms of reference/technical specification are not well prepared.</li> </ul> <p>Need for simplification document submission.</p>
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## 10(c) Key sectors and sector strategies

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Key sectors associated with the public procurement market are identified by the government.</b>	<p>Based on the government’s priority spending areas, key sectors associated with the procurement of goods, works, and services should be identified. The information can be utilized to conduct targeted assessments of relevant sector markets and to secure collaboration with sector market participants in a specific and meaningful way, e.g. to strengthen integrity, sustainability and/or innovation in public procurement.</p> <p>A Country Private Sector Diagnostic (CPSD) was recently completed by a WB-IFC team. The objective of the CPSD is to identify cross-cutting and policy constraints that hinder the expansion of market opportunities and subsequent private sector investment. The diagnostic identifies inadequate infrastructure and lack of competition as the main constraints and offers an extensive sector-by sector analysis. The CPSD points in particular to the lack of competition in most infrastructure markets. Limited competition has resulted in high costs and limited-service quality for transportation services, electricity, and digital infrastructure. Poor infrastructure and corresponding expensive utility costs discourage private sector investment and subsequent job creation. The CPSD also 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<sup>164</sup>.</p> <p>However, the above study deals with broad regulatory and trade restrictions and not much details are available for public procurement market</p> <p>CPSD was carried out for Philippines, that , highlighted at sector level, the regulatory and trade restrictions that limit competition and investment more generally</p>		<p><b>Criterion Partially Met</b></p> <p>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, though CPSD highlighted at sector level the regulatory and trade restrictions that limit competition and investment more generally, also impacting public procurement market</p>		<p>To 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 and government’s ambitious ‘Build, Build, Build Program’ with a total planned budget of US\$171 billion</p> <p>To carry out study on share of public procurement contracts by SMEs and steps being taken by the government to increase their share of business.</p>

<sup>162</sup> Systematic Country Diagnostic of the Philippines (The World Bank, 2019)

<sup>163</sup> Philippines Country Private Sector Diagnostic (CPSD) (World Bank/ IFC, March 2020)

<sup>164</sup> Systematic Country Diagnostic of the Philippines (The World Bank, 2019)

					To have a strategy to break monopolies and oligopolies as also to encourage SMEs
<b>(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</b>	<p>The objective of the abovementioned Country Private Sector Diagnostic (CPSD)<sup>165</sup> is to identify cross-cutting and sector-specific policy constraints that hinder the expansion of market opportunities, private sector investment, and the creation of better-quality jobs.</p> <p>The main findings of CPSD is that “complex regulations and lack of competition in key economic sectors hamper the creation of good-quality jobs. The private sector generates the majority of formal jobs in the Philippines; however, new firm generation rates are low because entrepreneurs are discouraged by complex regulations, including those regulations that protect incumbents. While bureaucratic complexities make it difficult for firms to formalize and enter markets, the viability of businesses in the market is undermined by high input costs because of limited competition in the provision of infrastructure. The resulting economic landscape is dominated by national conglomerates, especially in non-tradable sectors such as retail, banking, telecommunications, infrastructure, utilities, real estate, and transport. Reducing bureaucratic restrictions and promoting competition would allow new businesses to enter markets, lower input prices, and support the generation of better-quality jobs. The recent passage of key legislation (for example, to address competition, ease of doing business, digital payments) could be the momentum needed for the Philippines’ government to generate reforms that would unlock private sector markets”</p> <p>A sector scan in CPSD identifies opportunities to create markets in infrastructure and tradeable sectors. This section assesses the performance of infrastructure (energy, water, transport, and ICT) and tradeable sectors (agriculture, manufacturing, and services) together with the main policy constraints and suggests possible solutions.</p> <p>Government has taken initiative to seek Reimbursable Advisory Services from the World Bank and based on discussions held with GPPB-TSO using the recommendation for improvements</p> <p>Procurement Analytics was 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:</p> <div style="border: 1px solid black; padding: 5px;"> <p>Overall, considering both Government and private projects, there is a <b>big shortage of 22,617 licensed contractors</b> 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 <b>Government contracts, especially at the province level</b>. 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 PGs. 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.</p> <p>There are <b>major limitations or constraints in the licensing, eligibility and qualification requirements</b>, which hamper efforts to increase the supply and participation of capable contractors for Government contracts.</p> <p><b>Initial measures to address these limitations</b> are presented in the Report to enhance the involvement of contractors, particularly in province-level projects</p> <p>Other important factors - particularly <b>collusive and irregular practices</b> – hinder competitive procurement market and dampen the interest of contractors in bidding for PG projects.</p> </div> <p>These initiatives provide evidence that government is aware of such constraints. Government has taken initiative to seek Reimbursable Advisory Services from the World Bank and based on discussions held with GPPB-TSO using the recommendation for improvements</p> <p><i>Source: Technical Assistance to DILG- The World Bank</i></p>		<p><b>Criterion Partially Met</b></p> <p>Limited Competition as evidenced in CPSD and supported by 2019 APCPI of the government. Based on comparison with CPAR 2012 it is seen that average number of bidders who submitted bids has decreased from 5 to 2.07, from year 2010 to 2019 which is evidence of a trend towards lack of competition.</p> <p>Shortage of contractors as given in box on the left side of column</p>		<p>Government to further analyze the extent of procurement competition and the demand-supply situation concerning contractors and remove constraints on licensing, eligibility and qualification requirements, which hamper efforts to increase the supply and participation of capable contractors for Government contracts.</p>

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

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

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
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<sup>165</sup> Philippines Country Private Sector Diagnostic (CPSD) (World Bank/ IFC, March 2020)

<p><b>(a) A transparent and consultative process is followed when formulating changes to the public procurement system.</b></p>	<p>Based on response received from 9 participants, the summary of response is as under:</p> <p><i>Question:</i> Is there a transparent and consultative process when changes are formulated to the public procurement system?</p> <p>Yes – 33.3 % <b>No – 66.7%</b></p> <p>Regarding transparency of consultative process, one of the participants described it as “opaque” and “not consistent as supposed to be”. The other described the situation of engagement of CSO observers as procuring entities just going through the motion of involving CSO for the sake of formality and “tolerating the presence of CSO observers “and that the presence of CSO and the resources is not being used effectively. Some of the procuring entities, would expect CSO observers to be a part “irregular processing” and just get a “seal of approval” for compliance. There is a need for their involvement even while crafting Terms or Reference/Employer’s Requirements. There is a situation of lack of access or denial of data and information which is not in line with Freedom of Information Act. CSO observers need to be supported by budget (may be provided by GPPB-TSO like 1 % of their budget) as getting remunerated by procuring entities could create a Conflict-of-Interest situation and compromise the independence of CSO observers. GPPB-TSO has prepared learning modules and is conducting webinars.including for civil society organization GPPB-TSO has also prepared a Procurement Dashboard. They intend to revisit some of the Procurement Rules and suitable consultation with CSOs shall be carried out. For example, GPPB-TSO has prepared a draft “Community Participation Manual” and feedback from CSO on this document would be sought.</p>	<p>Please see data in the column on the left</p>	<p><b>Criterion Partially Met</b> At about two third of the respondents point towards lack of transparent and consultative process which is evidenced by their response and confirmed through virtual (due to pandemic situation) consultation workshop with CSOs on July 20, 2020</p>		<p>To enhance transparent and consultative process when formulating changes to the public procurement system through substantive involvement It should not be just going through the “motion of involving CSOs for the sake of formality” and just to get a “seal of approval”</p>
<p><b>(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.</b></p>	<p>As per responses from 9 CSO participants on Question “Are there programs in place to build capacity of CSOs to support participatory public procurement?” the data is as under:</p> <p>Yes – 44.4% <b>No – 56.6%</b></p> <p>Based on feedback of CSO in VC on July 20, 2020, regarding building capacity of CSO, it appears that volunteers have “ran out of steam” ( meaning no incentive left) and they do not find motivation to learn as was the case at the time of Procurement Watch when there was physical visit 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 degree of expertise. 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. The engagement needs to be revived as it was in early 2000s for education and health sector through engagement and training</p> <p>GPPB-TSO indicated in VC on July 20, 2020 that post COVID-19 situation, procurement transactions, training and consultations are progressively using digital platform. Therefore, while changing policies and procedures, conducting training for CSOs, and monitoring of procurement, the use of electronic means and digital platform could be used effectively. GPPB-TSO are monitoring the compliance through APCPI, they have prepared a directory of procuring entities and of procurement practitioners and a similar list CSO observer may be prepared. As explained previously, GPPB-TSO has prepared learning modules and is conducting webinars.including for civil society organization GPPB-TSO has also prepared a Procurement Dashboard.</p>		<p><b>Criterion Partially Met</b> Need for pool of experts and interested champions who could monitor at local levels. CSO felt that they are ready to help, but the initiative should come from the government. There is need for creating inclusive environment and strong presence of CSO volunteers at local level</p> <p>Lack of enabling environment to attract and retain motivated and qualified CSOs</p>		<p>GPPB-TSO update the list of CSO and conduct special training for them on the RA and IRR and on roles and responsibilities of CSO against a clear Terms of Reference. Especially on new procurement guidelines, modernized PhilGEPS, roles of BAC observers, monitoring of public contracts, and other areas that are relevant to the advocacies of CSOs. <u>Recommendations of CPAR 2012 to be revisited.</u> GPPB-TSO to allocate a part of their budget to utilize the resource of CSO for improving integrity and transparency of procurement process from the planning/needs assessment, procurement process and in contract implementation through the use of digital platform, taking post COVID-19 situation as an opportunity for change management.</p>
<p><b>(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.</b></p>	<p><b>The feedback based on consultations with 10 participants in Video Conferencing of July 20, 2020 is as under:</b></p> <ul style="list-style-type: none"> <li>• <b>Active Participation of CSO in early 2000s:</b> Participants indicated that around 2001 onwards, there was meaningful participation by CSOs, mostly through Procurement Watch. This was possible due to an enabling environment, initiatives from the government and procuring entities and donor support.</li> <li>• <b>Dwindling of CSO engagement:</b> Based by a study carried out by ADB around 2012, it was noted that that there was dwindling of CSO engagement and over a period of time in actual operations government did not involve CSOs</li> <li>• <b>Consultations in 2016:</b> Major changes were initiated that resulted in 2016 Revised IRR of RA 9184.GPPB-TSO indicated that they several consultations with stakeholders including CSOs</li> <li>• Regarding CSO being permitted or encouraged, despite Anti-corruption agenda and Open Government Partnership, there is “lack of space” for observers to act and contribute. In fact, the invitations to participate are received in the last hour or sometimes when the event is over.</li> </ul>		<p><b>Criterion Partially Met</b> CSO Input not fully taken based on evidence like lack of active participation of CSOs as in early 2000s, dwindling of engagement, consultation as held earlier in 2016 and “lack of space” for CSO observers to act and contribute</p>		<p>Government to take into account the input, comments and feedback received from civil society and create an enabling environment for CSO contribution as was the case in early 2000s and to some extent in 2016</p>



