MAPS | Methodology for Assessing Procurement Systems

# ASSESSMENT OF RWANDA'S PUBLIC PROCUREMENT SYSTEM

2022

MAPS APPROVED

# Rwanda

# Assessment of the Public Procurement System

## Volume I - Main Report

**Methodology for Assessing Procurement Systems (MAPS)**

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# Acronyms

| | |
|---|---|
| AfDB | African Development Bank |
| AGOA | Africa Growth and Opportunity Act |
| ALAC | Advocacy and Legal Advice Centers |
| AU | African Union |
| BI | Business Intelligence |
| BoD | Board of Directors |
| BPAR | Bank Procurement Assessment Report |
| BPS | Borrower Procurement System |
| CAS | Country Assistance Strategy |
| CEPGL | *Communauté Économique des Pays des Grand Lacs* (Economic Community of the Great Lakes Countries) |
| COMESA | Common Market for Eastern and Southern Africa |
| CPIA | Country Policy and Institutional Assessment |
| CPIP | Country Procurement Issues Paper |
| CSO | Civil Society Organization |
| DAC | Development Assistance Committee |
| DFID | UK Department for International Development |
| ECCAS | Economic Community of Central African States |
| e-GP | Electronic Government Procurement or e- Procurement |
| EAC | East African Community |
| EPA | Economic Partnership Agreement |
| GDP | Gross Domestic Product |
| GoR | Government of Rwanda |
| ICT | Information and Communication Technology |
| IFMIS | Integrated Financial Management Information System |
| IRP | Independent Review Panel (or National Independent Review Panel) |
| IRT | International Restricted Tender |
| KFW | *Kreditanstalt für Wiederaufbau* |
| MAPS | Methodology for Assessing Procurement Systems |
| MASC | MAPS Assessment Steering Committee |
| MDB | Multilateral Development Bank |
| MINECOFIN | Ministry of Finance and Economic Planning |
| MSMEs | Micro, Small, and Medium Enterprises |

| | |
|---|---|
| MTEF | Medium-Term Expenditure Framework |
| NIRP | National Independent Review Panel ( or Independent Review Panel) |
| NOT | National Open Competitive Tender |
| NST | National Strategy for Transformation |
| OAG | Office of the Auditor General |
| OCDS | Open Contracting Data Standards |
| ODA | Official Development Assistance |
| OECD | Organisation for Economic Co-operation and Development |
| PAC | Public Accountability Committee |
| PE | Procuring Entity |
| PEFA | Public Expenditure and Financial Accountability |
| PFM | Public Financial Management |
| PIC | Public Investment Committee |
| PPL | Public Procurement Law |
| PP Regulation | Public Procurement Regulation |
| PPP | Public Private Partnership |
| PSF | Private Sector Federation |
| RFQ | Request for Quotation |
| RGB | Rwanda Governance Board |
| RPPA | Rwanda Public Procurement Authority |
| SADC | South African Development Committee |
| SAI | Supreme Audit Institution |
| SBD | Standard Bidding Documents |
| SCD | Systematic Country Diagnostic |
| SDG | Sustainable Development Goal |
| SME | Small, Medium Enterprises |
| SOE | State-Owned Enterprise |
| SPP | Sustainable Public Procurement |
| TI | Transparency International |
| UCS | Use of Country System |
| UNCITRAL | United Nations Commission on International Trade Law |
| VNR | Voluntary National Review |
| WDR | World Development Report |

Currency Unit = Rwanda Franc (RWF); 1 USD= RWF 905.4 (Exchange rate as of June 18, 2018); Fiscal Year: July 1 – June 30

# Chapter 1: Introduction

## Strategic Context and Rationale of the Assessment

1. Public procurement of a country is a crucial component of good governance and sustainable economies with inclusive growth and one of the key elements to the effective and efficient functioning of the public sector and service delivery. It underpins the performance of all sectors in public services delivery at different levels of government and thus to the development of the country. Government expenditure on public procurement accounts for a sizeable part of economic activity. Governments around the world spend approximately USD 9.5 trillion in public contracts every year, which could constitute 12–20 percent of a country's GDP.[1] In Rwanda, the share of government spending as a percentage of gross domestic product (GDP), in 2017, accounts to 15.22 percent[2] (*Source:* The World Bank, TheGlobalEconomy.com). With GDP of USD 9.1 billion[3] in 2017, and a significant part of government expenditure requiring procurement of goods, works, and services, the estimated value of public procurement in Rwanda could be in the range of USD 1 billion in 2017/18 covering all sectors of the economy.

2. The 1994 genocide was unprecedented and left dysfunctional institutions, an economy in decline, and a divided society in Rwanda. However, in December 1994, the government endorsed an economic agenda for a 'New Rwanda' that embodied commitment to a market economy with strong private sector presence. In 2000, the government embarked on a multiphase decentralization initiative to foster reconciliation of the Rwandan people, engage citizens in participatory planning and decision-making, promote accountability, and enhance service delivery.

3. Based on a joint publication of the Government of Rwanda (GoR) and the World Bank,[4] as summarized in the following paragraphs, Rwanda's future aspirations are extremely ambitious. These aspirations are reflected in the country's Vision 2020 and Vision 2050, currently under preparation, as also in their development and poverty reduction strategies document, 7 Years Government Programme: National Strategy for Transformation (NST 1) 2017 – 2024, Vision 2020 (with its targets adjusted in 2011) sets the country on an ambitious course, and achieving middle-income status and reducing the poverty rate to 20 percent by 2020 were among its key objectives.

4. Vision 2020 identified six pillars to achieve its goals: (a) good governance and a capable state; (b) human resource development and a knowledge-based economy; (c) a private sector-led economy; (d) infrastructure development; (e) productive and market-oriented agriculture; and (f) regional and international economic integration. Gender equality, environmental sustainability, and long-term commitment to science and technology were the cross-cutting themes to support the six pillars. All these areas are vitally linked to the public procurement system of the country.

5. Vision 2050 aspires to take Rwanda to upper-middle-income-country status by 2035 and high-income status by 2050, with the intention of providing productive economic opportunities and higher-quality living standards to all Rwandan citizens (GoR 2017). These aspirations translate into double-digit

[1] MAPS 2018.
[2] https://www.theglobaleconomy.com/rankings/Government_size/Africa/
[3] World Bank Data 2017.
[4] Future Drivers of Growth in Rwanda, World Bank Group and Government of Rwanda (2019)

average annual growth rates (more than 10 percent in per capita terms), requiring Rwanda to grow faster than China or the Republic of Korea at similar stages of their development.

6. Rwanda's Systematic Country Diagnostic (SCD)[5] in its prioritization and policy recommendations has collated five groups or 'pathways' which are based on 28 constraints, for Rwanda's progress toward the twin goals of reducing extreme poverty and increasing shared prosperity. The pathways are (a) Investing in People; (b) Letting Markets Play a Bigger Role; (c) Investing Sustainably for Development; (d) Building Resilience; and (e) Strengthening State Efficiency and Accountability.

7. Large scale public investments over the years have contributed to improved access to water and sanitation, road transport, electricity, and information and communication technology (ICT), and housing conditions. However, unpaved rural and feeder roads remain in poor condition, impeding farmer's connection to input and output markets, while high cost and low reliability of energy is a persistent hurdle to enterprise development.

8. From historical perspectives, in 2010, the government performance in advancing the private sector agenda was recognized by the World Bank in its 2010 Doing Business Report that identified Rwanda as the top reformer worldwide jumping 76 places in ease of doing business, from 143 to 67, by fostering improved governance, access to credit, and streamlined regulation for the private sector.

9. Rwanda Public Procurement Law (Law No. 12 of 2007) was passed in March 2007. The GoR's legal framework is based on the United Nations Commission on International Trade Law (UNCITRAL) Public Procurement model law and covers all aspects of public procurement at all levels of the government public procurement system of the GoR. The law generally complies with the objectives of transparency, competition, and fairness. The institutional structure of the public procurement system in Rwanda has independent regulatory bodies, namely, the Rwanda Public Procurement Authority (RPPA) and Complaint Review Body (Independent Review Panel, IRP).

10. Based on a report on use of country system (UCS) by the World Bank (updated June 2010), which was based on the Organisation for Economic Co-operation and Development/Development Assistance Committee (OECD/DAC) benchmarking tool, it was considered that the law was generally consistent with international standards, but one of the key gaps identified in the UCS assessment was the RPPA combining both transaction and regulatory functions, which required devolution of the transaction function to procuring entities (PEs) including through capacity-building strategies and professionalization of the procurement function. This recommendation was implemented.

11. The Rwanda Public Procurement Law was revised in 2013 (Law No. 5 of 2013). The law was revised again in August 2018 (No 62/2018) to incorporate the e-procurement system and to consolidate the law into one Public Procurement Law (PPL) by including all amendments made so far.

12. The latest '2019 Doing Business Report' ranks Rwanda 29 out of 190 countries (ranking is 38 out of 190 as per the 2020 report) for the ease of establishing and running a business (World Bank Group 2019). This ranking is despite the private sector still maintaining a relatively limited presence, overwhelmingly dominated with small firms that lack the scale of economies critical for competitiveness

[5] Rwanda: Systematic Country Diagnostic, The World Bank (June 25, 2019)

and having limited export presence (World Bank Group; Government of Rwanda 2019). The high costs of energy, finance, and trade logistics and low returns have been important contributing factors.[6]

13. The GoR is moving toward modernizing its procurement function to improve compliance, efficiency, transparency, fair competition, value for money, and controls in public procurement. Accordingly, Rwanda has in place a policy for modernization and professionalization of the procurement function to help achieve above objectives. The GoR has developed and rolled out an e-procurement system across the entire country, from the national level to districts, which is the first of its kind in the Africa region. The electronic government procurement (e-GP) system is rolled out across all agencies, at all levels, covering all procurement categories and covering the end-to-end procurement process from July 1, 2017. Further, Rwanda has enacted a law to establish a 'Procurement Professionals Association' to maintain professional standards and certification of procurement professionals.

14. Despite having a robust legal framework and institutions, there are challenges, and public procurement could do much better in terms of economy and efficiency to achieve value for money. Weak implementation capacity at the subnational level results in lack of compliance, efficiency, and value for money, and remains a challenge, due to the capacity constraint.

15. As per findings of the RPPA, reflected in their Annual Activity Reports, there are several non-compliances in the procurement process and contract implementation identified in the past which, among others, includes lack of clear technical specifications, lengthy bidding process, non-permissible price negotiations, use of discriminatory criteria for open tenders, poor record keeping, excessive delays in contract execution, and resolution of issues with contractors. As per the Auditor General's Report ending June 30, 2018,[7] there were persistent cases of delayed and abandoned contracts. Similarly, there are areas within the e-GP system and the Procurement Professional Association that need improvements.

16. Following the development and rollout of the e-GP system across all government PEs at national and subnational levels, there is a need for continuous system stabilization and enhancement with technological advancements. Accordingly, enhancing the system with change/advancement of technology, introducing important e-GP features, such as Open Contracting Data Standards (OCDS), infographics, data analytics, and geo-tagging, is necessary. To this end, the Methodology for Assessing Procurement Systems (MAPS) can contribute to identify areas that need enhancement and problem areas that need to be addressed. In addition, MAPS can identify provisions of the legal framework that need to be amended for consistency and effective implementation of the e-GP and data analytics.

17. Improved demand-side governance by better disclosure of procurement data is another area where improvement could bring accountability, transparency, and improved service delivery.

18. The legal framework mandates maintenance of procurement professional standards and certification of procurement professionals. The Rwanda Association of procurement professionals is established by Law N°011/2016 of 02/05/2016 – 'Law establishing the Association of procurement professionals and determining its organization and functioning'. The professional body is formed, in the thought of the government, as one of the procurement reforms pillars. The professional body is in its infancy and has many problems to resolve before it can stand as an independent body to discharge its

[6] Future Drivers of Growth in Rwanda (2019)

[7] Report of the Auditor General for State Finances (2018) tabled to the Parliament on April 29, 2019

mandate. Currently, the association does not have a full-time manager due to resource constraints and thus is relying on the government to undertake its duties, compromising its independence.

19. The professional body is not fully independent at this stage as it is receiving finance/budget from the Ministry of Finance and Economic Planning (MINECOFIN) through the RPPA under an operating and facilitation budget code. The little contribution from members could only cover the purchase of computers. The law establishing the procurement professional body has a provision requiring procurement professionals to be a member of the professional association to be eligible for hiring by public institutions. As a result, 99 percent of the current members are from the public institutions. Currently there are about 400 members. The list is available on the RPPA website. Perception of the Rwanda procurement professional body toward the Rwanda public procurement legal framework and practice is positive. The association has the perception that the public procurement framework and practice is improving from with time and on the right track. General meetings of the association are planned in the near future, and a strategic plan on how to become financially self-sufficient and thus an independent body is at the top of the agenda. Some proposals on how to become financially independent, to be discussed in an upcoming forum, include (a) increasing membership fees, (b) organizing trainings, (c) issuing certificates (there is a plan to commence issuing membership certificates), (d) engaging in study services, and (e) receiving support from development partners (DPs).

20. Reportedly the number of procurement complaints varied over a period of time, but there was an increase from 42 appeals in 2016–17 to 68 appeals in 2017–18 as per the National Independent Review Panel Annual Activity Report. The professional associations believe that this is because of awareness increased through media coverage and the Public Accountability Committee (PAC) in the Parliament, which investigates agencies identified having serious procurement flaws according to the Office of the Auditor General (OAG) reports, and the inquiry by PAC is conducted in public and findings are published.

## Development Objectives of the Assessment

21. This assessment will support strengthening the public procurement system in Rwanda, which is an International Development Association (IDA) country, to improve efficiency of public spending and enhance service delivery. This aligns well with the third theme, Accountable Governance, of the Country Assistance Strategy (CAS) for Rwanda (2014–2018). The third theme comprises 'Supporting accountable governance through public financial management and decentralization'. This supports the government's objective of decentralizing decision-making and making the government more open and participatory in its processes. This theme includes likely IDA investment in public financial management (PFM), fiscal decentralization, statistical systems, and open data. The recommendations and action plan of the MAPS assessment could feed into future IDA PFM operations.

22. In summary, the main development objectives are to (a) assess the strengths, weaknesses, and gaps of the public procurement system, in general; (b) identify gaps in the implementation of the newly developed e-GP system, in particular; (c) improve effectiveness of procurement professionalization; (d) improve the procurement process and contracts management in practice; and (e) improve demand-side governance by disclosing procurement data following OCDS or through other enhancements in the existing system, as practical.

23. It is expected that an in-depth analysis of the public procurement system of Rwanda, among others, covering the issues as above, by adopting the latest MAPS assessment tool, would help in

identification of gaps, and the findings of the assessment could inform the strategic planning process for future public procurement reform or system development of Rwanda.

24. The GoR has shown keen interest in seeking the World Bank's assistance to carry out an assessment based on MAPS (2018) under the leadership of the RPPA. The letter dated January 4, 2019, from MINECOFIN appears in Volume III of the Assessment Report.

## Methodology of the Assessment

25. The MAPS assessment for Rwanda was guided by four pillars of the new MAPS (2018) analytical framework. These four pillars are (a) Pillar I: Legal, Regulatory, and Policy Framework; (b) Pillar II: Institutional Framework and Management Capacity; (c) Pillar III: Procurement Operations and Market Practices; and (d) Pillar IV: Accountability, Integrity, and Transparency. The assessment carefully considered—and customized, if needed, to fit for purpose—14 qualitative indicators and 15 quantitative indicators. The findings of the both the qualitative and quantitative indicators is expected to be the baseline from which to assess the impact of future procurement reforms as per the priorities set by the government.

26. Analysis as per MAPS methodology was applied using the following three-step approach[8]:

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

27. The GoR, in a letter sent on February 11, 2019, from the Permanent Secretary/Secretary to Treasury, informed the institutions on the Steering Committee regarding support of the GoR on the MAPS assessment being undertaken by the World Bank and the RPPA in collaboration with other DPs. In this letter, institutions that are part of the Steering Committee were requested to nominate a member. The composition of the Steering committee (Director General, RRPA as Chair and representatives of other institutions as members) is (a) RPPA; (b) MINECOFIN; (c) Office of the Ombudsman; (d) Ministry of Local Government; (e) Ministry of Justice; (f) the World Bank; (g) African Development Bank (AfDB); (h) Transparency International (TI)-Rwanda; (i) the Private Sector Federation (PSF); and (j) UK Department for International Development (DFID).

28. The initiation of the task was carried out in the first mission to Kigali in the period February 18 to 22, 2019, led by the World Bank's Lead Governance Specialist - Procurement from Washington, DC,

[8] Methodology for Assessing Procurement System (MAPS) 2018

supported by a Senior Governance Specialist - Procurement, based in Kigali. The Assessment Team was supported by an international expert and a local expert with support provided by two RPPA staff. Based on stakeholder analysis, discussions were held with the RPPA and key stakeholders. A full list of stakeholders is given in Volume III of the Assessment Report. Volume III also contains the sampling methodology for procurement cases/files.

29. During this mission the Assessment Team met with the Director General of the RPPA and the Director of Capacity Development, who was nominated by the Director General for coordinating all activities on behalf of the RPPA. A presentation on the MAPS methodology was given to all the staff of the RPPA. The forum was chaired by the Director General, RPPA. The Assessment Team met with other key stakeholders, namely the OAG, Permanent Secretary, Office of Ombudsman, Executive Director of TI-Rwanda, President of Rwanda Procurement Professionals Association, and a representative of the PSF. The team also met with the Director of the Strategic Planning Department of Rwanda Association of Local Government Authorities. Discussions were held with DPs such as AfDB, *Kreditanstalt für Wiederaufbau* (KFW), and the Belgian Development Agency. The team met with the Head of External Financing, Deputy Accountant General, MINECOFIN, to brief them on the MAPS exercise and seek their guidance.

30. In this first mission, discussions were also held with the World Bank financial management team and with the Country Economist and the Country Manager to seek their input and guidance. The procurement legal expert from Washington, DC, and an e- Procurement expert was inducted as part of the Assessment Team and they provided input and support throughout the assessment process.

31. The initial review of the legal, regulatory, and policy framework, institutional framework, and procurement appeals mechanism was carried out by the procurement legal expert, based on a desk review of all available documents. The full list of documents and references is given as part of Volume III of the Assessment Report.

32. The first meeting of the Steering Committee was held on May 16, 2019. In this meeting the Chair explained the role of the Steering Committee to members. A presentation was made by the World Bank on the methodology, and a tentative plan was finalized. The minutes of this meeting is given in Volume III of the Assessment Report. A mission to Kigali was also undertaken by the e-GP expert in the week of May 13, 2019. A brief report on e- Procurement is given in Volume III of the Assessment Report.

33. The second mission of the Assessment Team was undertaken in the week of June 10, 2019, with the objective of taking stock of all activities and obtaining missing information and data to complete the assessment. The second meeting of the Steering Committee was held on June 10, 2019. The Assessment Team sought assistance from the RPPA to provide additional support on data collection as there were challenges and delays in getting data, more so those related to physical files which were available at different locations in Rwanda. This assistance was provided efficiently and timely by RPPA staff. The minutes of the meeting is given in Volume III of the Assessment Report.

34. Pillar III on public procurement operations and market practices, looks at the operational efficiency, transparency, and effectiveness of the procurement system at the level of the implementing entity. This requires selection and review of a sample of actual procurement transactions (files) to determine how procurement operates and performs on the ground. The most challenging part of the assessment was identification and collection of data (qualitative and quantitative data) mostly through e-procurement (e-GP - UMUCYO portal) by going through data from July 1, 2017, till December 31, 2018, which apparently was an advantage, but a lot of data gaps were to be resolved.

35. For sample cases, this involved 15 entities and 81 sample contracts. As some of the large value contracts are under implementation and do not use e-procurement, the Assessment Team was required to collect data through physical files and visits to PEs. Also, for contract implementation, all the information was collected through physical files. The basic information on contract cases were collected primarily by two nominated staff of the RPPA, which demonstrated a strong commitment on the part of the GoR. This basic data provided a solid foundation for analysis and framing recommendations under Pillar III of the assessment.

36. As required by the MAPS methodology, a survey was undertaken to seek feedback from the private sector. The RPPA in collaboration with the World Bank launched on June 12, 2019, an electronic survey on **Perception of Private Sector on Public Procurement in Rwanda** with the following objectives:

- Seek feedback from contractors, suppliers, and consultants' experience about awareness on bidding/consulting opportunities when bidding/submitting proposal for government-financed contracts
- Understand if there are consultations with the private sector in framing or changing procurement laws and regulations
- Understand and assess the reasons that may encourage or discourage firms from submitting bids/proposals
- Determine awareness of government's complaints review mechanism
- Gauge firms' perceptions regarding fraud and corruption risks in procurement and how it affects competitiveness
- Understand how to facilitate the dialogue and partnerships between the government and private sector through outreach and training programs to improve the public procurement system in Rwanda.

37. The survey was carried out through a combination of seeking anonymous feedback electronically through SurveyMonkey and face-to-face interaction with a representative group of suppliers, contractors, and consultants. Based on a questionnaire sent to 100 participants, electronic feedback was received from 34 participants, with a lot of follow-ups. The consultation workshop with the private sector was hosted jointly by the RPPA and the World Bank in Kigali on June 12, 2019, on 'Perception of Private Sector on Public Procurement in Rwanda - How to Improve Competitive Effectiveness' and was attended by about 25 participants, representing suppliers, contractors, and consultants. After the introductory remarks by the Director General, RPPA, and a presentation by the World Bank, an on-the-spot quick survey was carried out based on a questionnaire of eight critical questions and feedback obtained without any attribution to the name of the feedback and 24 participants provided feedback. This was followed by a lively question and answer session. The results of these survey responses and discussions in the consultation workshop are captured at relevant sub-indicators of the Assessment Report.

38. A summary of this quick survey and feedback obtained is given in Volume III of the Assessment Report. The views expressed in the electronic survey, on-the-spot survey, and in discussions are suitably reflected in the analysis (both qualitative and quantitative) under relevant indicators of the Assessment Report.

# Chapter 2: Analysis of Country Context

## Political, Economic, and Geostrategic Situation of Rwanda[9]

39. Rwanda is a landlocked and low-income country, located in central and east Africa in the region usually known as the 'Great Lakes Region' and positioned between Tanzania, the Democratic Republic of Congo, Uganda, and Burundi. Relatively small with about 26,000 square kilometers, Rwanda has a high population density of about 500 inhabitants per square kilometer for a total estimated population of 12.2 million as of 2017 (World Bank Group 2019). With a population growth rate average of 2.8 percent per year since 2009, the country's young and growing population is expected to reach 16 million by 2030.

40. Rwanda's visionary leadership and the institutions that it put in place during the nation-building in the 1990s and early 2000s played a central role in Rwanda's recovery. Results-orientation in service delivery and a zero-tolerance approach to corruption helped create an environment conducive to the mobilization of external assistance. This has led Rwanda to be a highly favored recipient of development assistance, which has been the main source of its development finance. Official Development Assistance (ODA) inflows have averaged around 17 percent of GDP annually in 2000–17, nearly 5 percent more than the average of all Sub-Saharan African ODA countries, and nearly two times the average of all low-income countries. With Rwanda's growing income, ODA inflows have declined from 20 percent of GDP in 2000–09 to less than 15 percent of GDP in 2010–17, but the level remains high.

41. Rwanda was able to achieve development success stories since the early 2000s. Between 2000 and 2017, real growth in GDP averaged 7.8 percent per year (World Bank Group 2019). One of the world's poorest countries (only Mozambique was poorer than Rwanda) in the mid-1990s, Rwanda saw its per capita income increasing more than three-and-a-half-fold in 2000–17, being among the world's fastest growing economies. Poverty in Rwanda dropped from 60.4 percent in 2001 to 38.2 percent in 2017. Extreme poverty reduced from 40 percent to 16 percent over the same period (The Republic of Rwanda 2018). However, Rwanda's aspirations are even higher. The new 30-year vision for the period up to 2050 elaborates the country's long-term development goals and reflects Rwanda's high aspirations: to achieve upper-middle-income status by 2035 and high-income status by 2050 and to eradicate extreme poverty by 2024.

42. Rwanda's achievements resulted mainly from the fiscal space created by high ODA inflows, which enabled maintenance of increasing public investments. Public investments have increased from 5 percent in the early 2000s to an average of 15 percent in recent years, lifting the overall investment to GDP ratio from 12 percent to 25 percent during the same period (World Bank Group; Government of Rwanda 2019). Although foreign public savings have been the main source of funding for Rwanda's investments, Rwanda has increasingly relied on borrowing in recent years, including on commercial terms, as volumes of external assistance and public savings fell short of the public investment needs. This has led to a rapid increase in the debt-to-GDP ratio, from 19.8 percent of GDP in 2009 to 48.3 percent of GDP in 2017, of which about 76 percent is external debt. The recent debt sustainability analysis, of May 2018, assessed Rwanda's debt to be sustainable.[10]

[9] Reference documents for this section: Rwanda: Systematic Country Diagnostic (June 25, 2019); Future Drivers of Growth in Rwanda (2019).

[10] International Monetary Fund and the World Bank (May 2018).

43. Rwanda's economy relies heavily on basic farming methods and reliance on rain-fed agriculture. About 80 percent of farm households in Rwanda are engaged in small-scale rain-fed subsistence farming using traditional technologies which are susceptible to landslides, increasingly so because of climate change, and lower crop yields and food security. Rising temperatures affect crop and livestock productivity through crop failure, increased diseases, pests, and new pests that were previously unable to survive at the higher altitude. In addition, crop yields are also affected by excessive rainfall during short periods of time. About 90 percent of domestic cropland is on slopes, which are particularly susceptible to soil erosion and degradation due to the rain-fed nature of agriculture in Rwanda.

44. **Need to accelerate growth of trade.** There is a need to accelerate the growth of trade to achieve Rwanda's aspiration to become a high-income country by 2050. GDP growth in the past two decades was powered to a large extent through inflows of development assistance, but such assistance is likely to taper gradually as Rwanda progresses toward middle-income status. Based on the joint publication of the GoR and the World Bank,[11] "Trade will become an increasingly important driver of growth. Exports will provide foreign exchange to purchase much-needed investment in equipment, high-technology goods, intermediate components, and product varieties and will foster productivity by allowing firms to exploit increasingly large economies of scale. Increased import capacity will facilitate access to high-technology goods and foster competition that drives productivity." For example, in 2016, half of Rwanda's total export earnings of USD 1,685 million came from services to which tourism constituted 23 percent of exports, while transport, ICT, construction, and finance jointly accounted for another 11 percent.

45. **Importance of regional economic integration.** Rwanda considers regional economic integration as one of the crucial elements of achieving Vision 2050. Currently, Rwanda is a member of four key regional integration blocs: East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of the Great Lakes Countries (*Communauté Économique des Pays des Grand Lacs,* CEPGL), and the Economic Community of Central African States (ECCAS). Rwanda is also engaged in a tripartite agreement between EAC-COMESA-SADC[12] and the African Union (AU) and has international trade agreements such as the Economic Partnership Agreement (EPA) and the Africa Growth and Opportunity Act (AGOA), with the European Union and the United States, respectively.

46. The above situation though laudable is not sufficient to meet Rwanda's high aspirations. There is a need for a combination of steps to accelerate and sustain medium-term trade objectives, which are: (a) Harness the EAC and SADC as a platform for transformation by aligning regional incentives, harmonizing standards, and exploiting economies of scale; (b) Improve trade connectivity by lowering transport costs within and across the region; (c) Increase service sector productivity, both as a critical input to other priority sectors and as a source of exports; (d) Stimulate foreign and domestic investment into tradable sectors by using selective time-bound and performance-driven incentives; and (e) Accelerate industrialization through diversification, value addition, and quality upgrading. For example: "joining the EAC helped bring down tariffs, while also spurring substantial reductions in transport costs and time spent at border crossings. The accession into the EAC's common external tariff reduced average tariff rates from 16 .5 percent to 11 percent, which strongly benefited intraregional trade, especially with Tanzania and Uganda. Regional integration also enabled greater cooperation on trade facilitation along East Africa's two trade corridors: Northern Corridor (Mombasa) and the Central Corridor (Dar es Salaam), which have significantly reduced the overall cost and time to move goods to port." [13]

[11] Future Drivers of Growth in Rwanda (2019).
[12] SADC = South African Development Committee.
[13] Future Drivers of Growth in Rwanda (2019).

47. **Role of the private sector and small and medium enterprises (SMEs).** The World Bank Group's 'Doing Business Report of 2019' ranks Rwanda 29 out of 190 countries in the world for the ease of establishing and running a business (World Bank Group 2019). Despite the ranking, the private sector still maintains a relatively limited presence, overwhelmingly dominated with small firms that lack the scale of economies critical for competitiveness and have limited export presence (World Bank Group; Government of Rwanda 2019). "An economy cannot thrive without a healthy private sector. When local businesses flourish, they create jobs and generate income that can be spent and invested domestically. Any rational government that cares about the economic well-being and advancement of its constituency pays special attention to laws and regulations affecting local small and medium enterprises (SMEs). Effective business regulation affords micro and small firms the opportunity to grow, innovate, and, when applicable, move from the informal to the formal sector of an economy."[14] The economies with the most notable improvement in Doing Business 2019 are Afghanistan, Djibouti, China, Azerbaijan, India, Togo, Kenya, Côte d'Ivoire, Turkey, and Rwanda.

48. **Role of state-owned enterprises (SOEs).** The high costs of energy, finance, and trade logistics and low returns have been important contributing factors for the government to play a supporting role. Indeed, at the end of the 2000s, the government sought to partially privatize SOEs. This was matched by establishing new SOEs and quasi-public companies, which played a useful role in maintaining social and political stability and in generating revenues in the early years of reconstruction. Moreover, they have been used to de-risk strategic sectors, paving the way for private sector entry. While SOEs will remain crucial for several years to come, as the private sector needs time to build, there is, however, a strong need to define the future role of SOEs and further strengthen their corporate governance.

49. **Regarding ICT infrastructure**, according to the available sources, the number of internet users in Rwanda is 5,634,047 which is approximately 50 percent of the population. Based on published sources, it is seen that out of the 5,634,047 Rwandans with internet, only 7,237 or 0.1 percent use fixed internet. In other words, 99.9 percent of Rwandans access the internet via handheld mobile devices, such as smartphones. The infrastructure comprises 2,300 kilometers of fiber-optic telecommunications network across the country, but there is a need to expand the use of fixed internet as well.

50. **Importance of women in decision-making and gender gap.** Based on a World Economic Forum publication,[15] equal contribution of women and men in the process of deep economic and societal transformation is critical. The Global Gender Gap index was introduced in 2006 by the World Economic Forum for capturing the magnitude of gender-based disparities and tracking their progress over time. This includes measurement on four dimensions: (a) economic participation and opportunity; (b) educational attainments; (c) health and survival; and (d) political empowerment. The most challenging gender gaps to close are the economic and political empowerment dimensions which will take 202 and 107 years to close respectively.

51. Based on this report, covering 149 countries, "The most gender-equal country to date is Iceland. It has closed over 85 percent of its overall gender gap. Iceland is followed by Norway (83.5 percent), Sweden and Finland (82.2 percent). Although dominated by Nordic countries, the top ten also features a Latin American country (Nicaragua, 5th), two Sub-Saharan African countries (Rwanda, 6th, and Namibia, 10th) and a country from East Asia (Philippines (8th). The top ten is completed by New Zealand (7th) and Ireland (9th)."

[14] Doing Business Report of 2019.
[15] Global Gender Gap Report of 2018.

52. The situation of being ranked among the top ten in the world on gender gap is quite an achievement for Rwanda, and obviously it was made possible through the combined will of the people of Rwanda, constitutional provisions, and adherence to the same. Based on Article 10 of the Constitution of Rwanda, the State of Rwanda commits itself to upholding the fundamental principles which, among others, includes, "building a State governed by the rule of law, a pluralistic democratic Government, equality of all Rwandans and between men and women which is affirmed by women occupying at least thirty percent (30 percent) positions in decision making organ". For example, it is seen in Article 13 of the current PPL of 2018 on members of IRP and modalities for their appointment that out of 11 members, 30 percent must be women.

53. The above scenario in the area of political, economic, and geostrategic context, though optimistic, requires extraordinary efforts to realize aspirations as reflected in Vision 2020 and beyond. This will also require further improvements in the governance, PFM, and procurement system of Rwanda.

## The Public Procurement System and its Links with Public Financial Management and Public Governance System[16]

54. The Country Policy and Institutional Assessment (CPIA) for Africa is an annual diagnostic tool which measures the quality of policies and institutional frameworks, and their ability to support sustainable growth and poverty reduction. The report provides scores for 16 criteria for each country and an overall regional score, which informs governments about the impact of the country's efforts to support favorable growth and poverty reduction. Countries are rated on a scale of one (low) to six (high) for 16 dimensions reflecting four areas: economic management, structural policies, policies for social inclusion and equity, and public sector management and institutions. In 2017, the regional CPIA score was 3.1. Rwanda continued to lead at the regional level and globally, with a CPIA score of 4.0. Other countries at the high end of the regional score range were Senegal, with a score of 3.8, closely followed by Cabo Verde, Kenya, and Tanzania, all with scores of 3.7.[17]

55. Related to good governance, Rwanda's Constitution[18] is: "Committed further to building a State based on consensual and pluralistic democracy founded on power sharing, national unity and reconciliation, good governance, development, social justice, tolerance and resolution of problems through dialogue."

56. As per Article 95 of the Constitution, there is a clear hierarchy of laws, being the Constitution, organic laws, international treaties and agreements ratified by Rwanda, ordinary laws, and orders. As stated in the Law Governing Public Procurement Law No. 62/ 2018 of 25/08/2018 (PPL), the Parliament has adopted the PPL pursuant to the applicable provisions in the Constitution an Organic Law No. 12/2013/OL of 12/09/2013 on State finances and properties.

57. In accordance with Article 2 of the PPL on Scope of the Law, the PPL applies to all procurement of works, goods or supplies, and consultancy and non-consultancy services ordered by the PEs. However, the PPL does not apply to procurement of classified items relating to national defense and security. Also, in case provisions in the PPL conflict with provisions of a bilateral or multilateral treaty or other forms of

[16] Reference documents for this section: Future Drivers of Growth in Rwanda (2019) and websites of the GoR and other agencies.
[17] The Country Policy and Institutional Assessment (CPIA) for Africa for 2017.
[18] The Constitution of the Republic of Rwanda of 2003, revised in 2015.

agreement related to public procurement to which the GoR is a party, the provisions of those agreements prevail. Article 8 of the PPL states that, subject to other provisions of the PPL, in the case of public procurement in commercial public institutions whose budget is not approved by the Parliament, the same is governed by special regulations of each institution approved by an order of the minister in charge of public investment.

58. The key institutions in the normative and regulatory functioning of procurement involved in procurement are (a) the RPPA; (b) PEs (the total number of PEs as of March 31, 2019, is 150 as per the e-GP portal); and (c) the IRP. Other institutions that have roles in policy setting, procurement legislation, regulation, or in oversight are (a) MINECOFIN, (b) OAG, (c) Ministry of Justice/Attorney General, (d) Office of Ombudsman, and (e) Public Investment Committee (PIC), Rwanda Development Board (RDB), and Public Private Partnership (PPP) Unit

59. **Rwanda Public Procurement Authority (RPPA):** The main mission of the RPPA is defined under Article 3 of Law No. 25/2011 of 30/06/2011, which are: 1° to ensure organization, analysis, and supervision in public procurement matters; 2° to advise the government and all public procurement organs on the policies and strategies in matters related to the organization of public procurement; 3° to control activities of awarding public contracts and their execution; 4° to develop professionalism of the staff involved in public procurement; 5° to provide technical assistance as needed and develop teaching material, organize trainings, and lay down the requirements which must be met by public procurement officers; 6° to collect and disseminate on a regular basis information on public procurement; 7° to put in place standard bidding documents (SBDs), bid evaluation reports, and other standard documents for use by public PEs; 8° to sensitize the public on matters related to public procurement; 9° to draw up and publish the list of bidders suspended or debarred from participating in public procurement; 10° to establish cooperation and collaboration with other regional and international agencies whose mission is similar to that of the RPPA; and 11° to perform such other duties as may be assigned by law and which are not contrary to its main mission.

60. Further, as per Article 4 Law No. 25/2011 of 30/06/2011, the RPPA shall have the following powers: 1° to suspend, upon request or on its own initiative and in accordance with the provisions of the PPL, a public tender evaluation or award process to conduct an investigation; 2° to summon anyone and require him/her to provide any information relevant to the fulfillment of its mission; 3° to carry out investigations in any entity governed by the PPL and get copies of documents related to public procurement where need be; 4° to seek assistance from experts to fulfill its mission; and 5° to suspend or approve the suspension or debarment of bidders from participating in public procurement.

61. In 2004, the GoR decided to decentralize public procurement activities. From February 20, 2011, all responsibilities and activities regarding contract awarding, signing, and contract management were transferred to public PEs and the RPPA remained with the responsibility of being a procurement oversight body having the mission geared toward regulations, capacity building, and control.[19] However, it is seen from the RPPA Annual Activity Report of 2017–2018,[20] that the RPPA is still involved in granting request for authorization to PEs to use less competitive methods of procurement due to circumstances determined in the PPL.

62. **Procuring Entities: (PEs):** As per Article 9 of the PPL, public procurement entities are "central government organs, local administration organs, public institutions, national commissions, government

[19] Internal Procurement Control and Audit Manual at http://rppa.gov.rw
[20] RPPA Annual Activity Report 2017–18 (November 2018) at http://rppa.gov.rw

projects or any other organs so empowered by the Chief Budget Manager." In addition, 'commercial public institutions' where they use the state budget fall within the definition of PEs. As per Article 10 and Article 11, PEs establish a public tender committee with responsibilities as defined under the article and PEs put in place procurement officer(s) in charge of organizing the procurement process from the planning stage to the end of the contract with responsibilities as defined under Article 11.

63. **Independent Review Panel (IRP):** In accordance with Article 12 of the PPL, the IRP has the power to receive appeals on public procurement at the national level, concerning decisions of the PE "from publication of the tender to the signature of the contract." The secretariat of the IRP is within the RPPA. The IRP is composed of 11 members chosen for a non-renewable term of office for four years, appointed by an Order of the Minister of Finance and drawn from the public sector, private sector, and civil society. Members from the public sector shall not be more than five, and at least 30 percent of members must be women. Qualifications of the panel members are not clearly defined in the PPL nor are the dismissal criteria. The budget for the IRP is provided by the RPPA. Public Procurement Regulation (PP Regulation) shall determine the organization, power, and functioning of the IRP.