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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.</b>	<ul style="list-style-type: none"><li>Lack of Open Contracting Data Standards does not result in adequate and timely access to information as a precondition for effective participation.</li><li>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</li><li>There is a list of suggested Observers on GPPB-TSO website. But it is not clear when and how these Observers were involved.</li><li>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</li></ul> <p>Also as indicated at Indicator 7 there is inadequate and timely publication of information, for example Award information is not published in a timely manner or at all. About 50% of transactions do not have award information.</p>		<p><b>Criterion Partially Met</b></p> <p>PhilGEPS operates on an open data policy, enabling access to all information collected in the system from procuring agencies, but data is not uploaded by procuring Not all information is uploaded by Procuring agencies in a timely of complete manner. Evaluation reports, contract documents and other supporting documents are only available if uploaded by procuring agency</p> <p>Need to define role of CSO observers, notify them in a timely manner to improve quality of participation</p>		<p>GPPB-TSO to implement Open Contracting Data Standards and engage experts to analyze integrity and transparency of procurement process. This is possible with increasing use of digital platform</p> <p>Timely notification needed to CSO Observers</p>

11(c) Direct engagement of civil society

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:</b> <ul style="list-style-type: none"><li>the planning phase (consultation)</li><li>bid/proposal opening (observation)</li><li>evaluation and contract award (observation), when appropriate, according to local law</li><li>contract management and completion (monitoring).</li></ul>	<p><b>Provisions in Republic Act No. 9184 and 2016 Revised Implementing Rules and Regulations on involvement of Observers (in Particular CSOs)</b></p> <p><b>SEC. 13. Observers(RA 9184):</b> To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.</p> <p><b>Rule III Procurement by Electronic Means: 8.7 Observers:</b> The PhilGEPS shall allow observers, duly authorized by the BAC, to monitor the procurement proceedings on-line: Provided, however, that such observers do not have any direct or indirect interest in the contract to be bid as prescribed in Section 13 of this IRR.</p> <p><b>Rules V Bids and Award Committee: Section 13. Observers 13.1.</b> To enhance the transparency of the process, the BAC shall, during the eligibility checking, shortlisting, pre-bid conference, preliminary examination of bids, bid evaluation, and post-qualification, invite, in addition to the representative of the COA, at least two (2) observers, who shall not have the right to vote, to sit in its proceedings .....13.2 The other observer shall come from a non-government organization (NGO).... 13.3. Observers shall be invited at least five (5) calendar days before the date of the procurement stage/activity. <u>The absence of observers will not nullify the BAC proceedings:</u> Provided, that they have been duly invited in writing..... 13.4 The observers shall have the following responsibilities: a) To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the HoPE, copy furnished the BAC Chairperson. The report shall assess the extent of the BAC’s compliance with the provisions of this IRR and areas of improvement in the BAC’s proceedings; b) To submit their report to the Procuring Entity and furnish a copy to the GPPB and Office of the Ombudsman/Resident Ombudsman. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, then it is presumed that the bidding activity conducted by the BAC followed the correct procedure; and c) To immediately inhibit and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid. 13.5. Observers shall be allowed access to or be provided with the following documents free of charge upon their request: (a) minutes of BAC meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) APP and related PPMP; and (e) opened proposals. In all instances, observers shall be required to enter into a confidentiality agreement with the concerned Procuring Entity in accordance with the form prescribed by the GPPB</p> <p><b>Annex H: Consolidated Guidelines for the Alternative Methods of Procurement:</b> Observers. For Negotiated Procurement under Section 53.1 (Two-Failed Biddings), observers shall be invited in accordance with Section 13 of the IRR of R.A. 9184. <u>For other alternative methods of procurement, observers may be invited by the Procuring Entity as it may deem necessary.</u></p> <p><b>Appendix 3 Guidelines for Electronic Bidding (e-bidding): 4.0 General 4.5.</b> The provisions under Section 13 of the IRR on Observers shall apply without prejudice to full compliance with the requirement under Section 8.7 of the IRR.</p>		<p><b>Criterion Partially Met</b></p> <p>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. It should be clarified how it works in practice</p> <ul style="list-style-type: none"><li>Based on feedback, the involvement in procurement process as defined currently is not working</li><li>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</li><li>For other alternative methods of procurement, 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</li></ul>	Yes	<p>As required by MAPS Methodology (Sub-indicator 11 (c)) the legal and regulatory framework might establish an obligation or an opportunity for the government to consult the public and CSO in the planning process e.g. prior to large-scale or environmentally or socially sensitive procurement</p> <p>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</p>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

<b>(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.</b>	<p>As per responses received from 9 CSO participants on “Are CSOs permitted or encouraged to act as observers in procurement proceedings?” the data is as under:</p> <p>Yes – 77.8% <b>No – 22.2%</b></p> <p>CPAR of 2008 as also 2012 has pointed out the issue of sustainability of the CSO involvement as Observers in the bidding process. Based on information in CPAR 2012 to improve the participation of civil society organizations (CSOs) as observers in the procurement process, a manual on procurement monitoring was developed and rolled out in selected municipalities in 2012. It is not clear if this manual has been updated.</p> <p>The lack of direct participation and enabling environment was also confirmed in virtual consultation with CSO on July 20, 2020</p> <p>The situation of sustainability of CSO funding remains an issue and there is dwindling of participation of CSO over time to act as observers</p>		<b>Criterion Partially Met</b>  It was also pointed out in CPAR of 2012 that to ensure the integrity and transparency of the procurement process, issues on the sustainability of CSO funding 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.  The situation has remained the same and issue on sustainability of CSO funding has not been resolved		Issue of sustainability to be addressed as recommended in 2012 Manual on CSO participation to be updated
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12. The country has effective control audit systems

12(a) Legal framework, organisation and procedures of the control system  
The system in the country provides for:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies</b>	<p>The 1987 Constitution provides for an independent Commission on Audit (COA) that has the power to audit all accounts pertaining to government funds nationwide, including procurement-related transactions. The Government Auditing Code (PD 1445)<sup>166</sup> empowers COA to determine policies, promulgate rules and regulations, and prescribe standards governing the performance of its powers and functions</p> <p>The revised Implementing Rules and Regulations on Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act" prescribe the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the Philippine government. Other regulations with the same purpose include:</p> <p><i>a Government Procurement Policy Board issuances (circulars) related to procurement,</i> <i>b Administrative Order No. 278, dated April 28, 1992<sup>167</sup>, directing the strengthening of the internal control systems of government offices, agencies, government-owned and/or controlled corporations (GOCCs), including government financial institutions (GFIs) and local government units (LGUs);</i> <i>c Administrative Order No. 70 dated April 14, 2003<sup>168</sup>, strengthening the internal control systems of government offices, agencies, GOCCs, GFIs, state universities and colleges and LGUs;</i> <i>d DBM Circular Letter No. 2008-5 dated April 14, 2008<sup>169</sup> prescribing the Guidelines on the Organization and Staffing of an Internal Audit Service Unit and Management Division/Unit in Departments/ Agencies/GOCCs/GFIs concerned</i> <i>e Commission on Audit Circulars and Memoranda prescribing the guidelines in the conduct of audit of procurement and contracts review<sup>170</sup>, such as</i></p> <p>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)<sup>171</sup></p> <p>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 Commission on Audit<sup>172</sup></p>		<b>Criterion Met</b>  <hr/> <i>However, there are “Suggestion for Improvements” by the Assessment Team as in italics</i>  <i>To include contract implementation under circular 2009-001 dated Feb 12, 2009 to check if contract was completed within time, without cost over-run and if facilities are in effective use meeting the employer’s requirements/performance and technical specification parameters to ensure Value-for-Money (VfM)</i>  <i>To check as per Handy Guide “open competition is the basis for efficient public procurement” there is evidence of overestimated and excessive ABC</i>		