64. **Ministry of Finance and Economic Planning (MINECOFIN):** MINECOFIN was formed in March 1997 from the joining of the Ministry of Finance and the Ministry of Planning. This was done to improve the coordination between the functions of finance and planning. In the ministerial restructuring of February 1999, the ministry took on the function of development cooperation from the Ministry of Foreign Affairs. Related to public procurement, its goal, among others, includes the following:

- Maintain a stable macroeconomic environment with low inflation, moderate budget deficits, and sustainable public debt
- Foster greater evidence-based planning and performance-based budgeting
- Mobilize internal and external resources (that is, tax, social security contributions, grants, loans, and so on)
- Achieve the highest international standards in PFM to ensure accountable use of resources
- Improve the delivery of public services and accountability through effective financial and fiscal decentralization
- Contribute to increase the productivity of the economy, employment opportunities, the investment climate, and the quality of public investments
- Promote a dynamic, efficient, and stable financial market accessible to all segments of the population
- Contribute to foster deep regional integration through openness to change as well as mobility of goods

65. Based on the organization chart of MINECOFIN, the ministry is headed by a Minister, assisted by a Minister of State and Office of the Permanent Secretary/Secretary Treasury to whom the RPPA reports. Other offices under the administrative and financial control of MINECOFIN are National Budget Department; National Development Planning and Research Department; Office of the Chief Economist, with external finance division; Office of the Accountant General with Deputy Accountant General/Director General, Treasury, and Deputy Accountant General/Director General, Public Accounts, including the Integrated Financial Management Information System (IFMIS) Unit; Office of Chief Internal Auditor to cover both local and central government; and Single Project Implementation Unit.

66. **Office of the Auditor General (OAG):**[21] The OAG is the Supreme Audit Institution [SAI] of Rwanda. The OAG was established in 1998 by Law N° 79/2013 of 11/09/2013 determining the mission, organization, and functioning of the OAG and became the SAI of Rwanda in June 2003. It is headed by the Auditor General assisted by a Deputy Auditor General. The OAG is vested with legal personality.

67. According to Article 165 of the Constitution of the Republic of Rwanda of 6/2003 revised in 2015, the responsibilities of the Auditor General include the following: (a) auditing revenues and expenditures of the state as well as local administrative entities, public enterprises, parastatal organizations, and government projects; (b) auditing the finances of the institutions referred to above, particularly verifying whether the expenditures were in conformity with laws and regulations in force and sound management and whether they were necessary; and (c) carrying out all audits of accounts, efficient management, and control of the functioning of state organs and institutions mentioned above.

68. In addition, Article 166 of the Constitution as amended to-date stipulates that the Auditor General shall each year submit to each Chamber of Parliament, before the commencement of the session devoted to the examination of the budget of the following year, a complete report on the consolidated state accounts for the previous year, indicating the manner in which the budget was utilized.

69. The last Audit Report for the period ending June 30, 2018, was presented to the Parliament by the Auditor General on April 29, 2019. As in previous years, the report has identified instances of irregular expenditure, which is on the decline and as per the Auditor General "This is indicative of an improvement in our PFM systems and controls when it comes to recording and accounting for expenditure." Other crosscutting findings identified during audits include cases of delayed and abandoned contracts, stalled projects, continuing cases of idle assets, failure to recover advance payment and performance securities, and noncompliance with taxation laws.[22]

70. **Ministry of Justice/Attorney General:** The general mission of the Ministry of Justice/Office of the Attorney General is to organize and oversee the promotion of the rule of law, law enforcement, and justice for all. Some of the key activities of the Ministry of Justice/Office of the Attorney General are developing, disseminating, and coordinating implementation of policies, strategies, and programs; organizing and coordinating national legislation; regulating the law enforcement sectors and related subsectors; and providing legal advice and representation of the government and its institutions through (a) acting as a government technical adviser by providing requisite advice to the government and its institutions on legal matters; and (b) representing the government in disputes of any kind to which it is party at the national and international levels.[23]

71. **Office of the Ombudsman:** This office, headed by the ombudsman, reports to the President of Rwanda. The ombudsman is assisted by two deputy ombudsmen, one in charge of preventing and fighting injustice and the other for preventing and fighting corruption and related offences. The office has a Permanent Secretary, who, among other things, is responsible for declaration of the asset unit, the corruption and related offences prevention unit, and special investigation on the corruption unit. Law No. 76/2013 of 11/09/2013 determines the mission, powers, organization, and functioning of the ombudsman. There are other laws like whistle-blowers protection law (2012) and law on fighting against corruption (2018) which guide the work of the ombudsman, besides the Rwanda Anti- Corruption Policy

[21] http://www.oag.gov.rw/index.php?id=2
[22] http://www.oag.gov.rw/fileadmin/REPORTS/Annual_Report_2018_EXECUTIVE_SUMMARY.pdf
[23] http://www.minijust.gov.rw/index.php?id=2

(June 2012),[24] This policy also relies on international treaties like United Nations Convention Against Corruption/ African Union Convention Against Corruption.

72. The primary anti-corruption agency is the Office of the Ombudsman which is constitutionally independent and carries a wide mandate in the fight against corruption. A number of other institutions have core functions closely related to anti-corruption action but hold mandates where corruption is but one element. These include the National Public Prosecution Authority, the Rwanda National Police, the OAG, and the RPPA.[25]

73. **Public Investment Committee (PIC), Rwanda Development Board (RDB), and Public Private Partnerships (PPPs) Unit.** The PIC is a national committee in charge of establishing high-level strategic guidance to ensure the highest-quality public investment program, including PPPs, based on adopted annual, medium-term, and long-term investment objectives. The RDB is in charge of attracting private investments from both domestic and foreign (foreign direct investment) sources. The RDB also serves as the secretariat of the PPP Steering Committee as per Article 2 of the Prime Minister's Order determining the functioning of the PPP Steering Committee. In line with Article 10 of Law Nº14/2016 of 02/05/2016 'governing public private partnerships', the RDB's role also comprises the function of a specialized advisor for the preparation and implementation of PPPs.[26]

74. The PPP unit is a center of technical expertise and assists line ministries and their affiliated agencies in developing and implementing projects through the PPP procurement route. Further, the PIC is a body that approves ongoing and new investments at the central government level, which meet the requirements for implementation. The PIC is chaired by a high-level representative of MINECOFIN. The committee comprises high-level representatives of key spending ministries.[27]

75. **Other key players in the area of public procurement.** These are (a) Transparency International (TI)Rwanda; (b) Private Sector Federation-PSF; and (c) Development Partners (DPs) like AfDB, KFW, Belgian Development Agency, DFID, and the World Bank.

- **TI-Rwanda** is a Rwandan civil society organization (CSO) created in 2004 and became accredited as the national chapter of TI in September 2011 and is since then part of the TI movement. TI-Rwanda focuses on four thematic pillars: (a) Preventing and combating corruption; (b) Promotion of rule of law, transparency, and accountability; (c) Communication building and evidence-based advocacy; and (d) Citizen engagement.

  Based on various publications including by TI-Rwanda,[28] "Citizen Participation even has roots in the history of the country. There are different activities that were found in Rwandan culture way before colonization that could be defined as Citizen Participation. For example, *Gacaca* is traditional cultural communal law enforcement procedures. Through *Gacaca* Rwandan families used to participate in correcting each other without having to take all their cases to the king. Through this, the citizens participated in their own governance. Still, Rwanda's homegrown solutions, where Citizen Participation plays an important role, are crucial for the development of the country." TI-Rwanda has partnered with the Office of the Ombudsman, the Rwanda

[24] https://ombudsman.gov.rw/
[25] Rwanda Anti-Corruption Policy (June 2012).
[26] Public Private Partnership Guidelines (June 2018).
[27] Rwanda National Investment Policy (April 2017).
[28] 15 Years of TI-Rwanda experiences - Citizen's Engagement as a Driver to Fight Corruption (2018).

Governance Board (RGB), and international financing institutions in the fight against corruption and created Advocacy and Legal Advice Centers (ALAC) and Concerned Citizen's Committee.

- **PSF, Rwanda**. The PSF is a professional organization, dedicated to promote and represent the interests of the Rwandan business community. It is an umbrella organization that groups nine professional chambers. It was established in December 1999, replacing the former Rwanda Chamber of Commerce and Industry. According to the PSF, the Rwanda procurement law has included adequate provisions for competition and fairness that the PSF is comfortable with. The procurement practice is also perceived to be transparent enough. The PSF is given the opportunity to take part in consultations during the drafting/amendment of procurement laws. The PSF proposed and pushed for a 'Made in Rwanda' clause to be included in the PPL and succeeded. The PSF is also given access to directly give its comments on the procurement laws to the Parliament. Currently the PSF is reviewing the draft 'Partnership Law'. The PSF's perception toward the RPPA is positive, in terms of its capacity and in reaching out and involving the private sector on every public procurement-related issue. The RPPA organized trainings specific to the PSF on the public procurement system, including on e-procurement.

76. **DPs.** Based on the National Budget Document of 2018/19,[29] out of a total budget of RWF 2,443.5 billion, external grants and loans financed 33 percent of the budget and domestic sources accounted for the remaining 67 percent as depicted in the figure in Volume III (Annex 2) on **Scale of public procurement expenditure.** Based on the data available on the MINECOFIN website, the scale of public procurement expenditure is derived as given in the table below, according to which, public procurement expenditure of RWF 1,066.5 billion in 2017/18 constitutes 13.5 percent of GDP of RWF 7,898 billion.

| Rwanda: Public Procurement as a Share of GDP (RWF, Billions) | | | | |
|---|---|---|---|---|
| **Description** | **2016/17** | **2017/18** | **2018/19 (Projected)** | **2019/20 (Projected)** |
| 1. Total Expenditure and Net lending | 1,942.9 | 2,187.5 | 2,550.2 | 2,796.8 |
| 2. Current Expenditure on Purchase of Goods and Services | 194.1 | 216.3 | 230.9 | 235 |
| 3. Capital Expenditure | 759.5 | 850.2 | 1,040.6 | 1,152.1 |
| (i) Domestic | 418.2 | 463.2 | 638.3 | 694 |
| (ii) Foreign | 341.3 | 387.1 | 402.3 | 458.2 |
| 4. Public Procurement Expenditure (2+3) | 953.6 | 1,066.5 | 1,271.5 | 1,387.1 |
| 5. GDP Fiscal Year at Current Prices | 7,125.0 | 7,898.0 | | |
| 6. Public Procurement as % of GDP | 13.38% | **13.50%** | | |

*Source:* MINECOFIN Rwanda – Updated Macro Framework Public Dataset by May 2019.

77. A PEFA assessment was carried out in 2016 by AECOM International Development, Europe, with financing from the GoR and published in 2017 by the PEFA Secretariat (PEFA 2017). The overall objective of this PEFA assessment was to produce a comprehensive 'PFM Performance Report' according to the upgraded PEFA Performance Measurement Framework Methodology of 2016 to provide an analysis of the overall performance of the PFM systems of the country and to provide a baseline against which future progress can be measured.

78. As per PEFA 2017, regarding impact of PFM systems on the three main budgetary outcomes: (a) on *aggregate fiscal discipline*, the rating was reasonably good; (b) on *strategic allocation of resources*, most of the indicators received good overall rating; and (c) on *efficient use of resources for service delivery*,

[29] The National Budget - Citizens' Guide for 2018/2019 Budget, GoR, MINECOFIN.

financial management is not an end in itself, but rather a tool to assist a government to deliver services to its citizens, and of course, services cannot be delivered in the absence of funds. In this respect, the predictability in the availability of funds to support expenditure was at a satisfactory level, "rating for 'performance information' which can demonstrate the efficiency with which services are delivered (PI-8, 'D") is disappointing, as is that of the last of the completely new indicators introduced into the framework: 'Public Asset Management' (PI-12), which reveals a weak performance—with potentially severe consequences, in that resources are unlikely to be utilized efficiently or effectively by a government that does not know what assets it owns. Importantly, the mechanisms in place to reduce possible leakages in the system, such as internal controls, and controls over payroll (PIs 25 and 23, respectively) are good, while internal audit continues to improve (PI-26), as do basic accounting controls (PI 27) and the procurement indicator (PI-24)."

79. According to PEFA 2017, There are seven key program in the current PFM reform strategy, which are (a) Economic Planning and Budgeting; (b) Resource Mobilization; (c) Budget Execution, Accounting, and Reporting; (d) External Oversight and Accountability; (e) Electronic Service Delivery and IFMIS; (f) Fiscal Decentralization; and (g) PFM Sector Coordination and Management. In addition, four priorities emerged as per PEFA 2017: (a) Increased resource mobilization; (b) Scaling up of the implementation of IFMIS: (c) Strengthen PFM systems at subnational level; and (d) Enhance training, professionalization, and capacity building across all PFM disciplines.

80. The World Bank also provided support to the tune of USD 100 million for the Public Sector Governance 'Program-for-Results', which aims to improve Rwanda's PFM and statistics systems for the enhancement of transparency and accountability in the use of public funds, revenue mobilization, and the quality and accessibility of development data for decision-making. This P-for-R included actions for revised procurement regulations which was implemented in June 2015 and implementation of e- Procurement which was achieved in September 2018 (piloting was in July 2016 and full rollout on July 1, 2017). This program has progressed satisfactorily.

81. Based on a joint report of the World Bank and the GoR, several steps were taken to improve accountability over the Executive and strengthen oversight by the Parliament. Based on this report, "Public Accounts Committee was created in 2011 to scrutinize external audit reports and enforce audit recommendations. The committee has conducted in-depth hearings on audit findings, covered live by radio and national television and with attendance by senior officials, ministers, and the like (PEFA Secretariat 2017). The Office of the Auditor General (OAG) has built its own credibility as Rwanda's supreme audit institution by contributing to improved public financial management in line with standards of the International Organization of Supreme Audit Institutions."[30] More than 80 percent of government expenditures were audited (in fiscal 2013/14), and 60 percent of the recommendations in the OAG report were implemented (PEFA Secretariat 2017)."[31] Further based on the RPPA's Annual Activity Report for 2017–18, a procurement audit was carried out for 68 PEs covering 1,276 tenders for an amount of RWF 390.793 billion.[32]

82. A Public Financial Management Reform Project for Rwanda for a value of USD 20 million, with financing from the World Bank, is under implementation from December 2018. This project aims to

[30] Future Drivers of Growth in Rwanda (2019)
[31] PEFA Secretariat 2017
[32] RPPA Annual Activity Report 2017–2018 (November 2018).

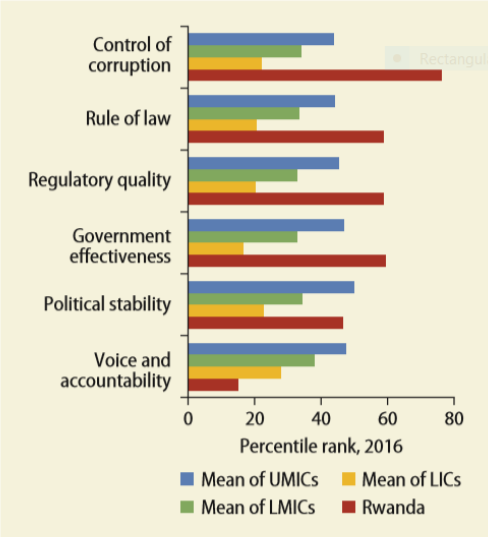
increase budget reliability and control of funds for service delivery, enhance budget transparency, and increase professionalization of the public finance officials.

83. Generally, public procurement is susceptible to corruption because of the vast sums of money that governments spend, high degree of discretion that public officials enjoy, and difficulty in detecting and investigating cases of corruption.

84. However, in Rwanda the anti-corruption efforts were led effectively by the Office of the Ombudsman. As per the joint publication of the World Bank and the GoR, "The legally independent Ombudsman's Office and Rwanda Governance Board have an important mandate (among others) to carry out the fight against corruption and monitor service delivery. Strengthening checks and balances among the branches of government—in particular, ensuring the independence of the judicial system—would help to reduce monopoly power and increase accountability. Full independence of institutions like Parliament, the OAG, the Ombudsman's Office, and RGB should be ensured in the long term by giving them more autonomy on budget prioritization and staffing (structure) independence."[33]

85. As a result of the above steps, the overall governance quality has improved significantly and been a driving force behind Rwanda's rapid development story. Emerging from difficult initial conditions after the 1994 genocide, the government (a) created new homegrown institutions and programs to create an integrated Rwandan community, including revitalizing the *umuganda* community work program to bring people together around a common community purpose once a month; (b) reestablished the traditional community courts (*Gacaca*) and created mediation committees (*abunzi*) to achieve reconciliation and mete out justice; (c) sought to hold all government officials accountable for performance through the *imihigo* system of performance contracts; (d) established the Joint Action Development Forum, a participatory planning mechanism to improve the alignment of citizens' and districts' priorities; and (e) created *umushyikirano*, an annual forum for national dialogue to allow all citizens to have direct access to the most senior leadership in government.

**FIGURE 0.26 Benchmarking of Rwanda along the various dimensions of governance**




*Source:* 2016 Worldwide Governance Indicators from Kaufmann, Kraay, and Mastruzzi 2010.
*Note:* LIC = low-income country; LMIC = lower-middle-income country; UMIC = upper-middle-income country.

86. Indeed, reestablishing peace and social stability and building the decimated social capital of trust were viewed as the underlying sociopolitical challenges of governance (World Bank Group; Government of Rwanda 2019). These efforts have proven effective, well-reflected in Rwanda's international rankings, with particularly strong performance on indicators of government effectiveness, control of corruption, rule of law, and regulatory quality. For example, Rwanda ranks 48 (out of 180 countries) for control of corruption in the TI's Corruption Perception Index of 2017, a vast improvement over its 2006 ranking of 121, placing it third (alongside Mauritius) on the continent. However, Rwanda's ranking on voice and accountability remains below that of its regional and low-income peers and as depicted in the figure.[34] ( Figure 0.26 as appearing in the source document)

[33] Future Drivers of Growth in Rwanda (2019).
[34] Future Drivers of Growth in Rwanda (2019).

## National Policy Objectives and Sustainable Development Goals

87. This new version of MAPS is timely in the wake of the launch of the Sustainable Development Goals (SDGs), which like MAPS is relevant for all countries, irrespective of income level or development status. MAPS is related to SDG12, which calls for the promotion of sustainable procurement practices in line with the national priorities and policies, and SDG16, which calls for effective and accountable institutions.[35]

88. The GoR has published a Voluntary National Review (VNR) Report on implementation of SDGs. As per this report, SDGs have been domesticated and integrated in Vision 2050, the National Strategy for Transformation 2017–2024 (NST1), and related sectors' and districts' strategies. NST1 mirrors the three dimensions of sustainable development: Economic, Social, and Environment. A dedicated SDG taskforce bringing together government ministries, DPs, CSOs, and the private sector was established to serve as the nucleus and focal point for ensuring interagency collaboration and coordination. Rwanda is committed to the enhanced delivery and realization of the SDGs including being selected to pilot one of the goals, SDG16 on building effective and capable institutions.[36]

89. Based on the above report, and as per NST1 Priority on Pillar - Economic Transformation (SDG12), Rwanda shall promote sustainable management of the environment and natural resources to transition Rwanda toward a Green Economy. Further under the Transformational Governance Pillar (SDG16), Rwanda shall strengthen capacity, service delivery, and accountability of institutions.

90. The above policy objectives and development goals are yet to be incorporated in laws, regulations, and standard procurement documents for the public procurement system of Rwanda as reflected under Pillar I on sustainable public procurement (SPP).

## Public Procurement Reform in Rwanda

91. The RPPA is a public body established on February 20, 2008 by Law N° 63/2007 of 30/12/2007. It was created to replace the National Tender Board during a reform process in PFM launched by the GoR, in which public procurement reform was one of the most important components.[37]

92. The 2007 PPL improved upon the body of laws and regulations and a procurement reform history that aimed at instituting discipline in the use of public funds. In the pre-UNCITRAL era, the 1959 Royal Decree on Procurement of Works, Goods, and Transport Services was put in place to limit discretion in the use of public funds. An UNCITRAL based manual was prepared in 2004 to complement the decree. The National Tender Board was established in 1997 with a view to handle procurement transactions, modernize the legal and institutional framework, build capacity, and monitor performance. These reform initiatives continued with the support of the World Bank as well.

93. The RPPA since its inception strived to create capacity and transition the authority on the task of handling procurement transactions to the PEs. Prior review and transactions thresholds were gradually increased starting 2006, in consonance with the increased capacity and performance of procurement units. The RPPA created a dedicated website for publication of procurement information, elaborated SBDs

[35] Foreword to MAPS 2018.
[36] 2019 Rwanda Voluntary National Review (VNR) Report (June 2019).
[37] http://rppa.gov.rw

based primarily on SBDs of the World Bank, and created a complaints review mechanism including a functionally independent review board formed from representatives of private sector, civil society, and government.

94. The 2004 Country Procurement Issues Paper (CPIP) was the first assessment of the country procurement system since 1986 and was conducted jointly by the GoR and the World Bank. Recommendations from this CPIP was one of the primary influences guiding procurement reforms in Rwanda, as its main recommendations were incorporated in the action plan for procurement reform adopted by the government.[38]

95. Rwanda was the first country in the Africa region to request consideration as a pilot country under the World Bank's Use of Country Procurement Systems Piloting Program approved by the Board of the World Bank in April 2008. The assessment, which was carried out in 2009 and 2010, involved a benchmarking based on MAPS, the OECD/DAC methodology that required scoring of 54 sets of sub-indicators built around 12 indicators and 4 pillars. Based on this rigorous assessment, the public procurement system of Rwanda was able to meet 49 out of 54 sub-indicators. The agreed mitigation actions for areas of improvements were the following:

- Complete the last stage of the RPPA's devolution of the transaction function to PEs
- Bring the capacity-building strategy to a new level
- Continue improving the enabling environment for private sector participation
- Strengthen internal controls and step up the oversight function and application of remedies.

96. In addition to the above, an assessment was also carried out on equivalency of Rwanda's procurement procedure with the World Bank's procurement policies and assessment of national bidding documents which were considered generally consistent with the International Bidding Procedure (International Competitive Bidding) of the World Bank and the World Bank's SBDs, with certain gaps which were expected to be handled in legal agreements for pilot projects and as part of the assessment of executing agencies. The pilot was expected to be rolled out in 2011, but on the basis of new policy and reform initiatives on the part of the World Bank, other multilateral development agencies and the needs of several other borrowing countries, the UCS pilot itself was abandoned. However, this exercise on UCS helped to provide a visibility to the public procurement system of Rwanda on a global platform.

97. AfDB prepared a Bank Procurement Assessment Report (BPAR) in the context of AfDB's new Procurement Policy Framework[39] for AfDB Group funded operations which was approved by the AfDB Board in October 2015. This diagnostic work was based on the MAPS developed by the OECD/DAC. The 54 sub-indicators of MAPS were split into two categories as follows: (a) 21 sub-indicators referred to as 'critical sub-indicators' that were identified to assess the conformity of the borrower procurement system (BPS) with the AfDB's fiduciary obligations, and which should be evaluated without negative impact on AfDB-funded operations to allow for the use of BPS; and (ii) 33 sub-indicators referred to as 'development sub-indicators' and considered to be essential in building the BPS, and which will be used in the framework of the Procurement Capacity Development Action Plan. This report was based on existing assessments of

[38] World Bank document on Use of Country Procurement System in Bank-supported Operations - Proposed piloting program report – 2009 - Stage I – Assessment based on OECD/DAC benchmarking tool – April 2009 (updated June 2010)

[39] AfDB's Procurement Framework approved by the Bank's Boards of Executive Directors, in October 2015, comprises the following documents: (a) "Procurement Policy for Bank Group Funded Operations", (b) Methodology for Implementation of the Procurement Policy of the African Development Bank, (c) Procurement Manual, and (d) Procurement Toolkit.

AfDB and also the World Bank's 2009 proposed piloting program on the UCS in World Bank-supported operations.

98. The main findings and recommendation of the BPAR of AfDB (2016) related to the public procurement system is summarized as follows:

- Rwanda's public procurement system can be considered to be globally sound and adequate for its use in AfDB-funded operations, however for specific procurement transactions or groups of similar transactions under AfDB-funded project, the decision will depend on the sector market analysis, project, and executing agency risk analysis.
- Rwanda's country procurement system globally meets the principles of equity, transparency, and integrity. The main issues identified with a negative impact on the use of BPS in AfDB-funded operations relate to (a) the registration of bidders and (b) the involvement of the RPPA in procurement transactions.
- The AfDB and the Government, will have to agree to revise the Procurement Law and Regulations in order to take into consideration the required changes, namely; (i) define a clear process for registration of national and foreign companies in the e-procurement system so that registration does not constitute a barrier to competition; (ii) remove RPPA from the approval of less competitive procurement transactions; and (iii) clearly state the conditions for use of less competitive methods by PEs.

99. A PEFA assessment was carried out in 2016, and published in 2017 (PEFA 2017) that included effectiveness of the procurement system as per PFM Performance Indicator PI-24. The first dimension focused on the extent to which prudent monitoring and reporting was in place to ensure value for money and fiduciary integrity, while the other dimensions focused on the operation of the procurement system, including the effectiveness of an independent administrative complaint resolution mechanism and public access to procurement information. The assessment covered all procurement for the central government using national procedures, including ministries, departments, and agencies and districts. The assessment was based on the data for the last completed fiscal year (2013/14). As per this assessment, 1,610 contracts for a value of RWF 120.140 billion (approximately USD 133 million, based on the exchange rate in 2018) were awarded in 2013/14 of which 81.9 percent were based on open bidding. There was an overall good rating on most of the dimensions, but there were issues related to the dimension on public access to procurement information. For example, as per the 2012–13 RPPA procurement audit report, only 7.5 percent of the PEs posted awarded contracts to their website, while for 2013/14, just 15.5 percent were available to their website. Besides, the RPPA procurement audit report is not explicit on PEs posting of data on resolution of procurement complaints that are supposed to be made public. With this the rating on the dimension on public access to procurement information was 'C', with an overall rating on PI-24 of B+ (on a scoring scale of A to D as per the PEFA methodology).

100. The MAPS Assessment Team has taken cognizance of the above background, but carried out an independent analysis and assessment, with input and support from the RPPA and other stakeholders, based on the latest status, laws, regulations, data, and information following the qualitative and quantitative criteria as per MAPS (2018) to identify the strengths, weaknesses, gaps, and recommendations.

# Chapter 3: Assessment

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

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

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

103. A consolidated list of applicable laws and regulations for Rwanda and documents referred for this Assessment Report is given in Volume III of the Assessment Report.

**Overview of Pillar I with Key Findings**

104. **Laws, regulations, and precedence of the different instruments.** The primary legislation governing public procurement in Rwanda is Law No.62/2018 of 25/08/2018 Governing Public Procurement (PPL).[40] The PPL came into force on September 7, 2018, with a six-month transitional period for PEs to comply. The PPL is an ordinary law sitting within a clearly defined hierarchical legal framework in accordance with Article 95 of the Constitution.[41] The PPL is supported by more detailed and/or specific instruments including the PP Regulations[42] and a professional code of ethics, both issued by way of ministerial orders. In addition, there are ministerial instructions, circulars, guidelines, and SBDs, as well as

[40] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Laws/Law_No_62_2018_of_25_08_2018_Governing_Public_Procurement.pdf

[41] Constitution of the Republic of Rwanda of 2003, revised 2015. http://www.mininfra.gov.rw/fileadmin/user_upload/aircraft/RWANDA_CONSTITUTION_NEW_2015_Official_Gazette_no_Special_of_24.12.2015.pdf

[42] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Ministerial%20orders/MINISTERIAL_ORDER_ESTABLISHING_REGULATIONS_ON_PUBLIC_PROCUREMENT_-ITEKA_RYA_MINISITIRI_RISHYIRAHO_AMABWIRIZA_AGENGA_AMASOKO_YA_LETA_01.pdf_01.pdf

a Public Procurement User Guide.[43] The PPL and PP Regulations are published in the official gazette and are also available, together with other supporting instruments and documents referred to above, on the website[44] of the RPPA which is a freely accessible online portal. The legal framework in the PPL applies to all procurement using public funds (goods, works, and services, including consulting services), with a limited list of exclusions. As per Article 2, the PPL does not apply to procurement of classified items relating to national defense and security and those where the PPL conflicts with provisions of a bilateral or multilateral treaty or other form of agreement related to public procurement to which the GoR is a party. PEs are widely defined to cover public bodies, including subnational governments, public institutions, and government projects. There is no separate law covering the utilities sector and utilities are not a defined term in the PPL.

105. **Special regulations for commercial public institutions.** Commercial public institutions are subject to the PPL as PEs where they use the state budget. Commercial public institutions whose budget is not approved by Parliament are governed by special regulations of each institution issued by the minister in charge of public investments. These special regulations for commercial public institutions are not available in the public domain. With great efforts, the Assessment Team was able to obtain the procurement manual for one such commercial public institution, Water and Sanitation Corporation (WASAC) Ltd. (originally issued on August 25, 2014, and later revised on September 21, 2015), which was reviewed, and the details are provided in Volume II, Detailed Matrix. In brief, the manual recognizes the principles of transparency, fairness, competition, value for money, effectiveness, and accountability.

106. However, it is seen that the scope of the manual is defined as a 'management tool' for WASAC Ltd. How these principles are applied in practice is not known and participants are not aware of the rules governing procurement. The list of such commercial public institutions is not published, and the magnitude of procurement expenditure is not available. More broadly, there is no information to determine if the special regulations of various institutions are harmonized with one another.

107. **Law governing PPPs.** The award of PPP contracts for a wide scope of infrastructure facilities and assets are regulated by Law No. 14/2016 of 02/05/2015 Governing Public Private Partnerships[45] (PPP Law). The potential sectors for PPPs include transportation, energy, social affairs, tourism, natural resources and environment, telecommunications and information technology, and any other sectors determined by order of the Prime Minister. The PPP Law does not apply to contracts subject to the PPL or to the privatization or divestiture of enterprises, assets, and any infrastructure facility owned by the government. The PPP Law generally requires a competitive procedure for the award of a PPP, with international and national advertisement, governed by the following principles: competition, transparency, fairness and non-discrimination, efficiency and effectiveness, protection of public property, and public interest and accountability. The PPP Law permits, in specified cases, the award, without competition, of a PPP contract to a partner who has made an unsolicited proposal. There are no readily available data on the practical use of unsolicited proposals in the award of PPP projects.

108. **Procurement plan.** The procurement rules require PEs to prepare and submit an annual procurement plan to the RPPA, indicating activities to be submitted to tender and related budget. Before commencing a procurement, the procurement office must ensure that the tender is included in the public procurement plan and the relevant budget for its execution is available. According to the PP Regulations,

[43] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Manuals/PublicProcurementUserGuide.pdf
[44] http://rppa.gov.rw/index.php?id=188
[45] https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Law%20No.14-2016%20of%20February%205th%202016%20Governing%20Public%20Private%20Partnerships.pdf

specified elements of the procurement plan must be published. Revised procurement plans must also be published.

109. **Use of electronic system for public procurement.** For procurement subject to the PPL and above relevant thresholds public PEs must use the e-procurement system, UMUCYO, for conduct of procurement. The requirement to use e-procurement includes the publication of tender opportunities and electronic submission and opening of bids. Exceptions to this rule are only permitted with prior authorization from the RPPA. In practice, there is an ongoing phased rollout of UMUCYO since its launch in 2016. UMUCYO is easily accessible, online, and available at no charge to users, although contracting entities may charge for procurement documents, and suppliers are required to register to participate in tenders. Contracting entities also publish their annual procurement plans on UMUCYO. UMUCYO is an end-to-end system with, for example, contracts management and electronic payment functions in addition to functions supporting the conduct of tender processes.

110. **Public procurement methods.** The PPL provides that public procurement contracts subject to the PPL shall be awarded through open competition, unless otherwise provided for in the PPL. The open procedure is the default procedure for contracts over the national threshold.[46] PEs are permitted to use other competitive procedures, subject to meeting conditions and/or thresholds set out in the PPL. The other competitive methods provided for in the PPL are pre-qualification (technically not a self-standing procurement method), restricted tendering, requests for quotation, simplified method, and two-stage tendering. Direct award (single source procurement) is permitted only where specified grounds for justification are satisfied. Procurement methods for award of contracts provided for in the PPL, together with conditions for their use, include force account and community participation approaches. The conditions for use of noncompetitive procurement methods are widely drafted and are potentially open to overuse, prior approval from the RPPA is required, in certain cases, for use of award methods other than the open procedure, although the PPL requirements[47] and practice in this respect are not entirely clear.

111. Moreover, the force account and community participation approaches embedded into the PPL as procurement methods and with high levels of use, are approaches derived from the World Bank's procurement rules. They were developed to be used only in very exceptional circumstances, for World Bank-financed operations where specific circumstances meant that it was not possible to deliver projects through other methods. In other jurisdictions, force account is similar to in-house procurement, which is normally excluded from the scope of the procurement law since this does not constitute procurement.

112. **Time for preparation of bids.** The PPL specifies minimum time limits between the call for proposals and submission of bids, which vary according to the nature and complexity of the procurement and also whether foreign bidders are expected to bid, in which case the time frames are longer. Most advertised opportunities use the open procedure, for which the minimum time frame for submission of tenders is 30 calendar days, and 45 days in the case of international tenders.

113. **Rules on participation.** The PPL sets out rules on eligibility to participate in procurement processes. Public companies and public institutions are eligible to participate as bidders in public procurement if they can prove that they are legally and financially autonomous and that they operate

[46] The PP Regulations set out thresholds applying to the use of the competitive procedures available under the 2007 PPL, with the 'lightest' methods of procurement permitted for low-value tenders.
[47] Article 29 of the PPL.

under commercial laws. The PPL also prescribes grounds for exclusion from participation and provides for rejection of offers where it is established that a bidder is engaged in corrupt or fraudulent practices.

114. There are no provisions in the PPL referring specifically to exclusion from participation due to conviction by final judgment for offences relating to participation in a criminal organization, terrorism, money laundering, child labor, trafficking in human beings, or the equivalent of those offences. There are provisions for temporary or permanent administrative debarment, subject to due process. The 'blacklist' of debarred bidders is published on the RPPA website, listing the name of the company/organization, name of the individual, ground for debarment, and period of debarment.

115. **Requirement for bidder's qualification.** The PPL sets out a non-exhaustive list of requirements for bidder qualification. Qualification requirements must be published in advance and only the published requirements may be applied. The PE must check the accuracy of evidence/information provided by a bidder and a PE may disqualify a bidder for submitting false, materially confusing, or incomplete information. The PPL also includes requirements for bidders to be registered as businesses, to hold professional licenses, or to exercise any liberal profession, but the PPL does not require that the registration or licensing must be in Rwanda. For specified construction works and engineering consultancy services, local and foreign companies are required to apply to the RPPA for 'categorization' which assesses a company's suitability to deliver contracts.

116. **Procurement documentation and specifications.** The PPL establishes the minimum content of procurement documents and requires that the tender document be prepared in accordance with the PPL, PP Regulations, and standard tender documents. PEs are required to use the SBDs published by the RPPA. The level of detail in the SBD varies according to the nature and complexity of the procurement covered by the particular SBD. Specifications must be objective and neutral, referring to national standards, or international standards where relevant, with recognition of the principle of equivalence. The use of output-based (functional) specifications to promote innovation is not covered by the legal framework. Potential bidders may request clarification of procurement documents and the PE must respond timely, with written clarification provided to all potential bidders.

117. **Evaluation and award criteria.** The legal framework requires that the procedure and criteria for bid evaluation and comparison are set out clearly in the tender documents. The SBDs have sections for specifying the evaluation criteria and methodology to be applied. Only pre-disclosed criteria may be used to evaluate bids, and nothing can be added or deleted in that respect. The submitted bid/proposal must be substantially responsive. In the case of works, the contract is awarded to the bidder whose bid/proposal is determined to have offered the lowest evaluated price/cost. Evaluation of price and non-price attributes is permitted, particularly in the case of supply of goods. While consideration of life cycle costing is permitted, there are no specific provisions concerning the method by which life cycle costs are determined. The default method for evaluation of proposals for consulting services is quality and cost-based selection. The PPL includes provisions on both exclusive preference and local price preference and the SBDs include price preference provisions and methods of calculation.

118. **Confidentiality in public procurement.** The PPL provides that during or after procurement proceedings the content of bids must not be disclosed, subject to disclosure required by law or for the purposes of appeal or audit. The PPL also forbids disclosure of information relating to a procurement whose disclosure is likely to impede respect for law or jeopardize public interest or would prejudice a bidder's legitimate commercial interest (which is not defined) or inhibit fair competition.

119. The PPL requires the PE to notify successful and unsuccessful bidders of the provisional outcome of the award decision. The PPL does not require the PE to provide, in the initial notification, specified information which would assist transparency and effective review, such as the scores of the winning bidder and the relevant bidder or reasons why the bidder's bid was unsuccessful. Bidders may apply for information on the reasons for the decision and have seven days in which to lodge a complaint before the contract is signed. After the contract is signed there is an additional right for a bidder to apply for information but not for the purposes of appealing against the award decision.

120. The PPL provides that the PE must publish a contract award notice on award of a contract, but it is not clear whether publication of a contract award notice is required when a non-competitive procedure is used or for low-value contracts.

121. **Contract management.** The PPL includes more detail on contract provisions than commonly found in primary procurement legislation in other jurisdictions and includes some contract management-related provisions. The standard contract terms included in the SBDs are very comprehensive. The conditions for contract amendments are defined in the PPL and include limitation to ensure economy and avoid arbitrary limitation of competition. The SBDs provide for dispute resolution, including alternative dispute resolution, by way of mediation, arbitration, and adjudication.

122. **Right to challenge and appeal.** The PPL provides participants and prospective participants in procurement proceedings the right to challenge decisions or actions taken by a PE at any stage from publication of the tender opportunity to signing of the contract. Provisions on the conduct of the review process, including fees and time limits, are set out in the PPL and PP Regulations. The initial application for review is made in writing to the PE, with a right of appeal to the National Independent Review Panel (NIRP). When an appeal is lodged with the NIRP the procurement process is suspended pending the NIRP's decision.

123. The NIRP may consider and decide on complaints without an oral hearing, but there is also the option for the NIRP to invite both sides to a hearing before the members of the panel. Complainants are entitled to be represented by a lawyer. The legal framework specifies the range of available remedies. The NIRP has authority to order a range of actions, including suspension of procurement proceedings. Decisions on appeal made by the NIRP must be published on the RPPA website. Decisions of the NIRP are final and binding, unless the decision has been reviewed by the court adjudicating the case on merit. The competent court for review is the commercial court. Decisions of the NIRP are not published.

124. Members of the NIRP are appointed, and may be dismissed, by the MINECOFIN. The NIRP budget and secretariat is provided by the RPPA.