<sup>166</sup> [PD1445.pdf](#)  
<sup>167</sup> [Administrative Order No. 278, s. 1992 | Official Gazette of the Republic of the Philippines](#)  
<sup>168</sup> [Administrative Order No. 70, s. 2003 | Official Gazette of the Republic of the Philippines](#)  
<sup>169</sup> [cl2008-5.pdf \(dbm.gov.ph\)](#)  
<sup>170</sup> [Untitled \(coa.gov.ph\)](#)  
<sup>171</sup> [Untitled \(coa.gov.ph\)](#)  
<sup>172</sup> [COMMISSION ON AUDIT CIRCULAR NO. 2009-001 - February 12, 2009 \(coa.gov.ph\)](#)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

	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				
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	<p>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 (IAS/IAU) 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<sup>173</sup>.</p> <p>Related to procurement process, he audit mechanisms and functions carried out by Commission on Audit (COA)including reporting to management on compliance, effectiveness and efficiency are part of the regular compliance and performance audits being performed by the audit groups/audit teams.</p>		<b>Criterion Partially Met</b>  <b>Role of COA as observer in bidding process (Sec 13 RA 9184 and Section 13, IRR):</b> As per CPAR of 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”. <sup>174</sup> Based on discussions held the situation persists and remains a gap		To review the current practice of “Role of COA as observer in bidding process (Sec 13 RA 9184 and Section 13, IRR)
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	This is an agency-level control, which is the responsibility of the management of the procuring agencies. The role of COA is to see to it that the internal control mechanisms that ensure the timely and efficient decision-making and adequate risk mitigation are in place and implemented as planned. 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 <sup>175</sup>		<b>Criterion Met</b>		
(d) independent external audits provided by the country’s Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	<p>Section 1, Article IX, A. of the 1987 Constitution provides that 'The Constitutional Commission, which shall be independent, are xxx Commission on Audit xxx.'" While 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"<sup>176</sup> establishes the jurisdiction and power of the Commission on Audit over all matters relating to auditing procedures, systems and controls, as well as examination of all claims owing from the government and its instrumentalities. The COA as the Philippine SAI regularly conducts procurement audit as part of the annual regular audit of the transactions of the government agencies. With the adoption by 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.</p> <p>Further, under the risk-based audit approach, auditors are required to undertake/obtain an understanding of its audited entity, its processes and systems, which includes the procurement system, as well as conduct a risk assessment to determine the residual audit risks, and to determine the nature, extent and timing of the audits.</p>		<b>Criterion Partially Met</b>  Moreover, there should be separate and clear procurement protocols for huge projects under the "Build, Build, Build" program of the present administration (and subsequent priority/pet projects of incoming administrations) to prevent grossly disadvantageous contracts to the government and the Filipino people. <sup>177</sup>  The above observation is relevant for for large investment under ambitious "Build, Build, Build" infrastructure development agenda for appropriate oversight based on risk level of huge investment		To focus COA’s procurement oversight for huge infrastructure investment based on level of risk
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	<p>Section4,ArticleIX-0ofthe 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”.</p> <p>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.</p>		<b>Criterion Met</b>		

<sup>173</sup> [cl2008-5.pdf \(dbm.gov.ph\)](#)  
<sup>174</sup> Development Bank of the Philippines v. COA. G.R. No. 107016. 11 March 1994; Villanueva v. COA. G.R. No. 151987. 18 March 2005.  
<sup>175</sup> [COA C2018-003.pdf](#)  
<sup>176</sup> [PD1445.pdf](#)  
<sup>177</sup> As per COA

<b>(f) clear mechanisms to ensure that there is follow-up on the respective findings.</b>	<p>COA Memorandum No. 2014-002 dated March 18, 2014 <sup>178</sup>prescribes the enhanced monitoring of compliance with recommendationsin the Annual Audit Report through the AAPSI form and 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 accomplishing the Action Plan Monitoring Tool (APMT). The AAPSI combines both an action plan and status of implementation of the previous year's recommendations. It is a tool for government agencies to indicate action plans on the audit observations and recommendations contained in the Annual Audit Report (AAR) which they are required to submit within 60 days after receipt of the AAR. While APMT is the validation and monitoring tool of auditors on the AAPSI submitted by the audited agency. This is a monitoring and validation tool of the auditors on the Agency Action Plan and Status of Implementation (AAPSI) of audit recommendations submitted by the management of the audited agency 60 days after the receipt of the audit report.</p> <p>The requirement on the submission by agencies of the AAPSI is likewise provided in Section 99 of the General Provisions in the General Appropriations Act (GAA) for FY 2019 and prior years' provisions of the GAA. It Thprescribes that within 60 days from receipt of the GOA Annual Audit report, agencies concerned shall submit to the GOA, either in printed or electronic form, 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 Representatives, the President of the Senate of the Philippines, the House Committee on Appropriations and the Senate Committee on Finance, either in printed or electronic form, a copy of said reports.</p> <p>An example of AAPSI for Education Technical Education and Skills Development Authority of Feb 11, 2019<sup>179</sup></p> <p>In addition, sustained compliance with audit recommendations was made a part. of the performance targets of an agency to be entitled to the grant of the Performance-Based Bonus. {Included in the yearly guidelines issued by the Inter-agency Task Force on the Harmonization of National Government Performance Monitoring, Information and Reporting Systems, Administrative Order (AO) No. 25 s. 2011}<sup>180</sup></p>		<b>Criterion Met</b>		

12(b) Coordination of controls and audits of public procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.</b>	<p>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.</p> <p>Internal audit is provided by the Procuring Entity whereas the external audit is provided by COA. The plans for each type of audit is not coordinated annually in our setting. However, written procedures and standards in the form of a Manual exist in the conduct of procurement audit, in so far as COA is concerned (COA Memorandum Nos. 2013-003 dated 14 January 2010 and 2016-009 dated 18 March 2016 re: Guide in the Audit of Procurement, 1st and 2nd update).</p> <p>The Procurement Law provides clear cut reporting lines to relevant oversight bodies. For example, observations noted by the Observers invited by the Procuring Entity intheconduct of procurement are required to submit the report to the Procuring Entity and furnish a copy to the GPPB and the Office of the Ombudsman/Resident Ombudsman 9Section 13.4(b) under Rule V of RA 9184).</p> <p><i>Most of the government agencies have written guidelines and procedures in the form of manuals and issuances as part of internal controls. The validation and assessment of these controls is documented in an Agency Level Control Checklist (ALCC) accomplished by the auditors during the audit risk assessment.</i></p> <p><i>The Commission on Audit adopted GOA Resolution No. 2016-016, dated September 30, 2016 with the subject "Adoption of the Philippine Internal Auditing Framework for Public Sector and Philippine Internal Control Framework for Public Sector"</i></p>		<p><b>Criterion Met</b></p> <p><b><i>However, there are “Suggestion for Improvements” by the Assessment Team as in italics</i></b></p> <p><i>The Checklist provided to Auditors in reviewing contracts as well as COA Circulars/Memorandum, should be updated from time to time in consonance with the latest issuances of the GPPB and other related body in regulating the procurement law.</i></p> <p><i>Audits should be carried out on a cyclical basis and not annually. With the voluminous engagements and audit assignments of our audit teams/groups, the practice of cyclical audit at the Barangay Level in the local sector in the past decades have proven to be effective, thus, may be adopted.</i></p>		

<sup>178</sup> COMMISSION ON AUDIT (studylib.net)

<sup>179</sup> COA-Annual-Audit-Report-CY-2018-Annually-Reports.pdf (api.edu.ph)

<sup>180</sup> Administrative Order No. 25, s. 2011 | Official Gazette of the Republic of the Philippines



	<p>The Technical Services Office (TSO) of the COA assists the auditors by providing information/updates on procurement in the COA intranet, as follows:</p> <ul style="list-style-type: none"> <li>• Agency-issued Price References</li> <li>• Price researched thru the internet</li> <li>• Updated Guide in the Audit of Procurement</li> </ul> <p>The TSO also conducts technical evaluation of contract and inspection of items/goods delivered. The auditors are also guided by the Manual on Procurement.</p> <p>All the above written procedures are considered adequate by the Assessment Team</p>				
<b>(b) There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.</b>	COA developed the Handbook on Philippine Internal Auditing Standards for the Public Sector <sup>181</sup> 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 for 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.		<b>Criterion Met</b>		
<p><b>(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):</b></p> <ul style="list-style-type: none"> <li>- number of specialised procurement audits carried out compared to total number of audits (in %).</li> <li>- share of procurement performance audits carried out (in % of total number of procurement audits).</li> </ul> <p><b>Source: Ministry of Finance/Supreme Audit Institution.</b></p>	<p>Based on PEFA Report ( June 2016) under PI-26-3 for Internal Audit, each agency's Internal Audit Service or Internal Audit Unit prepares and executes an annual audit program</p> <p>In the case of COA as external auditor, the audit of government procurement is part of the regular audit of the accounts and transactions of the audited agency. However, Manuals on Compliance and Performance audits are still for approval by the COA Commission Proper for adoption and application. These manuals are intended to guide the auditors in the conduct of compliance and performance audits of the government procurement, in accordance with the International Standards of Supreme Audit Institution (ISSAI)</p> <p>On the quantitative indicators:</p> <ul style="list-style-type: none"> <li>• Number of specialized procurement audits carried out compared to total number of audits (in %)</li> <li>• Share of procurement performance audits carried out (in % of the total number of procurement audits)</li> </ul> <p>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)</p> <p>These indicators are yet to be included in the overall strategic audit plan of COA to be cascaded to the audit sectors/offices/audit groups</p>	Please see in the left column	<b>Criterion Partially Met</b> As per COA, these Quantitative indicators on specialized procurement audit are yet to be included in the overall strategic audit plan of COA to be cascaded to the audit sectors/offices/audit groups		To include specialized procurement audit in strategic plan of COA
<b>(d) Clear and reliable reporting lines to relevant oversight bodies exist.</b>	<p>Section 99 of the General Provisions in the General Appropriations Act (GAA), FY 2019 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 GOA, 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 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.</p> <p>With the adoption by 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 International Standards of Supreme Audit Institution (ISSAI)</p>		<b>Criterion Met</b>		

<sup>181</sup> [Philippine Government Internal Audit Manual \(dbm.gov.ph\)](http://dbm.gov.ph)

12(c) Enforcement and follow-up on findings and recommendations

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<p><b>(a) Recommendations are responded to and implemented within the time frames established in the law.*</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):</b></p> <p>- Share of internal and external audit recommendations implemented within the time frames established in the law (in %).</p> <p><b>Source: Ministry of Finance/Supreme Audit Institution.</b></p>	<p>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 Agency Action Plan and Status of Implementation (AAPSI).</p> <p><b><i>Input from COA</i></b></p> <p>We suggest 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 Action Plan Monitoring Tool (APMT).</p> <p>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 implementation of the audit recommendations contained in the AAPSI by accomplishing the APMT.</p> <p>On the findings on the irregular, unnecessary and illegal procurement transactions, the auditors disallow the related payments and issue Notice of Disallowance (ND). Disposition on the disallowances follows the GOA Revised Rules of Procedure on the Settlement of Accounts.</p> <p>As to audit observations and recommendations, Section 4.9 of the GOA Rules and Regulations on Settlement of Accounts (RRSA) provides that an AOM is a written notification to the agency head and concerned officer/s informing of deficiencies and noted in the audit of accounts, operations, or transactions and requiring comments thereto and/or submission of documentary requirements and other information within a reasonable period. Under Section 5.3 of the same rule an AOM can be issued when the deficiency noted refers to financial or operational matter which do not involve pecuniary loss to the government while an audit suspension shall be issued when there is probable pecuniary loss which may, in turn, mature to an audit disallowance.</p> <p>As to Audit Decisions, like Notice of Disallowances or Notice of Charge, Sections 10.4 and 11.4 of the GOA RRSA prescribe a period of 6 months within which such audit decision should be <i>settled</i>.</p> <p>Audit Decisions which are not appealed, or those Audit Decisions which were upheld in Appeal or Petition for Review eventually attains finality, in which case a Notice of Finality of Decision and a GOA Order of Execution would be issued pursuant to Sections 22 and 23 of the RRSA.</p> <p>The Commission also issued Memorandum No. 2014-002 dated March 18, 2004 with the subject "Enhanced monitoring of compliance with recommendations in the Annual Audit Report (AAR) through the Agency Action Plan and Status of Implementation (AAPSI) Form and Action Plan Monitoring Tool (APMT)". The AAPSI is submitted by the auditee to inform COA as regards the plans and actions taken on the audit recommendations communicated, within 60 days upon receipt of the AAR. The same is validated and monitored by the auditors using the APMT. These tools are submitted by the auditee to inform COA as regards the plans and actions taken on the audit observations communicated.</p> <p>In cases of non-implementation of recommendations, aside from documentation of reasons, the need for alternative solutions should be addressed.</p> <p>Based on PEFA Report of June 2016, as per Dimension 30.3 on External Audit Follow up, responses are received in a timely manner. There is data for follow up on status of implementation of prior year recommendations. The data is available for 2013 status on implementation which shows that out of 1733 recommendations, 405 (23 %) were fully implemented, 903 (52%) were partially implemented. This shows sufficient and timely follow-up</p>	<p>Please see COA comments on improvements</p>	<p><b>Criterion Met</b></p> <hr/> <p><b><i>COA has suggested the following improvement:</i></b></p> <p><i>It is suggested 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 Action Plan Monitoring Tool (APMT).</i></p>		
<p><b>(b) There are systems in place to follow up on the</b></p>	<p>The auditees are required to submit to the COA auditors the Agency Action Plan on the Status of Implementation (AAPSI) of the audit recommendations after 60 days of receipt of the Annual Audit Report. The GOA auditors monitor and validate the status of implementation of the audit</p>		<p><b>Criterion Met</b></p>		

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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implementation/enforcement of the audit recommendations.	recommendations contained in the AAPSI by accomplishing the Action Plan Monitoring Tool (APMT). Audit recommendations not addressed are included in the Status of Implementation of Prior Years' Audit Recommendations. The Annual Audit Report of the COA carries with it the Agency Action Plan and Status of Implementation (AAPSI) on the COA recommendations which is required to be submitted and regularly updated by the Agency concerned. If certain recommendations were not implemented, the COA may reiterate the observations as the case may be and update its recommendations to become responsive and adaptive to institutional changes, if any. The COA Audit Teams are likewise required to monitor and validate the implementation of the audit recommendations through the Action Monitoring Tool (APMT).				
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12(d) Qualification and training to conduct procurement audits

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<p><b>(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</b></p> <p>- number of training courses conducted to train internal and external auditors in public procurement audits.</p> <p>Source: Ministry of Finance/Supreme Audit Institution.</p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</b></p> <p>- share of auditors trained in public procurement (as % of total number of auditors).</p> <p>Source: Ministry of Finance/Supreme Audit Institution.</p>	<p>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 (i). Law on Procurement (RA 9184) and Philippine Bidding Documents; (ii)Technical Review and Inspection on The Procurement Projects; and (iii) Technical Review and Inspection of Consulting Services</p> <p>The selection of auditors working on procurement audits require not only that they have adequate knowledge but that they should be able to demonstrate that acquired sufficient knowledge. The condition that <b>"if auditors lack procurement knowledge</b>, 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.</p> <p><u>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. But there is no statistics on number of training courses conducted</u></p> <p>The COA implements its Ladderized Training Program which requires personnel assigned at the auditing units to secure training and seminar on the Procurement Law and other relevant laws, rules, and regulations. All auditing personnel are free to nominate themselves for said training/seminar.</p> <p>Auditors are being nominated/sent on training on the Audit of Procurement. A Post Training Evaluation Report (PTER) is required to be submitted after the training to ensure that they acquired the sufficient knowledge and were able to apply in their conduct of procurement audit.</p>	<p>Please see data on the left as underlined</p>	<p><b>Criterion Partially Met</b></p> <p><u>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 So no statistics on number of training courses is available. .</u></p>		<p>For efficient and effective conduct of the audit, COA should consider constituting dedicated offices/audit groups/ audit teams, as appropriate, for the compliance and performance audits of government procurement and inclusion of appropriate and regular training program for auditors including on performance audit.</p>
<p><b>(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</b></p>	<p>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 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 and the Information Technology Audit Office was also created to assist auditors in IT related audits. Support taken through hiring of experts to assist auditors</p>		<p><b>Criterion Met</b></p> <p><b>Suggested improvements</b> However, for efficient and effective conduct of the audit, COA should consider constituting dedicated offices/audit groups/ audit teams, as appropriate, for the compliance and performance audits of government procurement.</p>		
<p><b>(c) Auditors are selected in a fair and transparent way and are fully independent.</b></p>	<p><i>The Commission observes the prescribed qualification standards for auditor positions by the Civil Service Commission as well as the prescribed hiring process which requires the posting of vacancies, review by the Selection and Promotions Board, among others.</i> Section 54 Chapter 1, Title 2 of PD 1445 provides: in all matters relating to the audit work, the auditor shall maintain complete independence, impartiality and objectivity and shall avoid any possible compromise of his independence or any act which may create a presumption of lack of independence or the possibility of undue influence in the performance of his duties.COA Resolution 2020-003 dated January 20, 2020 prescribed the adoption of the Guidelines on Preparation of Auditor's Individual Declaration of Independence and Compliance with Relevant Ethical Requirements to comply with the ISSA/s. Likewise, the COA Code of Conduct and the Integrity Management</p>		<p><b>Criterion Met</b></p>		