**Key Strengths and Weaknesses (Substantial Gaps)**

*Strengths*

- The legal framework is clearly structured and reasonably comprehensive, with higher-level, primary legislation providing the overarching structure supported by secondary legislation, guidelines, manuals, and standard documents. It sets out fundamental principles governing public procurement which include efficiency, fairness, and transparency.
- The legal framework provides for a range of competitive procedures with varying degrees of complexity, for use according to the nature of the contract. Thus, simpler, faster methods may be used for low-value/lower-risk contracts while more onerous procedures are applicable for more

complex contracts which are higher value/higher risk. The legal framework provides for the open procedure to be the default procedure.

- Up-to-date SBDs are available and published on the RPPA portal. Their use is mandatory for contracts over specified thresholds. The SBDs include provisions concerning evaluation criteria and methodologies, where relevant, as well as detailed standard terms and conditions of contract. The PPL requires tender specifications to be objective and neutral with references to national or international standards and in recognition of an equivalent standard where appropriate.
- There are clear provisions in the PPL requiring contracting entities to publish the criteria to be used to evaluate bidder qualification and tenders and to use only published criteria and methodologies. There are legal requirements addressing conflicts of interest and on maintaining bidder confidentiality.
- Standard contract forms contained within the SBDs are comprehensive and include provisions to resolve disputes promptly during the performance of the contract, including alternative dispute resolution methods. There are provisions in the legal framework limiting cases where contract amendments are permitted.
- The introduction and use of the e-procurement system should, in theory, contribute significantly to maintain or raise levels of transparency as well as increase cost effectiveness and improve the efficiency of procurement processes while reducing administrative burdens.
- A right of review of decisions of contracting entities is available to participants and prospective participants at any stage in the procurement. The initial complaint is made to the contracting entity but there is entitlement to appeal to the IRP. Statutory time scales for conduct of the review and decision-making are relatively short and a range of remedies is available.

*Weaknesses*

125. The main weaknesses identified in the legal and regulatory framework are the following:

- Non-alignment of the overall legal and regulatory framework with changes resulting from the PPL 2018 and the introduction of e-procurement
- Scope and application of coverage—commercial public institutions, SOEs, and privately owned utilities with exclusive rights
- Use of methods other than the open procedure—the authorization process by the RPPA.
- Justification for use of noncompetitive methods—single source procurement, force account, and community participation—and levels of use of those methods
- Non-publication of contract award information—particularly for low-value contracts and contracts awarded using noncompetitive methods
- Grounds for bidder exclusion, disqualification, and debarment process
- Price preference and preferential treatment appears to be a barrier to participation of foreign bidders
- Sustainability and life cycle costing are not explicitly provided for in the legal framework
- Procurement complaints—time scales, grounds, and failure to publish all NIRP decisions and the institutional independence of the NIRP

126. The above weaknesses are dealt with in detail as substantial gaps in the tables in this section under each Indicators.

127. Indicator-wise findings are summarized in the rest of this chapter.

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

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

**Findings**

129. **Legal framework, application, and coverage of public procurement.** The law governing public procurement is Law No.62/2018 of 25/08/2018 Governing Public Procurement (PPL)[48]. The PPL came into force on September 7, 2018, with a six-month transitional period for PEs to comply. The PPL is an ordinary law sitting within a clearly defined hierarchical legal framework. In the event of conflict with the PPL, the provisions of international treaties and agreements take precedence. The PPL takes precedence over and is supported by more detailed and/or specific instruments including PP Regulations[49] and professional code of ethics both issued by way of ministerial orders, ministerial instructions, circulars, guidelines, SBDs, and a Public Procurement User Guide.[50] Both the PP Regulations and the Public Procurement User Guide are out of date and require replacement or substantial amendment including alignment with the e-procurement system.

130. The legal framework applies to all procurement using public funds (goods, works, and services, including consulting services). The list of exclusions from the application of the PPL is limited but includes "classified items relating to national defense and security." PEs are widely defined to cover public bodies, including subnational governments and commercial public institutions where they use the state budget. Commercial public institutions whose budget is not approved by Parliament are governed by special regulations of each institution. There is no consolidated list of PEs which are categorized as commercial public institutions and thus have adopted special regulations. These regulations are not published and available in public domain as also the volume of procurement activities carried out by such institution is not available.

131. **PPPs and concessions.** MINECOFIN takes the policy lead on PPPs. The RDB supports the implementation of PPPs. The award of PPP contracts for a wide scope of infrastructure facilities and assets are regulated by Law No. 14/2016 of 02/05/2015 Governing Public Private Partnerships[51] (PPP Law). The potential sectors for PPPs include transportation, energy, social affairs, tourism, natural resources and environment, telecommunications and information technology, and any other sectors determined by

[48] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Laws/Law_No_62_2018_of_25_08_2018_Governing_Public_Procurement.pdf

[49] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Ministerial%20orders/MINISTERIAL_ORDER_ESTABLISHING_REGULATIONS_ON_PUBLIC_PROCUREMENT_-ITEKA_RYA_MINISITIRI_RISHYIRAHO_AMABWIRIZA_AGENGA_AMASOKO_YA_LETA_01.pdf_01.pdf

[50] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Manuals/PublicProcurementUserGuide.pdf

[51] https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Law%20No.14-2016%20of%20February%205th%202016%20Governing%20Public%20Private%20Partnerships.pdf

order of the Prime Minister. The PPP Law does not apply to contracts subject to the PPL or to the privatization or divestiture of enterprises, assets and any infrastructure facility owned by the Government. The PPP Law generally requires a competitive procedure for the award of a PPP, with international and national advertisement, governed by the following principles: competition, transparency, fairness and non-discrimination, efficiency and effectiveness, protection of public property, and public interest and accountability. The PPP Law permits, in specified cases, the award, without competition, of a PPP contract to a partner who has made an unsolicited proposal.

132. **Publication and accessibility.** Public procurement laws, ministerial orders, and ministerial instructions relating to public procurement, and circulars, SBDs, guidelines, and manuals are published on the website[52] of the RPPA. The RPPA website is a freely accessible online portal. It is not clear from the RPPA website whether the information available, for example the ministerial orders, are fully up to date and comprehensive, and there appears to be some inconsistency in the availability of documents in different language versions of the website. It is uncertain what degree of public consultation is required prior to issue of ministerial orders. There is a general lack of interface and seamless 'fit' between the RPPA website and the UMUCYO website and guidance is available.

133. **Procurement methods.** The PPL provides that public procurement contracts subject to the PPL shall be awarded through open competition, unless otherwise provided for in the PPL. The open procedure is the default procedure for contracts over the national threshold.[53] PEs are permitted to use other less competitive procedures, subject to meeting conditions and/or thresholds set out in the PPL, which generally reflect the nature and complexity of the contract concerned. In specified cases, prior approval from the RPPA is required to conduct procedures other than the open procedure. Direct award (single source procurement) is permitted only where specified grounds for justification are satisfied. Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules. A consolidated summary of the procurement methods available, including relevant thresholds and conditions, is not published.

134. **Advertising rules and time limits.** PEs are required to publish all tender opportunities on the e-procurement portal,[54] UMUCYO, except where the estimated value of the contract is below relevant thresholds published in the PP Regulations. Other circumstances where award without prior publication of a tender is permitted are specified in the PPL. When a PE does not use the e-procurement system and where no authorization has been obtained, the PPL provides that the contract shall not be paid for by the government, thus exposing suppliers to financial and commercial risk resulting from noncompliance by a PE.

135. The e-procurement portal, UMUCYO, is easily accessible online at no charge. The PPL requires only limited information to be included in the notice publicizing tender opportunities, although, in practice, the information published on UMUCYO is sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one. The minimum time between the call for proposals and submission of bids is specified in the PPL. Most advertised opportunities use the open procedure, for which the minimum time frame for submission of tenders is 30 calendar days. The minimum time frame is much shorter for submission of tenders using the simplified method, reflecting

[52] http://rppa.gov.rw/index.php?id=188

[53] The PP Regulations set out thresholds applying to the use of the competitive procedures available under the 2007 PPL, with the 'lightest' methods of procurement permitted for low-value tenders.

[54] Rollout of use of the e-procurement system has been phased since its launch in 2016 and most, but not all, PEs now use the system.

the low-value non-complex nature of these procurements. Where foreign bidders are expected to compete, the time frames are longer. The minimum time between the call for proposals and submission of bids is specified in the PPL.

136. **Rules on participation.** The PPL sets out rules on eligibility to participate in procurement processes and grounds for exclusion. The legal framework details eligibility requirements and provides for rejection of offers where it is established that a bidder is engaged in corrupt or fraudulent practices. Public companies and public institutions are eligible to participate as bidders in public procurement if they can prove that they are legally and financially autonomous and that they operate under commercial laws.

137. There are no provisions in the PPL referring specifically to exclusion from participation due to conviction by final judgment for offences relating to participation in a criminal organization, terrorism, money laundering, child labor, trafficking in human beings, or the equivalent of those offences. There are provisions for administrative debarment subject to due process. The provisions of debarment stipulated under Chapter IV on Sanctions. PPL A.176 deals with temporary debarment (for example, false information regarding the company, its document or its capacity) and PPL A.177 with permanent debarment (for example, use of fraudulent means to evade sanctions) for which conditions are listed exhaustively under these articles and summarized under Indicator 14 of the Detailed Matrix in Volume II of the Assessment Report. The 'Blacklist' of debarred bidders is published on the RPPA website, listing the name of the company/organization, name of the individual, ground for debarment, and period of debarment.

138. The PPL sets out a non-exhaustive list of requirements for bidder qualification. Qualification requirements must be published in advance and only the published requirements may be applied. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. The PE may require a bidder to provide evidence or information to establish that the criteria are met, in accordance with instructions set out in the tender document instructions.[55] The PE must check the accuracy of evidence/information provided by a bidder and may disqualify a bidder for submitting false, materially confusing, or incomplete information.

139. There are a number of measures which may limit or hinder access to the market. The PPL includes provisions on both exclusive preference and local price preference and the SBDs, which PEs are required to use, include price preference provisions and methods of calculation. The PPL also includes requirements for bidders to be registered as businesses, to hold professional licenses, or to exercise any liberal profession, but the PPL does not require that the registration or licensing must be in Rwanda. For specified construction works and engineering consultancy services, local and foreign companies are required to apply to the RPPA for 'categorization' which assesses a company's suitability to deliver contracts.

140. **Procurement documentation and specifications.** The PPL establishes the minimum content of procurement documents and requires that the tender document be prepared in accordance with the PPL, PP Regulations, and standard tender documents. SBDs are published by the RPPA and must be used by PEs. The level of detail varies according to the nature and complexity of the procurement covered by the particular SBD. Requirements in the specifications contained in the procurement documents must be objective and neutral, referring to national standards, or international standards where relevant, with recognition of the principle of equivalence. Some standard technical specifications have been published.

[55] The SBDs include 'Qualification Information' or 'Post-qualification' sections with forms for completion by bidders.

The use of output-based (functional) specifications to promote innovation is not covered by the legal framework. Some standard technical specifications have been published, which are generally input based in nature. Potential bidders may request clarification of procurement documents and the PE must respond timely, with written clarification provided to all potential bidders.

141. **Evaluation and award criteria.** The legal framework requires that the procedure and criteria for bid evaluation and comparison are set out clearly in the tender documents. Only the pre-disclosed criteria may be used to evaluate bids and nothing can be added or deleted in that respect. The submitted bid/proposal must be substantially responsive. In the case of works, the contract is awarded to the bidder whose bid/proposal is determined to have offered the lowest evaluated price/cost. Evaluation of price and non-price attributes is permitted, particularly in the case of supply of goods, where other criteria may be applied and monetized, to ensure value-for-money decisions. Consideration of life cycle costing is permitted, but there are no specific provisions concerning the method by which life cycle costs are determined. The default method for evaluation of proposals for consulting services is quality and cost-based selection. The SBDs have sections specifying the criteria and methodology to be applied, where relevant. In the case of consultancy services, the formula for assessment of combined criteria, including manner of combination and relative weighting, is set out in the PP Regulations. During the procurement process, information relating to the evaluation and comparison of bids or clarification on tenders and content of bids must not be disclosed.

142. **Submission, receipt and opening of tenders.** All public PEs must use the e-procurement system, UMUCYO, for conduct of procurement. This includes the electronic submission and opening of bids. However, the legal framework does not include details governing the modalities for opening bids or the preparation, retention, and availability of records of proceedings for bid opening, aligned with the e-procurement system. The PPL provides that during or after procurement proceedings the content of bids must not be disclosed, subject to disclosure required by law or for the purposes of appeal or audit. The PPL also forbids disclosure of information relating to a procurement whose disclosure is likely to impede respect for law or jeopardize public interest or would prejudice a bidder's legitimate commercial interest (which is not defined) or inhibit fair competition. The 2010 Public Procurement User Guide includes the requirement for security and confidentiality but the user guide is not up to date because of the introduction of the new PPL 2018 and the move to e-procurement in particular.

143. **Right to challenge and appeal.** Participants and prospective participants in procurement proceedings have the right to challenge decisions or actions taken by the PE at any stage of the procurement proceedings. There is no requirement in the PPL to demonstrate actual or possible loss or injury because of the alleged noncompliance. The legal framework is not sufficiently proscriptive in terms of information to be provided to bidders concerning the proposed contract award and the time frame within which such information shall be provided. It also appears that there is no right to challenge a final contract award decision after it has been made.

144. The initial application for review is made in writing to the PE, with a right of appeal to an IRP, the NIRP. When an appeal is lodged with the NIRP the procurement process is suspended pending the NIRP's decision. The NIRP has authority to order a range of actions, including cancelling procurement proceedings. The legal framework specifies the range of available remedies. There are rules which establish time frames for submission of challenges and appeals and for issuance of decisions by the NIRP. Decisions on appeal made by the NIRP must be published on the RPPA website, but there are no specified time frames for publication and not all decisions are published on the RPPA website. Decisions of the NIRP

are final and binding, unless the decision has been reviewed by the court adjudicating the case on merit. The competent court for review is the commercial court.

145. **Contract management.** The PPL provides more detail on contract provisions than commonly found in primary procurement legislation in other jurisdictions, and includes some contract management related provisions. The e-procurement system includes contract management and payment functions. The standard contract terms included in the SBDs are very comprehensive. The conditions for contract amendments are defined in the PPL and include limitations to ensure economy and avoid arbitrary limitation of competition. There are efficient and fair processes for prompt resolution of disputes during performance of the contracts, with amicable settlement as the first step. The SBDs provide for dispute resolution, including alternative dispute resolution, by way of mediation, arbitration, and adjudication. The PPL covers provisions concerning payment of invoices and refers to an order of the minister which determines the period within which the invoice is paid. The order of the minister has not yet been published.

146. **Electronic public procurement and norms for safekeeping of records, documents, and electronic data.** All public PEs must use the e-procurement system, UMUCYO, for conduct of procurement. The PPL and PP Regulations do not set out a comprehensive list of the records to be maintained either for paper-based or electronic procurement, and there are no document retention policies or comprehensive security protocols. There is currently a lack of clear alignment between the PPL, PP Regulations, and the use of the e-procurement system

147. Tabulation on substantive gaps, risk classification (Low - L, Medium – M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| ✓ **1(a)(b) Scope of application and coverage** | PPL Article 2 on the Scope of Law does not exclude commercial public institutions, which is in contradiction with PPL Article 5 where such institutions whose budget is not approved by the Parliament is governed not by PPL but by special regulations of each institution approved by an order of the minister in charge of public investment. | **M** | The RPPA in cooperation with the minister in charge of public investments should consider identifying and publishing the list of commercial institutions which are subject to special regulations. An assessment should be undertaken to determine the extent of and further need for harmonization with the PPL and between the special regulations of such commercial institutions. In this vein, the special regulations approved by the minister should at a minimum require the public disclosure of special procurement rules, as well as disclosure of reports and data on volume of procurement, share of competitive versus noncompetitive procedures, and complaints received and resolved. |
| ✓ **1(b)(a) Procurement methods** | **Use of methods other than open procedure - authorization process.** It is not clear from the PPL (Article 29) whether prior approval is required from the RPPA in all cases where a method | M | The process set out in Article 29 should be reconsidered, preferably to be abolished. However, if the government considers it important to keep this arrangement in place till the capacity of procurement workforce is upgraded, then revisions to the PPL and/or PP |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | other than an open tender is used or whether prior approval is only required where conditions for use of the particular method are not met.<br><br>There are no provisions in the legal framework setting out the detailed criteria and methodology which the RPPA uses to assess the application by PEs for authorization for use of methods other than the open procedure.<br><br>There is a lack of up-to-date, comprehensive, and publicly available information on submission, process, and decisions made on these applications.<br><br>The provisions of Article 29 appear to overwrite the detailed conditions for use of each method offering misplaced discretion to the RPPA (with confirmation from the responsible supervising minister that procurement is in public interest) to approve the use of noncompetitive methods if conditions for the application are not met. There are no provisions in the PPL or PP Regulations setting out the detailed criteria which the RPPA uses to assess the application for authorization and make a decision whether to approve or reject the application, even if to confirm that they will only approve a request if the conditions for the use of each method, set out in the PPL, are met. There is a danger that a non-transparent system of ex ante (prior) approval for use of methods other than open procedure could be used as a way for PEs to avoid using competitive procedures. This may be used, for example, to favor a particular | | Regulations should be considered to limit the ex-ante function of the RPPA to review and approve the use of noncompetitive methods set out in the PPL, when conditions set out in the PPL exist and such use is justified.<br><br>If up-to-date information is not available to suppliers then, particularly where authorization is given for noncompetitive procurement, this has a potentially negative impact on competition and transparency.<br><br>To increase transparency, there should be a requirement in the legal framework for prompt publication on the RPPA website/UMUCYO of authorizations granted by the RPPA to use methods other than the open procedure.<br><br>Information published must include sufficient information, including reasons for the decision and allow sufficient time to permit suppliers to challenge the decision. |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | contractor or as a way to deal with poor or lazy procurement practices such as leaving it too late to run an open procurement or insufficient market analysis to identify more than one potential provider. This is particularly the case if justifications can be in undefined broad terms such as being in 'public interest'.<br><br>Moreover, the RPPA's authority to allow derogations from the PPL without strong and clear conditions, dilutes the accountability of PEs. | | |
| | **Justification for single source procurement.** The drafting of the justification for single source procurement in urgent situations (PPL A.24(4)) is not sufficiently strong to guarantee that it is used only in exceptional circumstances.<br><br>**Justification for use of other noncompetitive methods - force account and community participation.** The conditions for use of force account (PPL A.26) and community participation (PPL A.27) are too broadly drafted and have the potential to be inappropriately used, overused, or used for non-economic considerations resulting in reduced competition. | M | PPL A.24 could be strengthened to reduce the likelihood of overuse or abuse.<br><br>Redraft (PPL A.24(4)) to strengthen the provision so that single source procurement may only be used in exceptional circumstances.<br><br>PPL A.26 and PPL A.27 could be strengthened to reduce the likelihood of overuse, inappropriate use, and or use based on non-economic considerations.<br><br>In summary, redraft PPL A.24, PPL A.26, PPL A.27, and PPL A.29 to narrow the conditions where these methods of noncompetitive award may be used or justified clearly and not in broad terms such as being in the 'public interest'. |
| **1(c) Advertising rules and time limits** | **PPL A.33: The information included in the tender notice** is insufficient to allow potential bidders to determine whether they are interested or able to submit a bid. | L | The PPL should be amended to ensure that information in a tender notice includes at least a short description of the subject matter of the procurement, time lines, and reference to where bidding documents can be obtained. |
| **1(d) Rules on participation** | **Bidder qualification.** The provisions allowing for disqualification of a bidder who is subject to "any legal proceedings" or on the grounds of provision of "incomplete information" may be interpreted | M | The RPPA to provide clear guidelines either through the PP Regulations or user guides on how these provisions should be interpreted by PEs. |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | widely or formalistically by PEs, which could cause problems or be misused. | | |
| | **Price preference provisions**<br>There is a set of requirements on exclusive preferences for goods produced in Rwanda and categorization that promotes preference for local goods and services. Though foreign companies can bid and be awarded a tender once, without categorization, they are required to apply for categorization later on. The categorization does not identify firms which are micro, small, and medium enterprises (MSMEs), though in practice most of the local firms fall under the category of MSME.<br>In conclusion rules of eligibility, exclusive preferences for local bidders, and system of categorization may be construed as a barrier to competition. | **M** | In applying the various schemes and preferences for locally produced goods or services, the government could consider the effects on participation of foreign bidders whose presence should not be underestimated in terms of innovative solutions, value for money, and flow of knowledge that they bring into the country. Based on hard data, the government should find out if such conditions create oligopolistic or monopolistic conditions. Among other things, the government could consider alternative ways to improve local participation: (a) including margin of price preference in favor of SMEs applied in evaluation and comparison of bids; (b) setting aside contracts below certain monetary levels or types of procurement for award to SMEs; (c) basing quotas for award of contracts to SMEs on a percentage of the value of total procurement of a PE; (d) specifying levels of subcontracting to SMEs to be met by prime contractors; and (e) bundling procurement into smaller contracts to encourage SMEs and local companies. |
| | **Grounds for exclusion:** There are no provisions in the PPL referring specifically to exclusion on the grounds of a conviction by final judgment for specified criminal offences or corrupt activities. | M | The PPL to be revised to include specific provisions dealing with exclusions for convictions for specified criminal offences or corrupt activities. |
| | **Debarment:** Periods of debarment of five or seven years are relatively long and may have a negative impact on competition.<br>The provision for debarment for a period of seven years for failure to inform a change of address appears disproportionate. | M | Consider reducing the periods for debarment. Specific guidance is needed to reduce discretion on these aspects and need to be addressed in the PP Regulations and/or User's Guide for transparency and certainty (cross refer to sub-indicator 14(c)). |
| **1(f) Evaluation and award criteria** | **Use of price and non-price attributes in practice**<br>**Life cycle costing.** The PPL and PP Regulations do not contain specific provisions concerning relative weighting and/or life cycle costing of the method by | L | Including life cycle costing provisions in higher level legislation supported by guidance on use of life cycle costing, where relevant, would emphasize its importance and ensure consistency and uniformity among PEs.<br>Revise the PPL and/or PP Regulations to include explicit provisions on use of life cycle costing, |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | which life cycle costs are determined, which is also a gap under Indicator 3. | | supported by practical guidance and methodologies, where appropriate |
| **1(g) Submission, receipt, and opening of tender** | There is a lack of clear and up-to-date rules, policies, and guidance on modalities for submission, receipt, and opening of bids; recording proceedings for bid opening; document retention; and security and confidentiality of bids**.** | L | Legal framework to be updated to reflect PPL 2018 and move to e-procurement system. This should be supported by publication of clear and up-to-date policies and guidance (as appropriate).<br><br>This information should to be public and easily accessible. |
| **1(h) Right to challenge and appeal** | **PPL A.49: Information to be provided in 7- day period before contract award.** PPL A.49 does not appear to place a PE under an obligation to provide the information to the bidder without delay and within a short-specified period following receipt of the request. Nor is it clear on what kind of information and whether the information provided at this stage must include an explanation as to why it is proposed not to select their bid.<br><br>This may potentially create problems for a bidder seeking to substantiate grounds for a complaint within the seven-day period. | L | It is of utmost importance for the transparency and fairness of the procurement complaints review mechanism to provide timely and sufficient information to bidders for them to prepare and file meaningful complaints.<br><br>The PPL and, at a minimum, the PP Regulations must include provisions to address the gaps.<br><br>Alternatively, a series of changes/measures could be considered to strengthen the review process:<br><br>• After completion of bid evaluation, automatically communicate the evaluation results to all bidders who submitted bids, providing information on their respective bids, reasons for rejection, points awarded, evaluated total price, ranking, and so on, as relevant. Also, provide information on the successful bidder to whom the PE is proposing to award the contract.<br><br>• The notification commences the 'standstill period', which can be 7–10 days during which bidders may complain. |
| | **Right to challenge final award decision:** The PPL does not, appear to provide a right to challenge the final award decision.<br><br>PPL provides that after signature the PE must notify the other bidders that their bids were unsuccessful and bidders have a right to request an explanation as to why their bids were not selected.<br><br>This is too late in the process for other bidders to seek | L | |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | explanations on their bids. The PE should proactively disclose this information at an earlier stage, where bidders can seek a more meaningful recourse. | | |
| | **Publication of information on appeals.** List of appeals and appeals filed cannot be found on the NIRP website. | L | Appeals or, at a minimum, a list of accepted appeals with sufficient detail to identify the parties and subject matter of the appeals, should be published, on receipt and acceptance, on a dedicated web page or website and in an easily searchable format.<br><br>The PPL or PP Regulations to be amended to include provisions on publication of information on appeals, including timelines for publication. |
| | **Publication of decisions.** Not all NIRP decisions are published on the NIRP website. | L | All decisions of the NIRP should be published on a dedicated web page or website within a short-specified period of the decision being made and in an easily searchable format.<br><br>The PPL or PP Regulations to be amended to include provisions on publication of decisions, including specifying a short time frame for publication. |
| **1(j) Electronic public procurement** | **Alignment with legal framework**<br><br>There is currently a lack of clear alignment between the PPL, PP Regulations, and the use of the e-procurement portal. | M | Amend the PPL (if necessary) and adopt and publish as quickly as possible the new PP Regulations for the implementation of the PPL 2018, aligned with e-procurement. |
| **1(k) Norms for safekeeping of records, documents, and electronic data** | The PPL and PP Regulations do not set out a comprehensive list of the records to be maintained either for paper-based or electronic procurement. There are no easily accessible published document retention policy or security protocols. The 2010 User Guide is out of date and not aligned with PPL 2018 or e-procurement. | M | Codification of legal requirements into the new PP Regulations should include provisions on record keeping and transactions, document retention and security, aligned with e-procurement processes and supported by practical and up-to-date guidance, policies, and protocols (as appropriate). |
| **1(l) Public procurement principles in specialized legislation** | **Procurement by public commercial entities** is not essentially aligned with the overall procurement framework. There is no evidence the special procurement regulations are approved by ministerial order as required by the PPL. They are not publicly available, and there is no | M | The RPPA in cooperation with the minister in charge of public investments should consider identifying and publishing the list of commercial institutions which are subject to special regulations. An assessment should be undertaken to determine the extent of and further need for harmonization with the PPL and between the special regulations of such commercial institutions. In this vein, the special regulations |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | clarity on whether the special procurement regulations issues by any such commercial public institution are harmonized with one another. The complaints review mechanism, an essential element of accountability and fairness in public procurement, is limited to review by internal structures of the commercial institution | | approved by the minister should at a minimum require the public disclosure of special procurement rules, as well as disclosure of reports and data on volume of procurement, share of competitive versus noncompetitive procedures, and complaints received and resolved. |
| | **Unsolicited proposals for PPP.** The provisions permitting the award without competition of a PPP contract following receipt of an unsolicited proposal have the potential to reduce the overall competitiveness of the market and negatively impact long term value for money outcomes. | | With regard to PPP contract, the RDB (which serves as the Secretariat of the PPP Steering Committee) to review use of unsolicited proposal with a system of evaluating it against other competing proposals as per international practices including 'Swiss Challenge' as a method where the subject matter is put to competition after the unsolicited proposal is submitted and the first proposer is asked to match the alternative proposal price if he is not lowest. |

148. The following table sets out non-substantial gaps and suggestions for improvements.

| Sub-indicator | Non-substantive Gap | Recommendations/Suggestions for Improvements |
|---|---|---|
| **1(a) Scope of application and coverage** | **Ministerial orders - easy availability.** The English language version of the RPPA website site does not appear to contain a comprehensive set of the ministerial orders which apply to public procurement.<br><br>It is not possible to establish with certainty from the English language version of the website whether the information provided on the RPPA website is exhaustive or up to date.<br><br>**RPPA website.** There is some inconsistency between the documents available in all official languages.<br><br>**RPPA/UMUCYO interface.** There is a general lack of 'fit' between the RPPA website and the UMUCYO website and guidance available.<br><br>**Ministerial orders - creation.** It is not clear to what degree consultation is required prior to the issue of | In order to ensure easy access, a comprehensive and up-to-date collection of all relevant current documents should be published on the RPPA website, including the PPL, PP Regulations, ministerial orders, ministerial instructions, circulars, guidelines, SBDs, information and instructions on use of e-procurement, user guides, and a summary of all relevant financial thresholds.<br><br>All published documents in the collection should be identified (indexed) in a consistent manner and be available in all language versions of the website. An index of documents, with links to the documents, would also be helpful. Ideally, PDF documents would be in a searchable format for ease of reference.<br><br>Where documents are included in the collection for historic reference purposes (such as the old PPL 2007) there should be a |

| Sub-indicator | Non-substantive Gap | Recommendations/Suggestions for Improvements |
|---|---|---|
| | ministerial orders which have an impact on public procurement. | clear indicator that these are no longer in force.<br>Users should be also able to access this information through the UMUCYO interface. |
| **1(g) Submission, receipt, and opening of tenders** | **Commercial interest.** The PPL provides for non-disclosure to protect 'commercial interest' but this term is not defined in the PPL. If this term is interpreted broadly post evaluation, transparency may be unnecessarily limited. | Commercial interest should be clearly defined in the PPL and supported by guidance<br>Additionally, instructions to bidders should be prepared on how to identify/mark commercially confidential information to balance the need for transparency with protecting legitimate commercial interests such as intellectual property rights or trade secrets. |
| **1 (l) Public procurement principles in specialized legislation** | **Policy lead.** The policy lead for the PPP is the RDB but there is no separate unit to undertake the task of the PPP with required expertise as per international practices. | The RDB to undertake an assessment based on international practices and constitute an independent PPP unit with a full range of expertise available as required for a PPP unit. |

## Indicator 2: Implementing regulations and tools support the legal framework

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

**Findings**

150. PP Regulations[56] date from 2014. They supplement and provide more detail on various provisions of the procurement law but they are out of date and refer to the old 2007 PPL. According to the RPPA Strategic Plan, updated PP Regulations were planned for June 2019, but they are not yet published on the RPPA website.[57] The RPPA is responsible for the preparation of SBDs which PE are required to use. SBDs (dated January 2019) have been published for large works, small works, supply of goods, supply of consultancy services, and supply of small consultancy services. These include comprehensive conditions of contract. There is no SBD for non-consultancy services. Comprehensive standard contract conditions are included as an integral part of the SBDs. There is a User Guide for Public Procurement which the RPPA

[56] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Ministerial%20orders/MINISTERIAL_ORDER_ESTABLISHING_REGULATIONS_ON_PUBLIC_PROCUREMENT_-ITEKA_RYA_MINISITIRI_RISHYIRAHO_AMABWIRIZA_AGENGA_AMASOKO_YA_LETA_01.pdf_01.pdf

[57] RPPA website accessed July 23, 2019.

is responsible for preparing and maintaining. The user guide dates from 2010, has not been updated and is not aligned with the new PPL or e-procurement system.

**Substantive Gaps**

151. Tabulation on substantive gaps, risk classification (Low - L, Medium – M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| **2(a) Implementing regulations to define processes and procedures** | **PP Regulations** are not up to date and comprehensively aligned with the provisions of the PPL and e-procurement. | L | Adopt and publish as quickly as possible the new PP Regulations for the implementation of the PPL 2018, aligned with e-procurement. |
| **2(d) User's guide or manual for procuring entities** | **User guide.** The current user guide dates from 2010 and is not aligned with the new PPL and e-procurement. | L | Prepare and publish as quickly as possible new user guides to align with the 2018 PPL and e-procurement system.<br>The government is planning to produce new user guides by June 2020. It would be helpful to include more practical information and examples on specific topics such as life cycle costing and sustainable procurement. |

**Non-substantial Gap and Suggestions for Improvements**

| Sub-indicator | Non-substantial Gap | Recommendation/Suggestions for Improvements |
|---|---|---|
| **2(a) Implementing regulations to define processes and procedures** | **SBD for non-consultancy services:** There is currently no SBD for non-consultancy services and no standard contract conditions for non-consultancy services | Prepare and publish SBD for non-consultancy services with standard contract conditions (and if needed for information technology and supply and installation) |

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

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

**Findings**

**Sustainable Public Procurement (SPP)**

153. The GoR has published a VNR Report on implementation of SDGs[58] consistent with 'Transforming our World: The 2030 Agenda for Sustainable Development' of the United Nations and SDG12, which calls for promotion of sustainable procurement practices in line with national priorities and policies, and SDG16, which calls for accountable institutions. Based on this report Rwanda is committed to delivery and realization of SDGs and in fact is selected as a pilot for SDG16 on building effective and capable institutions. Further, as per the NST1 priority on Pillar - Economic Transformation (SDG12), Rwanda shall promote sustainable management of the environment and natural resources to transition Rwanda toward a Green Economy. Further, under the Transformational Governance Pillar (SDG16), Rwanda shall strengthen capacity, service delivery, and accountability of institutions

154. Based on the VNR report (June 2019), there is a mechanism to monitor application of SPP in a general way without any reference to SPP which promotes the integration of three pillars of sustainable development: economic development, social development, and environmental protection; but related to sustainable procurement there is no implementation plan.

155. There is no specific policy or strategy to implement SPP in support of national policy objectives. There are no comprehensive measures in the public procurement legal and regulatory framework to address sustainability at all stages of the procurement cycle. There are targeted examples, such as the 'Buy Made In Rwanda' program. There are guidelines on enhancing value for money in public procurement[59] but no specific legal provisions in the PPL or PP Regulations.

156. Guidelines for enhancing value for money in public procurement were issued in June 2018 by the RPPA: 010/2017/2018 -1996/RPPA60. The guidelines refer to the achievement of whole life cost and clearly defined benefits as well as the need to deliver to meet user need and source locally, but the focus is not on application of sustainability criteria.

157. **Obligations deriving from international agreements.** In the past there were dialogues with key regional integration blocs like COMESA, but these regional agreements are not specifically reflected in procurement policy.

158. Tabulation on substantive gaps, risk classification (Low - L, Medium – M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| ✓ **3(a) Sustainable Public Procurement (SPP)** | The legal framework does not address sustainability comprehensively and at all stages of the procurement cycle. The legal framework | M | Need to develop a policy to promote the integration of three pillars of sustainable development: economic development, social development, and environmental protection, by focusing on reduced demand for resources |

[58] 2019 Rwanda Voluntary National Review (VNR) Report (June 2019).
[59] Guidelines for enhancing Value for Money in Public Procurement, RPPA, June 2018 010/2017/2018 -1996/RPPA59.
[60] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Guidelines/Guidelines_for_enhancing_Value_for_Money_in_Public_Procurement.pdf

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | does not address the specific requirement for application of sustainability criteria to ensure value for money. | | and minimizing negative impact of goods, works, and services across their life cycle.<br>Include sustainability provisions in higher-level legislation to emphasize its importance and ensure consistency and uniformity among PEs.<br>Develop and adopt SPP policy/strategy and implementation plan.<br>Revise the PPL and/or replace PP Regulations to include explicit provisions on sustainability at all stages of the procurement cycle, supported by practical guidance.<br>Revise the PPL and/or replace PP Regulations to include explicit provisions on sustainability criteria, supported by practical guidance. |
| **3(b) Obligations deriving from international agreements** | Regional agreements are not specifically reflected in procurement policy. | L | Linkage to be established between regional economic integration and procurement policies. |

## Pillar II. Institutional Framework and Management Capacity

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

**Overview of Pillar II with key findings**

160. **Linkage of procurement system with budget management.** PPL A.16 requires PEs to prepare an annual procurement plan. In situations where execution covers a period longer than a fiscal year, the PE allocates in the budget of the year money corresponding to the planned activities. The tender execution budget for the remaining years is provided for each fiscal year. No tender solicitation can be made without money available for execution in the adopted budget. Regarding procurement of works, the budget manager plans in the budget activities for the works, if their study has been approved. As per PPL A30 before preparing the tender document, the procurement officer ensures that such a tender is included in the public procurement plan and relevant budget is available. As per the GoR PFM regulations, solicitation of tenders or proposals are preceded by existing budget allocation duly approved by the Parliament. Budget commitment on contract can be done only with prior check and availability of the related budget appropriations. This internal control regulation is reinforced by the existing IFMIS and e- Procurement which provide automatic control mechanism.

161. **Existence of institution in charge of the normative and regulatory functions.** The country has an institution in charge of the normative and regulatory function. The RPPA has been established by law and has legal personality and administrative and financial autonomy (Article 1 of law no. 25/2011 of 30/06/2011 establishing the RPPA and determining its mission, organization, and functioning - RPPA Law). The RPPA is an independent body under the supervision of MINECOFIN. The IRP which is the appeals body at the national level, is housed in the RPPA which is its Secretariat, and budget is provided by RPPA. The organization structure of RPPA is given in Volume III of the Assessment Report at its Annex 2 -

162. **PEs and their mandate.** PPL A.9 defines PEs as "central government organs, local administration organs, public institutions, national commissions, government projects or any other organs so empowered by the Chief Budget Manager." In addition, "commercial public institutions" where they use the state budget fall within the definition of procurement entities.

163. **Centralized procurement bodies.** As per Article 3.9 of the PPL, there is definition of "Central purchasing body: public entity which conducts the procurement process and concludes a framework agreement with the successful bidder for works, supplies, and consultancy and non-consultancy services on behalf of other procuring entities." However, in practice no such institution is in existence.

164. **E-procurement.** The e-procurement system is used by all PEs now and made mandatory. The UMUCYO e-procurement governmental website is easily accessible and free of charge. The pilot stage has been successful, and from July 2018 it is mandatory for all PEs to use the e-procurement system. The management of the e-procurement system is clearly defined. There is an e-procurement team in charge of managing the system and another team in charge of helping suppliers to be registered. Management is currently done by the project team. The current management structure is depicted in the diagram in Annex 3, Volume III.

165. **Existence of effective and transparent information system.** The e-procurement system is designed to generate monitoring information without any manipulation. The information regarding all procurement phases (advertisement, bidding period, evaluation, and contractual period) are available anytime. The RPPA publishes an Annual Activity Report.

166. **Strategy and program to develop capacity of procurement staff and for professionalization of the procurement function.** Based on the RPPA Strategic Plan (2018–2021), one of the key issues is improved skills and knowledge of trained public procurement officials. In terms of subprogram I.2 'Improved skills and knowledge of trained public procurement officials', there is a list of indicators, baselines, targets in percentage, and accountability, but there is no list on existing and proposed training programs in procurement. The training modules are published on the RPPA website, which are the 'Introductory Module in Public Procurement (March 2012)' and a draft 'Intermediate Level Training Module in Public Procurement (April 2012)'. Rwanda Association of procurement professionals is established by Law N°011/2016 of 02/05/2016 - Law establishing the association of procurement professionals and determining its organization and functioning. Article 2 of this law defines procurement professionals as those who are qualified persons, registered and authorized to practice the procurement profession as per this law.

**Summary of Key Strengths and Weaknesses (Substantial Gaps) under Pillar II**

*Key strengths*

- Existence of multiannual procurement plan to facilitate budget planning based on three-year Medium-Term Expenditure Framework (MTEF)
- Existence of an institution in charge of the normative, regulatory function namely, RPPA, which has been established by law with legal personality and administrative and financial autonomy
- Existence of a functioning e-procurement System (UMUCYO) till contract award including the e-GP appeal module for complaints review
- Existence of the RPPA Strategic Plan (2018–2021) to handle key issues of training and improving skills and knowledge of public procurement officials

*Key weaknesses (substantial gaps)*

- Independence of the RPPA impacted adversely due to budget constraints
- Conflict of interest situation for the RPPA due to their involvement in procurement transactions (like providing authorization to use less competitive methods other than open tender) and the IRP housed in the RPPA with the RPPA being a Secretariat and providing budget to the IRP
- Lack of independence of the IRP due to their dependence on budget of the RPPA, who have budget constraints
- e-GP does not support OCDS and does not have comprehensive business intelligence (BI) and data analytics capability

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

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

**Findings**

168. **Procurement planning and the budget cycle.** Annual procurement plans are prepared to facilitate budget planning and to contribute to multiyear planning in a three-year MTEF. According to PPL A.16, when the execution period for the tender is longer than the fiscal year, the PE allocates in the budget for the year money corresponding to the planned activities. The tender execution budget for the remaining years is provided for each fiscal year. The Law on State Finance and Property provides that all public entities shall prepare and submit their quarterly budget execution reports to the minister. PP Regulations A.5 requires PEs to submit monthly reports to the RPPA showing how the procurement plan is being implemented.

169. **Financial procedures and the procurement cycle:** As per PPL A. 16, no tender solicitation can be made unless money for the execution is provided for in the adopted budget. The PFM law, regulations, and procedures provide a clear segregation of duties for invoice processing and payment under the overall oversight of the Chief Budget Manager. The national regulations/procedures for processing of invoices

and authorization of payments are significantly followed, publicly available, and understandable to potential bidders. On invoices for procurement of goods, works, and services paid on time (percentage of total number of invoices), out of total contracts executed, based on a sample, the assessment found 51 contracts (representing 62.9 percent) whose invoices were paid within 45 days as required by the PPL.

170. Tabulation on substantive gaps, risk classification (Low - L, Medium – M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| ✓ **4 (a) (c) Feedback mechanism on budget execution** | Even though, reporting requirement is supported by an adequate IFMIS and e-procurement system able to produce tailored feedback information on contracts completion, in practice, the contract implementation part of the e-procurement system is not functional. Analytical information on contracts or major contracts completion within the monthly financial report is very limited. There are cases of delayed and abandoned contracts as per the report of the Auditor General for the period ending June 30, 2018,[61] and cases of contract failures, which are not reported by PEs as per the RPPA Annual Activity Report (2017– 2018) | M | There is need to take a comprehensive look at the implementation of major contracts, analyzing issues affecting implementation like change in design and/or site location, land acquisition/ expropriation of properties located in the area of implementation of infrastructure, delays in payment/budget constraint, capacity/capability of selected contractors, and reasons for contract delays and failure and take timely corrective action. There is a need for an effective contract monitoring and closing mechanism to ensure that both the employer and contractor have fulfilled their obligations, there are no dues certificate from the contractor without any pending dispute, and facility is in effective use as intended (cross refer to sub-indicator 9(c) on contracts management in practice). |
| **4 (b) (b) Timely payment of invoice** | Evidence of timely payment of Invoices for procurement of goods, works and services paid on time (percentage of total number of invoices)<br>On total contracts executed, the assessment found 51 contracts (representing 62.9 percent) whose invoices were paid within 45 days as required by the PPL, while 14 contracts (representing 17.5 percent) were delayed and for 12 (14.8 percent) contracts the assessed PEs did not have information as payment files are elsewhere, so the assessment did not find that information (rross refer to sub-indicator 9(c)). | M | The RPPA to monitor timely payment of invoices and in case of delays interest for delayed payment to be made, not just penalty to the officer who delays or refuses to pay without reasonable ground. |

[61] Rwanda - Audit Report of the Auditor General for period ending June 30, 2018. Presented to the Parliament on April 29, 2019. http://www.oag.gov.rw/fileadmin/REPORTS/Annual_Report_2018_EXECUTIVE_SUMMARY.pdf

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

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

**Findings:**

172. **Status and legal basis of the normative and regulatory function.** The RPPA has been established by law with legal personality and administrative and financial autonomy (Article 1 of Law No. 25/2011 of 30/06/2011 is the Law establishing the RPPA and determining its mission, organization, and functioning). The RPPA is an independent body under the supervision of the ministry (MINECOFIN).

173. **Responsibilities of the normative/regulatory function.** The RPPA Law sets out the RPPA's mission and provides requisite powers. The RPPA has clear powers to provide advice and information, monitor public procurement, develop and support initiatives, provide tools, documents, and training, and support professionalization. The drafting of procurement policies is not clearly assigned but it is understood that MINECOFIN is the policy making body. In practice, the RPPA is the body which proposes changes/drafting amendments to the legal and regulatory framework.

174. **Organization, funding, staffing, and level of independence and authority.** RPPA Law A.1 establishes the RPPA with legal personality and administrative and financial autonomy and provides that the RPPA shall be governed in accordance with general provisions governing public institutions. As per RPPA Law A.6, the RPPA is composed of two management organs: (a) the Board of Directors (BoD) and (b) the Director General. As per RPPA Law A.7, the BoD is a decision-making organ whose competence, responsibilities, and functioning and terms of office of its members are determined by a Prime Minister's order. There is a performance contract concluded between the supervising authority of the RPPA (MINECOFIN) and its decision-making organ indicating the competence, rights, and obligations of each party for the RPPA to fulfill its mission.

175. Members of the BoD, including its chairperson and deputy chairperson, are appointed by Presidential Order. Members of the BoD shall be selected on the basis of their competence and expertise, and 30 percent of members shall be females. Therefore, the head of the institution namely the Director General with the supervision of the BoD has a high-level, authoritative standing in the government with a diverse and inclusive background.

176. As per the organization chart on the RPPA website as also in the RPPA Strategic Plan (2018/19–2020/21), the RPPA (excluding the IRP) has a total staff of about 50, divided into four units, Office of Director General (10 staff including the Director General), Monitoring & Audit Unit (20 staff including a

Director), Capacity Development Unit (9 staff including a Director), and Administration and Finance Unit (10 staff including a Director). Based on the RPPA Annual Activity Report 2017–2018 (November 2018), for the given year the revised budget was RWF 929,959,824 with execution of RWF 836,837,492 (about 90 percent of budget), out of which 61.10 percent related to compensation of employees and 30 percent to use of goods and services.

177. In 2017-18, due to RPPA budget constraints the training, which is one of its core functions, was carried out only for those PEs who were able to organize and sponsor those trainings. The given budget is not sufficient compared to the overall scale of procurement and to demonstrate meaningful impact on the overall performance of the public procurement system in the country.

178. **Incompatibility in the functions of RPPA.** The RPPA is responsible for functions and roles normally assigned to regulatory and normative bodies. There are however additional tasks such as approval authority for use of noncompetitive method if the conditions for the use of such method as provided in the PPL are not met and the role of secretariat to the IRP, which not only put the RPPA in direct involvement with specific transactions, but also have the potential to create actual or perceived conflicts of interest, with each other and also in relation to the other functions. Specifically, the RPPA approves the use of methods other than open tender, while at the same time it will be acting as secretariat/budget holder of the NIRP, which can potentially be faced with a complaint challenging the RPPA's approval of use of a noncompetitive method. It is questionable how objective the NIRP can be to overthrow a decision of the RPPA, and bidders may not have confidence in the impartiality and independence of the NIRP. More generally, involvement of the RPPA in the authorization process and as secretariat of the NIRP are not consistent with the primary function of the RPPA as a regulatory and oversight body where independence in assessing the functioning of the procurement system is required. The RPPA cannot discharge such a function without full independence and objectivity.

179. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| ✓ **5(c) Financial independence and staffing** | The RPPA is dependent for its resources on the state finances, and it is not clear if the available finances ensure the function's independence and proper staffing. | M | There is a need to create sources of finances that provide some degree of independence to the RPPA to ensure proper staffing and resources to keep the services at the level of quality desired and to fulfill the mandate of the RPPA as required by the PPL.<br>The RPPA to assess, through an independent agency, the focus of its activities compared to its mandate, adequacy of RPPA staffing, and budget to find out if there is a meaningful impact on improving the overall public procurement system. |
| ✓ **5(d) Avoiding conflicts of interest** | Conflicts of interest, with regard to the advisory and regulatory functions of the RPPA | | To avoid actual or perceived conflicts of interest, the RPPA should not be involved with the complaints review function and procurement transaction function; also to improve accountability of PEs. |

| | | | |
|---|---|---|---|
| | | | If it is unavoidable, for financial, organizational, or other reasons, for the RPPA to stay involved as budget holder and provider of the secretariat for the IRP there should be robust structures, policies, and systems in place to prevent conflicts of interest or the potential for inappropriate influence. |

## Indicator 6: Procuring entities and their mandates are clearly defined

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

**Findings**

181. **Definition, responsibilities, and formal powers of PEs:** There is a lack of clarity concerning the definition of commercial public institutions and, in particular, whether SOEs are classified as commercial public institutions. It is also unclear whether privately owned enterprises with grants of exclusive rights are subject to the PPL. Responsibilities and competencies of PEs are clearly defined and they are required to appoint procurement officers with responsibilities defined in the PPL. Decision-making authority on matters such as the conduct of procurement, contract award decision, award and executing of contracts, contract monitoring, invoicing, and payments lies with the PEs and so is delegated to the lowest competent levels.

182. The PPL does not use the term 'utilities' and it does not contain specific provisions concerning the status of utility companies with special or exclusive rights.[62] It is therefore not immediately apparent from the primary legislation what, if any, the nature and extent of coverage of the PPL is in respect of utilities. However, as noted above, 'commercial public institutions', where they use the state budget, fall within the definition of procurement entities.

183. **Centralized procurement body.** As per Article 3.9 of the PPL, there is a definition of "Central purchasing body: public entity which conducts the procurement process and concludes a framework agreement with the successful bidder for works, supplies, and consultancy and non-consultancy services on behalf of other procuring entities."

184. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| **6(a) on definition, responsibilities and** | The status and definition of commercial public institution is not clear. | L | Improve clarity of definitions, in particular concerning the status of utility companies with special or |

[62] Utilities, including the water and energy sectors, are subject to regulation by RURA, the Rwanda Utilities Regulatory Authority https://rura.rw/index.php?id=44

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| **formal powers of procuring entities** | | | exclusive rights and whether they are included in the definition of 'procuring entity' (see comment under sub-indicator 1(a)). |
| ✓ **6(a) on responsibility and accountability of procuring entities** | Involvement of the RPPA in authorization on use of less competitive bidding (other than open tender method) as per Article 29 of the PPL, dilutes the accountability of PEs. Based on statistical data (refer Indicator 7) and as per the RPPA Annual Activity Report for 2017–2018 the use of a noncompetitive method is in the range of 40–45 percent of total expenditure with open tender as 50 percent by value and 72 percent by number, which is much above any norm for a competitive and transparent procurement system. | L | PEs should be accountable for use of less competitive methods which should be subject to ex post audit by the RPPA and OAG. |
| **6(b) Centralized procurement body** | Despite a provision in law, the actual functioning of such a centralized body does not exist. In practice, the lead for specialized procurement is taken by ministries/PEs with specific expertise who procure bulk items, including requirements for other ministries/ PEs. | L | The RPPA to consider benefits of a centralized procurement body to implement the provisions of the PPL through a specific guidance note to document the way specialized procurement is handled. |

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

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

**Findings**

186. **Publication of procurement information supported by information technology.** It is mandatory for all procurement entities to publish the procurement plan through the e-procurement system. The access to the website is free, and the e-procurement staff provide free services to suppliers for registration. The information system and the RPPA website provide for publication of (a) procurement plans: a PE cannot publish a tender without a previously published procurement plan, and the annual publication of procurement plans is required by the law; (b) tender notices that provide all information related to a procurement opportunity, such as the title, the place to deliver, the bid security, and so on; (c) links to rules and regulations that can be found in the website; the supplier can be informed on the debarment process and the ethics of the public procurement officer; (d) general information**;** (e) tender

information; (f) SBDs for goods/works/services; (g) required bidding documents; (h) user's guide; and (i) Strategic Plan (2018–2021). There is an e-procurement team in charge of managing the system and another team in charge of helping suppliers to be registered.

187. Appeal decisions are published in the RPPA website. In e-GP, suppliers are notified through their inbox message (email and e-GP system). The NIRP has access to the e-GP appeal module, to get appeals, and send messages to entities, but does not publish the decisions. They send scanned copies to the RPPA which are accessible from the RPPA website (https://rppa.gov.rw/index.php?id=567.

188. The e-procurement system is designed to generate monitoring information without any manipulation. The information regarding all procurement phases (advertisement, bidding period, evaluation, and contractual period) are available at any time.

**Some Key Statistical Information**

| Period | Total Number of Contracts (Online) | Procurement Plans Published (Percentage of Total) (Online) | Key Procurement Information Published (Percentage of Total Number of Contracts) | Invitation to Bid (Percentage of Total Number of Contracts) | Total Number of Appeals Received (All Received Online Only) | Percentage of Total Appeals Decisions Posted |
|---|---|---|---|---|---|---|
| July 1, 2017, to June 30, 2018 | 3,269 | 4,485 (100%) | 100% | 100% | 30 | 100% |
| July 1, 2018, to March 31, 2019 | 3,214 | 5,427 (100%) | 100% | 100% | 55 | 89% Others are in progress |

*Source:* e- GP Portal.

189. **Use of e- procurement.** The e-procurement system is used by all PEs now and its use has been made mandatory. The pilot stage has been successful and from July 2018 it is mandatory for all PEs to use the e-procurement system. The e-GP system is still to be implemented in sectors, schools, health centers, and district pharmacies. The RPPA is implementing it in the district hospitals soon. Currently, the RPPA is working out the engagement strategy for schools and health facilities. The total value of expenditure was RWF 336.707 billion and the total number was 4,378 for 2017–2018, with breakdown of off-line and online procedures as under:

| | | |
|---|---|---|
| Off line by value / % | RWF 221.270 billion | 65.72% of total |
| Online by value / % | RWF 115.436 billion | 34.28% of total |
| Offline by number / % | 1,571 | 35.88% of total |
| Online by number / % | 2,807 | 64.12% of total |

*Source:* e- Portal and Annual Activity Report of RPPA for 2017–2018

190. **Strategies to manage procurement data.** 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. The Monitoring and Audit Unit is in charge of collecting data on e-procurement. The system allows to collect data from e-bidding to awarding of the contract, such as the numbers of bidders, the prices submitted by each of them, the bidder, and the amount of the contract. The e-GP system does not have extensive standard analytical reports, but the RPPA has maintained an Excel file generated from the e-GP system with data sets and analytics.

191. The e-procurement system is designed to generate monitoring information without any manipulation. The information regarding all procurement phases (advertisement, bidding period, evaluation, and contractual period) are available anytime. Auditors have separate access to the e-GP system. They need permission to audit. Audit is done by the OAG.

192. The overall scale of public procurement compared to volume of government expenditure and its share in GDP is captured in the following table (for the period July 1, 2017, to June 30, 2018).

| Total Number of Contracts | Total Value of Contracts (RWF, billions) | Total Number of Contracts awarded through Competitive Methods | Total Value of Contracts Awarded through Competitive Methods RWF billion (%) | Volume of Government Expenditure (Public Procurement Expenditure) (RWF, billions) | Public Procurement as Share of Government Expenditure | Volume of GDP (RWF, billions) | Public Procurement as Share of GDP |
|---|---|---|---|---|---|---|---|
| 4,378 | 336.707 | 3,400 | 166.658<br>(49.50%) | 2,187.5<br>(1,066.5) | 48.74% | 7,898 | 13.50% |

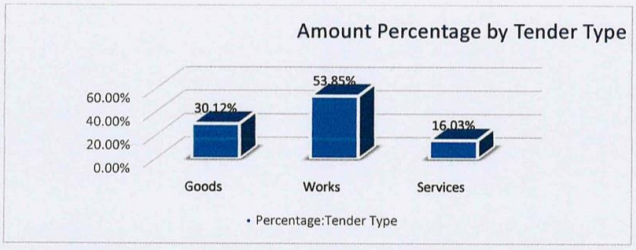
193. The figure of RWF 336.707 billion is based on statistics from the RPPA Annual Activity Report (2017–2018) on page 14. The figure of total public procurement expenditure of RWF 1,066.5 billion is derived from MINECOFIN Rwanda Updated Macro-Framework - Public Data Set of May 2019. The competitive methods for this table is defined as open competitive tenders, both international and national, and request for quotation (RFQ). The remaining categories of restricted tender, single sourcing, community approach, and force account are considered noncompetitive.

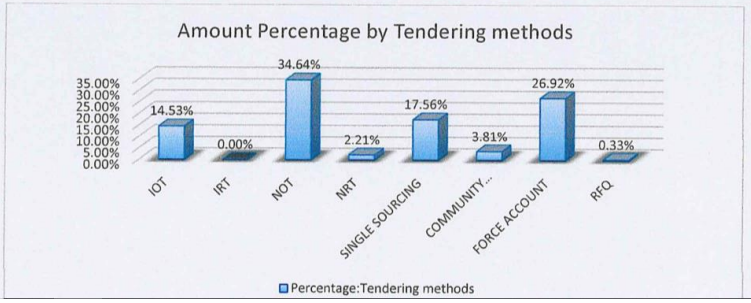
194. Based on the RPPA Annual Activity Report for 2017–2018, the statistics for number of tenders and amount by type and method for the fiscal year 2017–2018 is as below (the table numbers refer to the number as given in the source document).

**Table 2:6. Below shows statistics for number of tenders, amount by type and procurement method for the fiscal year 2017-2018.**

| | Total expenditure | 336,707,190,486 | | Number of tenders 4,378 | |
|---|---|---|---|---|---|
| | | Amount | % | Numbers | % |
| By Types | Goods | 101,419,834,187 | 30.12% | 2222 | 50.75% |
| | Works | 181,317,097,135 | 53.85% | 726 | 16.58% |
| | Services | 53,970,259,165 | 16.03% | 1430 | 32.66% |
| **Total** | | **336,707,190,487** | **100.00%** | **4378** | **100.00%** |
| Methods | IOT | 48,911,772,879 | 14.53% | 212 | 4.84% |
| | IRT | 2,805,227 | 0.00% | 7 | 0.16% |
| | NOT | 116,625,645,401 | 34.64% | 2971 | 67.86% |
| | NRT | 7,425,516,701 | 2.21% | 72 | 1.64% |
| | SINGLE SOURCING | 59,133,063,868 | 17.56% | 344 | 7.86% |
| | COMMUNITY APPROACH | 12,837,244,032 | 3.81% | 332 | 7.58% |
| | FORCE ACCOUNT | 90,649,011,566 | 26.92% | 223 | 5.09% |
| | RFQ | 1,122,130,814 | 0.33% | 217 | 4.96% |
| **Total** | | **336,707,190,488** | **100.00%** | **4378** | **100.00%** |

**Figure 2:1. Amount of tenders by type and procurement method.**




*Source:* RPPA Annual Activity Report 2017–2018 (November 2018).

*Note:* IOT: International open competitive tender; IRT: International restricted tender; NOT: National open competitive tender; NRT: National restricted tender; RFQ: Request for quotation.

195. The RPPA Annual Activity Report has indicated that: "The table 2.6 above shows a low level of use of open competitive method unlike the previous years, 49 percent (IOT + NOT). Some of the reasons behind this situation include: emergencies caused by heavy rainfall, infrastructure needed urgently for some strategic projects like Bugesera airport, pre-financing of some projects offered by some contractors and unlocking very many projects which had stalled due to poor performance of some contractors. These

reasons led to more use of single source and force account methods than in previous years. Sufficient measures will be taken to address the situation."

196. Based on the data as per the Annual Activity Report of the previous two years (2016–2017 and 2015–2016), it is seen that the share of IOT + NOT was much higher compared to 2017–2018 as tabulated below.

| Years | Total Procurement Expenditure (RWF, billions) | % Share of IOT + NOT in Terms of Amount | % Share of Single Source in Terms of Amount | % Share of Force Account in Terms of Amount | % Share of RFQ in Terms of Amount |
|---|---|---|---|---|---|
| 2017–2018 | 336.707 | 49.11% | 17.56% | 26.92% | 0.33% |
| 2016–2017 | 520.095 | 73.12% | 16.52% | 5.67% | 0.69% |
| 2015–2016 | 546.933 | 85.03% | 12.51% | 0.74% | 0.38% |

197. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| **7(a) on publication of procurement information supported by information technology** | **OCDS.** Currently, the e-GP system does not support the OCDS and does not publish data in machine-readable formats. There are some report formats available, but these are not adequate to get a complete picture of the procurement sector. | L | It is recommended to incorporate OCDS for structured data dissemination to facilitate transparency and citizen engagement and support better use of data in policy decisions. |
| **7(b) Use of e-Procurement** | Bids submitted by MSMEs are not identified (though it is understood that the majority of local firms fall under the category of MSME). | L | The e-GP system to enable MSME identification to develop policy and identify share of business attributed to MSME. |
| **7(c) strategies to manage procurement data** | Analysis of information is not available publicly other than through the RPPA Annual Activity Report. | L | The e-GP system in Rwanda currently lacks a comprehensive tool for data mining, analysis, and generating comprehensive reports with visualization and infographics for using in decision-making. However, the system can be enhanced to incorporate OCDS and add a BI system. |

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

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

**Findings**

199. **Training, advice, and assistance.** Based on the RPPA Strategic Plan (2018–2021), one of the key issues is improved skills and knowledge of trained public procurement officials. In terms of subprogram I.2 'Improved skills and knowledge of trained public procurement officials', there is a list of indicators, baselines, targets in percentage, and accountability (see details under 8(c)), but there is no list on existing and proposed training programs in procurement. There is an advisory help desk and hotline.

200. The training modules are published on the RPPA website, which are 'Introductory Module in Public Procurement (March 2012)' and a draft 'Intermediate Level Training Module in Public Procurement (April 2012)'. As per the RPPA Annual Activity Report 2017–2018 from July 2017 to June 2018, capacity building, coaching, and mentoring officers in the Capacity Development Unit trained 583 officials from different public PEs that requested RPPA trainers. The capacity assessment conducted during 2016–2017 has pointed out PEs with weakness in applying procurement procedures. The OAG has also identified weak PEs. These PEs (30) have benefitted from procurement training.

201. There was also a monitoring and evaluation of training performance to determine whether the trained staff of previous years (2016–2017) applied their skills and knowledge as part of the internal tender committee and stayed for a sufficient duration in that role, whether the training was applied on the job and useful (97 percent said 'yes'), and whether there was evidence on use of SBDs.

202. **Recognition of procurement as a profession.** Rwanda Association of procurement professionals is established by 'Law N°011/2016 of 02/05/2016 - Law establishing the association of procurement professionals and determining its organization and functioning'. The professional body in the view of the government was formed as one of the pillars of procurement reform. The procurement professional body law has a provision requiring procurement professionals to be a member of the professional association to be hired by the public institutions. As a result, 99 percent of the current members are from the public institutions. Currently there are about 400 members. The list is available on the RPPA website.

203. A general meeting of the association is planned in the near future and a strategic plan on how to become independent of the government is at the top of the agenda. Some preliminary proposals suggested by the president, on how to become financially independent, are (a) increasing membership fees, (b) organizing trainings, (c) certifying members - there is a plan to commence issuing annual membership certificates/cards, (d) engaging in study services, and (e) receiving support from DPs.

204. **Monitoring performance to improve the system.** The RPPA has published a 3three-year strategic plan (2018–2021) which indicates the framework with goals, actions, indicators with baselines, targets, and accountability both in qualitative and quantitative terms. These include, under Outcome II: 'Improved skills and knowledge of trained public procurement officials', a host of activities that, among others, include (a) establishing an inventory of higher learning and training institutions that offer procurement courses in Rwanda and organizing and conducting meetings with such institutions; (b) establishing and updating a database of information relevant to procurement training, trainers, and trainees; (c) adopting and disseminating internal regulations and code of ethics for the Association of Procurement Professionals; (d) establishing conditions and procedures for selecting candidates to undertake Chartered Institute of Procurement and Supply (CIPS) under government sponsorship; (e) conducting training for officials of PEs that will be able to organize such training; (f) updating, approving, and publishing induction and refresher course training modules to reflect the applicable public procurement legal regulatory framework and best practices; (g) updating the list and Identifying newly recruited procurement officials,

specialists, and tender committee members and planning for their training and designing a training schedule for every category; (h) developing and publishing a detailed capacity-building plan/strategy/program informed by a capacity needs assessment; (i) establishing activities on capacity-building methodology which builds partnership between the RPPA and PEs in addressing persistent issues faced by PEs; and (j) approving the annual performance measurement tool to be used.

205. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| **8(a) Training, advice, and assistance** | There is no permanent and relevant training program for new and existing staff in government procurement, to judge the relevance, nature, scope, and sustainability. Training is based on availability of budget from PEs rather than needs analysis.<br><br>Relevant trainings not available to build capacity for private sector and CSOs. There is no training program on integrity aspects in procurement. | M | There is a need to institute a permanent and relevant training plan. A well-functioning system should (a) be based on skills gap inventory to match the needs of the system; (b) be sufficient in terms of content and frequency; and (c) provide for evaluation of the training program and monitoring progress in addressing capacity issues. The budget constraint of the RPPA is to be addressed so that training is provided as per needs assessment rather than availability of budget from PEs. Collaboration with other training institutions to be sought<br><br>A sustainable and intensive training program to be instituted to train key actors in procurement, in particular private sector and CSOs. These training should include integrity training programs. |
| **8(b) Recognition of procurement as a profession** | The professional body's independence is compromised due to budget allocation from MINECOFIN through the RPPA's operating and facilitation budget. Though the professional body is aspiring to become independent there are serious staff and financial constraints. Contribution from the members could only cover purchase of computers. | M | The Association of Procurement Professionals needs to be financially independent and sustainable by (a) increasing membership fees (currently RWF 50,000 ( USD 54), (b) organizing trainings, (c) certifying members - there is a plan to commence issuing membership certificates, (d) engaging in study services; (e) receiving initial support from DPs and the government; and (f) offering corporate membership. |
| **8(b) Procurement positions defined with job description** | There is no definition of procurement positions at different professional levels, job descriptions, and requisite qualification and competencies specified. The qualification and experience requirements of public | L | To define procurement positions at different professional levels, job descriptions, and requisite qualification and competencies specified. The PPL or PP Regulations to specify the qualification |

| Sub-indicator | Substantive Gap | Risk | Recommendations |
|---|---|---|---|
| | tender committee members is not clear from the PPL or PP Regulations. | | and experience requirements of public tender committee members. |
| **8(c) Monitoring performance to improve the system** | The RPPA strategic plan 2018–2021 has developed a three-year strategy based on the assessment done regarding the performance indicator from the previous years. However, based on the published annual report, implementation of the above has been achieved in limited number of activities, conducting training for PEs, and addressing issues faced by PEs. | L | The RPPA to review implementation of the strategic plan and identify budget and resource constraints.<br><br>(Mid-term review is expected in June 2020) |

## Pillar III. Public Procurement Operations and Market Practices

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

**Summary of Pillar III Key Findings**

207. **Needs analysis and market research - its linkage to selection of procurement method.** Based on MAPS sub-criteria there is a requirement for needs analysis and market research to guide a proactive identification of optimal procurement strategies and choosing of an appropriate procurement method based on the market situation. Based on the sampled cases, it appears that a market research did not guide choice of procurement method which led to lack of competition. As required by MAPS criteria, the basic conditions governing the entire procurement process are established at the onset of the procurement process, highly influencing the achievement of the defined objective.

208. **Average number of days between advertisement/solicitation and contract signature.** Based on sampled cases, out of 81 cases where data was available, 58 contracts were awarded within initial validity and 16 were not awarded within initial validity. The average number of days was 172.4 for National Competitive Bidding, 362.7 for International Competitive Bidding, 68 for National Restricted Tender, and 105.3 for single source contracts.

209. **Contract implementation.** The assessment was conducted on a sample of 81 cases; 25 (30.8 percent) contracts had time overruns, 37 (45.6 percent) did not, 14 (17.2 percent) contracts did not have clear or complete data, 3 (3.7 percent) contracts were executed through force accounts, and 1 (1.2 percent) contract was not executed.

210. **Timely payment of invoices.** Of the total contracts executed, the assessment found 51 contracts (representing 62.9 percent) whose invoices were paid within 45 days as required by the PPL, while 14 contracts (representing 17.5 percent) were delayed; for 12 (14.8 percent) contracts the assessed PEs did

not have information as payment files were elsewhere, so the assessment did not find that information. Based on the RPPA Annual Activity Report of 2017–2018, the RPPA looked into the issue of delayed payment for services rendered by the private sector to government institutions, but it was a limited intervention involving a total amount of invoices for RFW 884.281 million (about USD 1 million).

211. **Limited evidence of dialogue and partnerships between public and private sector.** Based on the results of the private sector survey there is limited evidence of such partnership, which perhaps is based on limited data. Based on PSF perception, there is some evidence of dialogue and partnership with the private sector. Also based on the RPPA Annual Activity Report of 2017–2018, the RPPA organized a one-day public procurement awareness meeting with bidders at different locations with more than 600 participants.

**Summary of Key Strengths and Weaknesses (Substantial Gaps) under Pillar III**

212. **The key strength under this pillar** is that there are certain good examples of contracts management: (a) out of 81 contracts, 37 (45.6 percent) were executed without any time overrun; (b) the assessment found that 68 contracts (83.9 percent) had measures for inspection, quality controls, supervision of work, and final acceptance of products where goods, services, or works were received in good quality and appropriate quantity; and (c) on the total contracts executed, the assessment found that for 51 contracts (representing 62.9 percent) where invoices were paid within 45 days as required by the PPL. Further, there were certain good initiatives of the RPPA as follows:

- Advocacy of the RPPA for delayed payment; a good step but needs scaling up for impact.
- Meeting with bidders to improve public procurement awareness through a one-day program involving more than 600 participants from the private sector needed more frequently.

*Key weaknesses (substantial gaps)*

- Lack of market research to guide procurement method
- Some delays in award of contracts
- Contract awards not published/announced when process is carried out offline
- Contract clauses do not provide for incentives for exceeding defined performance levels
- Significant number of contracts with time overruns
- Significant delays in payment of invoices
- Contract amendments not issued on time for majority of contracts
- Limited opportunities for involvement of civil society or external stakeholders in monitoring of procurement process and contract implementation
- Lack of complete record in a single file
- Limited dialogue and partnership with the private sector
- No formal program to build capacity of private sector
- Absence of sector strategy to secure collaboration with sector market participants to strengthen integrity, sustainability, and/or innovation in public procurement

## Indicator 9: Public procurement practices achieve stated objectives

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

214. The assessment of Indicator 9 required the selection and review of a sample of actual procurement transactions; 81 samples were selected covering 15 PEs. As some of the large value contracts are under implementation and did not use e-procurement, the Assessment Team was required to collect data through physical files and visits to PEs. Also, for contract implementation, all the information was collected through physical files.

**Findings**

215. **Planning.** On a total number of 15 PEs sampled, for all 81 cases, a procurement plan with cost estimates and budget approval was available, but in only 39 cases procurement plans were updated. Rwanda has a legal framework on safety and environment protection, but neither the law on public procurement and related regulations nor the practice integrate clearly and systematically the measures to ensure SPP taking into account the environment.

216. **Selection and contracting.** In the assessed cases, procurement methods were chosen, but only noncompetitive methods were assumed to be documented and justified in accordance with the purpose and in compliance with the legal framework. Practically and mandatorily before the launch of the procurement process, the tender committee members met to approve the procurement method that was proposed by the procurement officer within the PE. However, there was no justification of choice based on market research. Multistage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process. For all sampled cases where competitive methods were used, there were clear integrated standardized procurement documents. Throughout the bid evaluation and award process, confidentiality was ensured.

217. **Contracts management.** This is one of the weakest areas in the procurement cycle, though there are certain positive aspects as indicated above under strengths; still there were a set of weaknesses in terms of delays in implementation, lack of timely issue of amendment, lack of inspection by qualified staff, and delays in payment of invoices, which are also covered in the table of substantial gaps.

- ✓ Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.
  - ✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendation |
|---|---|---|---|
| ✓ **9(a)(a) Planning** | No appropriate market research that can lead the choice of methods and strategies. | H | Market research to be mandated to guide procurement strategy irrespective of method of procurement adopted (including competitive methods). |
| **9(a)(c) Planning** | Not enough evidence of the use of sustainability criteria | M | Sustainability and value-for-money considerations to be implemented, for example, take into |

| | | | |
|---|---|---|---|
| | to ensure value for money when they are used. | | account the disposal of assets policy, life cycle costing measures, and consideration of environmental, social, and economic issues. |
| **9(b)(b) Selection and contracting** | Lack of competition with participation which counted between 1 and 4 bids in more than 50 percent of cases for all types of procurement combined. | H | The RPPA and PEs to identify reasons for lack of competition and take measures to remove constraints. |
| **9(b)(d) Selection and contracting** | There is no system of monitoring of bid submission, receipt, and opening by a CSO. | L | The RPPA to consider independent monitoring of bid submission, receipt, and opening by a CSO for better transparency. |
| **9(b)(f) Selection and contracting** | The assessment did not record any other technique for the purpose of increasing value for money. | L | There is need for using other techniques like taking into account life cycle costing to achieve value for money. |
| **9(b)(g) Contract award announced** | Contracts processed offline were not published. | L | The RPPA to publish. |
| **9(c) Contracts management** | Delays in implementation. | M | Improve capability of contract officers on contract management and sector market analysis for determining optimum contract size and to analyze if contractors fail due to their capacity to deliver, to improve capability of local construction companies, removing constraints of delayed payment, instituting a formal system of contract. |

## Indicator 10: The public procurement market is fully functional

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

**Findings**

219. **Dialogue and partnership with private sector.** Based on the results of a private sector survey, in response to a question, "Does the government get in touch with private association to communicate changes to procurement framework?" only 11.11 percent of respondents indicated 'always'; 25.93 percent indicated 'usually'; 33.33 percent indicated 'sometimes'; 14.81 percent indicated 'rarely' and 14.81 percent 'never'. Therefore, it is seen that the evidence of an open dialogue with the private associations, including a transparent and consultative process when formulating changes to the public procurement framework, is weak.

220. **Private sector's organization and access to public procurement market.** PSF perception toward the RPPA is positive, in terms of its capacity and in reaching out and involving the private sector on every

public procurement-related issue. Based on the results of the survey, about 40–60 percent of participants indicated the major constraints for participation as access to financing, procurement methods and procedures that are proportionate to the risk and value in question, contracting provisions that do not fairly distribute risks, and lack of an effective appeals mechanism and dispute resolution. About 70 percent identified absence of fair payment provisions as a constraint as it does not help offset the cost of doing business with the government.

221. **Key sectors and sector strategies.** There is no evidence of sector market analysis to determine sector specific risks and the government's scope to influence specific market segments.

222. The following table illustrates '**Voices from private sector'** based on results of the survey.

**Based on Electronic Response**

- 60 percent (out of 30 responses) indicated that there is no perceived conflict of interest situation in normative/regulatory institution or in PE
- 40–60 percent (out of 26 responses) identified access to finance, appropriate procurement method, procurement rules, contracting provisions, fairness of payment provisions, effective mechanism of appeals and dispute as constraints for participation in bidding opportunities
- 70 percent (out of 10 responses), felt appeals system to be trustworthy and fair
- 56 percent (out of 25 responses) indicated that they are aware of capacity building (including on e-GP) being run by government for private sector and SMEs
- 70 percent (out of 22 responses) indicated that CSOs' involvement in overseeing procurement contracts would be beneficial in future
- 31.82 percent (out of 22 responses) indicated that companies are expected to give a gift to secure contracts in public sector
- 76 percent (out of 21 responses) feel that introduction of e-procurement has led to reduction in corruption
- 52 percent (out of 23 responses) feel that introduction of e-GP has led to loss of business for SMEs due to difficulties

**Critical Anonymous Written Feedback in Consultation Workshop Based on Quick Survey on June 12, 2019**

- "Make sure that e-procurement is working well"
- "Training and capacity building of SMEs required"
- "Improve contract management"
- "Encourage joint venture, but find a way to better protect the locals who sometimes have no voice in the decision-making as they do not have majority (share)"
- "Concerning JV, RPPA should put in place a mechanism to protect local companies, who should not be excluded after the contract was won"
- "Sometimes budget is coming late, and you can get our invoices (paid) after many months"
- "Poor technical specification/Terms of Reference/Bidding Document"
- "To avail access to financing for small suppliers/consultants"
- "Sometimes RPPA get involved in decision-making of procurement on the final results of tender where there is a conflict"
- "In my view complaints review system improved because we use e-procurement system"
- "Interest on delayed payment to be included in the law"

223. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below:

✓ Red flag, if any

| Sub-indicators | Substantive Gap | Risk | Recommendation |
|---|---|---|---|
| **10(a)(a) and (a)(b) Dialogue and partnership** | Lack of a formal mechanism on partnership and absence of ethics and integrity related training programs | L | Government to establish a formal mechanism and enhance its dialogue and partnership with private sector both on changes to the legislative process and for information and training programs tailored to the needs of small businesses as well as to support supplier diversity. It should include a module on ethics and integrity in public procurement. |
| **10(b)(b) Private sector's organization and access to public procurement market** | Based on the results of the survey, about 40–60 percent of participants indicated major constraints for participation as access to financing, procurement methods and procedures that are proportionate to the risk and value in question, contracting provisions that do not fairly distribute risks, and lack of effective appeals mechanism and dispute resolution. About 70 percent identified absence of fair payment provisions as a constraint as it does not help offset cost of doing business with the government. | M | More outreach and training of private sector participants is needed. The RPPA to discuss with private sector associations on constraints faced by them and take corrective measures to improve competition. |
| **10(c) (a) and 10 (c) (b)Key sectors and sector strategies** | No evidence of sector market analysis to determine sector specific risks and government's scope to influence specific market segment. | M | Based on the government's priority spending areas, key sectors to be identified for sector market analysis to strengthen competition, integrity, sustainability, and innovation in public procurement. |

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

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

**Overview of Pillar IV with Key Findings**

225. **CSO engagement.** PPL Article 13 requires members of the IRP to be chosen, among others, from civil society. However, the PPL does not require the association of a CSO in monitoring the procurement process and contracts implementation. There are few instances of association of a CSO like TI-Rwanda in

contract monitoring at the district level. However, there are no homegrown CSOs active in contract monitoring, perhaps due to lack of incentives to engage in such activities.