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	Program recently established in COA shall also ensure that the auditors observe independence in the conduct of audit				
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13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Decisions are rendered on the basis of available evidence submitted by the parties.</b>	<p><b>General note on Indicators 1 (h): Right to challenge and appeal, and 13: Procurement appeals mechanisms are effective and efficient.</b></p> <p>Indicators 1(h) and 13 are closely linked. They both address the right of 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.</p> <p>Indicator 1(h) requires that the legal framework should provide for the right to appeal a decision , following a first review/challenge (bid protest in this case), to an independent body (appeals body) within specified timescales, including in cases where the procuring entity has failed to issue a decision. Indicator 1(h) provides that the independent body may be an administrative or judicial review body, thus allowing for use of the regular courts. Where there is no specialised administrative/judicial review body and judicial review by the courts is not appellate in nature, as in the case of the Philippines, no further assessment is undertaken undertaken [of the availability and operation of the judicial review procedure]</p> <p>This sub-indicator 13(a)(a) refers to decisions in the context of both challenges and appeals. Decisions relating to challenges are referenced. There are no appeals decisions to be assessed as there is no specialist independent administrative appeal/review entity to make such decisions.</p> <p><b>Challenge: Bid Protest IRR s.55:</b> Where a bidders request for reconsideration is denied by the BAC, the bidder is then entitled to file a bid protest with the Head of the Procuring Entity and must do so within 7 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.</p> <p>GPRA s.56 <b>Resolution of Protests</b>/IRR s.56 provides that the bid protest shall be resolved strictly on the basis of records of the BAC.</p>		<p><b>Criterion not met</b></p> <p>Criterion Not Possible to be assessed due to Lack of Data</p> <p>MAPS team were not able to fully assess the functioning of the existing challenge mechanism at Procuring Entity level.</p> <p>The Assessment Team faced 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 in several occasions. This is due, in particular, to the fact that bid protests/challenges are dealt with in a decentralized manner, at the Procuring Entity level with the Head of Procuring Entity (HoPE) as the decision-making authority. There is no central source of information concerning Bid Protests for 2017 onwards, as the requirement on Procuring Entities to provide statistical information to GPPB-TSO on bid protests was removed from the IRR. See comment and recommendation at Indicator 1(h)(e).</p> <p>• Against the backdrop of lack of reliable information or data, it is not possible to fully assess for Sub-indicators 13(a)(a) and 13(a)(b). The Assessment Team considered that the Assessment Criteria for these sub-indicators are not met</p>	Yes	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.
<b>(b) The first review of the evidence is carried out by the entity specified in the law.</b>	Challenge: The legal framework provides for the initial review to be carried out by the Procuring Entity BAC as specified in GPRA/IRR s.55.		<p><b>Criterion not met</b></p> <p>Criterion Not Possible to be assessed in view of comments at 13(a) (a)</p>	Yes	As at 13(a) (a)
<b>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</b>	Quantitative indicator: There is no specialist independent administrative appeal/review entity and no possibility to respond to a challenge by means of administrative review and no decisions to be assessed for the purposes of this sub-indicator.		<p><b>Criterion not met</b></p> <p>as there is no specialist independent administrative appeal/review entity</p>	Yes	As at 13(a) (a)
// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.					
* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.					

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



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<b>(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.</b>	<p>This sub-indicator 13(a)(b) refers to decisions in the context of both challenges and appeals. Time frames for challenges are assessed. There is no appeals process to be assessed as there is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.</p> <p><b>Challenge</b> <b>Request for reconsideration:</b> IRR s.55.1 requires that prior to filing of a bid protest, a bidder files a request with the BAC for reconsideration of the contested BAC decision. The bidder must file the request for reconsideration within 3 calendar days of written notice or verbal notification of the decision. The BAC has 7 calendar days from receipt of the request to make a decision. In the event that the request for reconsideration is denied, IRR s.55 provides that the bidder is then entitled to file a protest with the Head of the Procuring Entity and must do so within 7 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 and verified by an affidavit. The bidder must also certify under oath various issues concerning the absence or status of other actions. The bidder must pay a non -refundable fee ranging from 0.75% of the ABC for contracts of ₱ 50 million and below up to 0.1% of the ABC for contracts over ₱ 5 billion<sup>182</sup>. 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).</p> <p>GPRA s.56 <b>Resolution of Protests</b>/IRR s.56 provides that the protest shall be resolved strictly on the basis of records of the BAC. The Head of the Procuring Entity must resolve the protest within 7 calendar days of receipt. The decisions of the Head of the Procuring Entity shall be final up to the limit of his contract approving authority. In the case of Local Government Units, the decision of the local chief executive shall be final.</p> <p>GPRA s.57 <b>Non Interruption of the Bidding Process:</b> provides that filing of a protest does not stay or delay the bidding. However, protests must be resolved before any award is made. IRR Appendix 3 Guidelines on Electronic Bidding s.14.3 provides that the Notice of Award shall only be created and issued to the successful bidder if not request for reconsideration or protest is received by or inputted in PhilGEPS.</p>		<b>Criterion Partially Met</b>  <b>Challenge: Criterion met</b> <b>Appeal (review): Criterion not met</b> as there is no specialist independent administrative appeal/review entity	<b>Yes</b>	As at 13(a) (a)
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13(b) Independence and capacity of the appeals body  
The appeals body:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions</b>	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		<b>Criterion not met</b>	<b>Yes</b>	As at 13(a) (a)
<b>(b) does not charge fees that inhibit access by concerned parties</b>	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		<b>Criterion not met</b>	<b>Yes</b>	As at 13(a) (a)
<b>(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available</b>  <i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.</i>	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		<b>Criterion not met</b>	<b>Yes</b>	As at 13(a) (a)
<b>(d) exercises its legal authority to suspend procurement proceedings and impose remedies</b>	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge		<b>Criterion not met</b>	<b>Yes</b>	As at 13(a) (a)

<sup>182</sup> IRR s55.3 includes a table setting out the fees payable.

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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e(e) issues decisions within the time frame specified in the law/regulations*	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)
(f) issues decisions that are binding on all parties	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)
(g) is adequately resourced and staffed to fulfil its functions.	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)

13(c) Decisions of the appeals body

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) based on information relevant to the case.	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)
(b) balanced and unbiased in consideration of the relevant information.* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)
(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)
(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*  // Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralised online portal.*	There is no specialist independent administrative appeal/review entity and no administrative review available in response to a decision on a challenge.		Criterion not met	Yes	As at 13(a) (a)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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14. The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:  
The legal/regulatory framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</b>	<p>RA No. 3019 Anti-Graft and Corrupt Practices Act 1960 defines corrupt practices of public officers (in addition to acts or omissions already penalized by existing law) and includes practices falling with commonly understood definitions of corrupt practices as they apply to public procurement.</p> <p>The Philippines Standard Bidding Documents<sup>183</sup> (PBD), use of which is mandated, includes detailed definitions consistent with legally binding anti-corruption agreements of “corrupt practice”, “fraudulent practice”, “collusive practices”, “coercive practices”, and “obstructive practice”.</p>		<b>Criterion Met</b>		
<b>(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</b>	<p>The principle of accountability of public officers is enshrined in the Article X1 of the Constitution of the Philippines.</p> <p>In the procurement legal framework: GPRA s.3 recognizes governing principles of procurement as follows: transparency, competitiveness, streamlined procurement, system of accountability and public monitoring. IRR s.47 sets out rules on disclosure of relations.</p> <p>Article XXI, Section 65 of RA 9184 provides for the definition of the offenses and provision of penalties for prohibited public procurement practices, such as: (a) Premature disclosure of bids;(b) Unjustifiable delay in the bid process; (c)Undue influence or pressure on any officer or employee of the procuring entity to take a particular action which favors or tends to favor a particular bidder; and (d) Splitting of contract to avoid purchase limits and competitive bidding.</p> <p>The above Section 65 on Offenses and penalties, without prejudice to the provisions of RA 3019 and other penal laws stipulates a penalty of imprisonment of not less than six (6) years and one (1) day, but not more than 15 years.</p> <p>Section 65 of RA 9184 also criminalizes/penalizes collusion between public officials/employees and private individuals. The different form of collusive practices declared unlawful are: (a) Agreement to submit bids with higher amounts to ensure that the contract will be awarded to the pre-arranged lowest bidder; (b) Malicious submission of different bids through two or more persons to create an appearance of competition that does not in fact exist; (c) Agreement between and among bidders which call upon one to refrain from bidding or to withdraw bids already submitted to secure an undue advantage to any one of them; (d) Employment of schemes which tend to restrain the natural rivalry of the parties or operate to suppress competition which produce a result disadvantageous to the public.</p> <p>Likewise penalized under Republic Act No. 9184 are the following fraudulent acts: (a) Submission of false information in the eligibility requirements or falsified documents to influence the outcome of the screening process or conceal such information; (b) Submission of bidding documents that contain false information or falsified documents or concealing such information in the bidding documents to influence the outcome of the public bidding; (c) Use of the name of another or allow another to use one's name for the purpose of participating in a public bidding; and (d) Withdrawal of bid or refusing to accept an award to force the procuring entity to award the contract to another bidder.</p> <p>Anti-graft Laws are contained in Republic Acts and implementing rules, the Penal Codes<sup>184</sup> and Presidential Decrees<sup>185</sup>. RA No. 3019 Anti-Graft and Corrupt Practices Act 1960 defines corrupt practices of public officers (in addition to acts or omissions already penalized by existing law) and also contains anti-graft provisions concerning private individuals, close personal relations and requirements for the provision by every public officer of an annual sworn statement of assets and liabilities.</p>		<b>Criterion Met</b>		

<sup>183</sup> Sampled document: SBD for Works, 5<sup>th</sup> Ed. Part A. General Section 3 Corrupt, Fraudulent, Collusive and Coercive Practices

<sup>184</sup> Including Revised Penal Code (Title II) - Crimes Against the Fundamental Laws of the State and Revised Penal Codes (Title VII) - Crimes Committed by Public Officers. See Department of Justice Anti-Graft Laws web page (accessed 29 February 2020)

<https://www.doj.gov.ph/anti-graft-laws.html>

<sup>185</sup> See Department of Justice Anti-Graft Laws web page (accessed 29 February 2020)