226. **Effective audit and control system.** There is an internal procurement control and audit manual in 2010 published by the RPPA which is effectively implemented. The report published by the OAG includes performance and compliance audits, identification of root causes, and follow-up of serious contracts management issues.

227. **Appeals mechanism.** The first review of the application is carried out by the PE. A.53 of the PPL provides that the decisions of the NIRP are final and binding unless the decision has been reviewed by the court adjudicating the case on merit. The NIRP is not involved in procurement transaction and based on data and surveys the decisions of the IRP are generally considered trustworthy and consistent and rendered on time as per statistical information given in the detailed matrix under sub-indicator 13(a)(d).

228. **Ethics and anti-corruption measures.** Prohibited practices and conflict of interest situations in procurement are well-defined in the PPL and SBDs. There is a system for temporary and permanent debarment that ensures due process.

**Summary of Key Strengths and Weaknesses (Substantial Gaps)**

*Key strengths*

- A strong legal framework, organization, and procedure on control system
- In-depth performance audit related to contract implementation by the OAG
- Regular and substantive procurement audit by the RPPA

*Substantial gaps*

- Inadequate consultation with CSOs
- Lack of citizen engagement in monitoring the procurement process and contract implementation
- Need for collaboration on procurement audit between the RPPA and OAG to make it mutually reinforcing
- Lack of information on anti-corruption measures in procurement - no annual reports are published by the Office of the Ombudsman
- Lack of mechanism for identification and detection of corruption risk in procurement

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

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

**Findings**

230. **Enabling environment for public consultations and monitoring.** CSOs in Rwanda remain weak due to a variety of constraints that include inadequate consultations when formulating changes to the public procurement system, absence of any provision in the PPL on engagement of CSOs in procurement and contracts management monitoring, and absence of homegrown CSOs interested in participation.

231. **Adequate and timely access to information by the public.** The e-procurement system is accessible to all stakeholders to access the information before taking the decision to participate in a tender. The deadline is clearly indicated and the documentation easily accessible. The e-procurement team also provides a short training and information regarding the website whenever the bidder requests it. However, there is absence of OCDS.

232. **Direct engagement of civil society.** The legal framework does not provide for the citizens to participate in the planning process of the procurement phase. With the e-procurement system the entire process in done online. There was no provision in the law for the citizens to participate or monitor contract management. The RPPA has private sector representation as Board members, and the NIRP also has private sector and CSO representation (PPL Article 13). They are consulted every time public procurement regulations and policies need to be improved.

233. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicators | Substantive Gap/ | Risk | Recommendation |
|---|---|---|---|
| ✓ **11(a) on enabling environment** | CSOs in Rwanda remain weak due to a variety of constraints. | L | Government to take measures to enhance consultation with CSOs and build their capacity. There is a need for providing incentives for homegrown CSOs. |
| **11(b) on adequate and timely access to information** | The e-GP system does not publish data in machine-readable formats. There are some report formats available, but they are not adequate to get a complete picture of the procurement sector.<br>The current e-GP system does not support OCDS and also does not have a comprehensive BI system. | L | To develop and integrate a comprehensive BI tool with visual representation of data and infographics which can be understood easily. It is recommended to incorporate OCDS for structured data dissemination to facilitate transparency and citizen engagement. |
| ✓ **11(c) on Direct engagement of civil society** | The legal framework does not provide for citizens engagement in planning, selection, and implementation phases of procurement. | M | PEs should allow citizens to participate in the planning of their activities. In the execution of the contract, citizens/CSOs should be invited to monitor the execution of the works contracts including through application of innovative techniques like geo-tagging and social audits. The RGB may possibly provide a mechanism to encourage homegrown CSOs. |

## Indicator 12: The country has effective control and audit systems

234. The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, 'effectiveness' means the expediency and thoroughness of the implementation of auditors' recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available. This indicator has four sub-indicators (a-d) to be assessed.

**Findings**

235. **Legal framework, organization, and procedures on control system.** The OAG as per its mandate under Article 165 of the Constitution, the Organic Law on State Finances and Property, and the Ministerial Order N° 003/17/10/TC of 27/10/2017 set the regulation for internal audit and audit committees. The OAG is the SAI. The OAG was established by Law n° 79/2013 of 11/09/2013 determining the mission, organization, and functioning of the OAG. The Constitution of the Republic of Rwanda (Article 165) mandates the Auditor General for (a) auditing revenues and expenditures of the state as well as local administrative entities, public enterprises, parastatal organizations, and government projects domestically or externally financed; and (b) auditing the finances of the institutions referred to above, particularly verifying whether the expenditures were in conformity with laws and regulations. The OAG applies audit standards compliant with international audit standards. The OAG conducts audit engagements in accordance with the International Standards of Supreme Audit Institutions and the Code of ethics consistent with the Code of Ethics of the International Organization of Supreme Audit Institutions. The Auditor General has to submit to each Chamber of Parliament, prior to the commencement of the session devoted to the examination of the budget of the following year, a complete report on the consolidated state accounts for the previous year indicating the manner in which the budget was utilized. This report for the period ending June 30, 2018, (as also for previous years) is available on the OAG website.

236. The RPPA has issued an internal procurement control and audit manual in 2010 which states the requirement for internal control procedures.

237. The findings of both the OAG and the RPPA are reflected in the next paragraph which resonates with the findings of the MAPS Assessment Team as reflected under sub-Indicator 9(c) under Pillar III on contracts management.

238. **Serious contract management issues as per audit reports.** Based on reports of the OAG (2018) and the RPPA Annual Activity Report (2018), there are serious contracts management issues related to delays in contract execution, abandoned contracts, and non-performance of contracts sometimes due to delayed payments. Relevant extracts from the OAG and the RPPA Annual Activity Report are given in Volume III of the Assessment Report.

239. **Coordination of controls and audits of public procurement.** Article 166 of the Constitution stipulates that the Auditor General shall each year submit to each Chamber of Parliament, prior to the commencement of the session devoted to the examination of the budget of the following year, a complete report on the consolidated state accounts for the previous year indicating the manner the budget was utilized. The specialized procurement audit is done by the RPPA. Based on the report of the OAG it is seen that OAG reports cover issues beyond compliance, and there are substantive finds and recommendations

to cover procurement performance and contracts management in OAG reports. There is a strong emphasis by the RPPA in conducting procurement audit based on the manual of 2010, which identifies serious gaps and issues. These audit reports are contained in the RPPA Annual Activity Reports and available on the RPPA website. The findings are reflected in the previous paragraph.

240. **Enforcement and follow-up on findings and recommendation.** Based on the report of OAG for the period ending June 30, 2018, "interrogate deeper the root cause of some of the recurring findings in our reports from one year to another through the adoption of root cause analysis model." There are issues related to performance information on service delivery as per the PEFA report of 2017. The methodology followed by the RPPA includes compliance with the implementation of previous audit recommendations.

241. **Qualification and training to conduct procurement audit.** Auditors are selected by the ministry in charge of labor, like other public servants. The selection is made through writing exams and interviews. However, it is not clear if auditors are trained on procurement or there is collaboration and exchange of staff between the OAG and the RPPA and if procurement specialists or consultants support the OAG office.

242. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicators | Substantive Gap | Risk | Recommendation |
|---|---|---|---|
| **12(b) coordination of controls and audits of public procurement** | There is no protocol or memorandum of understanding between the RPPA and the OAG on exchange of information on audit. | L | The RPPA and the OAG to carry out procurement audit (both on compliance and performance) which are coordinated and mutually reinforcing. |
| **12(d) qualification and training to conduct procurement audit** | Even though one of the focus areas of the OAG's strategic plan is continued capacity building and training, the OAG and the RPPA need to collaborate on devising and conducting specific courses on procurement audit in additional to their general training to conduct audit. | L | Auditors to be trained in the area of public procurement with a specific course for procurement audit in addition to their general training to conduct audit. |

## Indicator 13: Procurement appeals mechanisms are effective and efficient

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

**Findings**

244. **Process for challenges and appeals.** Decisions by the NIRP are rendered on the basis of available evidence submitted by the parties, which may include an oral hearing. PP Regulations A.53 lists the contents of the request for review which includes information on the decision or conduct against which a review is requested and any other relevant document the panel may request from the complainant.

245. **Independence and capacity of appeals body (NIRP).** According to (a) **PPL A.12,** the secretariat of the NIRP is within the RPPA; (b) **PPL A.14,** the NIRP is provided with a budget by the RPPA; (c) **PPL A.13,** the minister (from MINECOFIN) appoints NIRP members; (d) **PPL A.15,** the minister dismisses NIRP members for incapability, misconduct, or poor performance; and (e) regarding individual panel members**:** PP Regulations A.49 provides that NIRP members may not be members of a tender committee, staff, members of the RPPA BoD, or members of the district council.

246. PP Regulations A.59 is a provision dealing with conflict of interest, requiring a panel member (a) not to take part in "deliberations on the request until the decision thereof has been taken" where the member has applied for review and (b) not to take part in review proceedings where a member has "any relationship or misunderstanding with the complainant," and to inform the NIRP in writing.

247. Members of the NIRP are appointed and dismissed by the minister. The NIRP is provided with a budget by the RPPA which also provides the NIRP secretariat. The way in which the IRP is funded, the location of the secretariat, and the way in which members are appointed and dismissed along with grounds for dismissal have the potential to compromise the independence of the NIRP.

248. As currently structured, with its budget and secretariat provided by the RPPA, the IRP lacks full institutional independence.

249. **Independence of complaints review body.** As currently structured, with its budget and secretariat provided by the RPPA, the IRP lacks full institutional independence. The relationship with the RPPA may create for the NIRP an actual or perceived conflict of interest arising from the RPPA's role in authorizing the use of methods other than open tender. For example, the NIRP may be presented with a complaint challenging the RPPA's approval. Furthermore, the appointment process, qualification criteria, and grounds for dismissal of the members are not set forth in the PPL. Until the government explores the options for establishing a fully independent complaints review mechanism, it may be appropriate to consider some short-term changes/fixes such as direct budget allocation to the NIRP (if possible, within the budgetary system), appointment of members by open public competition, specifying qualification criteria of the members in the PPL, and tightening of the grounds for dismissal of members to limit discretion.

250. **Decisions of the appeals body (NIRP).** Participants and prospective participants in procurement proceedings have the right to challenge decisions or actions taken by the PE at any stage of the procurement proceedings. The initial application for review is made in writing to the PE, with a right of appeal to an IRP or the NIRP. The PPL provides for automatic suspension of procurement proceedings pending decision of the IRP. The procedures for review are clearly defined in the PPL and PP Regulations which are publicly available but are not presented in a user- friendly format.

251. Decisions of the NIRP, which are enforceable and binding, are rendered on the basis of available evidence submitted by the parties, which may include oral hearing. The time frames specified for submission of a complaint and timeliness of decision by the NIRP should not unduly delay the

procurement process, although the legal framework does not say how quickly a decision must be issued to the parties. Transparency in the functioning of the review system may be enhanced by publishing all decisions of the IRP on time. The procurement appeals system would benefit from greater availability of user- friendly electronic means for submission of appeals, communication, and publication of decisions.

252. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High - H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicator | Substantive Gap | Risk | Recommendation |
|---|---|---|---|
| ✓ **13(b) Independence and capacity of the appeals body** | As currently structured, with its budget and secretariat provided by the RPPA, the NIRP lacks full institutional independence. | M | To ensure institutional independence, the RPPA should not be involved with the complaints review function.<br>Explore the options for enhancing and ultimately achieving the independence of the complaints review body, properly resourced and staffed with qualified members selected in a competitive and transparent manner. In the short term, it may be appropriate to consider some short-term changes/fixes such as direct budget allocation (if possible, within the budgetary system), appointment of members by open public competition, and tightening of the grounds for dismissal to limit discretion. |
| **13(c) Decisions of the appeals body** | General lack of transparency in the overall functioning of the review system due to the failure to publish comprehensive information on receipt and processing of complaints and also lack of publication of the decisions of the IRP. | M | To improve transparency the web page/website of the IRP should include easily accessible and easily searchable, up-to-date information on complaints received and resolved.<br>There should be prompt publication of all of the decisions of the IRP in an easily searchable format which allows for a range of search terms. |

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

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

254. **Legal definition of prohibited practices, conflict of interest.** It is given in PPL Article 3, under definition of terms corrupt practices, obstructive practices, collusive practices, fraudulent practices, and conflict of interest.

255. The PPL provides for cancellation of procurement procedures in the event of fraud or lack of fairness, rejection of offers in the event of corruption or fraud, and cancellation of contracts due to forged or fraudulent practices. The Code of Ethics sets out both principles and ethical standards and the consequences of noncompliance, without prejudice to other provisions in the criminal law.

256. The PPL sets out circumstances where conflict of interest arises and 'Ministerial Instructions Establishing the Professional Code of Ethics Governing Public Agents Involved in Public Procurement' require public officials to provide a declaration of interest in the event that a conflict is identified.

257. The SBDs contain instructions, provisions, and self-declaration for bidders to complete, including a clause on conflict of interest and debarment but not a declaration confirming that the bidder has not been prosecuted or convicted of fraud, corruption, or other prohibited practices. The SBDs also contain contractual provisions concerning fraud, corruption, and other prohibited practices as specified in the legal framework.

258. **Debarment and sanctions.** The PPL provisions cover the process leading to temporary or permanent debarment of suppliers, who are listed on the RPPA website. There is a lack of specific guidance on how and when poor contract performance may lead to debarment, and debarment grounds linked to criminal activities and corruption are insufficiently specified. The periods for debarment appear to be rather long or disproportionate in some cases. The PPL also includes provisions on financial sanctions payable by suppliers in specified circumstances.

259. In addition, the PPL sets out circumstances where public officials may be sanctioned by imprisonment and a fine levied for committing an offence relating to the award of procurement contracts, collusion, and other offences. The potential prison sentences and fines are high. While these may have a dissuasive effect on poor or corrupt behaviors, these significant sanctions can have a negative impact on the operation of the procurement system. Heavy weight sanctions may create a culture of fear, resulting in procurement officials acting defensively, to protect their position, and not resulting in the best value-for-money outcomes from procurement processes.

260. Tabulation on substantive gaps, risk classification (Low - L, Medium - M, or High- H), and recommendations is given below.

✓ Red flag, if any

| Sub-indicators | Substantive Gap | Risk | Recommendation |
|---|---|---|---|
| **14(c) Effective sanctions and enforcement system** | There is a lack of specific guidance on how and when poor contract performance may lead to debarment, and debarment grounds linked to criminal activities and corruption are insufficiently specified. The periods for debarment appear to be rather long or disproportionate in some cases. According to the list of debarred entities/individuals, poor performance is one of the two main grounds for debarring firms and individuals. PPL A.48 sets out the requirements for PEs issuing certificates of good completion at the end of each contract. Specific guidance on these may lead to abuse of discretion by PEs | L | Specific guidance needed to reduce discretion on these aspects and need to be addressed in the PP Regulations and/or user's guide for transparency and certainty. |

| Sub-indicators | Substantive Gap | Risk | Recommendation |
|---|---|---|---|
| | and lead to misconduct. Moreover, regarding debarment, it is not clear if failure by a bidder to obtain good completion certificate automatically leads to debarment. | | |
| **14(d) Anti-corruption framework and integrity training** | Mechanism for identification and detection of corruption risk and mitigating these in the procurement cycle is not available. Annual reports are not published for the last three years with statistics on corruption-related legal proceedings and convictions | M | Anti-corruption strategy needs to include the use of modern technology (including through artificial intelligence) to detect cases of fraud or corruption also through electronic e-GP portal by suitable enhancement to the system. The Office of the Ombudsman to regularly publish its Annual Report. |

# Chapter 4: Consolidated Recommendations and Action Plan

## Pillar-wise Key Recommendations

261. Based on the assessment conducted of the public procurement system including the rating against 54 baseline sub-indicators, the following key recommendations and action plan are proposed for the government's consideration.

## Pillar I - Legislative and Regulatory Framework

- **Amend the PPL (if necessary) and adopt and publish** as quickly as possible the new PP Regulations for the implementation of the PPL 2018, aligned with e-procurement. Codification of legal requirements into the new PP Regulations should include provisions on record keeping and transactions, document retention, and security, aligned with e-procurement processes and supported by practical and up-to-date guidance, policies, and protocols (as appropriate).
- **Review and harmonize the various special procurement regulations of commercial public institutions** to ensure consistency with the PPL and between the special regulations of various commercial institutions.
- **Review the existing price preference provisions to balance the** preference for locally produced goods and participation of MSMEs, while ensuring participation of foreign bidders.
- **Remove the requirement of authorization by the RPPA** for use of methods other than the open procedure which dilutes the accountability of procurement decisions of the PEs (and the supervising minister) or, at a minimum, consider defining more clearly the criteria for approval by the RPPA.
- **Reconsider classification of force account and community participation** as a means of financing and funds transfer rather than a procurement method, as these methods are used finally to adopt less competitive methods of procurement.

- **Amend legal framework to ensure that contract award information** including for contracts awarded using noncompetitive methods, is published promptly, within a defined period, on a freely accessible portal. The administrative burden for publication of low-value contract awards can be reduced by, for example, requiring quarterly publication of contract award information.
- **Revise the PPL and/or PP Regulations to include explicit provisions on sustainable procurement** including use of life cycle costing, supported by practical guidance and methodologies, where appropriate.
- **Revise the PPL and/or PP Regulations** to require the PEs to provide timely and sufficient information to bidders for them to prepare and file meaningful complaints.

## Pillar II - Institutional Framework and Management Capacity

- **Avoid actual or perceived conflicts of interest.** The RPPA should not be involved with the complaints review function. If it is unavoidable, for financial, organizational, or other reasons, for the RPPA to maintain involvement as budget holder and provider of the secretariat for the IRP there should be robust structures, policies, and systems in place to prevent conflicts of interest or the potential of inappropriate influence.
- **Incorporate a comprehensive tool for data mining, analysis,** and generating comprehensive reports with visualization and infographics for use in decision-making in e-GP system, which can be enhanced to incorporate OCDS and a BI system
- **Remove budget constraint of the RPPA so that training is provided as per needs assessment** rather than availability of budget from PEs. A sustainable and intensive training program to be instituted to train key actors in procurement, in particular the private sector and CSOs. These training should include integrity training programs.
- **Need for financial independence of Association of Procurement Professional** by (a) increasing membership fees, (b) organizing trainings, (c) certifying members - there is a plan to commence issuing membership certificates, (d) engaging in study services, and (e) receiving support from DPs.

## Pillar III - Procurement Operations and Market Practices

- **Recommended actions on contract management.** It is seen that the PPL has extensive provisions on Contract Execution (Chapter III Article 91 to 149 of PPL 2018). It is expected that all these provisions are reflected in respective contracts, including provisions in regulations like rejection of bid with an abnormally low price (Article 3 of Regulation of 2014) which are consistently applied at selection and implementation stages. For example, the feature of abnormally low bids does not appear in the SBD for works. The procurement or supervising officer appointed as per the PPL and PP Regulations need to be fully trained on contract management, as this part of the pillar appears to be weak despite such extensive provisions in the legislative framework.

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

- **Take measures (a) to enhance consultation with CSOs and build their capacity**; (b) to develop and integrate a comprehensive BI tool with visual representation of data and infographics; it is recommended to incorporate OCDS for structured data dissemination to facilitate transparency and citizen engagement; and (c) to enable PEs to allow citizens to participate in the planning of their activities. To avoid suspicion of corruption the execution of the contract, citizens/CSO should be invited to monitor the execution of the works, including through application of innovative techniques like geo-tagging and social audits.
- **Carry out coordinated and mutually reinforcing procurement audits by the OAG and the RPPA** both on compliance and performance.
- **Improve transparency on the web page/website of the IRP.** It should include easily accessible and easily searchable, up-to-date information on complaints received and the conduct of those complaints, and there should be prompt publication of all of the decisions of the IRP in easily searchable format.
- **Need to include in anti-corruption strategy** the use of modern technology to detect cases of fraud or corruption through the electronic e-GP portal by suitable enhancement to the system. There is a need to publish statistics on corruption-related legal proceedings and convictions, including regular publication of the Annual Report by the Office of the Ombudsman.

## Summary of Recommendations

- **Update** regulations, bidding documents, guidance manuals to align these with the overall legal and regulatory framework with changes resulting from the PPL 2018 and the introduction of e-procurement (*The GoR is planning to address this when the New Ministerial Order establishing Regulations is adopted and published in the time frame of March–June 2020).*

- **Enhance** budget allocation to the RPPA so that they can discharge their core functions including, but not limited to, update and alignment of regulation and guidance documents with PPL 2018 and training and capacity building of all the actors in procurement, including the private sector and CSOs.

- **Remove** the conflicting role of the RPPA in authorizing use of less competitive bidding, define conditions for its use more precisely to prevent its misuse, and make PEs fully accountable without leaning on the RPPA, with a provision of targeted ex post audit by the RPPA and the OAG.

- **Enhance** professionalization of procurement function by holding regular trainings to meet the requirements of 'skill gaps' of all the actors in procurement (including decision makers, oversight and control bodies, private sector, and CSOs) and instituting a system of mandatory certification of procurement professionals, and in future, with some planning and resources, this professional body may be used initially as a forum for exchange of knowledge for procurement professionals in the Africa region and later converted into a center for learning. This initiative is ambitious, but with support from all stakeholders is possible with the advantage Rwanda has in use of three

languages (English, French, and Kinyarwanda) apart from its lead in public procurement reform and the overall governance system.

- **Improve contracts management.** This may need several measures like strengthening needs analysis at the planning stage, improving capability of contract officers, improving capability of local construction companies, removing constraints of delayed payment, and instituting a formal system of contract closing.

- **Improve** dialogue and partnership with the private sector and CSOs, improve citizen engagement and bring better transparency with the BI tool with visual representation of data and infographics on the entire procurement cycle, including contract implementation.

## Action Plan on Key Recommendations

262. These actions include suggested timeline and priority with strategies for implementation to be decided by the government. The strategy needs to be realistic, aligned with other reform initiatives, ensuring a balance of perspectives and including a good mix of 'quick wins', as well as medium- and long-term initiatives. Accordingly, in the following table, (a) timeline is indicated as Short Term (ST); Medium Term (MT); and Long Term (LT); or through continuous improvements; (b) priorities are categorized as 1, 2, or 3; and (c) responsibility is assigned

| Key Recommendations | Timeline | Priority | Responsibility |
|---|---|---|---|
| ***Legislative, Regulatory, and Policy Framework*** | | | |
| 1. Amend the PPL (if necessary) and adopt and publish as quickly as possible the new PP Regulations for the implementation of the PPL 2018, aligned with e-procurement. | MT | 1 | RPPA |
| 2. **Review and harmonize the various special procurement regulations of commercial public institutions** to ensure consistency with the PPL and between the special regulations of various commercial institutions. | MT | 2 | RPPA and minister In charge of public investments |
| **3. Review the existing price preference provisions to balance the** preference for locally produced goods and participation of MSMEs while ensuring participation of foreign bidders. | MT | 2 | MINECOFIN/RPPA |
| 4. **Reconsider the requirement for review and authorization by the RPPA** for use of noncompetitive method if the conditions for the use of such method as provided in the PPL are not met, which dilutes the accountability of procurement decisions of the PEs (and the supervising minister) or consider defining more clearly the exceptional circumstances where prior approval by the RPPA is required. | MT | 2 | MINECOFIN/RPPA |

| Key Recommendations | Timeline | Priority | Responsibility |
|---|---|---|---|
| 5. **Revise the PPL and/or PP Regulations** to include explicit provisions on sustainable procurement including use of life cycle costing. | LT | 2 | RPPA |
| 6. **Provide timely and sufficient information to bidders** for them to prepare and file meaningful complaints under the procurement complaints review mechanism. | LT | 1 | RPPA/ IRP |
| ***Institutional Framework and Management Capacity*** | | | |
| 7. **Reconsider the RPPA's role** in the review and authorization of use of noncompetitive method if the conditions for the use of such method as provided in the PPL are not met (which diffuses the responsibility and accountability of PE). In addition, the role of the RPPA as secretariat to the NIRP which creates actual or perceived conflict of interest with its role as reviewer of noncompetitive methods, should eventually be eliminated. | MT | 1 | MINECOFIN/RPPA |
| 8. **Institute a permanent and relevant training plan** including integrity training programs based on needs assessment and train key actors in procurement, in particular the private sector and CSOs. | MT | 2 | RPPA |
| 9. **Improve effectiveness of Association of Procurement Professional** by making them financially independent by (a) increasing membership fees, (b) organizing trainings, (c) issuing membership certificates, (d) engaging in study services, and (v) receiving support from DPs. | MT | 2 | RPPA |
| ***Public Procurement Operations and Market Practices*** | | | |
| 10. **Strengthen needs analysis and market research to** guide a proactive identification of optimal procurement strategies and choosing an appropriate procurement method based on the market situation. | MT | 1 | PEs |
| 11. **Strengthen contracts management** through a host of measures like improving capability of contract officers on contract monitoring, sector market analysis for determining optimum contract size and to analyze if contractors fail due to their capacity to deliver, improving capability of local construction companies, removing constraints of delayed payment, and instituting a formal system of contract closing. | Continuous | 1 | PEs |
| 12. **Enhance outreach with the private sector** to understand their concerns and take corrective measures to improve competition. | Continuous | 2 | RPPA and PEs |
| 13. **Carry out sector market analysis** based on the government's priority spending areas with a view to strengthen competition, integrity, sustainability, and innovation in public procurement. | MT | 2 | RPPA and line ministry of relevant sector |

| Key Recommendations | Timeline | Priority | Responsibility |
|---|---|---|---|
| ***Accountability, Integrity, and Transparency of Public Procurement System*** | | | |
| 14. **Enhance consultations with CSOs** and build their capacity, integrate comprehensive BI tools with visual representation of data and infographics, and allow citizens to participate in needs analysis and contract monitoring (time element of award) through a transparent procurement plan tool and timely execution of contracts. | LT | 2 | RGB/RPPA |
| 15. **Encourage homegrown credible and independent CSOs** to play a role in social audit and control on procurement process and contracts management with suitable financial incentives provided to such CSOs. | MT | 2 | RGB/RPPA |
| 16. **Enhance collaboration between the OAG and the RPPA on procurement audit.** - The procurement audit (both on compliance and performance) being carried out to be coordinated and mutually reinforcing. | Continuous | 2 | OAG/RPPA |
| 17. **Explore options to enhance the independence of the complaints review mechanism**. Until an assessment is carried out by the government on where to host this important function, short-term fixes can be put in place, including eliminating the RPPA's role as secretariat of the NIRP, making direct budget allocation (if possible within the budgetary system) to the NIRP, appointment of the NIRP members by open public competition, and tightening of the grounds for dismissal to limit discretion. | MT | 2 | MINECOFIN/RPPA |
| 18. **Ensure prompt publication of all decisions** by the IRP on its website, and it should be easily accessible and searchable. | Continuous | 1 | IRP |
| 19. **Include the use of modern technology (like artificial intelligence) in anti-corruption strategy** to detect cases of fraud and corruption through enhancements in the e-GP portal. Need to publish statistics on corruption-related legal proceedings and convictions including regular publication of annual report | LT | 2 | RPPA/Ombudsman |

263. **As next practical step,** change the role of MAPS Steering Committee (MASC) to a 'Public Procurement Reform Group' to be hosted by the RPPA as secretariat to implement the reform agenda.

## Process of Validation

264. The following table lists the process of validation with stakeholders which was held through multiple consultations both individually and collectively. as documented in Volume III- Annexes. The Steering Committee was consulted through three separate meetings and their feedback obtained during a larger stakeholder meeting. The basic information on contract cases were collected primarily by two nominated staff of the RPPA, which demonstrated a strong commitment on the part of the GoR. This basic

data provided a solid foundation for analysis and framing recommendations under Pillar III of the assessment.

The Assessment Team had several meetings with the Director General of the RPPA, and the was validation obtained through sharing the report at all key stages including a day -long meeting with DG, RPPA and his team to validate gaps for all 210 assessment criteria. The process of endorsement of the government was carried out through the Steering Committee after the report was cleared with the World Bank's management which is being followed by external certification by Technical Advisory Group of international experts before a wider dissemination of the Assessment Report is carried out in future.

| # | Description | Outcome | Action Taken |
|---|---|---|---|
| 1 | Meeting with the RPPA and Steering Committee on October 21, 2019 | Feedback obtained | Comments incorporated into the report |
| 2. | Validation Workshop with Stakeholders on October 24, 2019 | Feedback obtained | Comments incorporated into the report |
| 3 | Follow-up meeting with the Director General, RPPA and his team on October 25, 2019 | Feedback obtained | Comments incorporated into the report |
| 4 | Comments received from the Director General, RPPA on the Detailed Matrix on December 29, 2019 | Feedback obtained | Comments incorporated into the report |
| 5. | Draft report sent to peer reviewers in the World Bank before decision meeting of February 25, 2020 | Feedback obtained | Comments incorporated into the report |
| 6 | Report sent for external certification by Technical Advisory Group of international experts and comments received on April 13, 2020, and few till end of April 2020 | Feedback obtained | Comments incorporated into the report |
| 7 | Approval of the Final Draft Report by the World Bank Management was done in the decision meeting of February 25, 2020 | The Chair Cleared the report subject to comments | Comments incorporated into the report |
| 8 | Dissemination of report after endorsement by the GoR. Meeting of Steering Committee held on March 05, 2020 | The Report was endorsed | Dissemination and follow-up action shall be taken as recommended |

MAPS | Methodology for Assessing Procurement Systems

RWANDA - MATRIX SUMMARY COLOR CODE – SUB-CRITERIA(I) MET: GREEN: (II) PARTIALLY MET: YELLOW; (III) NOT MET- RED-
VERSION JANUARY 2020 ( FINAL FEB 2022)

*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

| Assessment criteria |
|---|
| (a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established. |
| (b) It covers goods, works and services, including consulting services for all procurement using public funds. |
| (c) PPPs, including concessions, are regulated. |
| (d) Current laws, regulations and policies are published and easily accessible to the public at no cost |

1(b) Procurement methods

| Assessment criteria |
|---|
| (a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used. |
| (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. |
| (c) Fractioning of contracts to limit competition is prohibited. |
| (d) Appropriate standards for competitive procedures are specified. |

1(c) Advertising rules and time limits

| Assessment criteria |
|---|
| (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) 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. |
| (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). |
| (c) 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. |

1(d) Rules on participation

| Assessment criteria |
|---|
| (a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions. |
| (b) It ensures that there are no barriers to participation in the public procurement market. |
| (c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations. |
| (d) It establishes rules for the participation of state-owned enterprises that promote fair competition. |
| (e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract. |

1(e) Procurement documentation and specifications

| Assessment criteria |
|---|
| (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) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate. |
| (c) It requires recognition of standards that are equivalent, when neutral specifications are not available. |
| (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) |

1(f) Evaluation and award criteria

| Assessment criteria |
|---|
| (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 based on the criteria stipulated in the documents. |
| (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. |
| (c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined. |
| (d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents. |



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

| |
|---|
| (e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process. |

1(g) Submission, receipt, and opening of tenders

| Assessment criteria |
|---|
| (a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission. |
| (b) Records of proceedings for bid openings are retained and available for review. |
| (c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts. |
| (d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework. |
| (e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders. |

1(h) Right to challenge and appeal

| Assessment criteria |
|---|
| (a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity. |
| (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 establish the right for judicial review. |
| (c) Rules establish the matters that are subject to review. |
| (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. |
| (e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information. |
| (f) Decisions by the independent appeals body can be subject to higher-level review (judicial review). |

1(i) Contract management

| Assessment criteria |
|---|
| (a) Functions for undertaking contract management are defined and responsibilities are clearly assigned, |
| (b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition. |
| (c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract. |
| (d) The final outcome of a dispute resolution process is enforceable. |

1(j) Electronic Procurement (e-Procurement)

| Assessment criteria |
|---|
| (a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially. |
| (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. |
| (c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically. |

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

| Assessment criteria |
|---|
| (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) 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. |
| (c) There are established security protocols to protect records (physical and/or electronic). |

1(l) Public procurement principles in specialized legislation

| Assessment criteria |
|---|
| (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) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate. |
| (c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned. |



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

## 2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

| Assessment criteria |
|---|
| (a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law. |
| (b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place. |
| (c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly. |

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

| Assessment criteria |
|---|
| (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. |
| (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. |
| (c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned. |

2 (c) Standard contract conditions

| Assessment criteria |
|---|
| (a) There are standard contract conditions for the most common types of contracts, and their use is mandatory. |
| (b) The content of the standard contract conditions is generally consistent with internationally accepted practice. |
| (c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings. |

2(d)

| Assessment criteria |
|---|
| (a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws. |
| (b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly. |

## 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 |
|---|
| (a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives. |
| (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. |
| (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. |
| (d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money. |

3(b) Obligations deriving from international agreements

| Assessment criteria |
|---|
| (a) clearly established |
| (b) consistently adopted in laws and regulations and reflected in procurement policies. |

# 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

| Assessment criteria |
|---|
| (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) 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). |
| (c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts. |



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

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4(b) Financial procedures and the procurement cycle

| Assessment criteria |
|---|
| (a) No solicitation of tenders/proposals takes place without certification of the availability of funds. |
| (b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders. |

## 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

| **Assessment criteria** |
|---|
| (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. |

5(b) Responsibilities of the normative/regulatory function

| **Assessment criteria** |
|---|
| (a) providing advice to procuring entities |
| (b) drafting procurement policies |
| (c) proposing changes/drafting amendments to the legal and regulatory framework |
| (d) monitoring public procurement |
| (e) providing procurement information |
| (f) managing statistical databases |
| (g) preparing reports on procurement to other parts of government |
| (h) developing and supporting implementation of initiatives for improvements of the public procurement system |
| (i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement |
| (j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession) |
| (k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate |

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

| **Assessment criteria** |
|---|
| (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) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing. |
| (c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities. |

5(d) Avoiding conflict of interest

| **Assessment criteria** |
|---|
| (a) The normative/regulatory institution has a system in place to avoid conflicts of interest. |

## 6. Procuring entities and their mandates are clearly defined

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

| **Assessment criteria** |
|---|
| (a) Procuring entities are clearly defined. |
| (b) Responsibilities and competencies of procuring entities are clearly defined. |
| (c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability. |
| (d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. |
| (e) Accountability for decisions is precisely defined. |

6(b) Centralized procurement body

| Assessment criteria |
|---|
| (a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement. |



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

| |
|---|
| (b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:<br>• Legal status, funding, responsibilities and decision-making powers are clearly defined.<br>• Accountability for decisions is precisely defined.<br>• The body and the head of the body have a high-level and authoritative standing in government. |
| (c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities. |

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

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

| Assessment criteria |
|---|
| (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) 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. |
| (c) The information system provides for the publication of:<br>• procurement plans<br>• information related to specific procurements, at a minimum, advertisements /notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions<br>• linkages to rules and regulations and other information relevant for promoting competition and transparency. |
| (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). |
| (e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format) |
| (f) Responsibility for the management and operation of the system is clearly defined. |

7(b) Use of e-Procurement

| Assessment criteria |
|---|
| (a) E-procurement is widely used or progressively implemented in the country at all levels of government. |
| (b) Government officials have the capacity to plan, develop and manage e-Procurement systems. |
| (c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems. |
| (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology. |
| (e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment. |

7(c) Strategies to manage procurement data

| Assessment criteria |
|---|
| (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) 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. |
| (c) The reliability of the information is high (verified by audits). |
| (d) Analysis of information is routinely carried out, published and fed back into the system. |

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

8(a) Training, advice and assistance

| Assessment criteria |
|---|
| (a) substantive permanent training programmes of suitable quality and content for the needs of the system. |
| (b) routine evaluation and periodic adjustment of training programmes based on feedback and need. |
| (c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public. |
| (d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement. |

8(b) Recognition of procurement as a profession

| Assessment criteria |
|---|
| (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. |



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

| |
|---|
| (b) Appointments and promotion are competitive and based on qualifications and professional certification. |
| (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided. |

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8(c) Monitoring performance to improve the system

| Assessment criteria |
|---|
| (a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects. |
| (b) The information is used to support strategic policy making on procurement. |
| (c) Strategic plans, including results frameworks, are in place and used to improve the system. |
| (d) Responsibilities are clearly defined. |

## Pillar III. Public Procurement Operations and Market Practices

### 9. Public procurement practices achieve stated objectives

9(a) Planning

| Assessment criteria |
|---|
| (a) Needs analysis and market research guide a proactive identification of optimal procurement strategies. |
| (b) The requirements and desired outcomes of contracts are clearly defined. |
| (c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money. |

9(b) Selection and contracting

| Assessment criteria |
|---|
| (a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process. |
| (b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors. |
| (c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework. |
| (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. |
| (e) Throughout the bid evaluation and award process, confidentiality is ensured. |
| (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. |
| (g) Contract awards are announced as prescribed. |
| (h) Contract clauses include sustainability considerations, where appropriate. |
| (i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance. |
| (j) The selection and award process is carried out effectively, efficiently and in a transparent way. |

9(c) Contract management

| Assessment criteria |
|---|
| (a) Contracts are implemented in a timely manner. |
| (b) Inspection, quality control, supervision of work and final acceptance of products is carried out. |
| (c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. |
| (d) Contract amendments are reviewed, issued and published in a timely manner. |
| (e) Procurement statistics are available and a system is in place to measure and improve procurement practices. |
| (f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised. |
| (g) The records are complete and accurate, and easily accessible in a single file. |



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

### 10. The public procurement market is fully functional

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

| Assessment criteria |
|---|
| (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.<br>effectiveness in engaging with the private sector (in % of responses). |
| (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. |

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

| Assessment criteria |
|---|
| (a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts. |
| (b) There are no major systemic constraints inhibiting private sector access to the public procurement market. |

10(c) Key sectors and sector strategies

| Assessment criteria |
|---|
| (a) Key sectors associated with the public procurement market are identified by the government. |
| (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. |

## 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 |
|---|
| (a) A transparent and consultative process is followed when formulating changes to the public procurement system. |
| (b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. |
| (c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society. |

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

| Assessment criteria |
|---|
| (a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation. |

11(c) Direct engagement of civil society

| Assessment criteria |
|---|
| (a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:<br>• the planning phase (consultation)<br>• bid/proposal opening (observation)<br>• evaluation and contract award (observation), when appropriate, according to local law<br>• contract management and completion (monitoring). |
| (b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring. |

### 12. The country has effective control audit systems

12(a) Legal framework, organisation and procedures of the control system

| Assessment criteria |
|---|
| (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies |



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

| |
|---|
| (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 |
| (c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation |
| (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 |
| (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) |
| (f) clear mechanisms to ensure that there is follow-up on the respective findings. |

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

| Assessment criteria |
|---|
| (a) There are written procedures that state requirements for internal controls, ideally in an internal control manual. |
| (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. |
| (c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with. |
| (d) Clear and reliable reporting lines to relevant oversight bodies exist. |

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

| Assessment criteria |
|---|
| (a) Recommendations are responded to and implemented within the time frames established in the law. |
| (b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations. |

12(d) Qualification and training to conduct procurement audits

| Assessment criteria |
|---|
| (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) 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. |
| (c) Auditors are selected in a fair and transparent way and are fully independent. |

## 13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

| Assessment criteria |
|---|
| (a) Decisions are rendered on the basis of available evidence submitted by the parties. |
| (b) The first review of the evidence is carried out by the entity specified in the law. |
| (c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. |
| (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. |

13(b) Independence and capacity of the appeals body

| Assessment criteria |
|---|
| (a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions |
| (b) does not charge fees that inhibit access by concerned parties |
| (c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available |
| (d) exercises its legal authority to suspend procurement proceedings and impose remedies |
| (e) issues decisions within the time frame specified in the law/regulations* |
| (f) issues decisions that are binding on all parties |
| (g) is adequately resourced and staffed to fulfil its functions. |

13(c) Decisions of the appeals body

| Assessment criteria |
|---|
| (a) based on information relevant to the case. |



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

| |
|---|
| (b) balanced and unbiased in consideration of the relevant information. |
| (c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures. |
| (d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law. |

## 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:

| Assessment criteria |
|---|
| (a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements. |
| (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. |
| (c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials. |

14(b) Provisions on prohibited practices in procurement documents

| Assessment criteria |
|---|
| (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) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework. |

14(c) Effective sanctions and enforcement systems

| Assessment criteria |
|---|
| (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) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities. |
| (c) There is a system for suspension/debarment that ensures due process and is consistently applied. |
| (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. |

14(d) Anti-corruption framework and integrity training

| Assessment criteria |
|---|
| (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) 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. |
| (c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually. |
| (d) Special measures are in place for the detection and prevention of corruption associated with procurement. |
| (e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training. |

14(e) Stakeholder support to strengthen integrity in procurement

| Assessment criteria |
|---|
| (a) There are strong and credible civil society organisations that exercise social audit and control. |
| (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. |
| (c) There is evidence that civil society contributes to shape and improve integrity of public procurement. |
| (d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures. |

14(f) Secure mechanism for reporting prohibited practices or unethical behaviour

| Assessment criteria |
|---|
| (a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour. |
| (b) There are legal provisions to protect whistle-blowers, and these are considered effective. |
| (c) There is a functioning system that serves to follow up on disclosures. |



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

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

| Assessment criteria |
| --- |
| (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) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements. |
| (c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal. |
| (d) Regular training programmes are offered to ensure sustained awareness and implementation of measures. |
| (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. |



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

# Rwanda

## Assessment of the

## Public Procurement System

### Volume II - Detailed Report - Indicator Matrix

Methodology for Assessing Procurement Systems (MAPS)

May 2020

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# 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 |
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| **(a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.** | **Summary:** The legal framework is clearly structured, distinguishing laws, regulations and procedures and with precedence firmly established. The higher- level instrument, the Public Procurement Law, is the primary legislation. Lower level, more detailed instruments such as Ministerial Orders, including Public Procurement Regulation, and Circulars issued by the Rwanda Public Procurement Authority, are used to regulate more detailed procedures for implementation.<br><br>**Hierarchy**<br>Article 95 of the Constitution of the Republic of Rwanda of 2003 revised in 2015[1] confirms a clear hierarchy of laws, being; the Constitution, organic law, international treaties and agreements ratified by the Republic of Rwanda, ordinary law and orders. Article 95 states that a law cannot contradict another law that is higher in the hierarchy.<br>**The law governing public procurement** is Law No.62/2018 of 25/08/2018 Governing Public Procurement **("PPL")**[2].<br>The PPL repealed the previous PPL 2007 (as amended). The PPL came into force on the date of publication in Official Gazette of the Republic of Rwanda (Official Gazette): 7 September 2018. Transitional provisions required procuring entities to comply with the PPL within 6 months of its publication in the Official Gazette.<br>The PPL is an ordinary law and a high level, more stable instrument.<br>PPL A.2 provides that in the event of conflict with the PPL, the provisions of international treaties and agreements take precedence.<br>PPL A.5 confirms that organization of public procurement is based on the PPL, regulations governing procurement, codes of conduct and model tender documents determined by an Order of the Minister.<br>PPL A.5 confirms that the Rwanda Public Procurement Agency (RPPA) issues standard procurement documents and guidelines, which are published on the RPPA website, aimed at the achievement of the objectives or any duty under the PPL.<br><br>**Level of detail and flexibility**<br>The **PPL** is a comprehensive law setting out the legal framework applying to public procurement. The PPL refers at various points to public procurement regulations and/or ministerial orders, which regulate more detailed procedures and issues; for example, the financial thresholds below which the PPL do not apply (PPL A.32), fees to be paid by prospective bidders for tender documents (PPL A.34), bid security (PPL A.37), content of evaluation report (PPL A.42), details concerning the right to review and review process (PPL A.50-54).<br>**Public Procurement Regulations:** Public procurement regulations have been issued pursuant to the previous PPL 2007 (as amended) - Public Ministerial Order No.001/14/10/TC of 19/02/2014 Establishing Regulations on Public Procurement, Standard Bidding Documents and Standard Contracts ("PP Regulations"). However, no public procurement regulations have been issued to align with the new PPL. The preparation of a Ministerial Order establishing new regulations on public procurement is identified in the RPPA Medium Term Strategic Plan 2018/19-2020/2021, as an action for completion by June 2019[3].<br>*Note: For purposes of this assessment, Assessment team has assumed that the PP Regulations are still in force, as there is no indication in the public domain that they have been repealed. The PP Regulations reference the 2007 PPL and are therefore not aligned with the new PPL although many provisions remain the same. Reference to the PP Regulations in this assessment need to be read in that context.*<br><br>**Other Ministerial Orders/instructions**: Other Ministerial Orders/instructions are issued relating to public procurement. These include, for example, the establishment of a professional code of ethics governing public agents involved in public procurement[4]. | Not applicable | **Criterion is met.** | | |

[1] http://www.mininfra.gov.rw/fileadmin/user_upload/aircraft/RWANDA_CONSTITUTION_NEW_2015_Official_Gazette_no_Special_of_24.12.2015.pdf

[2] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Laws/Law_No_62_2018_of_25_08_2018_Governing_Public_Procurement.pdf

[3] RPPA Medium Term Strategic Plan 2018/19-2020/2021, Programme 1, Sub-programme 1.1, Output 1.2 (page 36), RPPA October 2018.
[4] Ministerial Instruction No. 001/11/10/TC of 24/01/2011 establishing the professional code of ethics governing public agents involved in public procurement.



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| | **Circulars, guidelines and model tender documents:** The RPPA publishes Circulars on its website addressing more detailed practical issues on a range of topics. Recent examples include confirmation of suitability of building materials under the "Made in Rwanda" policy[5] and instructions on submission by procuring entities to the RPPA on contracts awarded offline[6]. There is a **Public Procurement User Guide** available to download from the RPPA website[7]. The User Guide was published in 2010, providing guidance on the 2007 PPL and so is not aligned with the new PPL or developments in e-procurement in particular (*see indicator 2(d) for further information, comment and gap analysis)*<br>**Model tender documents** (Standard Bidding Documents "SBD") which include **standard conditions of contract**, also available, with new versions published in 2019[8]. | | | | |
| **(b) It covers goods, works and services, including consulting services for all procurement using public funds.** | **Summary:** The legal framework applies to all procurement undertaking using public funds (goods, works and services, including consulting services) with "classified items relating to national defense and security" excluded from the coverage of the PPL. Procuring entities are widely defined to cover public bodies, including sub-national governments. Commercial public institutions are required to comply with the PPL where they use the State budget. State owned companies do not fall within the definition of procuring entities, although they are required to comply with the PPL where they use the State Budget[9].<br><br>PPL A.2 provides that the PPL applies to all procurement by procuring entities of works, goods or supplies and services, including consultancy services. A.3 PPL defines "tender for works", "goods or supplies", "consultancy services" and "non-consultancy services". The definitions are broadly drafted.<br>PPL A.9 defines procuring entities as "central government organs, local administration organs, public institutions, national commissions, government projects or any other organs so empowered by the Chief Budget Manager". In addition, "commercial public institutions" where they use the State budget fall within the definition of procuring entities.<br>There is not an extensive list of exclusion, in terms of subject matter, from the application of the PPL. PPL A.2 excludes from coverage of the PPL "public procurement of classified items relating to national defense and security". It is not clear how and by whom items are designated as "classified items relating to national defense and security" and whether exclusions are made with or without public oversight. The exclusion does not exclude all procurement by the Ministry of Defence. The Ministry of Defence has a procurement unit set up pursuant to requirements under the PPL 2007[10] and it publishes tender opportunities on its website[11].<br><br>The PPL does not use the term "utilities" and it does not contain specific provisions concerning the status of utilities companies with special or exclusive rights[12]. It is therefore not immediately apparent from the primary legislation what the nature and extent of coverage of the PPL is in respect of utilities. However, as noted above, "commercial public institutions" where they use the State budget fall within the definition of procurement entities.<br><br>*Example in practice:* In August 2014 the staff and most assets of the Energy, Water and Sanitation Authority (EWSA) were transferred to government owned companies: (1) WASAC (Water and Sanitation Corporation) and (2) REG (Rwanda Energy Group) with two subsidiaries, The Energy Utility Corporation Ltd (EUCL) and Energy Development Corporation Limited (EDCL). Both WASAC and EDCL are listed as procuring entities on the e-procurement system for Rwanda (UMUCYO)[13] and contract opportunities are published on the UMUCYO e-procurement system[14]. Both WASAC and REG (both subsidiaries - EDCL and EUCL) also publish tender opportunities on their websites[15] [16].<br><br>**PPL A.5: Special regulations of commercial public institutions:** PPL A.5 provides that, subject to other provisions of the PPL, commercial public institutions whose budget is not approved by Parliament are governed by special regulations of each | Not applicable | **Criterion is partially met**<br><br>PPL Article 2 on the Scope of Law does not exclude commercial public institution, which is in contradiction with PPL Article 5 where such institutions whose budget is not approved by the parliament is governed not by PPL but by special regulations of each institution approved by an Order of the Minister in charge of public investment **PPL A.5 Special regulations of commercial public institutions spending public funds:** It is not clear from the PPL whether the special regulations of each institution are required to be harmonized and as consistent as possible. Whilst it is important to recognize that particular business needs may result in some divergence between commercial public institutions in terms of procurement regulations, it is advisable to have baseline harmonization and consistency between organizations. If each institution has its own individual rules, not sufficiently harmonized or consistent with other commercial public institutions/state owned companies then there is likely to be a problem with fragmentation in procurement, with lack of coherency presenting a potential barrier or hindrance for the market. This is because suppliers would need to adapt their approach according to the procurement procedures of the particular institution.<br>There is no consolidated list of Procuring Entities which are categorized as Commercial Public Institutions and follow specialized regulation. These regulations are not published and available in public domain same as the volume of procurement activities carried out by such institution. | Yes | A list of all commercial institutions including their special procurement regulations should be published in a government portal with free and open access for transparency purposes. Furthermore, there should be a level of harmonization between the various legislation of commercial entities to ensure as much consistency as possible so as to minimize fragmentation and ensure that such special regulation is generally in line with PPL on fundamental principles governing public procurement which is adapted for efficient and effective functioning of commercial institutions The government should also consider publishing data and information on the volume of procurement expenditures by such commercial public institutions including share of competitive and non-competitive procedure adopted. |

[5] Circular 010/2018/2019-3343/RPPA.
[6] Circular 010/2018/2019-2654/RPPA.
[7] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Manuals/PublicProcurementUserGuide.pdf

[8] See, for example, Standard Bid Documents for: Large Works, Small Works, Consultancy Services and Small Consultancy Services, dated January 2019 available at: http://rppa.gov.rw/index.php?id=613

[9] RPPA response to WB request for clarifications, document dated 06 May 2019.
[10] https://mod.gov.rw/about-the-mod/agencies-units/procurement-unit/#.XKO9x-tKhm8

[11] https://mod.gov.rw/news-centre/tenders-job-opprotunities/#.XKS1COtKhm8

[12] Utilities, including the water and energy sectors, are subject to regulation by RURA, the Rwanda Utilities Regulatory Authority https://rura.rw/index.php?id=44

[13] http://www.umucyo.gov.rw:8082/eb/bpp/selectPagePeList.do

[14] UMUCYO accessed and searched 04 April 2019.
[15] WASAC: https://wasac.rw/index.php/projects/tenders accessed and searched 04 April 2019.

[16] REG http://www.reg.rw/public-information/tenders/new-tenders/ accessed and searched 04 April 2019.



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| | institution approved by an Order of the Minister in charge of public investment. It is not clear from the PPL whether the special regulations of each institutions are required to be harmonized and consistent.<br><br>The Assessment Team reviewed the procurement manual for one such commercial public institution, Water and Sanitation Corporation (WASAC) Ltd (originally issued on August 25, 2014 as later revised on September 21, 2015). The Manual recognizes the principles of transparency, fairness, competition, value for money, effectiveness and accountability. The Manual proclaims to be based on the National Procurement Guidelines [this specific documents does not appear to exist in the Rwandan procurement legal framework] and best practices in international commercial industry. It is detailed and covers most aspects of procurement proceedings. It covers goods, works and services, including consulting services, and encompasses all stages from planning till contract award. Procurement methods and its conditions of use are defined (including for Single Source / Force Account), it provides that contracts above 50 million Rwf are to be procured through competitive procedures, guidelines of Development Partners to apply if in conflict with provisions of the Manual. It specifies the minimum content of the bidding document/contract, composition of Internal Tender Committee, and the process for contract approval. The clause on contracts management is very brief and does not provide much guidance. Appeals are handled by an ad hoc committee appointed by the senior management which is led by the CEO who approves and signs contracts documents. Appeal Procedures provide only for review by an internal Review Panel which takes final decisions, which are not clear if are subsequently subject to judicial review (since there is no explicit provision on this possibility). The Manual states that all procurement matters not provided for in the Manual, reference shall always be made to existing national laws and regulation.<br><br>However, it is seen that the scope of the Manual is defined as a "management tool" for WASAC Ltd<br>but how these principles are applied in practice is not known and participants are not aware of the rules governing the procurement. | | | | |
| **(c) PPPs, including concessions, are regulated.** | **Summary:** The award of Public Private Partnership contracts for a wide scope of infrastructure facilities and assets are regulated by a specific law, the PPP Law, which requires, in general, the conduct of a competitive procedure to award a PPP contract.<br><br>*Note: For the purposes of this assessment the assessors have reviewed and commented only on the PPP Law regarding infrastructure and other assets.*<br><br>**PPP contracts:** The award of public/private partnerships (PPPs) is regulated by Law No. 14/2016 of 02/05/2016 Governing Public Private Partnerships (PPP Law). The Rwanda Development Board has published Guidelines on PPP[17].<br><br>The PPP Law applies to management contracts, build-own-operate (BOO), build-operate-transfer (BOT) and lease-operate-develop (LOD) arrangements for infrastructure facility or other assets (A.3 PPL). Other PPP arrangements may be prescribed by Order of the Prime Minister. The PPP Law does not apply to contracts subject to the PPL or to the privatization or divestiture of enterprises, assets and any infrastructure facility owned by the Government (A.4 PPL). The potential sectors for PPPs are broadly defined in A.5 PPL covering transportation, energy, social affairs, tourism, natural resources and environment, telecommunications and information technology and any other sectors determined by Order of the Prime Minister.<br><br>The PPP Law generally requires a competitive procedure for the award of a PPP with international and national advertisement. The competitive procurement procedure is governed by the principles of competition, transparency, fairness and non-discrimination, efficiency and effectiveness, protection of public property and public interest and accountability (A.15 PPP Law). The procurement procedure is conducted by the procuring entity and the procuring entity is the signatory to the contract. Negotiations are led by the Rwanda Development Board (PPP Law A.10).<br><br>The PPP Law permits, in specified cases, the award without competition of a PPP contract to a partner who has made an unsolicited proposal (PPP Law A.25-29). *See comment and gap analysis at sub-indicator 1(l)(b).* | Not applicable | **Criterion is met.** | | |
| **(d) Current laws, regulations and policies are published and easily accessible to the public at no cost** | **Summary:** Public procurement laws, Ministerial Orders and Ministerial Instructions relating to Public Procurement and Circulars are published on the website of the Rwanda Public Procurement Authority (RPPA). The RPPA website is a freely accessible on-line portal. There is a dedicated tab on the homepage of the RPPA providing a link to "Legal Instruments" which, in addition to the documents already listed, provide further links to Standard Bidding Documents, Guidelines and Manuals.<br><br>The PPL and other primary legislation are available for download in searchable PDF format.<br>Ministerial Orders and Instructions are also published and available for download although it appears that they are not comprehensive, and they are not always in a searchable PDF format. | Not applicable | **Criterion is met.**<br><br>However, based on the analysis conducted further improvements are recommended.<br><br>**Ministerial Orders – easy availability:** the English language version of the RPPA website site does not appear to contain a comprehensive set of the Ministerial Orders which apply to public procurement. Ministerial Orders are not easy to find on the Official | | Consider the following recommendations for improvements.<br><br>Publish all Ministerial Orders on the RPPA's website and e-procurement system, clearly and consistently indexed, for easy access.<br><br>Update/replace the PP Regulations for implementation of PPL 2018 and to align with e-procurement. |

[17] Public Private Partnership Guidelines, Official Gazette No.29 bis of 16/07/2019, Rwanda Development Board, June 2018.



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| | Circulars, which are issued by the RPPA, are available in English and/or Kinyarwanda[18] and are not always in a searchable PDF format.<br>It is not possible to establish with certainty from the English language version of the website whether the information provided on the RPPA website is exhaustive or up to date. For example, the 2007 PPL is still available to download but it is not accompanied by clear warnings that it is no longer in force.<br><br>However, it is clear that the website is active and additional information added, such as new Standard Bidding Documents made available on the website during the MAPS assessment period.<br>The Public Procurement User Manual 2010 is also available from the RPPA website.<br><br>In general, the current laws, regulations and policies are published and easily accessible to the public at no cost.<br><br>It is expected that the new Ministerial Order, which is under draft stage would address the lack of harmonization – order expected to be issued between March 2020 to June 2020. | | Gazette website without knowing the date or number of the Order as the search facility is limited. It was not, therefore possible to fully assess the legal framework applying to public procurement and in some cases, there is an unhelpful level of uncertainty.<br><br>**Ministerial Orders – creation and scrutiny:** It is not clear to what degree consultation or public scrutiny is required prior to the issue of Ministerial Orders which have an impact on public procurement.<br><br>**PP Regulations not aligned with the new PPL 2018**: The current PP Regulations date from 2014.Updated PP Regulations were planned for June 2019 but the lack of detailed up to date Regulations to support the new PPL 2018 is unsatisfactory and likely to cause uncertainty and confusion, particularly when combined with introduction of the e-procurement system. *This is identified as a substantial gap in the commentary on sub-indicator 2(a).*<br><br>**Procurement User Manual out of date:** Procurement User Manual dates from 2010 and is based on the 2007 PPL. The lack of a detailed up to date manual to support the new PPL 2018 is unsatisfactory and likely to cause uncertainty and confusion, particularly when combined with introduction of the e-procurement system. *This is identified as a substantial gap in the commentary on sub-indicator 2(d).*<br><br>**RPPA website:** there is some inconsistency between the documents available in all official languages. There is a general lack of "fit" between the RPPA website and the UMUCYO website and guidance available. | | Update/replace the Procurement User Guides to provide practical guidance aligned with 2018 PPL and with e-procurement system. |

1(b) Procurement methods

The legal framework meets 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 |
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| **(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.** | **Summary:** The PPL provides that public procurement contracts shall be awarded through open competition, unless otherwise provided for in the PPL. The PPL defines situations where alternative procurement methods can be used, with grounds for justification clearly specified. In specified cases, prior approval from the RPA is required to conduct procedures other than the open procedure.<br><br>PPL A.20 provides that public procurement contracts shall be awarded through open competition, unless otherwise provided for in the PPL. Open tendering is thus the presumed form of procurement method at the top of the hierarchy of procurement methods[19]. An "open tender" is defined as a "bidding process made open to all qualified bidders through an announcement"[20]. Procuring entities are required to use the e-procurement portal for announcing open tenders. | Not applicable | **Criterion is partially met.**<br><br>**Use of methods other than the open procedure–authorization process:** The requirement for contracting authorities to obtain prior authorization from the RPPA for use of less competitive procedures where the conditions in the PPL cannot be met is good in terms of central control and monitoring or exceptional circumstances which do not fall within the permitted conditions. Assessment found that the PPL | Yes | **Use of less competitive methods – authorization process:** The criteria and methodology to be used by the RPPA should be clearly defined in the legal framework, to increase transparency and reduce the possibility of abuse of discretion.<br><br>If up to date information is not available to suppliers, then, particularly where |

[18] Assessors were unable to access the RPPA website Kinyarwanda language version. Assessment based on English language version of the website: http://rppa.gov.rw/index.php?id=188

[19] The Public Procurement User Guide states at the start of Chapter 6: Procurement Methods (page 56), that "procuring entities shall apply open competitive bidding for procurement of supplies, works, goods and other services except when this is not ideal."

[20] PPL A.4 procuring entities are required to use the e-procurement system (UMYCYO) to announce and conduct competitive tenders. Procuring entities must obtain prior approval from the RPPA if they wish to to conduct public procurement without using the e-procurement system.



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

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| | PPL A.20 lists a range of other competitive and less competitive methods, which are permitted only where conditions set out in the PPL are satisfied. Competitive methods are: pre-qualification, restricted tendering, requests for quotation, simplified methods and two-stage tendering. Non-competitive methods are single source/direct award, force account (where public procurement is carried out by recourse to civil servants and using public equipment) and community participation processes (where the beneficiary community participates in the delivery of non-consultancy services).<br><br>It is unusual to see force account and community participation processes embedded into procurement law as procurement methods and with high levels of use. Both force account and community participation are approaches derived from World Bank historic practice. They were developed to be used only in very exceptional circumstances, for World Bank financed operations where specific circumstances meant that it was not possible to deliver projects through other methods.<br><br>PPL A.68 to 78 set out specific provisions concerning the procurement of consultancy services which requires publication of a notice online and on the e-procurement portal. The PPL clearly defines situations in which alternative competitive and non-competitive procurement methods can be used[21].<br><br>PPL A.29 obliges procuring entities to seek and obtain advance authorization from the RPPA where they wish to award a tender using a method other than open tendering. It is not entirely clear from the PPL whether prior approval is required from the RPPA in all cases where a method other than an open tender is used or whether prior approval is only required where the conditions set out in the PPL for use of the particular method are not met[22]. PPL A.29 provides that the RPPA gives the authorization after receipt of a reasonable justification from the procuring entity accompanied by a confirmation from the supervising minister (or other designated persons where there is no supervising minister) that the procurement is in the public interest.<br><br>PP Regulations A.38 **Impossibility to meet conditions for use of a given method:** sets out the information which a procuring entity must submit to the RPPA when seeking authorization to use a less competitive method. In summary, procuring entities are required to: prove how conditions for use of appropriate methods cannot be met; explain in detail the circumstances giving rise to the request for authorization; show any justification that the urgent award of the tender is in the public interest and any relevant consequences in case the tender is not awarded; obtain and submit the confirmation from the supervising Minister that the justification given by the procuring entity is reasonable and serves the public interest. The procuring entity must also submit a letter and supporting documents indicating the proposed procurement method and setting out the details preventing the entity form using the normal procurement method, clarifying the public interest, signed by the chief budget manager. (PP Regulations A.39). The RPPA is required to provide authorization within 5 working days of receipt of the request.<br>The RPPA website includes a template letter for use by procuring entities requesting authorization to use a less competitive method[23].<br><br>The e-procurement portal, UMUCYO, has a function permitting submission through the portal of "request for non-objection". A user guide to support this process can be downloaded from the UMUCYO website[24]. | | sets out the conditions for use of each method other than open tendering that appear to be broadly defined and in line with international practices.<br><br>However, the provisions of Article 29 which appear to overwrite the detailed conditions for use of each method offering misplaced discretion to RPPA (with confirmation from the responsible supervising Minister that procurement is in public interest) to approve the use of noncompetitive methods if conditions for the application are not met. There are no provisions in the PPL or PP Regulations setting out the detailed criteria which the RPPA uses to assess the application for authorization and make a decision whether to approve or reject the application, even if to confirm that they will only approve a request if the conditions for the use of each method, set out in the PPL, are met. There is a danger that a non-transparent system of ex-ante (prior approval) for use of methods other than open procedure could be used as a way for procuring entities to avoid using competitive procedures. This may be used, for example, to favor a particular contractor or as a way to deal with poor or lazy procurement practices such as leaving it too late to run an open procurement or insufficient market analysis to identify more than one potential provider. This is particularly the case if justifications can be in undefined broad terms such as being in "public interest".<br><br>Moreover, RPPA's authority to allow derogations from the PPL without strong and clear conditions, dilutes the accountability of procuring entities.<br><br>**Use of less competitive methods – publication:** Assessment team was unable to find up to date information on applications for consent and authorizations by RPPA to use less competitive methods. If up to date information is not available to suppliers, then, particularly where authorization is given for non-competitive procurement, this has a potentially negative impact on competition and transparency.<br><br>In conclusion, there is a danger that a non-transparent system of prior approval for use of methods other than open procedure could be used as a way for procuring entities to avoid using competitive procedures. This may be used, for example, to favor a particular contractor or as a way to deal with poor or lazy procurement practices such as leaving it too late to run an open procurement or insufficient market analysis to identify more than one potential provider. This is particularly the case if justifications can be in undefined | | authorization is given for non-competitive procurement, this has a potentially negative impact on competition and transparency.<br><br>**Use of less competitive methods – publication:** To increase transparency, there should be requirement in the legal framework for prompt publication on the RPPA website/UMUCYO of authorizations granted by the RPPA to use less competitive methods. Information published must include sufficient information, including reasons for the decision and allow sufficient time to permit suppliers to challenge the decision.<br><br>if it is the case that prior approval is required in all cases where procuring entities wish to use a method other than the open procedure, consider whether to delimit more clearly the circumstances where prior approval by the RPPA is required and require this only in exceptional circumstances<br><br>It is recommended that the process set out in Article 29 is reconsidered, preferably to be abolished. But if the government considers it important to keep this arrangement in place till the capacity of procurement workforce is upgraded, then revisions to PPL and/or PP Regulations should be considered to limit the ex-ante function of RPPA to review and approve use of non-competitive methods set out in the PPL, when conditions exist and such use is justified. |

[21] PPL A.21 Prequalification, PPL A.22 Restricted tendering, PPL A. 23 Request for Quotations, PPL A.25 Simplified methods, PPL A. 24 Single-source/direct award, PPL A.28 Two-stage tendering, PPL A.26 Force account, PPL A.27 Community Participation.
[22] In 2017/18 the RPPA received 261 requests for authorization to use methods other than the open procedure and it authorized 207 of those requests. Of those requests, 241 (92.3% ) were for authorization to use single source procurement and 197 of those requests were granted. (Table 3.3 RPPA Annual Activity Report 2017-18). In 2017/18 344 tenders were awarded using single source procurement, out of a total of 4378 awarded tenders Table 2.6 , RPPA Annual Activity Report 2017-18).
[23] RPPA website, downloadable forms http://rppa.gov.rw/index.php?id=606 accessed 18 July 2019.

[24] http://umucyo.gov.rw/index.do Admin announcement, Request for Non-objection from RPPA.



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

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| | | | broad terms such as being in the "public interest". This gap needs to be addressed. | | |
| **(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.** | **Summary:** The PPL sets out conditions for use of procedures other than the open tender procedure which are generally linked to the nature, complexity or risk involved in the contract which is the subject of the procurement. The PP Regulations set out thresholds applying to the use of the competitive procedures available under the 2007 PPL[25] with the lightest methods of procurement permitted for low value tenders. The procurement methods and processes are proportional to the value and risks of the underlying project activities. The range of options does provide, in theory, for a procurement system in which value for money, fairness, transparency, proportionality and integrity are achieved. Direct award (single-source procurement) is permitted only where specified grounds for justification are satisfied.<br><br>"Lighter" methods of procurement are available where the benefits of "process-heavier" methods are not evident or necessary. For example, a Request for Quotations, without publication of a notice, is permitted for contracts below RwF 2 000 000 (2 million Rwandan Francs)[26] for the procurement of readily available good or works on the market with have standard specifications. The Simplified method is available for contracts between RwF 2 000 000 (2 million Rwandan Francs) and RwF 10 000 000 (ten million Rwandan Francs)[27] and where the preparation of bids is easy and technical specifications are not complex (PPL A.25). In this case a shorter tender document and short period between tender publication and submission of bid are used. More process-heavy methods are permitted in specified cases, in particular for more complex contracts. For example, restricted tendering is only permitted where the nature of the requirement is highly complex or specialized in nature (PPL A.22 ) and two-stage tendering is permitted only in listed cases; where formulation of detailed and clear specifications is not feasible, a tender is complex or a previous procedure has failed (PPL A.28).<br><br>**Direct awards (single-source procurement)** is permitted for very low value contracts or where the ground for justification specified in the PPL are satisfied. These grounds include urgent situations, which are not expressed to be limited to exceptional cases or linked to a catastrophic event, where use of other procedures is impractical and disaster, force majeure where any other method of procurement would be impractical given the time constraints.<br><br>PPL A.24 sets out seven circumstances where it is permitted to award of a public procurement contract using single-source procurement or direct contracting, which means procuring by way of soliciting a price quotation from a single qualified bidder. The seven circumstances are, in summary: where there is only one supplier/contractor/service provider and no reasonable alternative or substitute exists; a supplier/contractor/service provide holds exclusive rights; where the value of the contract is below a specified threshold[28]; where there are additional activities that cannot be technically separated from the initial tender (subject to a 20% cap); in cases of urgency which renders the conduct of any other usual method impractical and where the urgency is not attributable to the procuring entity of the result of its carelessness; where due to disaster, force majeure the time required renders the conduct of any other usual method impractical; and; for consultancy services and other services for research, experiment or study where the provider Is working or teaching in a higher learning or research institution in Rwanda.<br><br>**Justification for Single source procurement:** The justification for single-source procurement in urgent situations (PPL A.24(4)) is not expressed to be exceptional and is permitted where engaging in the open tender method or other usual tender methods is impractical. "Carelessness", which could be interpreted as including poor planning, by the procuring entity is specifically excluded as a ground for justification of use of single-source procurement. The justification for single-source procurement in the event of disaster, force majeure is expressed to apply where any other method of procurement would be impractical given the time constraints.<br><br>Data on the use of single source procurement is not available for 2018/19. Data on the use of single source procurement is available for 2016/17 and 2017/18 during which periods the 2007 PPL (as amended) applied. The grounds for justification of use of single source procurement under the 2007 PPL (as amended) are not identical to those in the new PPL, although the wording of the justifications for use in urgent and disaster, force majeure cases are almost the same. In 2016/17, single source procurement comprised 7.16% of the total number of tenders representing 16.52% of the total value of tenders[29]. In 2017/18, single source procurement comprised 7.86% of the total number of tenders representing 17.56% of the total value of tenders[30].<br><br>**Direct award using Force account or Community Participation** The PPL provides for two additional non-competitive procurement methods: Force account (PPL A.26) and Community Participation (A.27). | Not applicable | **Criterion is partially met.**<br><br>**Rationale:**<br><br>This is indicated as "partially met" given the significant issues with the consistency of thresholds, justifications for Single source, use of force account and community approach all tilting the balance towards more non-competitive.<br><br>The use of competitive procurement accounts for 49% of the overall procurement in 2017-18. This is a big gap and it is likely facilitated by the existence of more competition-flexible methods such as: force account, community approach and loosely defined single source procurement. it may be further amplified by the possibility of RPPA issuing approvals for use of noncompetitive methods when conditions of the PPL are not met (A.29)<br><br>**Thresholds:** It is necessary to look at a number of different sources to work out which thresholds apply. Transparency would be improved if there is a summary document published on the RPPA website/UMUCYO listing the procurement methods and relevant financial thresholds, together with reference to conditions (where relevant) which need to be met in order to use a particular procurement procedure.<br><br>**Justification for Single source procurement:** The drafting of the justification for single source procurement in urgent situations (PPL A.24(4)) is not sufficiently strong to guarantee that it is used only in exceptional circumstances and could be strengthened to reduce the likelihood of over-use or abuse.<br><br>**Justification for use of Force account:** The conditions clearly have the potential to be generously interpreted, with the consequent possibility of inappropriate use, over-use or corruption and reduction in competition<br><br>**Justification for use of Community participation:** Whilst the aims are commendable, these very broadly drafted conditions clearly have the potential to be generously interpreted, with the consequent possibility | | **Thresholds:** Prepare and publish a summary document which lists the procurement methods and financial thresholds applying to the different procurement methods, together with reference to conditions (where relevant) which need to be met in order to use a particular procurement procedure<br><br>**Justification for Single source Procurement:** Redraft (PPL A.24(4)) to strengthen the provision so it may only be used in exceptional circumstances<br><br>**Justification for use of Force account:**<br>If Force account is to continue to be used as a procurement method, redraft PPL A.26 to emphasize exceptional nature of this method and to tighten the conditions for use.<br><br>**Justification for use of Community participation:** If Force account is to continue to be used as a procurement method, redraft PPL A.27 to emphasize exceptional nature of this method and to more clearly and narrowly define the circumstances where it may be used.<br><br>**Framework agreements:** Redraft PPL A.2/A.58 to provide greater clarity, in particular on methods of award of contracts. If the concept or use of frameworks is new then this should be supported by clear, practical guidelines for contracting entities on how to establish and operate frameworks. All provisions and guidelines should be aligned with the e-GP system. |

[25] Note: the PP Regulations date from 2014, prior to the new PPL and it is not clear whether these thresholds still apply to the procedures set out in the new PPL.
[26] This is the threshold listed in the PP Regulations and so may be out of date.
[27] This is the threshold listed in the PP Regulations and so may be out of date.
[28] PP Regulations A.23 set the threshold at RwF 300 000 (three hundred thousand Rwandan Francs). This may be out of date.

[29] Table 13 a, RPPA Annual Activity Report 2016-17.
[30] Table 2:6 , RPPA Annual Activity Report 2017-18.



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

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| | **Force account (PPL A.26):** Force account is the carrying out of requirements by the use of civil services and public equipment. Use of Force account is permitted where conditions listed in PPL A.27 are met. In summary, the conditions are where: the quantity of works cannot be defined in advance; construction works which are small and scattered, in remote locations or where access is difficult so that reasonably priced bids are unlikely, where construction works would disrupt other ongoing obligations, emergency situations and completion of works not completed by contractor.<br><br>**Community participation (A.27):** Community Participation is where the beneficiary community may participate in the delivery or non-consultancy services. The condition for use of this method is that "it will contribute to the economy, create employment and involve the beneficiary community". Whilst the aims are commendable, these conditions clearly have the potential to be generously interpreted, with the consequent possibility of inappropriate use or over-use of this method, reduction in competition and potential corruption.<br><br>The combined value of single sourcing, community approach and force account (non-competitive methods) appear high. According to RPPA's annual report, in 2017/18, these three methods comprised 20.53% of the total number of tenders awarded, representing 48.41% of the total value of contracts awarded[31]. As per explanation given in the Annual Report the level of use of open competition method was much higher in earlier years and reason behind the situation in 2017/18 were emergencies, use of Single source to unlock stalled projects and certain strategic decision to start projects.<br><br>**Framework agreements**: Framework agreements, which are a procurement tool rather than a procurement method, are defined in PPL A.2 with more detailed provisions in PPL A.58. A.58 allows for single supplier and multi-supplier frameworks, generally subject to a maximum of 3 years, and sets out the circumstances where a framework agreement may be established and used. It does not include details on how contracts are awarded under the framework agreement. | | of inappropriate use, over-use or corruption and reduction in competition.<br><br>**Framework agreements:** Both the concept and practical use of framework agreements can be difficult for procuring entities to understand. There can be confusion in terminology as "framework agreement" can be used to describe both the overall concept and the contractual document setting up the arrangements between the procuring entity (or entities) and the supplier or suppliers. It is important to ensure that there are clear legal provisions covering the setting up of a framework arrangement and also the way in which contracts will then be awarded (called off) under a framework agreement) as well as defining the scope of the framework agreement so that it does not get misused for procurements requirement falling outside the advertised scope and value. | | |
| **(c) Fractioning of contracts to limit competition is prohibited.** | **Summary:** Fractioning of contracts to avoid open competition is prohibited when it aims at circumventing competitive rules.<br><br>PPL A.85 provides that procuring entities are not permitted to divide tenders in a manner contrary to the provisions of the PPL or the PP Regulations. PPL A.23 provides that the procuring entity shall not split its tender into separate contracts in order to bring them within the provisions permitting the use of a Request for Quotations process and thus avoid a fully competitive process. PP Regulations A.23 provides that the procurement entity is not allowed to split a tender in a manner aimed at avoiding the normal procurement methods provided for by law. | Not applicable | **Criterion is met.** | | |
| **(d) Appropriate standards for competitive procedures are specified.** | The PPL requires use of the Open procedure as the default procedure but permits procuring entities to use other competitive procedures subject to meeting conditions set out in the PPL (as described in (a)(b)(c) above, which generally reflect the nature and complexity of the contract concerned. Where the procuring entity wishes to use a less competitive procedure but is unable to meet the conditions specified in the PPL the procuring entity is required to seek the prior authorization of the RPPA. | Not applicable | **Criterion is met.** | | |

1(c) Advertising rules and time limits

The legal framework meets 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** |
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| **(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)).** | PPL A.32 requires procuring entities to publish all tenders on the e-procurement portal, UMUCYO, except where the estimated value of the contract is below relevant thresholds published in the PP Regulations[32]. Other circumstances where award without prior publication of a tender is permitted are specified in the PPL (see indicator 1(b)). | Not applicable | **Criterion is met.** | | |
| **(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for** | **Summary:** All competitively tendered opportunities above the national threshold are required to be advertised on the e-procurement portal and conducted using the e-procurement system[33]. Procurement is conducted using the e-procurement system, except where authorization has been obtained from the RPPA to conduct public procurement without using the e- | Not applicable | **Criterion is met.**<br><br>**However, certain improvements for greater transparency are suggested:** | | |

[31] RPPA Annual Activity Report 2017/18

[32] *Regs A.23 re threshold for single source below 300 000 - are all single source either below this threshold or, if above threshold, subject to ex-ante approval PP Regs A.24 RFQ below 2 000 000.*

[33] See notes at on phased roll-out of mandatory use of e-procurement.