<https://www.doj.gov.ph/anti-graft-laws.html>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	<p>RA No.6173 of 1989<sup>186</sup> sets out the Code of Conduct and Ethical Standards for Public Officials and Employees and contains further detail, including provisions on conflicts of interest. RA No.6173 is supported by Implementing Rules covering matters such as requirements to conduct development programs and training, transparency and access to information.<sup>187</sup></p> <p>The Office of the Ombudsman, has potentially far-reaching powers, including the power to investigate and prosecute any act or omission of any public officer or employee which appears to be illegal, unjust, improper or inefficient and to recommend removal, suspension, demotion, fine, censure or prosecution and ensure compliance<sup>188</sup>. The <i>Sandiganbayan</i> is a special court of the same level of the Court of Appeals and possessing all the inherent powers of a court of justice with jurisdiction including violations of RA No. 3019, RA No. 1379<sup>189</sup> and specified section of the Revised Penal Code<sup>190</sup>. The <i>Sandiganbayan</i>’s jurisdiction covers holders of specified offices including national and local officials above designated grades. For violations committed by officials holding lower positions, the jurisdiction lies with the relevant regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court. Decisions of the Sandiganbayan are accessible on-line.<sup>191</sup></p> <p>GPRA s.65 sets out offenses and penalties applying to public officers who commit listed acts including undue influence or exerting pressure on any member of the BAC, or any officer or employee of the procuring entity to take a particular bidder. GPRA s.65 also sets out offenses and penalties applying to acts committed by private individuals, including any public officer, including collusive behaviour. These offenses and penalties are without prejudice to the provisions of RA No.3018 and other penal laws, civil liability and administrative sanctions.</p>				
<b>(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.</b>	<p>RA No.6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees) and contains further detail, including provisions on conflicts of interest.</p> <p>GPRA s.47 Requires all bidding documents to be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. Failure to comply with this provision is a ground for automatic disqualification. IRR s.48 expands upon these requirements and requires that the sworn affidavit confirms that the bidder is not relate to “the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree.” IRR s.48 also covers conflicts of interest between bidders.</p> <p><b>Cooling off period for former public officials:</b> RA. No.3019 Anti-Graft and Corrupt Practices Act s.3(d) provides that the following act shall constitute an unlawful corrupt practice of any public officer: “Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.”</p>		<b>Criterion Met</b>		

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<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.</b>	GPRA s.47 Requires all bidding documents to be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. IRR s.48 expands upon these requirements and requires that the sworn affidavit confirms that the bidder is not relate to “the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user or implementing unit, and the project consultants, by consanguinity or affinity up to the third civil degree.” IRR s.48 also covers conflicts of interest between		<b>Criterion Partially Met</b>  Definition of “fraudulent practices” in the IRR is not the same as definition included in the definition for the Goods SPDs.		The definitions of misconduct should be consistent across the legal framework to avoid

<sup>186</sup> RA No.6173 Conduct and Ethical Standards for Public Officials and Employees

An Act Establishing a code of conduct and ethical standards for public officials and employees, to uphold the time-honored principle of public office being a public trust, granting incentives and rewards for exemplary service, enumerating prohibited acts and transactions and providing penalties for violations thereof and other purposes

<sup>187</sup> Available from Department of Justice web page (accessed 1 March 2020)  
<https://www.doj.gov.ph/files/rulesRA6713.pdf>

<sup>188</sup> RA No.6770 of 1989 An Act Providing for the functional strength and structure organisation of the Ombudsman and for other purposes (Ombudsman Act)

<sup>189</sup> RA No.1379 An Act Declaring forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer or employee and providing for proceedings therefor

<sup>190</sup> Presidential Decree no. 1606, as amended by RA.No.7975 and RA No.8249 (Revising Presidential Decree No. 1468 Creating a special court to be known as “*Sandiganbayan*” and for other purposes)

<sup>191</sup> Office of the Ombudsman website (accessed 01 March 2020)

<https://www.ombudsman.gov.ph/>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



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	bidders. IRR s.25 mandates the submission by bidders of an Omnibus Sworn Statement in the form prescribed in the Philippine Bidding Documents (PBD). The Omnibus Sworn Statement <sup>192</sup> includes a statement that the bidder” did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity”.		“Obstruction” is included in the SPDs as a misconduct, but it is not defined in the IRR		misinterpretation and ensure legal consistency.
<b>(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.</b>	<p>The Philippines Standard Bidding Documents<sup>193</sup> (PBD) , use of which is mandated, includes detailed definitions consistent with legally binding anti-corruption agreements of “corrupt practice”, “fraudulent practice”, “collusive practices”, “coercive practices”, and “obstructive practice”. The PBD provides that the Procuring Entity shall reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of these practices for the purposes of competing for the contract. Further, the procuring entity will seek to impose the relevant maximum civil, administrative and/or criminal penalties. These definitions and provision for rejection of the bid are included in the General Conditions of Contract incorporated into the PBD, together with provision on contract termination for unlawful acts, with particular reference to corrupt, fraudulent and coercive practices.</p> <p>The PBD also include definitions of bidder’s conflict of interest. Under the provisions of the PBD a Bidder is responsible for ensuring, amongst other things, that it is not blacklisted or debarred, and has not made unlawful payments, that it complies with disclosure provisions under GPRA/IRR s.47 (conflict of interest) in relation to other provisions under RA No.3019 Anti-Graft Act.</p>		<b>Criterion Met</b>		

14(c) Effective sanctions and enforcement systems

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.</b>	<p>There is an Online Blacklisting Portal (OBP) maintained by the ministerial authority of the GPPB and its Technical Support Office which is limited only to the maintenance of the OBP, 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. Questions and clarifications must be directed towards the PE who posted the blacklisting order<sup>194</sup>.</p> <p>Based on the website of GPPB-TSO, only the procuring entity’s (PE) authorized representative can register in the OBP. PE's authorized representative (also known as Official User), is the duly designated personnel by the Head of the Procuring Entity, through an Office Order or any equivalent document, upon the recommendation of the Bids and Awards Committee taking into consideration the following qualifications: (i)He/she has knowledge and familiarity with the blacklisting procedures; (ii) Holding a plantilla position in the PE; (iii)He/she has no pending case involving moral turpitude and violations enumerated under Section 65 of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR);(iv)He/she is technically capable to use an online system or program; and (v) He/she is known to embody honesty and integrity. The PE complies strictly with the rules and procedures in accordance with GPPB Resolution 14-2020 and GPPB Circular 03-2020.The PE reads and agrees with the Terms and Conditions of the system and the Blacklisting Guidelines prior to use/access of the OBP.</p>		<b>Criterion Met</b>		
<b>(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.</b>	Based on feedback from Ombudsman 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. The failure to report acrime involving public procurement is not specifically sanctioned and declared unlawful by Philippine legislation. There is no evidence on systematic reporting and follow up by enforcement authorities on allegation of procurement related fraud and corruption		<b>Criterion Not Met</b>		A system to be instituted for reporting and strengthening the effectiveness of sanction and enforcement system
<b>(c) There is a system for suspension/debarment that ensures due process and is consistently applied.</b>	There is no evidence that due process is followed as action is taken Procuring Entities (PEs) without any control of an independent authority (other than PEs) responsible for suspension and debarment		<b>Criterion Not Met</b>		The system of suspension and debarment to consider due process by control of an independent authority
<b>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*</b>	<p>Based on the entries at OBP portal there are 57 entities blacklisted on grounds that include, poor performance, abandonment of contract, non-compliance with technical specification, submission of eligibility requirements containing false information or falsified document, failure by the contractor to fully and faithfully comply with its obligations, termination due to default<sup>195</sup>.</p> <p>There is no data government officials found guilty of fraud and corruption in public procurement</p>	<p>Please see data on the left</p>	<b>Criterion Partially Met</b>  No data on government officials found guilty of fraud and corruption in public procurement		A system to be instituted to follow up cases government officials found guilty of fraud and corruption in public procurement

<sup>192</sup> <https://www.gppb.gov.ph/issuances/Resolutions/22-2013.pdf>

<sup>193</sup> Sampled document: SBD for Works, 5<sup>th</sup> Ed. Part A. General Section 3 Corrupt, Fraudulent, Collusive and Coercive Practices

<sup>194</sup> [Government Procurement Policy Board - Technical Support Office \(gppb.gov.ph\)](#) ( accessed on May 04, 2021)

<sup>195</sup> [Government Procurement Policy Board - Technical Support Office \(gppb.gov.ph\)](#) ( accessed on May 04, 2021)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):</b></p> <p>- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory function/anti-corruption body.</p> <p>- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Source: Normative/regulatory function/anti-corruption body.</p> <p>- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey.</p>	<p>In response to Survey Question to private sector participants on Dec 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%) stated “Yes”</p>				
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14(d) Anti-corruption framework and integrity training

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<p><b>(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*</b></p> <p><b>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):</b></p> <p>- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.</p>	<p>The 1987 Constitution envisions the Ombudsman as an independent constitutional authority in government with full powers and authority to see to it that actions of public officials and employees conform to the standards of constitution. The Ombudsman Act of 1989 operationalize the role of Ombudsman to lead the anti-corruption agency of the government with effective and active watchdog to discharge functions of investigation, enforcement, prosecution and public assistance</p> <p>As stated under 14(a) (a) above, In the procurement legal framework: GPRA s.3 recognizes governing principles of procurement as follows: transparency, competitiveness, streamlined procurement, system of accountability and public monitoring. IRR s.47 sets out rules on disclosure of relations.</p> <p>Anti-graft Laws are contained in Republic Acts and implementing rules, the Penal Codes<sup>196</sup> and Presidential Decrees<sup>197</sup>. RA No. 3019 Anti-Graft and Corrupt Practices Act 1960 defines corrupt practices of public officers (in addition to acts or omissions already penalized by existing law) and also contains anti-graft provisions concerning private individuals, close personal relations and requirements for the provision by every public officer of an annual sworn statement of assets and liabilities.</p> <p>Without prejudice to the provisions of RA No 3019 Anti-Graft and Corrupt Practices Act 1960, Section 65 of RA 9184 under Article XXI “Penal Clause” defines Offences and Penalties, list conditions where any offense if committed could lead to penalty of imprisonment of not less than six (6) years and one (1) day and not more than fifteen (15) years. These offenses include situations where: “(1) Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents. (2) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the IRR. (3) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular action which favors, or tends to favor a particular bidder. (4) Splitting of contracts which exceed procedural purchase limits and competitive bidding. (5) When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act. When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense. In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the Government”</p>		<p><b>Criterion Partially Met</b></p> <p>No data is available how these provisions of offenses, penalties and civil liabilities were handled in practice.</p> <p>Survey results points towards improving enforcement</p>		<p>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</p>

<sup>196</sup> Including Revised Penal Code (Title II) - Crimes Against the Fundamental Laws of the State and Revised Penal Codes (Title VII) - Crimes Committed by Public Officers. See Department of Justice Anti-Graft Laws web page (accessed 29 February 2020)

<https://www.doj.gov.ph/anti-graft-laws.html>

<sup>197</sup> See Department of Justice Anti-Graft Laws web page (accessed 29 February 2020)

<https://www.doj.gov.ph/anti-graft-laws.html>

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

	<p>Penalties are also stipulated for Private individuals who commit as specified like collusion including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years.</p> <p>These penalties cover temporary or perpetual disqualification from public offices and permanent disqualification from transacting business with the Government</p> <p>Civil Liability in case of conviction is stipulated ARTICLE XXII CIVIL LIABILITY SEC. 67 of RA 9184 “ Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under this Act or Republic Act No. 3019 shall carry with it civil liability, which may either consist of restitution Republic Act No. 9184 23 for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts”</p> <p>Based on feedback from 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 SILAK<sup>198</sup> 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: (i) the crafting of ways to introduce courses on ethics as elective subjects to reinforce the academic institutions role on values formation; (ii). the push for programs that can be developed in coupling professional excellence and values-driven public service; (iii) <u>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</u>; (iv). The push for awareness on how corruption impacts gender discourse and how it possibly curtails the rights of our women and other vulnerable sectors; and (v) advocating for innovative &amp; emerging trends that the new breed of leaders can adopt in trying to curb corruption in local governments<sup>199</sup></p> <p><b>Feedback from Private Sector Participants on Dec 12, 2019 “Measures to Reduce Corruption in Public Procurement, about 80% of participants expressed need for improving among other things in areas identified as “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”, “Dedicated reporting channel to report misconduct, “Declaration forms for suppliers to affirm their compliance with anti-corruption rules”, Strong enforcement system” to be somewhat effective or very effective<sup>200</sup></b></p>				
<b>(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.</b>	<p>The Office of Ombudsman has reported a mechanism of Integrity Development Review which was instituted in 2002 <sup>201</sup> However there are no further IDR beyond the year 2006 and it requires reviving the system of identification of corruption risk and to take action for mitigation</p>		<b>Criterion Partially Met</b> There is no effective mechanism currently in place for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.		<p>To revive system of Integrity Development Review (IDR), as task carried out till 2006 The IDR, to assist the Office of the Ombudsman, together with its key partners in the corruption prevention program of the government,</p>

<sup>198</sup> A Public Accountability Summit (Best Practices in Anti-Corruption) in observance of the International Anti-Corruption Day December 9, 2019

<sup>199</sup> Office of the Ombudsman- Annual Report 2019

<sup>200</sup> Private Sector Survey – Dec 12, 2019

<sup>201</sup> [Integrity Development Review Report | Office of the Ombudsman](#)

	<div>Overview of the Project</div> <div>Integrity Development Review (IDR) is a preventive measure against corruption. It aims to build institutional foundations to prevent corruption before it occurs. It entails a systematic diagnosis of the corruption resistance mechanisms in place in an agency and its vulnerabilities to corruption. The process is undertaken with the use of two major tools: corruption resistance review and corruption vulnerability assessment. A summary of these tools is shown in the table that follows.</div> <div>Table 1. Summary of Tools used in IDR</div> <table><tr><th>Tools/Methodologies</th><th>Objective</th></tr><tr><td>Tool 1: Corruption Resistance Review (CRR)<ul style="list-style-type: none"><li>Integrity Development Assessment</li><li>Survey of Employees</li></ul></td><td><ul style="list-style-type: none"><li>Self-assess systems integrity, review relevant policies and procedures</li><li>Assess deployment of integrity building measures and generate feedback from employees</li></ul></td></tr><tr><td>Tool 2: Corruption Vulnerability Assessment<ul style="list-style-type: none"><li>Process Mapping</li><li>Risk Assessment</li><li>Evaluation of controls and safeguard</li></ul></td><td><ul style="list-style-type: none"><li>Understand agency procedures</li><li>Identify factors that can induce deceit, malfeasance, or abuse of power or position for private gain.</li><li>Assess the adequacy of means in addressing risks</li></ul></td></tr></table> <div>The IDR builds on the Corruption Resistance Review (CRR) approach developed by the Independent Commission Against Corruption (ICAC) of New South Wales and the Corruption Vulnerability Assessment (CVA) tool developed by the Development Academy of the Philippines. The CRR helps agencies assess their level of corruption resistance and progressively develop and implement corruption prevention measures to meet certain standards at every level for organizational integrity. Patterned after the vulnerability assessment guidelines of the US Office of Budget and Management, the CVA determines the susceptibility of agency systems to corruption and adequacy of safeguards to forestall wrongdoings. With the support of the World Bank, CVA was pilot-tested in the Department of Budget and Management in 2002.</div> <div>In its effort to improve governance in the public sector, the leadership of the Department of Budget and Management and the Office of the Ombudsman initiated Integrity Development Review also known as Pursuing Reforms through Integrity Development (PRIDE). The Development Academy of the Philippines, in collaboration with the United States Agency for International Development undertook the review of two agencies: the Office of the Ombudsman and the Department of Education with a view to a wider application of the IDR in other agencies in the future. The project proceeded in five stages from November 2003 to April 2004. The tools and methodologies discussed above, as well as this handbook, are outputs of the project. Twenty-six assessors were selected, trained and tasked to conduct the IDR in the two pilot agencies. The IDR, for this second cycle, is intended to assist the Office of the Ombudsman, together with its key partners in the corruption prevention program of the government, namely the Presidential Anti-Graft Commission (PAGC), Civil Service Commission (CSC), Commission on Audit (COA), Department of Budget and Management (DBM) and the Department of Education (DepEd, a pilot IDR line agency) in establishing a culture of professionalism and integrity in government, raising consciousness on corruption prevention, and providing practical corruption prevention tools to improve organizational and systems integrity in public sector agencies. The Development Academy of the Philippines is undertaking the review of selected agencies. EC-OMB Corruption Prevention Project Integrity Development Review of the Department of Public Works and Highways Development Academy of the Philippines Page 2 Final Report (Draft) as of 24 August 2006 Under the European Commission – Office of the Ombudsman Corruption Prevention Project, sixteen (16) public sector agencies are scheduled to undergo the IDR, five of which started on October 2005. These are the Department of Public Works and Highways (DPWH), Bureau of Internal Revenue (BIR), Bureau of Customs (BOC), Philippine National Police (PNP) and the Land Transportation Office (LTO)</div> <div>There are reports available on the website of Ombudsman where IDR of 16 agencies are reported which covers the following aspects: The PRIDE Assessment Team used a two-stage methodology in implementing the project. Stage One is Corruption Resistance Review (CRR), which has three (3) key tools, namely, Integrity Development Assessment (IDA), Indicators Research and Survey of Employees. Stage Two is Corruption Vulnerability Assessment (CVA), which uses the Site Visit Forms and Risk Assessment Worksheets. The IDA is a guided self-assessment tool used in reviewing an agency’s performance in the following dimensions of integrity: 1. Leadership 2. Code of Conduct 3. Gifts and Benefits Policy 4. Human Resource Management 5. Performance Management 6. Procurement Management 7. Financial Management 8. Whistle-blowing, Internal Reporting and Investigation 9. Corruption Risk Management 10. Interface with the External Environment</div> <div>All the above reports were completed in 2006-2007. No update on action taken and no further reports are available</div>	Tools/Methodologies	Objective	Tool 1: Corruption Resistance Review (CRR) <ul style="list-style-type: none"><li>Integrity Development Assessment</li><li>Survey of Employees</li></ul>	<ul style="list-style-type: none"><li>Self-assess systems integrity, review relevant policies and procedures</li><li>Assess deployment of integrity building measures and generate feedback from employees</li></ul>	Tool 2: Corruption Vulnerability Assessment <ul style="list-style-type: none"><li>Process Mapping</li><li>Risk Assessment</li><li>Evaluation of controls and safeguard</li></ul>	<ul style="list-style-type: none"><li>Understand agency procedures</li><li>Identify factors that can induce deceit, malfeasance, or abuse of power or position for private gain.</li><li>Assess the adequacy of means in addressing risks</li></ul>				
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Tool 2: Corruption Vulnerability Assessment <ul style="list-style-type: none"><li>Process Mapping</li><li>Risk Assessment</li><li>Evaluation of controls and safeguard</li></ul>	<ul style="list-style-type: none"><li>Understand agency procedures</li><li>Identify factors that can induce deceit, malfeasance, or abuse of power or position for private gain.</li><li>Assess the adequacy of means in addressing risks</li></ul>										
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	No statistics is available on procurement related cases on fraud and corruption		Criterion Not Met		To compile the statistics on corruption related legal proceedings and convictions and publish it annually						

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.