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

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| **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.** | procurement system. Most advertised competitive opportunities use the open procedure[34], for which the minimum time frame for submission of tenders is 30 calendar days which provides sufficient time for potential bidders to obtain documents and respond. The minimum time frame is much shorter for submission of tenders using the Simplified method, reflecting the low value non-complex nature of these procurements. Where foreign bidders are expected to compete the timeframes are longer. The minimum time between the call for proposals and submission are specified in the PPL.<br><br>**Prequalification applications:** The minimum time frame between publication of a prequalification notice and submission of expressions of interest for contracts for works, goods and non-consultancy services is [x…. days]<br>For consultancy services the minimum time limits for submission of expressions of interest are national tenders - 14 days from date of publication; international tenders 21 days from date of publication (PP Regulation A.34).<br><br>**Submission of tenders**<br>**Open Tender PPL A.36** The minimum time frame for submission of tenders is:<br>• National tenders - 30 calendar days[35] from the time the tender notice is published<br>• International tenders - 45 to 90 calendar days from the time the tender notice is published on the e-procurement portal<br>The minimum time frame between publication of the tender notice and submission of tenders for open tender using the Simplified Method (for contracts between the threshold for Request for Quotation and the national competitive bidding threshold) is 8 *working* days, reflecting the low value and non-complex nature of the procurement (PPL A.25)<br><br>**Restricted tendering PPL A.22 & PPL A.36** The minimum time frame for submission of tenders is:<br>• National tenders - 14 calendar days from the time the tender notice is published<br>• International tenders - 21 calendar days from the time the tender notice is published on the e-procurement portal<br>The minimum time for preparation of tenders for restricted tender using the Simplified Method (for contracts between the threshold for Request for Quotation and the national competitive bidding threshold) is 5 *working* days, reflecting the low value and non-complex nature of the procurement (PPL A.25)<br><br>**Pre-qualification proceedings PPL A.21** The minimum time frame for preparation of tenders is<br>• From issue of the tender document inviting prequalified bidders to submit their bid to submission of the bid is 14 days for national tenders and 21 days for international tenders.<br><br>**PPL A.28 Two-stage tendering**<br>• The provisions generally applicable to tendering apply to two stage tendering except to the extent that PPL A.28 is contrary to those provisions.<br><br>**Request for Quotations PPL A.23 & PPL 36**<br>• The minimum time limit for submission of tenders is 3 working days from date of receipt of the invitation to tender by bidder. This short time limit reflects the low value of contracts awarded using the Request for Quotations method.<br><br>**Publication of contract award:** PPR A.42 requires the procuring entity to publish the results of the contract award as soon as the contract is signed by both parties. Information to be published must include the winner, amount of tender awarded and duration of the contract. Publication is required on the procuring entity's website and notice board and the RPPA official website.<br><br>The title of PPR A.42 is "Publication of competition results" It is therefore not clear from the PPR whether publication is required where the award of a contract is made *without* a competition.<br><br>**e-procurement system for advertising and conduct of procurement:** There are no shortened time lines in the case of electronic transmission of procurement notices and bidding documents because all competitively tendered opportunities above the national threshold are required to be advertised on the e-procurement portal (PPL A,4). PPL A.4 also requires that all procuring entities must conduct public procurement through the e-procurement system, except where prior authorization has been obtained from the RPPA to conduct public procurement without using the e-procurement system. | | Late publication, non-publication of contract award information creates practical difficulties with accessing such information, creates potential problems particularly in terms of transparency and right to review. In this respect, **publication of contract award – timing: PPR.A42** requires that contract award notices are published "as soon as the contract is signed. It is preferable to specify a maximum defined period for publication, to ensure consistency and transparency. In practice, it is difficult access information on tender awards on UMUCYO without being a registered user of the UMUCYO. For procurement processes conducted without using UMUCYO it appears that there is a failure to publish contract award information[36].<br><br>**Publication of contract award - coverage:** The title of PPR A.42 is "Publication of competition results". It is therefore not clear from the PPR whether publication is required where the award of a contract is made *without* a competition (single source/force accounts/community participation). In practice, information on the award of contracts by non-competitive methods is not published and publicly available.<br>It is also not clear whether publication is required for low value contracts not subject to the PPL.<br><br>If it is not required to publish information about contracts awarded without competition and/or very low contracts this creates potential problems particularly in terms of transparency. The administrative burden for publication of low value contract awards can be reduced by, for example, requiring quarterly publication of contract award information.<br><br>**Failure to use e-procurement - Non-payment of suppliers**<br>PPL A.4 provides that any tender awarded without authorization contrary to the requirement to use e-procurement "shall not be paid for by the Government". This is an inappropriate transfer of commercial risk to the supplier resulting from a procuring entity failure. | | Amend legal framework to ensure that contract award information is published promptly for contracts awarded using competitive and non-competitive methods, within a defined period, on a freely accessible portal.<br><br>The administrative burden for publication of low value contract awards can be reduced by, for example, requiring quarterly publication of contract award information. |

[34] For example, Data obtained by assessment team from UMUCYO shows national or international competitive bidding (open) used in 87.39% of on-line tenders and
[35] PPL A. 3(28) defines "Day" as "calendar day including holidays unless provided otherwise by the tender document"

[36] Results of Short survey of procuring entity websites and telephone interviews carried out as part of WB MAPS assessment process.



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

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| | In practice, use of the e-procurement system has been phased, since its introduction in 2016. Use of the e-procurement system started with 9 pilot procuring entities and was subsequently rolled out in 2017/18 to a further 141 entities. Roll out to district hospitals is planned for July 2019, with ongoing work on an engagement strategy for schools, health facilities and district pharmacies. This means that some procuring entities are not yet using the e-procurement system although the number of procuring entities is diminishing as the planned roll out progresses. Any tender awarded contrary to the requirement to use the e-procurement system, where no authorization to do so has been obtained from the RPPA, "shall not be paid for by the Government". | | | | |
| **(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).** | **e-procurement system for advertising and conduct of procurement:** All competitively tendered opportunities above the national threshold, including Open Tenders, are required to be advertised on the e-procurement portal (PPL A.4)[37]. The e-procurement portal, UMUCYO, is easily accessible on-line at no cost. | Not applicable | **Criterion is met.** | | |
| **(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.** | PPL A.33 requires that the tender notice must include at least; the name and address of the procuring entity, the reference number and an explanation of how to obtain the tender document and its cost.<br><br>This is rather limited information and does not allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one. However, in practice, tender notices published on the UMUCYO have more detail than this – including a short description of the requirement, time lines and reference to bidding documents being available to download from the portal.<br><br>PPL A.69 requires the notice of expression of interest for consultancy services to include a description of the services to be provide, qualification necessary and time line for submission. | Not applicable | **Criterion is partially met.**<br><br>**PPL A.33: the information specified to be included in the tender notice** is insufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one. The list of specified information to be included in the tender notice should include, at least, a short description of the subject matter of the procurement, time lines and reference to where bidding documents can be obtained. It should also be aligned with the operational requirements of the e-procurement system. In practice, however, tender notices published on UMUCYO in practice have sufficient details. | | Though in practice the tender notices have sufficient details for bidders, consider amending the legislation to ensure that information in tender notice includes at least a short description of the subject matter of the procurement, time lines and reference to where bidding documents can be obtained whether the tender notices are published through e-Procurement or off-line |

1(d) Rules on participation

The legal framework meets 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 |
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| **(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.** | **PPL A.44** sets out requirements for bidder's qualification. A bidder is qualified to be awarded a tender only if he/she:<br>• has qualified personnel, equipment, experience[38] and financial capacity[39] to provide what is being procured<br>• has legal capacity to enter into a public procurement contract<br>• is not insolvent, in liquidation, bankrupt or in the process of being wound up or subject to any legal proceedings<br>• has not been debarred or suspended from participating in public procurement proceedings<br>• has provided accurate and appropriate evidences as required.<br>Additional criteria may be used, depending on the nature of the tender.<br><br>The qualification requirements must be published – they must be set out in the tender document or, in the case of a restricted tender in the request for proposals and in the case of quotations in the prequalification documents. Only the published requirements may be applied (PPL A.30)<br>• The procuring entity may require a bidder to provide evidence or information to establish that the criteria are met. PPL A.30 includes a requirement for the tender document instructions to include information on documents required to evidence the bidder's qualifications. The procuring entity must check the accuracy of evidence/information provided to demonstrate that qualification criteria are met. A procuring entity *may* disqualify a bidder for submitting false, materially confusing or incomplete information. | Not applicable | **Criterion is partially met.**<br><br>**Requirement that bidder is not qualified to be awarded a tender if they are subject to "any legal proceedings":** This has the potential to be widely interpreted and so could cause problems or be misused.<br><br>**Option to disqualify bidder on grounds of provision of "incomplete information":** This has the potential to be formalistically interpreted by procuring entities who exercise discretion on this question. Over-formalistic interpretation of this provision could cause problems or be misused. | | RPPA to provide clear guidelines on how these provisions should be interpreted and by procuring entities |

[37] PP Regulations require contracts over RwF 2 000 000 (two million Rwandan Francs) to be advertised in at least one newspaper of wide circulation and on the official website of the procuring entity in addition to the RPPA official website. It is not clear whether this provision still applies under the new PPL.

[38] PPL A.44 paragraph 5 states that a ministerial order determines the thresholds of the tender value exemption requirement of past experience of potential bidders.

[39] Public Procurement User Guide 2010 includes details on assessment of financial resources based on minimum level of annual turnover and proof of access to funds, and references RPPA circular No. 101/09-018 RPPA of 09/01/2009



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

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| | PPL A.21 sets out provisions on the use of prequalification proceedings and includes a non-exhaustive list of qualification criteria concerning staff, equipment, financial capacity and experience.<br>PPL A.69 on consultancy services requires that the notice of expression of interest published on line includes information on the qualification necessary to be invited to submit a bid.<br>**PPL A.89 Conflict of interest**: defines cases of conflict of interest where persons or institutions are not allowed to bid for public tenders. PPL A.188 provides that direct or indirect participation where there is a conflict of interest under the provisions of the PPL constitutes an offence liable to imprisonment and a fine.<br>**PPL A.89** sets out **further prohibitions on bidding** including; a bidder submitting more than one bid in the same tender, a member of the public tender committee or any other person involved<br>in the award process or contract management where kinship or other specified circumstances apply. Any act contrary to the provisions of PPL A.89 causes the cancellation of the contract. | | | | |
| **(b) It ensures that there are no barriers to participation in the public procurement market.** | **Summary:**<br><br>The PPL sets out rules on eligibility to participate in procurement processes and grounds for exclusion. See 1 c) below.<br><br>**Price Preference provisions:** The PPL includes provision on price preference.<br>**PPL A.79: <u>Exclusive</u> preference for goods or supplies produced or supplied in Rwanda and bidders registered in Rwanda:** Provides that, through competition, exclusive preference is given to:<br>**Goods or supplies:** preference given to suppliers of supplies or goods produced or manufacture in Rwanda[40] .<br>**Non-consultancy services:** preference given to service providers registered in Rwanda.<br>**Works and consultancy services:** preference given to entrepreneurs registered in Rwanda.<br>According to PPL A.79, paragraph 2, the threshold for application of exclusive preference is made by Order of the Minister.<br><br>The Ministry of Finance and Economic Planning has issued guidelines on "Use of public procurement to support "Buy Made in Rwanda program"" 4404/10/16/TC. This cross references to PP Regulations A.82 which applies a **10%** price preference.<br><br>**PPL A.80 Preference for *goods* produced or manufactured in Rwanda and local *consultancy services*:** In international or national competitive bidding **local preference of 15% (local goods preference)** is given as follows: procurement of goods – preference given to goods or supplies produced or manufactured in Rwanda; procurement of consultancy services – preference given to companies registered in Rwanda.<br><br>**PPL A.81 Local preference for *works* and *non-consultancy* services**<br>In international or national competitive bidding **local preference of 10% (local company preference)** is given as follows: Procurement of works and non-consultancy services -preference given to bidders registered in Rwanda.<br>**PPL A.82 Modalities for applying exclusive or local preference:** requires procuring entities to indicate in the tender documents when it applies exclusive or local preference. In practice, the same information is also required to be included in the contract/tender notice[41]. Where a procuring entity does not apply exclusive or local preference referred to in the PP it must make a report explaining the reasons for not doing so and include it in the tender procurement file.<br><br>The **Standard Bidding Documents** contain price preference provisions and methods of calculation.<br><br>The Ministry of Finance and Economic Planning has issued guidelines on "Use of public procurement to support "Buy Made in Rwanda program"" 4404/10/16/TC. This cross references to PP Regulations A.82.<br><br>**Registration requirements**<br>PPL A.88 provides that eligible bidders for public procurement are physical persons or companies who deal with commercial activities that are registered as businesses or those holding professional licenses or exercising any liberal profession. There is no specific requirement in the PPL that the registration or licensing must be in Rwanda. PP Regulations A.16 provide further detail but do not refer to registration/licensing in Rwanda.<br>PP Regulations A.17 require that any individual or legal entity participating in public procurement shall be registered with the RPPA.<br><br>**Categorization**<br>Since 2015, companies participating in specified construction rehabilitation works[42] have been required to apply to the RPPA for "categorization". Companies may apply for categorization at any time. This is a process which assesses a company's suitability to deliver contracts for a specified category of works. Companies must hold a categorization | Not applicable | **Criterion is partially met**<br>Due to set of requirements on exclusive preferences for goods produced in Rwanda and categorization that promotes preference for local goods and services. Though foreign companies can bid and be awarded a tender once, without categorization, they are required to apply for categorization later on. The categorization does not identify firms which are MSME, though in practice most of the local firms fall under the category of MSME.<br><br>In conclusion rules of eligibility, exclusive preferences for local bidders and system of categorization may be construed as a barrier to competition. | | The government may consider giving preference for locally produced goods, encourage MSMEs and consider a policy of preference that does not discourage foreign participation. Based on hard data government to find out if such conditions create oligopolistic or monopolistic conditions rather than promote development of local industry and a de facto barrier to competition. Government to categorize MSMEs including in e-GP system and consider other means to improve local participation: (1) including margin of price preference in favor of SMEs applied in. evaluation and comparison of bids; (2) setting aside certain monetary levels or types of procurement for award to SMEs; (3) basing quotas for award of contracts to SMEs on a percentage of the value of total procurement of a PE; (4) specifying levels of subcontracting to SMEs to be met by prime contractors; and (5) bundling procurement into smaller contracts to encourage SMEs and local companies. |

[40] PPL A.3 (8) "local goods or supplies" are defined as "goods or supplies produced in Rwanda for which labour, raw materials or component originating from Rwanda account for at least thirty percent (35%) of the ex-works price."
[41] RPPA response to WB request for clarifications, document dated 06 May 2019.
[42] The categories are: construction/rehabilitation of buildings, road and bridges, development of marshlands and irrigation, construction of embankments/dams and drinking water supply



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

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| | certificate in order to bid for work falling within a specified category. All companies registered in Rwanda are required to apply for categorization. Foreign companies can bid and be awarded a tender once, without categorization, but will then be required to apply for categorization.<br>Local and foreign companies may form joint ventures but only for one international tender.<br>The Manual for Categorization of Companies (December 2014)[43] requires companies to submit documents with their application to the RPPA including certificates of registration to the Rwanda Revenue Authority and Rwanda Social Security Board, financial statements declared to the Rwanda Revenue Authority and location plan of the head office.<br>In 2017 firms providing engineering consulting services are also required to apply for categorization. The Manual for Categorization of Consulting Firms Operation in the Field of Building and Civil Engineering Works for Design and Supervision Assignments (May 2017) [44] sets out different rules for foreign firms which, in practice acknowledge that foreign firms will not be in a position to submit the same evidence as domestic firms. Foreign firms are permitted to bid and be awarded a tender once, without categorization, but will then be required to apply for categorization and provide proof of application to the Institute of Engineers or Institute of Architects to work in Rwanda[45]. A local consulting firm and a foreign firm may only form a joint venture for an international tender.<br><br>**Publication of Categorization lists:**<br>The Manuals referred to above, together with form to be completed by companies and firms applying for categorization can be downloaded from the RPPA website. Categorization lists are published on the RPPA website. | | | | |
| **(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.** | **Summary:** The legal framework details eligibility requirements and provides for rejections of offers where it is established that a bidder is engaged in corrupt or fraudulent practices. There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process 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 labour; and all forms of trafficking in human beings, or the equivalent of those offences as commonly found in other jurisdictions. There are provisions for administrative debarment subject to due process.<br><br>**PPL A.44** sets out requirements for bidder's qualification. See indicator 1 a) above. Grounds for exclusion from qualification include debarment.<br><br>**PPL A.87 Anti-corruption measures:** provides that a bidder's offer must be rejected where it is established that the bidder is engaged in any corrupt or fraudulent practice while bidding for a public procurement.<br>**PPL A.48 Cancellation of procurement proceedings**: A procuring entity may take a decision to cancel procurement proceedings where it is established that there is fraud or lack of fairness in the tendering process.<br>**PPL A.93 Cancellation of the contract due to forged or fraudulent practices**: a procurement contract is cancelled if it is proved that any information or document submitted by the successful bidder was falsified or fraudulent.<br><br>**Debarment**<br>**PPL A.176 Temporary debarment:** temporary debarment applies for five or seven years, according to the nature of the action leading to debarment. Grounds for debarment include collusion with other bidders the intention to interfere with fair competition, collusion with public officials, fraud over estimated prices, poor performance, failure to pay workers and provision of false information.<br>A bidder may also be debarred for 7 years for failure to inform the contracting authority of change of address.<br>**PPL A.177 Permanent debarment:** Grounds for permanent debarment apply where a bidder is debarred for a second time or enters a contract while he/she is debarred and to any company debarred which used fraudulent means to evade sanctions imposed on it, in order to continue to participate in public procurement in the debarment period. In this context, fraudulent means to evade sanctions are defined.<br>**PPL A.179 Procedures for debarment from public procurement:** The RPPA has power to debar a bidder from participation in public procurement. The debarment process requires the RPPA to inform that bidder in writing of charges made and for the bidder to respond to those charges within a specified period of 15 days for national bidders and 30 days for foreign bidders. Bidders are entitled to a hearing and have the right to be represented or assisted by a lawyer. The hearing is | Not applicable | **Criterion is partially met.**<br><br>**Exclusion for conviction by final judgment for designated offences**: There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process 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 labour; and all forms of trafficking in human beings, or equivalent of those offences as commonly found in other jurisdictions. Nonetheless, there are debarment provisions with due process<br><br>**Periods for debarment** are rather long – in other systems 1 to 3 years is common.<br><br>**The provision for debarment for failure to inform of change of address** appears disproportionate.<br><br>In this respect, the sub-indicator 1(d)(c) requires among others that the legislation details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations. In this respect, there are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by | | **Exclusion:** Amend PPL to include specific provisions dealing with exclusions for criminal or corrupt activities.<br><br>**Debarment:** Consider reducing the periods for debarment<br><br>The identified gaps needs to be reviewed and improvement made |

[43] Available to download from the RPPA website http://rppa.gov.rw/fileadmin/files/CIRCULAR/MANUAL_FOR_CATEGORIZATION_OF_COMPANIES_Publish.pdf

[44] Available to download from the RPPA website http://www.rppa.gov.rw/fileadmin/files/CompanyCategorisation/Final_Categories_2016_2017/Categorization_manual_for_consulting_firms.pdf



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

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| | recorded, and all evidence is filed, with a debarment decision made within 45 days. Debarment is takes effect from date of issue of the decision until expiry or annulment by a competent court. A list of debarred bidders must be published on the RPPA website, the UMYCON e-procurement portal and in the newspapers. **PPL A.180 provides for a right of appeal** against an RPPA debarment decision to a competent court.<br><br>The "Blacklist" of debarred bidder is published on the RPPA website, listing the name of the company/organization, individual name, ground for debarment and period of debarment[46]. | | 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 labour; and all forms of trafficking in human beings, or equivalent of those offences as **commonly found in other jurisdictions**. Hence, sub-indicator is assessed as "partially met". Existence of debarment as a ground for exclusion is also considered. Our comment on reconsidering the debarment period in some cases is for further improvement only. | | |
| **(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.** | **Summary:**<br><br>PPL A.88 provides that public companies and public institutions are eligible to participate as bidders in public procurement if they can prove that they are legally and financially autonomous and that they operate under commercial laws.<br>Standard Bidding Documents (SBD) published by the RPPA (January 2019) for the procurement of works and supplies include provisions that government-owned enterprises shall be eligible to participate only if they can establish that they are (1) legally and financially autonomous, (ii) operate under commercial law. In the case of *supply of goods/supplies* they must also establish that they are not a dependent agency of the purchaser.[47] | Not applicable | **Criterion is met** | | |
| **(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.** | **Summary:** The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multi stage procedures are permitted for specified types of contracts and circumstances for use are defined.<br><br>In general, bidders are required to submit qualification information with their bids.<br>The Standard Bidding Documents (SBD) published by the RPPA dated January 2019 include "Qualification Information" or "Post-qualification: section/s with a form/ for completion by bidders ore requests for the provision of specified information which is used for the purposes of post qualification or prequalification (where used). The SBDs include instructions to bidders explaining how and when the process of assessment is undertaken. The SBD for large works is accompanied by a User's Guide which includes explanations of how to complete the forms and what the procuring entity will evaluate, particularly in the context of financial resources, personnel and equipment<br><br>For more complex procurements, Prequalification proceedings may be used, with an initial evaluation stage focused on evaluation of a bidder's suitability to ability to perform a specific contract (PPL A.21). In this case, only prequalified bidders are invited to submit a tender. PPL A.21 provides that prequalification proceedings may be used for procurement of large or complex works and acquisition of high value or complex goods.<br><br>PPL A.22 provides that restricted tendering is to be used where the requirements are of a complex or specialized nature or are only available from a limited number of bidders. PPL A.28 provides that two stage tendering may only be used where, in summary, it is not feasible to formulated detailed and clear specifications, the tender is complex, and the procuring entity lacks sufficient knowledge in the area, or it relates to high technological development or in the event of a previous failed tender procedure. | Not applicable | **Criterion is met.** | | |

1(e) Procurement documentation and specifications
The legal framework meets 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** |
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[46] http://rppa.gov.rw/index.php?id=605

[47] SBD for the supply of goods, Section 1 Instructions to bidders, paragraph 4.6; SBD for small works, Section 1 Instructions to bidders, paragraph 4.4; SBD for large works, ITB 4.5;



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| **(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.** | **Summary:** The PPL requires that procurement documents contain sufficient information to enable the submission of responsive tenders/bids/proposals and documents prepared in compliance with the provisions of the PPL should establish the basis for a transparent evaluation and award process. Standard Bidding Documents are published by the RPPA for use by procuring entities and the relevant level of detail varies according to the nature and complexity of the procurement covered by the particular SBD.<br><br>PPL A.30 requires that the tender document is prepared in accordance with the PPL, procurement regulations and standard tender document. PPL A.30 lists the information which must be included in the tender document. The information required should be sufficient to enable submission of responsive tenders/bids/proposals. The tender document must include specific requirements including quantities, time limits for delivery and completion, applicable standards and terms and conditions. The tender documents must also include instructions for preparation and submission of bids. The tender documents document establish the basis for a transparent evaluation and award process by including information on the procedures and criteria for bid evaluation and comparison.<br><br>The RPPA publishes Standard Bid Documents (SBD) covering procurements of different types and values. PP Regulations A.7 requires all public institutions, as a general rule, to use the SBD and standard contracts The SBD published by the RPPA dated January 2019 are comprehensive and detailed and satisfy the requirements of PPL A.30. The level of detail in the SBDs and requirements for provision of documentation varies according to the nature and complexity of the procurement covered by the SBD.<br><br>PPL A.25 provides that for the Simplified method of procurement, which applies to lower value contracts where the preparation of bids is easy and technical specification are not complex, a shorter tender document is used. This should help to ensure that the information required for simpler procurements is not excessive. PPL A.44 provides that a ministerial order determines the thresholds for the tender value exempting requirement of past experiences of potential bidders when assessing qualification. | Not applicable | **Criterion is met.** | | |
| **(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.** | **Summary:** Requirements set out in the specifications contained in the procurement documents are must be objective and neutral. References are required to national standards, or international standards. The PPL, PP Regulations and Guidance do not contain provisions specifically encouraging the use of output-based (functional) specifications to promote innovation, where appropriate.<br><br>PPL A.31 applies to specifications for goods or supplies, works of non-consultancy services. It requires that specifications "clearly define the expected results with objectivity and neutrality". PPL A.31 requires that the tender documents must include information on applicable Rwandan standards, or international standards, where available. Standard Bidding Documents issued by the RPPA include instructions to procuring entities, stating that "Recognized international standards should be specified as much as possible"[48]. Standard Technical Specifications for motorbikes, USB flash drives and generators are published on the RPPA website[49].<br><br>PPL A.25 provides that single source procurement is not justified where functionally equivalent goods or supplies, works or consultancy and non-consultancy services would satisfy the needs of the procuring entity.<br><br>The PPL, PP Regulations and Guidance do not contain provisions specifically encouraging the use of output-based (functional) specifications to promote innovation, where appropriate. | Not applicable | **Criterion is met.**<br><br>**However, consider strengthening the following aspects:**<br><br>**Output based specifications:** the legal framework could include provisions and guidance on the use of output-based specifications and based on functional requirements | | |

[48] Section 3 Technical specifications, Standard Bidding Document for Supply of Goods, RPPA January 2019
[49] Technical specifications of some items used by procuring entities, 2017 http://rppa.gov.rw/index.php?id=604



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

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| **(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.** | **Summary:** The PPL requires recognition of standards that are equivalent, when neutral specifications are not available<br><br>PPL A.31 applies to specifications for goods or supplies, works of non-consultancy services. It requires that specifications "clearly define the expected results with objectivity and neutrality".<br><br>It also provides that specification shall not make reference to a particular brand, trade name, design type, origin or producer unless there is no other sufficiently precise ways of describing the characteristics required. In that case the words "or equivalent" must be added.<br><br>Standard Bidding Documents issued by the RPPA include instructions to procuring entities, stating that reference to specific brand names, catalogue numbers of other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. The SBD state that where unavoidable the descriptions "should always be followed by the words "or substantially equivalent" ".[50] | Not applicable | **Criterion is met.** | | |
| **(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)** | **Summary:** Potential bidders are allowed to request clarification of procurement documents, the procuring entity must respond in a timely fashion and written clarification is provided to all potential bidders.<br><br>PPL A.35 permits any prospective bidder to ask the procuring entity to provide explanations as to the content of the tender documents. The procuring entity is required to respond with clarifications within a specified time period, calculated by reference to the deadline for submission of tenders. The procuring entity must communicate the response provided to all prospective bidders, without disclosing the source of the request. In practice this can be dealt with using the e-procurement portal which has a "clarifications" function, with questions and responses made public. | Not applicable | **Criterion is met.** | | |

1(f) Evaluation and award criteria

The legal framework mandates 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** |
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| **(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.** | **Summary:** Procuring authorities are required to disclose in advance in the procurement documents the procedures and criteria for bid evaluation. The tender committee must evaluate bids solely on the basis of the pre-disclosed criteria. The contract is awarded to the bidder whose bid/proposal is determined to have offered the lowest evaluated price/cost or, where other defined award criteria are also used, to the best evaluated bid/proposal. The legislation is missing an explicit requirement that award criteria shall be relevant to the subject matter of the contract.<br><br>PPL A.6 sets out fundamental principles governing public procurement which include efficiency, fairness and transparency. PPL A.30 requires that the tender document is prepared in accordance with the PPL, procurement regulations and standard tender document. PPL A.30 lists the information which must be included in the tender document. The information required should be sufficient to enable submission of responsive tenders/bids/proposals. The tender document must include specific requirements including quantities, time limits for delivery and completion, applicable standards and terms and conditions. The tender documents must also include instructions for preparation and submission of bids. The tender documents establish the basis for a transparent evaluation and award process by including information on the procedures and criteria for bid evaluation and comparison.<br><br>PPL A.30 requires that the tender document is prepared in accordance with the PPL, procurement regulations and standard tender document. The Procuring Entity is required to identify the bidders who meet the qualification criteria stipulated in the procurement document, in accordance with applicable rules on eligibility and exclusions (see sub-indicator 1(d)).<br><br>The procuring entity is required to disclose in the tender document the procedures and criteria for bid evaluation and comparison. PPL A.42 requires the public tender committee to evaluate responsive bids on the basis of the pre-disclosed criteria and provided that nothing can be added or deleted in that respect. PPL. A188 provides that any person who uses a criterion not provided in the tender document to award a tender commits and offence.<br><br>PPL A.43 describes a "[substantially] responsive bid". A bid is responsive if it substantially conforms to the requirements specified in the tender document. Standard Bidding Documents include a section on examination of bids and determination of responsiveness[51]. PPL A.42 provides that the successful bidder is the bidder who fulfils the requirements and who is the lowest responsive bidder. PPL A.45 permits a procuring entity to request clarification in writing during the evaluation and comparison of bids, provided such clarification does not change the substance of bids. PPL A.46 requires disqualification of | Not applicable | **Criterion is met.** | | |

[50] Section 3 Technical specifications, Standard Bidding Document for Supply of Goods, RPPA January 2019

[51] See for example, Instructions to Bidders, paragraph 26, Standard Bidding Document for Small Works, RPPA January 2019



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| | any bid containing an arithmetic error, subject to a requirement to correct arithmetic errors in bids not submitted electronically.<br><br>PPL A.43 requires that where a Request for Quotation method is used the contract must be awarded on the basis of the lowest priced quotation for the described quality that also meets the required delivery period. PPL A.28 sets out rules on the conduct and evaluation in two-stage tendering processes. A.24 refers to the soliciting of a price quotation in single source procurement. | | | | |
| **(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.** | **Summary:** The evaluation of price and non-price attributes is permitted, particularly in the case of supply of goods, to ensure value for money decisions. Consideration of life-cycle costing is permitted.<br><br>For works and non-consultancy services, the SBD imply that contracts are generally awarded to the bidder whose offer is determined to be the lowest evaluated bid and is substantially responsive. In order to be substantially responsive a bid must conform with all terms and conditions and specifications in the bidding documents.<br><br>In the case of supply of goods, it is specifically provided in the Standard Bidding Document that other factors may be taken into consideration. The Standard Bidding Document for supply of goods provides that a Procuring Entity's evaluation of a bid may require the consideration of other factors, in addition to Bid Price. The additional factors may be related to characteristics, performance and terms and conditions of purchase. The impact of the factors, which must be disclosed in the SBD shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in the SBD. The contract is awarded to the bidder whose offer is determined to be the lowest evaluated bid and is substantially responsive[52]. The SDB includes a dedicated section on Qualification and Evaluation Criteria which sets out criteria and the evaluation methodologies to be used. | Not applicable | **Criterion is met.**<br><br>**Nonetheless,**<br><br>PPL and PP Regulations do not contain specific provisions covering the use of life-cycle costing or considerations of environmental/social characteristics.<br>However, the Guidelines for enhancing Value for Money in Public Procurement were issued in June 2018 by the RPPA: 010/2017/2018 -1996/RPPA[53]. refer to the use of whole life cost assessment, where relevant. | | Suggestion for improvement<br>Including life cycle costing provisions in higher level legislation would emphasize its importance and ensure consistency and uniformity among procuring entities.<br>Hence, the need to revise PPL and/or PP Regulations to include explicit provisions on life cycle costing, supported by practical Guidance. |
| **(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.** | **Summary:** Technical qualifications for consulting services can be assessed by using a scored evaluation against stated criteria. The default method for evaluation of proposals for consulting services is quality cost-based selection. Clear procedures and scoring methodologies for assessment are defined. The PPL lays out conditions under which different methods for evaluation may be conducted.<br><br>PPL A.70 concerning the procurement of consultancy services requires disclosure of the procedures and criteria to be used to evaluate which proposals are responsive and the evaluating the financial proposals. Other evaluation methods are permitted, including interviews or presentations, in which case the procedures and criteria must be included in the tender document.<br><br>PPL A.73 requires technical proposals to be evaluated on the basis of criteria disclosed in the request for proposals and includes a non-exhaustive list of criteria. PP Regulations A.35 sets out the scoring methodology for evaluation of technical proposals. This allow for a range of scores against specified criteria.<br><br>PPL A.72 sets out the selection method and criteria for consultancy service tenders. These are a quality and cost-based selection, quality -based selection, selection under a fixed budget method and least cost selection.<br><br>PPL A.72 specifies the quality and cost-based method as the default method and sets out the circumstances where the other methods may be used. Quality based selection is permitted where quality is the paramount factor. Selection under a fixed budget may be applied when the assignment is simple, precisely defined and the budget is fixed. Least cost selection may be applied when selection is of a standard and routine nature where establish practice and standards exist and the tender value is small. PPL A.74 sets out the method for evaluation of financial proposals. The methodology to be applied to evaluation of quality and cost-based selection is set out in the PP Regulations A.36.<br><br>The Standard Bidding Documents for consultancy services and small consultancy services contain detail on evaluation of technical/quality and financial aspects. | Not applicable | **Criterion is met.** | | |
| **(d) The way evaluation criteria are combined and their relative weight** | **Summary:** The legal framework requires that the procedure and criteria for bid evaluation and comparison are set out clearly in the tender documents. Standard Bidding Documents have sections specifying the criteria and methodology to be | Not applicable | **Criterion is partially met.** | | The legal framework should include provisions and guidance on the use of |

[52] This is also the basis of the award specified in the SBD for small works (para.32) and SBD for large works
[53] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Guidelines/Guidelines_for_enhancing_Value_for_Money_in_Public_Procurement.pdf



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| **determined should be clearly defined in the procurement documents.** | applied, where relevant. In the cases of consultancy services, the formula for assessment of combined criteria, including manner of combination and relative weighting is set out in the PP Regulations.<br><br>General provisions: PPL A.30 requires that the procedure and criteria for bid evaluation and comparison is set out in the tender document. It also requires the tender document to be prepared in accordance with the PPL, PP Regulations and Standard Bidding Documents. PPL A.42 provides that the public tender committee must evaluate and compare bids based on the procedures and criteria set out in the tender document and nothing can be added or deleted.<br>For works contracts and supply of goods there is no specific reference in the PPL, PP Regulations or Standard Bidding Documents to the use of relative weighting. For works contracts, the Standard Bidding Documents refer to contract award based on the lowest priced, substantially responsive, tender. The Standard Bidding Document for the supply of goods also refers to contract award based on the lowest priced, substantially responsive, tender but also includes provisions for the use of additional criteria which are to be evaluated and monetized in accordance with a methodology set out in the tender document, in order to facilitate evaluation.<br><br>Consultancy services: PPL A.72 provides that detailed procedures for the use of the evaluation methods specified for consultancy services shall be contained in regulations. PP Regulations A.36 sets out the methodology which must be used for using the quality cost-based selection method for consultancy services. The methodology provides that the overall score shall be obtained by adding technical and financial scores. Technical and financial scores are determined according to the nature and complexity of the assignment. The coefficient for quality and cost score is presented as a formula with a range of weighting for technical score (70% to 90%) and financial (10% to 30%) where there are combined scores. The formula must be specified in the request for proposals. There is also a formula which must be used to determine the financial score of each bid.<br><br>There are no specific provisions concerning life-cycle costing or the method by which life-cycle costs are determined which is a gap under Indicator 3 | | There are no specific provisions concerning relative weighting and/or life-cycle costing of the method by which life-cycle costs are determined, which is also a gap under Indicator 3. | | relative weighting and life cycle costing, including methodologies, where relevant. |
| **(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.** | **PPL A.18 Confidentiality in public procurement** requires that during or after procurement proceedings, information relating to the evaluation, comparison of bids or clarification on tenders and content of bids must not be disclosed.<br>**PPL A.18** also forbids disclosure or information relating to a procurement whose disclosure is likely to impede respect for law or jeopardize public interest, would prejudice a bidder's legitimate commercial interest or inhibit fair competition.<br>PPL A.18 goes on to provide that the following should not be considered as disclosure of information: disclosure to signatory of the procurement contract, disclosure of information required by law, disclosure of information for the purpose of an appeal, a procurement audit or for any other reasons provided by the Law and disclosure pursuant to a court decision.<br>PPL A.35 requires that responses to bidder clarifications provided by a procuring entity during the procurement process are shared with other bidders on an anonymous basis. | Not applicable | **Criterion is met.** | | |

1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

| 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** |
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| **(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.** | **PPL A.4 Use of electronic system for public procurement**: PPL A.4 requires that all public procuring entities must use the e-procurement system, UMUCYO, for conduct of procurement. This includes the electronic submission and opening of bids. Exceptions to this rule are only permitted with prior authorization from the RPPA.<br><br>**PPL A.41 provides that the modalities for opening bids using the e-procurement system** are determined by an Order of the Minister. This Order has not yet been published, although in practice bids submitted using the e-procurement systems are opened by the system at the end of the relevant tender period.<br>There are quite detailed instructions in the 2010 Public Procurement User Guide, on bid receipt and opening, which respect the basic principles, but this is not up to date because of the introduction of the new PPL 2018 and the move to e-procurement in particular.<br>There are various explanatory documents downloadable from the UMUCYO website but detailed legal provision on this compliance issue are not apparent. | Not applicable | **Criterion is not met.**<br><br>**PPL A.41 provides that the modalities for opening bids using the e-procurement system** are determined by an Order of the Minister. The Order has not been published. | | **E-procurement system**: Legal framework to be updated to reflect move to e-procurement system and modalities for bid opening.<br><br>Order on modalities for opening bids should cover situations where the e-procurement system is used and where the e-procurement system is not used. |