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<b>(d) Special measures are in place for the detection and prevention of corruption associated with procurement.</b>	No special measures are in place for detection and prevention of corruption associated with procurement		<b>Criterion Not Met</b>		Complaint and Case Monitoring System of Ombudsman to identify cases on procurement-related corruption
<b>(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</b>	There is no special integrity training for procurement workforce		<b>Criterion Not Met</b>		To organize special integrity training on procurement related fraud and corruption

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
<b>(a) There are strong and credible civil society organisations that exercise social audit and control.</b>	No evidence – refer Indicator 11 and Indicator 9  Based on feedback from Ombudsman “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		<b>Criterion Not met</b>  Despite presence of CSOs There is no system where observers could alert authorities like Ombudsman on any lack of compliance or irregularity and no active engagement of CSO in oversight and social control in public procurement		Need for collaboration between CSOs and Ombudsman to improve transparency and integrity in public procurement
<b>(b) There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.</b>	The Office of Ombudsman has envisaged use of A CORRUPTION PREVENTION UNIT (CPU) that “ refers to any formal and non-partisan organization from the private sector and civil society that is duly accredited by the Office of the Ombudsman to undertake corruption prevention initiatives. Purpose. As a partnership mechanism, the network of corruption prevention units aims to assist and support the Office of the Ombudsman in the implementation of its corruption prevention programs. Scope of Functions. In coordination with the Office of the Ombudsman, a CPU shall undertake the following functions: a. To facilitate public information, education and capacity-building on accountability, transparency and integrity in public service; b. To provide feedback on efficiency, red tape, mismanagement, fraud and corruption in the government, and report any information that could determine the causes thereof; c. To promote and advocate high standards of ethics and efficiency in public administration; or d. To mobilize support for reforms in public service delivery” and “Any formal and non-partisan organization from the private sector and civil society, of good standing, and with at least three (3) years involvement in anti-corruption work may file a petition for accreditation as a corruption prevention unit” <sup>202</sup>  However, there is no evidence of any collaboration between CSO and Ombudsman and meaningful role of CSO as third-party monitor and enabling environment promoted by the government		<b>Criterion Not Met</b>  However, there is no evidence of any collaboration between CSO and Ombudsman and meaningful role of CSO as third- party monitor and enabling environment promoted by the government		Enabling environment required so that CSO could act as third-party monitor in procurement process
<b>(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*</b>  <b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):</b> - number of domestic civil society organisations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement. <i>Source: Survey/interviews.</i>	No evidence on how CPU provision is used as third-party monitor in practice for procurement and contract implementation. As per CPAR of 2012 and “the Coalition Against Corruption, an alliance of the academe, business, CSOs and the Catholic Church in coordination with the Partnership of Transparency Fund also made efforts to engage civil society groups in setting up public procurement monitors in the national and local levels”  Based on feedback sought by the Assessment Team from a list of 9 CSOs (refer indicator 11), 77.8% of participants stated that CSOs are permitted or encouraged to act as observers in procurement proceedings. However, based on study carried out by ADB in 2012 it was noted that there was dwindling of CSO engagement over a period of time and in actual operations 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.  The Assessment Team with support from GPPB-TSO as part of private sector survey, dealt with seeking feedback from participants on Dec 12, 2019 in Manila. in response to question “Are you or your company aware of any CSO actively providing oversight or social control in public procurement 71 % (24 out of 34) stated “NO”. Obstacles to CSO participation was identified cause of delay, lack of technical or procurement knowledge or some officials are opposed to idea of involvement of CSO	Please see data on the left column	<b>Criterion Partially met</b>  Based on private sector survey 71% of the participants stated that CSOs are not providing social control in public procurement.		As indicated at Indicator 11, 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 process and in contract implementation through the use of digital platform, taking post-COVID-19 situation as an opportunity.
<b>(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</b>	CPAR 2012 mentions special initiatives like “Unified Code of Conduct for Business of the Integrity Initiative- a campaign led by the private sector that aims to promote common ethical standards among various sectors of society – some businesses have agreed to avoid any involvement of procurement related practices”  But there is no evidence of internal compliance measures by private sector even now	Please see data on the left column	<b>Criterion Not Met</b>  No data if internal compliance measures are in place even now		To discuss with private sector on ways to institute internal compliance measures

<sup>202</sup> [cpu primer final- Philippines.pdf](#) (accessed on May 04, 2021)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.					
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14(f) Secure mechanism for reporting prohibited practices or unethical behaviour

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.	Ombudsman has provided a forum for filing complaint <sup>203</sup> One of the systems in place to encourage reporting mechanism is the use of the "hotline" in the form of telephone call or through email. This is to provide channels of communication to the public who wishes to report any irregularities to initiate the conduct of an investigation. The Office of the Ombudsman uses a hotline and even accepting anonymous complaint to serve as basis for a preliminary evaluation. The database of the Office of the Ombudsman however has yet to provide a system that would capture the statistics of the number of complaints received through the hotline, and how many of those have advanced to preliminary investigation and prosecution of complaints to determine the effectivity of the hotline system. This is one area where improvement in the existing database system of the Office of the Ombudsman may be introduced.  No data on enforcement		<b>Criterion Partially Met</b> The database of the Office of the Ombudsman however has yet to provide a system that would capture the statistics of the number of complaints received through the hotline, and how many of those have advanced to preliminary investigation and prosecution of complaints to determine the effectivity of the hotline system  Not data on enforcement		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
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	The Philippines has passed RA No. 6981 ( <i>The Witness Protection, Security and Benefit Act</i> ) in 1991. This law seeks to encourage a person who has witnessed or has knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals and from economic dislocation.		<b>Criterion Partially Met</b>  No evidence or data on protection of whistle blower		To track if whistle blower protection system is used effectively in the existing database system of the Office of the Ombudsman and report published on compliance while retaining the confidentiality of specific cases
(c) There is a functioning system that serves to follow up on disclosures.	No functioning system on follow up of disclosure		<b>Criterion Not Met</b> There is no reporting intake system related to procurement cases indicating number of investigations conducted		As at 14(f) (a) above

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
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<sup>203</sup> 3 – Filing of Complaint | Office of the Ombudsman

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<p><b>(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):</b> - share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function.</p>	<p>RA No.6173 of 1989<sup>204</sup> sets out the Code of Conduct and Ethical Standards for Public Officials and Employees and contains further detail, including provisions on conflicts of interest. RA No.6173 is supported by Implementing Rules covering matters such as requirements to conduct development programs and training, transparency and access to information.<sup>205</sup></p> <p>However, there is no requirement of a mandatory code of conduct or ethics specifically for procurement</p>		<p><b>Criterion Partially met</b></p> <p>No separate particular provisions for those involved in public financial management, including procurement</p>		<p>Separate code of conduct or ethics for government officials to be instituted with particular provisions for those involved in public financial management, including procurement</p>
<p><b>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*</b></p> <p><b>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):</b> - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.</p>	<p>In accordance with Anti- Graft and Corrupt Practices Act (RA 3019) Section 7. Statement of assets and liabilities. — “Every public officer, within thirty days after assuming office, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of department or Chief of an independent office, with the Office of the President, a true, detailed sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year. (As amended by RA3047, PD 677, January 24, 1978)”<sup>206</sup></p> <p>Accountability is enforced through RA No.6173 Conduct and Ethical Standards for Public Officials and Employees which is an Act Establishing a code of conduct and ethical standards for public officials and employees, to uphold the time-honored principle of public office being a public trust, granting incentives and rewards for exemplary service, enumerating prohibited acts and transactions and providing penalties for violations thereof and other purposes</p> <p>No Statistical Details are available related to procurement.</p>		<p><b>Criterion Partially Met</b></p> <p>No statistical details are available related to procurement nor a system available to track accountability of decision making</p>		<p>Need for instituting system to track accountability for decision making, and specific financial disclosure requirements for officials involved in procurement</p>
<p><b>(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</b></p>	<p>RA No.6173 s.4 requires every public official and employee to observe the specified standards of personal conduct in the discharge and execution of public duties. RA No.6173 s.5 sets out the obligations of all public officials and employees in the performance of their duties. Prohibited acts and transactions under the Code of conduct are listed in s.7, with penalties for violation set out in s.11</p> <p>An important preventive measure under Section 24 of Republic Act No. 6770 (The Ombudsman Act of 1989) is the power to preventively suspend any public official or employee pending an investigation, if the evidence of guilt is strong, and any of the following conditions concur: (a) the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the public official or employee's continued stay in office may prejudice the case filed against him.</p>		<p><b>Criterion Met</b></p>		

<sup>204</sup> RA No.6173 Conduct and Ethical Standards for Public Officials and Employees

An Act Establishing a code of conduct and ethical standards for public officials and employees, to uphold the time-honored principle of public office being a public trust, granting incentives and rewards for exemplary service, enumerating prohibited acts and transactions and providing penalties for violations thereof and other purposes

<sup>205</sup> Available from Department of Justice web page (accessed 1 March 2020)  
<https://www.doj.gov.ph/files/rulesRA6713.pdf>

<sup>206</sup> [Republic Act 3019.doc \(ombudsman.gov.ph\)](#) (Accessed on May 04, 2021)

\*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.	No details are available		<b>Criterion Not Met</b> No data or details related to procurement		Need for regular training and awareness on procurement related code of conduct and disclosure for officials involved in procurement
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.	No details are available if COI and financial disclosure forms are used by decision makers		<b>Criterion Not Met</b> No data or details related to procurement		Need for tracking COI statements financial disclosure forms and information on beneficial ownership and used by decision makers to prevent corruption risks throughout the public procurement cycle.