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| | PPL A.10 provides that, in the event that bids are not submitted through e-procurement, the public tender committee established by the procuring entity is in charge of opening of bids.<br>PPL A.74 provides that, in respect of bids for consultancy services, financial proposals are opened in public electronically. | | | | (expected to be resolved through Ministerial Order – Time frame March – June 2020)) |
| **(b) Records of proceedings for bid openings are retained and available for review.** | PP Regulations A.31 refer to record of proceedings but not to a retention policy. | Not applicable | **Criterion is not met**<br>As present regulation has no retention policy | | **E-procurement:** Legal framework to be updated to reflect move to e-procurement and process for recording and retaining records of bid opening.<br><br>This will need to cover situations where the e-procurement system is used and also where it is not used<br><br>Retention policy should cover situations where the e-procurement system is used and where it is not used<br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.** | PPL A.18 provides that during or after procurement proceedings the content of bids must not be disclosed, subject to disclosure required by law or for the purposes of appeal or audit.<br>The 2010 Public Procurement User Guide includes the requirement for security and confidentiality but the User Guide is not up to date because of the introduction of the new PPL 2018 and the move to e-procurement in particular. | Not applicable | **Criterion is met.** | | **e-procurement**: Legal framework to be updated to reflect move to e-procurement and process for submission and receipt of bids. |
| **(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.** | **PPL A.18 Confidentiality in public procurement** requires that during *or after* procurement proceedings, information relating to the evaluation, comparison of bids or clarification on tenders and content of bids must not be disclosed.<br>**PPL A.18** also forbids disclosure or information relating to a procurement whose disclosure is likely to impede respect for law or jeopardize public interest, would prejudice a bidder's legitimate commercial interest or inhibit fair competition. | Not applicable | **Criterion is met.**<br><br>**Suggestions for improvement:**<br>**PPL A.18:** Commercial interest is not defined in the PPL and it if this is interpreted broadly *post evaluation* transparency may be limited. | | Commercial interest should be clearly defined in the PPL. Additionally, instructions to bidders should be prepared on how to identify/mark commercially confidential information to balance the need for transparency with protecting legitimate commercial interests such as intellectual property rights or trade secrets. |
| **(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.** | The UMUCYO website includes guides/manuals for submission of online bids but these are practical in nature rather than legal. | Not applicable | **Criterion is partially met**<br><br>There are practical guidelines on submission and receipt of online bids but the modality is not clearly defined in the legal framework | | **e-procurement**: Legal framework to be updated to reflect move to e-procurement and process for submission and receipt of bids.<br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |

1(h) Right to challenge and appeal

The legal framework provides for the following:

| 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** |
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| **(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.** | **Summary:** Participants and prospective participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.<br><br>**PPL A.50 Right to ask for review of the decision of the procuring entity:** PPL A.50 provides the right of a prospective or actual bidder to apply at any stage of the procurement proceedings for review of any conduct in the procurement proceedings in violation of the PPL or any other public procurement regulations. There is no requirement in the PPL to demonstrate actual or possible loss or injury because of the alleged non-compliance.<br><br>**Review of contract award decision: PPL A.49** requires that the procuring entity must notify the successful and unsuccessful bidders of the provisional outcome of the bid evaluation. The notification must inform the bidders that the "major elements of the procurement process" will be made available to bidders on request and that they have 7 days to lodge a complaint. | Not applicable | **Criterion is partially met.**<br><br>**Review of contract award decision:**<br>**PPL A.49 Information to be provided in 7- day period before contract award:** PPL A.49 does not appear to place a procuring entity under an obligation to provide the information to the bidder *without delay and within a short- specified time period following* receipt of the request. This may potentially create problems for a bidder seeking to substantiate grounds for a complaint within the 7- day period. Nor is it clear what kind of information and whether the information provided at | **Yes** | PPL and at a minimum the PP Regulations to include provisions to address the gaps. It is of utmost importance for the transparency and fairness of the procurement complaints review mechanism to provide timely and sufficient information to bidders for them to prepare and file meaningful complaints.<br>Alternatively, a series of changes/measures could be considered to strengthen the review process:<br>- After completion of bid evaluation, communicate the |



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

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| | This creates a short "standstill period" (though not explicitly defined as such in the legal framework) allowing bidders to challenge a *proposed* contract award decision.<br>In practice, complaints can be filed online using the e-procurement system.<br><br>**PPL A.12 Independent Review Panel** provides that the independent review panel has the power to receive appeals on public procurement at the national level concerning decisions of the procuring entity "from publication of the tender to the signature of the contract". | | this stage, must include an explanation as to why their bid is proposed not to be selected.<br><br>**PPL A.49 Final award decision** also provides that after signature the procuring entity must notify the other bids that their bids were unsuccessful and bidder have a right to request and explanation as to why their bids were not selected. This does not, however, appear to provide a right to challenge the final award decision. This is too late in the process for other bidders to seek explanations on their bids. The procuring entities should proactively disclose this information at an earlier stage, where bidders can seek a more meaningful recourse. | | evaluation results to all bidders who submitted bids, providing information on their respective bids, reasons for rejection, points awarded, evaluated total price, ranking, etc., as relevant. Also, provide information on the successful bidder to whom the procuring entity is proposing to award the contract.<br>- The notification commences the "standstill period", which can be 7-10 days during which bidders may complain. |
| **(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.** | **Summary:** the initial application for review is made in writing to the procuring entity, with a right of appeal to the independent review panel. When an appeal is lodged with the NIRP the procurement process is suspended pending the NIRP's decision. The NIRP has authority to order a range of actions including cancellation of procurement proceedings. The legal framework specifies the range of available remedies.<br><br>The initial application for review is made in writing to the procuring entity (PPL A.51). If the procuring entity fails to make a decision within 7 days of the date of receipt of the complaint or if the bidder is not satisfied with the decision of the procuring entity, the bidder may lodge a complaint with the independent review panel. *In practice, complaints may now be filed using the e-procurement system, UMUCYO*[54] [55].<br><br>PPL A.50 provides that the application for review is subject to an administrative pre-screening process.<br>PPL A.50 provides that application for review is not acceptable unless it identifies a specific act of omission or commission contravening the PPL or any other public procurement regulations. PP Regulations A.54 covers admissibility of the request for review and pre-screening in more detail.<br>PPL A.52 provides that when an appeal is lodged with the NIRP the procurement process is suspended pending the NIRP's decision<br>PPL A.53 provides that the independent review panel may recommend one or more of the following remedies (in summary):<br>• denounce the actions or decisions of the procuring entity which are contrary to the PPL or public procurement regulations<br>• require the procuring entity that has acted or proceeded in a manner contrary to the law so act consistently with the laws<br>• cancel in whole or in part a decision of the procuring entity which is contrary to the laws or a decision which resulted in a procurement contract<br>• revise a decision or substitute its own recommendation (other than signing of a contract)<br>• order re-evaluation of bids and indicate the grounds for such order<br>• recommend payment of reasonable bidding costs when a legally binding contract has been awarded which in the opinion of the review panel should have be awarded to the complainant<br>• Order the cancellation of the procurement proceedings | Not applicable | **Criterion is partially met.**<br><br>The failure to update the PP Regulations to align with the new PPL and the e-procurement system means that the legal framework is currently lacking clarity in terms of the process for making a challenge. For, example, the PP Regulations still make reference to District Independent Review panels and do not refer to the use of UMUCYO to file challenges. | | Update/replace the PP Regulations to align with the new PPL and use of UMUCYO for filing challenges<br><br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(c) Rules establish the matters that are subject to review.** | PPL A.12 PPL A.50 provides the right of a prospective or actual bidder to apply at any stage of the procurement proceedings for review of **any conduct** in the procurement proceedings in violation of the PPL or any other public procurement regulations. | Not applicable | **Criterion is met.** | | |
| **(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.** | **Summary:** There are rules which establish time frames for submission of challenges and appeals and for issuance of decisions by the institution in charge of review and the independent appeals body.<br><br>A request for review to the procuring entity must be made within 7 days after the bidder becomes aware of the circumstances giving rise to the request (PPL A.52), though there is lack of clarity as to when bidders become aware. | Not applicable | **Criterion is met.** | | |

[54] See Commentary in Conclusions of National Independent Review Panel Annual Activity Report 2017-2018 & Note on Registration of decision on Complaints available from UMUCYO website, Admin Announcement 22 http://www.umucyo.gov.rw/index.do

[55] According to the National Independent Review Panel Annual Activity Report 2017-2018, 28 (out of a total of 68) complaints were received electronically in 2017-18. In 2016-17, 5 complaints were received electronically out of a total of 35.



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

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| | Unless a matter is resolved to the satisfaction of the requesting bidder the procuring entity must suspend the procurement proceedings and issue a written decision (PPL A.51). Once a complaint is lodged with the independent review panel the procurement procedures are suspended until a decision on the complaint is made by the independent review panel (PPL A.52). However, the procuring entity may apply to NIRP for lifting the suspension of the procurement process for public interest.<br><br>PPL A.52 sets out the timeframes for decisions to be made by the independent review panel; an initial period of 30 days, with one extension of 30 days. In the event of a failure to reach a decision within the specific period the complainant may lodge his/her claim with the competent court which is the Commercial Court.<br><br>Unless appealed in a competent court, the decisions of the IRP are final and binding (PPL A.53) | | | | |
| **(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.** | **Summary:** Decisions on appeal made by the National Independent Review Body must be published on the RPPA website. But not all decisions are published (see gap analysis). There are no specified time frames for publication. Decisions of District Independent Review Bodies are not published on the RPPA website. The PPL includes provisions restricting publication of sensitive information.<br><br>PPL A.54 provides that the decision of the independent review panel must be published and a copy must be "promptly" made available for inspection by the general public, but there is no specific time line for publication. PP Regulations A.60 requires decisions of the independent review panel to be published and communicated to both parties, posted on the RPPA's website and on the procuring entity's notice board.<br>The RPPA website has a section dedicated to the Independent Review Panel and decisions of the National Independent Review Panel are published in this section of the website.<br><br>PPL A.54 further provides that no information is to be disclosed if it would be contrary to the laws, impede law enforcement, not be in the public interest, jeopardize commercial interests of the parties or would inhibit fair competition. | Not applicable | **Criterion is partially met.**<br><br>There is a need for improved clarity on the publication of decisions by the NIRP<br><br>A list of appeals filed cannot be found in the NIRP page on the RPPA website.<br><br>**There are no specified time frames for publication of decisions.**<br><br>**Not all decisions are published**. In 2017-18 the NIRP analyzed 68 appeals (with 11 held to be inadmissible)[56] but only 35 decisions for that period are published on the RPPA website NIRP page[57]. | | PPL and/or PP Regulations should bring greater clarity on the various aspects of the complaints review process which if not addressed undermine the transparency of the mechanism, a cornerstone of a sound public procurement system.<br><br>PPL or PP Regulations to be amended (or PP Regulations replaced) to include, as a minimum, provisions on publication of (1) up to date information on appeals; and (2) NIRP decisions, including specifying short time frame for publication.<br><br>All information on appeals and decisions of the NIRP should be published in accordance with specified timescales on a dedicated webpage or website and in an easily searchable format.<br><br>Information on appeals should include at a minimum, a list of accepted appeals with sufficient detail to identify the parties and subject matter of the appeals, should be published, on receipt and acceptance, on the NIRP website<br><br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).** | **PPL A.53** provides that the decisions of the national level independent review panel are final and binding unless the decision has been reviewed by the court adjudicating the case on merit. | Not applicable | **Criterion is met.** | | |

1(i) Contract management
The legal framework provides for the following:

[56] NIRP annual activity report 2017-18, Table 3.
[57] RPPA Website accessed 18 July 2019.



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

| 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** |
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| **(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,** | The PPL A.55 to 62, provides more detail on contract provisions than commonly found in primary procurement legislation in other jurisdictions, and includes some contract management related provisions. The standard contract terms included in the new Standard Bidding Documents published January 2019 are very comprehensive.<br><br>PPL A.11 provides that it is the responsibility of the procurement office of the procuring entity to monitor contract execution in collaboration with the concerned department. | Not applicable | **Criterion is met.** | | |
| **(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.** | **Summary:** The conditions for contract amendments are defined in the PPL and include limitation to ensure economy and avoid arbitrary limitation of competition.<br><br>**PPL A.57 Contract amendment**: PPL A.57 sets out conditions for contracts amendments and extensions, which must not affect the substance and the nature of the original contract. There are provisions limiting the value of any change, with an amendment increasing or decreasing the contract value by more than 20% triggering the requirement for a new tender. There are also provisions covering the specification of additional works.<br><br>**PPL A.175 Payment of invoices:** PPL A.175 covers provisions concerning payment of invoices and refers to an Order of the Minister which determines the period within which the invoice is paid. The Order of the Minister has not yet been published.<br>Where payment is delayed the reasons for doing so must be included in the monthly statement submitted by the procuring entity to the RPPA.<br><br>The Standard Bidding Documents issued by the RPPA include contract provisions on prompt payment. For example the SBD for supply of goods requires payment of undisputed invoices within 45 days. There are also provision requiring the procuring entity to notify a supplier of disputed amounts within 3 days of the invoice date. (clause 20 Terms of Payment). They do contain provisions concerning the payment of interest by the procuring entity in the event of late payment by the procuring entity. | Not applicable | **Criterion is met.** | | |
| **(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.** | **Summary:** There are efficient and fair processes for prompt resolution of disputes during performance of the contracts, with amicable settlement as the first step. The Standard Bidding Documents provide for dispute resolution including alternative dispute resolution including by way of mediation, arbitration and adjudication.<br><br>PPL A.56 requires that the procurement contract must include "modalities for dispute settlement, review organs and applicable regulations."<br>The Standard Bidding Documents issued by the RPPA include terms and conditions. These include dispute resolution provisions as follows, by way of example:<br>**SBD for supply of goods:** Clause 15 General Conditions of Contract provide for amicable settlement as the first step. Where a dispute cannot be settled amicably within 30 days, the Special Conditions of Contract apply. These provide for mediation in accordance with the Kigali International Arbitration Centre rules, with shared costs of mediation. In the event the parties cannot resolve the dispute amicably there is an option to litigate in the national courts.<br>**The SBD for small works:** Clause 33 General Conditions of Contract provide for amicable settlement as the first step. Where a dispute cannot be settled amicably within 14 days the matter is referred to an adjudicator. Where a dispute cannot be resolved amicably through adjudication within specified time scales the decision may be submitted for settlement by way of arbitration or litigation. | Not applicable | **Criterion is met.** | | |
| **(d) The final outcome of a dispute resolution process is enforceable.** | **Summary:** A framework is in place for fair and timely resolution including procedures to ensure the final outcome of a dispute resolution process is enforceable.<br><br>The SBD standard contract provisions for supply of goods provide (GDD 14/GDCC 9.2) for the award by an arbitrator to be final and binding and enforceable by any Court of competent jurisdiction.<br>Arbitration is to be undertaking in accordance with the Kigali International Arbitration Centre (KIAC) rules. KIAC[58] administers cases under KIAC arbitration rules and UNCITRAL Rules. Rwanda ratified the New York Arbitral Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 on 31 October 2008 and the Convention came into force in Rwanda on 29 January 2009[59]. | Not applicable | **Criterion is met.** | | |

[58] KIAC website - http://www.kiac.org.rw/spip.php?rubrique22

[59] http://www.newyorkconvention.org/countries



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

1(j) Electronic Procurement (e-Procurement)
The legal framework provides for the following:

| 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 |
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| **(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.** | **PPL A.4 Use of electronic system for public procurement**: PPL A.4 requires that all public procuring entities must use the e-procurement system, UMUCYO, for conduct of procurement except for defense. The obligation on procuring authorities to use the e-procurement system has been rolled out on a phased basis since the launch of the e-procurement system in 2016. This process is ongoing.<br><br>The system includes registration of government suppliers, preparation and publication of procurement plans, submission and opening of bids, selection and notification of winners, negotiation and signing of contracts, submission of goods delivery notes and transmission of goods inspection and acceptance reports[60]. The system may also be used to file complaints.<br><br>Exceptions to use of the e-procurement system for the conduct of public procurement are only permitted with prior authorization from the RPPA.<br><br>The e-procurement portal UMUCYO contains guidance and standard documents relating to use of the e-portal for both procuring entities and bidders. | Not applicable | **Criterion is partially met.**<br><br>**Suggestions for improvements:**<br>There is currently a lack of clear alignment between the PPL, PP Regulations and the use of the e-procurement portal. | | Amend PPL (if necessary) and adopt and publish as quickly as possible the new PP Regulations for the implementation of the PPL 2018 and aligned with e-procurement.<br><br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(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.** | Lack of alignment between the legal framework and the e-procurement system. The legal framework needs to be updated to address this issue in detail and to tie in with the operation of the e-procurement system. PPL and PP Regulations do not set out a comprehensive list of the records to be maintained either for paper-based or electronic procurement, There is no easily published documentation policy or security protocols | Not applicable | **Criterion is not met**<br>It is a substantial gap**.** The legal framework needs to be updated to address this issue in detail and to tie in with the operation of the e -procurement system | | The legal framework needs to be updated to address this issue in detail and to tie in with the operation of the e-procurement system.<br><br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.** | Legal framework does not set out the specific requirement that the interested parties be informed which parts of the processes will be managed electronically | Not applicable | **Criterion is not met.**<br><br>The legal framework needs to be updated to address this issue in detail and to tie in with the operation of the e -procurement system. | | The legal framework needs to be updated to address this specific issue and to tie in with the operation of the e-procurement system.<br><br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |

1(k) Norms for safekeeping of records, documents and electronic data
The legal framework provides for the following:

| 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 |
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| **(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.** | The PPL and PP Regulations do not set out a comprehensive list of the records to be maintained either for paper-based or electronic procurement.<br>In practice the e-procurement system retains records of the procurement process and transactions, but these requirements need to be codified.<br><br>The 2010 User Guide refers at 9.3 Record Management System, to each Procuring Entity ensuring that complete documentation is maintained in respect of all procurement activities and also to official maintenance of record files.<br>The 2010 User Guide refers at 9.4 to Procurement Unit Records Management and lists structure/content of the procurement dossier which is fairly comprehensive covering most of the information listed in the indicator It is not clear whether this is open to public inspection. | Not applicable | **Criterion is not met.**<br><br>The legal framework needs to be updated to address this issue in detail and to tie in with the operation of the e-procurement system. | | Codification of legal requirements into the PP Regulations should include provisions on record keeping and transactions, aligned with e-procurement processes and supported by practical guidance.<br><br>Legal requirements into the PP Regulations should include provisions on record keeping and transactions.<br>Expected to be resolved through Ministerial Order- Time frame March- June 2020) |

[60] Information set out in Bid Submission User Guide, accessed 09 04 19 http://www.umucyo.gov.rw/index.do



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

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| **(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.** | Previous regulations provided for a ten-year document retention period. A new Ministerial Order will extend the period to 20 years but the order is not yet published.<br>Unable to find a document retention policy document | Not applicable | **Criterion is not met.**<br><br>No policy document. | | Publication of new Ministerial Order as soon as possible, which should be compatible with statute of limitations for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.<br><br>Retention policy document aligned with new Ministerial Order to be prepared and published.<br>Expected to be resolved through Ministerial Order- Time frame March- June 2020) |
| **(c) There are established security protocols to protect records (physical and/or electronic).** | There is an internal security policy for the e-procurement system, but no comprehensive security protocols exist. | Not applicable | **Criterion is not met.**<br><br>No comprehensive security protocols. Codification should include provisions on security protocols. | | Codification of legal requirements into the PP Regulations should include provisions on security protocols, aligned with e-procurement processes and supported by practical guidance.<br><br>Comprehensive protocols should be prepared and published. |

1(l) Public procurement principles in specialized legislation
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) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.** | PPL Article 5 specifies that procurement by institutions whose budget is not approved by the parliament is governed by special regulations of each institution approved by an Order of the Minister in charge of public investment. One such entity is Water and Sanitation Corporation (WASAC) or Rwanda Energy Group (REG). The list of such commercial public institutions and their special regulations are not available in public domain. Based on the review of the procurement manual obtained for one such institution (WASAC), it is not clear how public procurement principles especially transparency principle, are applied, when these regulations are not known to the participants of the tenders. WASAC is listed as procuring entity on the e-procurement system for Rwanda (UMUCYO)[61] and contract opportunities are published on the UMUCYO e-procurement system[62]. WASAC also publishes tender opportunities on its website[63]. Though required by the PPL Article 5, the procurement regulations of WASAC have not been approved by a Ministerial Order. Below is a summary of such review:<br><br>The Assessment Team reviewed the procurement manual for one such commercial public institution, Water and Sanitation Corporation (WASAC) Ltd (originally issued on August 25, 2014 as later revised on September 21, 2015). The Manual recognizes the principles of transparency, fairness, competition, value for money, effectiveness and accountability. The Manual proclaims to be based on the National Procurement Guidelines [National Procurement Guidelines does not appear to exist in the Rwandan procurement legal framework] and best practices in international commercial industry. It is detailed and covers most aspects of procurement proceedings. It covers goods, works and services, including consulting services, and encompasses all stages from planning till contract award. Procurement methods and its conditions of use are defined (including for Single Source / Force Account), it provides that contracts above 50 million Rwf are to be procured through competitive procedures, guidelines of Development Partners to apply if in conflict with provisions of the Manual. It specifies the minimum content of the bidding document/contract, composition of Internal Tender Committee, and the process for contract approval. The clause on contracts management is very brief and does not provide much guidance. Appeals are | Not applicable | **Criteria is not met.**<br><br>Procurement by public commercial entities is not essentially aligned with the overall procurement framework. There is no evidence the special procurement regulations are approved by Ministerial Order as required by PPL. They are not publicly available, and there is no clarity on whether the special procurement regulations issues by any such commercial public institution are harmonized with one another. The complaints review mechanism, an essential element of accountability and fairness in public procurement, are limited to review by internal structures of the commercial institution. | | RPPA in cooperation with the Minister in charge of public investment to identify list of Procuring Entities which are subject to special regulations. The procurement rules of such institution to be published including scale of procurement expenditure and procurement data like share of competitive vs non-competitive procedure for better transparency. |

[61] http://www.umucyo.gov.rw:8082/eb/bpp/selectPagePeList.do

[62] UMUCYO accessed and searched 04 April 2019.
[63] WASAC: https://wasac.rw/index.php/projects/tenders accessed and searched 04 April 2019



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

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| | handled by an ad hoc committee appointed by the senior management which is led by the CEO who approves and signs contracts documents. Appeal Procedures provide only for review by an internal Review Panel which takes final decisions, which are not clear if are subsequently subject to judicial review (since there is no explicit provision on this possibility). The Manual states that all procurement matters not provided for in the Manual, reference shall always be made to existing national laws and regulation. | | | | |
| **(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.** | **Summary:** Public procurement principles are incorporated into the PPP Law. The PPP law specifies use of competitive procurement procedures for PPP. There are provisions permitting the award of a PPP following an unsolicited proposal.<br><br>**Law no.14/2016 of 02/05/2016 Governing Public Private Partnerships (PPP Law):** The PPP Law is a specific law which applies to the process of establishing partnerships with private firms. The PPP Law defines the arrangement and sectors covered (PPP Law A.3 & A.5) and confirms that the PPP Law does not apply to contracts covered by the PPL or the privatization or divestiture of enterprises, assets and any infrastructure facility owned by the Government (PPP Law A.4). The PPP Law sets out rules for the conduct of a competitive procurement procedures for a PPP project, preceded by a feasibility study.<br><br>**Principles applying to the procurement of PPPs:** The competitive procurement procedure for PPP is governed by the principles of competition, transparency, fairness and non-discrimination, efficiency and effectiveness, protection of public property and public interest and accountability (PPP Law A.15).<br><br>The procedure requires publication of an expression of interest at national and international level (PPP Law A. 16) and a bidder shortlisting process (PPP Law A.18). There is the option to use a two-stage competitive procurement procedure (PPP Law A.20). Negotiation is permitted with the preferred bidder (PPP Law A.23), with negotiations being led by the Rwanda Development Board.<br><br>**Unsolicited proposals for PPP:** There are provisions permitting the award of a PPP without competition, in specified circumstances, following an unsolicited proposal (PPP Law A.25-28). The specified circumstances are, in summary: Where there is an urgent need to ensure continuity of provision and engaging in a competitive procurement process may cause delay or is not in the nation's best interest; national security; the required service is a monopoly; there is little interest from the private sector (PPP Law A.25).<br><br>The PPP Guidelines[64] emphasize that in these circumstances the government's role is to ensure that the project is structured to meet economic and societal needs, ensuring fair terms, conditions and pricing. Additional checks and balances are required Sub -section 4 sets out Guidelines on the appraisal of unsolicited project proposals and defines the roles and responsibilities of the agencies involved including MINECOFIN, including screening of the pre-feasibility report, preparation and review of detailed feasibility study, negotiation and project approval process.<br><br>The Assessment Team did not have data indicating the extent (number, type and value of PPP contracts) to which the unsolicited proposals route is used, in practice, to award PPPs. | Not applicable | **Criterion is partially met.**<br><br>**Unsolicited proposals for PPP:** The provisions permitting the award without competition of a PPP contract following receipt of an unsolicited proposal have the potential to reduce the overall competitiveness of the market and negatively impact long term value for money outcomes. No data is available on the extent of unsolicited proposal<br><br>Article 15 of PPP Law only lays the principles, but the same is negated in some respect by provisions under PPP Law article 25 -28 on unsolicited proposal that does not follow international practice of putting such proposal to competition. | | Rwanda Development Board to review use of unsolicited proposal with a system of evaluating it against other competing proposals as per international practices |
| **(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.** | **Summary:** The Ministry of Finance and Economic Planning (MINECOFIN) takes the policy lead on PPPs.<br>The Rwanda Development Board supports the implementation of PPPs.<br><br>The National Investment Policy, April 2017[65], prepared by the Ministry of Finance and Economic Planning (MINECOFIN) includes PPPs as one of a number of methods to deliver public investment. *It [National Investment Policy] states that MINECOFIN "governs the functions of finance, planning, and development cooperation for the GOR. Its mission is to encourage sustainable growth, provide economic opportunities, and raise living standards of all citizens of Rwanda".*<br><br>The Rwanda Development Board is a government agency responsible for fast-tracking economic development in Rwanda by enabling private sector growth. Its roles include mainstreaming PPPs in Rwanda. The Rwanda Development Board has issued PPP Guidelines, in accordance with requirements of the PPP Law: Public Private Partnership Guidelines Official Gazette No. 29bis of 16/07/2018[66]. | Not applicable | **Criterion is met.**<br><br>Suggestion for improvement:<br><br>Policy lead for PPP is Rwanda Development Board, but there is no separate unit to undertake the task of PPP with required expertise as per international practices, which is the recommended international practice | | RDB to undertake an assessment based on international practices and constitute an independent PPP unit with a full range of expertise available as required for a PPP unit. |

[64] Public Private Partnership Guidelines Official Gazette No. 29bis of 16/07/2018

[65] National Investment Policy, April 2017, MINECOFIN http://www.minecofin.gov.rw/index.php?id=57

[66] https://rdb.rw/wp-content/uploads/2018/08/PPP-Guidelines.pdf



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

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| | PPP Law A.6 provides that the public institutions playing a role in PPP are the PPP Steering Committee, Contracting Authority and the Rwanda Development Board.<br>PPP Law A.10 specified the role of the Rwanda Development Board which is to: issue general guidelines applicable to competitive procurement procedures for PPP Projects, be the lead negotiator during negotiations relating to a PPP agreement; and to advise Government on matters relating to PPP.<br>Based on Public Private Partnership Guidelines of 2018, currently the PPP unit is handled by Special Investment Department of RDB[67] and it is envisaged that RDB may set up a separate department/section in future based on number of projects being developed on PPP basis. There is no separate unit to undertake PPP in Rwanda as the assessment carried out as per the publication of the World Bank [68]. | | | | |

## 2. Implementing regulations and tools support the legal framework.

### 2(a) Implementing regulations to define processes and procedures

| 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) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.** | **Summary:** There are regulations that supplement and detail provisions of procurement law but they are out of date and refer to the 2007 PPL, replaced in 2018 with a new PPL.<br><br>The PPL refers at various points to public procurement regulations, which regulate more detailed procedures and issues; for example, the financial thresholds below which the PPL do not apply (PPL A.32), fees to be paid by prospective bidders for tender documents (PPL A.34), bid security (PPL A.37), content of evaluation report (A.42 PPL), details concerning the right to review and review process (PPL A.50-54).<br><br>**Public Procurement Regulations:** Public procurement regulations have been issued (as an Order of the Minister) pursuant to the previous PPL 2007 (as amended) - Public Ministerial Order No.001/14/10/TC of 19/02/2014 Establishing Regulations on Public Procurement, Standard Bidding Documents and Standard Contracts. However, no public procurement regulations have been issued to align with the new PPL and so there is no up to date comprehensive set of regulations detailing procedures or issue to supplement the current PPL.<br><br>**Other Ministerial Orders/instructions**: Other Ministerial Orders/instructions are issued relating to public procurement. These include, for example, the establishment of a professional code of ethics governing public agents involved in public procurement[69].<br><br>**Circulars:** The RPPA publishes Circulars on its website addressing more detailed practical issues on a range of topics. Recent examples include confirmation of suitability of building materials under the "Made in Rwanda" policy[70] and the process for filing complaint procedures for District Independent Review Panels[71]. | Not applicable | **Criterion is partially met.**<br><br>**Regulations are available, but need update**<br>**New Public Procurement Regulations** aligned with the new PPL 2018 and the e-procurement system are required.<br>These are identified in the RPPA Strategic plan for production by June 2019 | | Adopt as quickly as possible the new PP Regulations for the implementation of the PPL 2018 and aligned with e-procurement.<br><br>*(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.** | The 2014 PP Regulations are available from the RPPA website but they are out of date as they are not aligned with the current PPL. | Not applicable | **Criterion is partially met.**<br><br>**New Public Procurement Regulations** aligned with the new PPL 2018 and the e-procurement system are required.<br>These are identified in the RPPA Strategic plan for production by June 2019. | | *(Gap expected to be resolved when New Ministerial Order establishing Procurement Regulations is adopted and published- Time frame March- June 2020*) |
| **(c) Responsibility for maintenance of the regulations is clearly established,** | Public Procurement Regulations are issued as Ministerial Orders, thus lying within the competence of the relevant Ministry (MINECOFIN), although this is not always clearly stated in the PPL. | Not applicable | **Criteria is partially met** as responsibilities are clearly defined but an update is needed | | is expected to be removed in the time frame of March to June 2020 |

[67] As per World Bank publication "The creation of PPP units is a common trend to support the development of PPPs. As many as 81 percent of the assessed economies have a dedicated PPP unit, which, in most economies, concentrates on promoting and facilitating PPPs. In 4 percent of the economies, however, the PPP unit takes a prominent role in the development of PPPs and acts as the main (or exclusive) procuring authority" (

[68] https://bpp.worldbank.org/en/data/exploreeconomies/rwanda/2018 (Benchmarking PPP Procurement 2017)

[69] Ministerial Instruction No. 001/11/10/TC of 24/01/2011 establishing the professional code of ethics governing public agents involved in public procurement.

[70] Circular 010/2018/2019-3343/RPPA.

[71] Circular 010/2018/2019-2555/RPPA.



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

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| **and the regulations are updated regularly.** | In practice the RPPA takes the lead on preparation of the Regulations and submission to MINECOFIN. See RPPA Strategic Plan 2018-2021, Implementation Matrix programme 1.1, output 1.2 which shows submission of new PP Regulations by RPPA to the Ministry timetabled for June 2019. | | | | |

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

| 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) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.** | **Summary:** there are model procurement documents provided for goods, works and consultancy services procured by public entities including documents for small and large value procurements.<br><br>The RPPA has published on its website, in the "Downloadable Forms" section, a new suite of Standard Bidding Documents (SBD) in English and French, dated January 2019. These are as follows:<br>• SBD for Small Works<br>• SBD for Supply of Goods<br>• SBD for Consultancy Services<br>• SBD for Small Consultancy Services<br>An SBD for Large Works dated January 2019 is currently only available in English. There is currently no SBD for non-consultancy services[72]. | Not applicable | **Criterion is partially met.**<br>Documents needs to be updated to align with 2018 PPL<br><br>There is currently no SBD for non-consultancy services[73]. | | SBDs need to be updated> Expected by June 2020 |
| **(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.** | **Summary:** There are comprehensive standard contract terms included with the mandatory SBD (standard bidding documents).<br><br>PP Regulations A.7 require procuring institutions to use the standard bidding documents and standard contracts for tenders governed by the PPL. Public institutions are permitted to use other international models for international tenders if more appropriate. The standard contracts have to be approved by the ministry in charge of providing legal advisory services to the Government.<br><br>The SBD include comprehensive standard contract terms.<br><br>The SBD do not include information on the right to challenge decisions or actions and the right of appeal[74]. | Not applicable | **Criterion is met.**<br>Improvement needed:<br>The SBD do not include information on the right to challenge decisions or actions and the right of appeal[75]. | | **Suggested improvement**:<br><br>The SBD to include information on the right to challenge decisions or actions and the right of appeal |
| **(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.** | **Summary:** The SBD are up to date. Responsibility for preparation lies with the RPPA.<br><br>Article 3 (7) of Law no. 25/2011 of 30/06/2011 Establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning, lists as one of the RPPA's missions the requirement to "put into place standard bidding documents, bid evaluation reports and other standard documents for use by public procuring entities."<br><br>The SBD needs update | Not applicable | **Criterion is partially met.**<br>SBDs need update to align with 2018 PPL | | SBDs need update to align with 2018 PPL |

2 (c) Standard contract 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** |
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| **(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.** | Standard contract conditions are included as an integral part of the Standard Bidding Documents (SBD) for<br>• SBD for Small Works<br>• SBD for Supply of Goods<br>• SBD for Consultancy Services | Not applicable | **Criterion is met.**<br>Improvements needed<br>There is currently no SBD for non-consultancy services[76]. | | Suggested improvements<br><br>SBD for non-consultancy services to be prepared |

[72] RPPA Website access 09 April 2019.
[73] RPPA Website access 09 April 2019.
[74] The SBD for large works refers to a right to complain but the information provided is limited and does not refer to the National Independent Review Panel
[75] The SBD for large works refers to a right to complain but the information provided is limited and does not refer to the National Independent Review Panel
[76] RPPA Website access 09 April 2019.



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

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| | • SBD for Small Consultancy Service<br>• Large Works<br>PP Regulations A.7 require procuring institutions to use the standard bidding documents and standard contracts for tenders governed by the PPL. | | | | |
| **(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.** | The standard contract conditions ae comprehensive and are generally consistent with international accepted practice, covering standard contract conditions, general conditions on contract implementation (as appropriate), invoicing and payment as well as provisions on dispute resolution, including the use of alternative dispute resolution including arbitration. | Not applicable | **Criterion is met.** | | |
| **(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.** | Standard contract conditions are included as an integral part of the Standard Bidding Documents.<br>The Standard Bidding Documents are made available to all participants in procurement proceedings through the e-procurement system. | | **Criterion is met** | | |

2(d)

| 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** |
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| **(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.** | **Summary:** the current User Guide dates from 2010 and is not aligned with the new PPL.<br><br>The Public Procurement User Guide was published in 2010 by the RPPA. The User Guide provides a comprehensive guide to the 2007 PPL but it has not been updated regularly and is not aligned with the new PPL.<br>A number of practical guides are identified for future development in the RPPA Strategic Plan. | Not applicable | **Criterion is partially met.**<br><br>There is no user guide aligned with the 2018 PPL and e-procurement system. | | There is the need for a new user guide to align with the 2018 PPL and e-procurement system.<br><br>Prepare and publish as quickly as possible new user guide/s to align with the 2018 PPL and e-procurement system.<br><br>If the government is planning to produce a new user guide it would be helpful to include more practical information and examples on specific topics such as life-cycle costing and sustainable procurement. |
| **(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.** | **Summary:** the RPPA is responsible for issuing guidelines. The User Guide has not been updated to align with the new PPL.<br><br>PPL A.5 provides that the RPPA issues standard procurement documents and guidelines aimed at achievement of the objectives or any duty under the PPL.<br><br>Preparation and maintenance of the User Guide lies within the responsibility of the RPPA which, under the Article 3 of Law no. 25/2011 of 30/06/2011 Establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning, lists as the RPPA's mission as including the requirement to "provide technical assistance as needed…" for procurement officers, and "put into place standard bidding documents, bid evaluation reports and other standard documents for use by public procuring entities." | Not applicable | **Criterion is partially met**<br>As responsibility is defined, but document needs update to align with the 2018 PPL and e- Procurement system | | User's Guide to be updated |

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

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| **(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.** | Consistent with " Transforming our World: The 2030 Agenda for Sustainable Development" of UN and Sustainable Development Goal- SDG12 which calls for promotion of sustainable procurement practices in line with national priorities and policies and, Goal 16, which calls for accountable institutions, GoR has published a Voluntary National Review Report on implementation of SDGs[77] Based on this report Rwanda is committed to delivery and realization of SDGs and in fact is selected as pilot for Goal 16 on building effective and capable institution, and further, as per NST1 priority on Pillar- Economic Transformation ( SDG12) Rwanda shall promote sustainable management of the environment and natural resources to transition Rwanda towards a Green Economy. Further under Transformational Governance Pillar (SDG16) Rwanda shall strengthen capacity, service delivery and accountability of institutions | Not applicable | **Criterion is met.** | | |
| **(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.** | Based on the report of VNR (June 2019), there is a mechanism to monitor application of SPP in a general way without any reference to Sustainable Public Procurement which promotes the integration of three pillars of sustainable development: economic development, social development and environmental protection but related to sustainable procurement there is no implementation plan | Not applicable | **Criterion is not met**<br>As no tools are available to operationalize, facilitate and monitor application of sustainable public procurement. | Yes | Need to develop a policy to promote the integration of three pillars of sustainable development, economic development, social development and environmental protection by focusing on reduced demand for resources and minimizing negative impact of goods, works and services across their life cycle and tools to be developed to operationalize, facilitate and monitor application of sustainable public procurement |
| **(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.** | No evidence of comprehensive measures to address sustainability across the legal framework and at all stages of the procurement cycle. There are targeted examples, such as the "Buy Made In Rwanda" programme, which is aimed at contributing to the growth of Rwandan manufacturing capacity, reduce the export/import gap and promote growth of Rwandan enterprises. This flows through into local and exclusive preference provisions in Standard Bidding Documents highlighted in Guidelines issue by MINECOFIN78.<br><br>See also the RPPA Circular which designates a specific product and company for exclusive preference and refers to applications to RPPA for consent for single source procurement.<br>http://rppa.gov.rw/fileadmin/files/CIRCULAR/using_Straw_panels_made_by_Strawtec_Building_Solutions_Ltd_for_internal_walls_and_partitioning.pdf | Not applicable | **Criterion is not met.**<br><br>No evidence of comprehensive measures to address sustainability across the public procurement legal framework and at all stages of the procurement cycle. | | Include sustainability provisions in higher level legislation would emphasize its importance and ensure consistency and uniformity among procuring entities. Hence, the need to revise PPL and/or replace PP Regulations to include explicit provisions on sustainability, supported by practical guidance, revision to SBDs to include specific provisions on sustainability. |
| **(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.** | No legal provisions setting out this specific requirement:<br>Guidelines for enhancing Value for Money in Public Procurement were issued in June 2018 by the RPPA: 010/2017/2018 - 1996/RPPA79. The guidelines to refer to the achievement of whole life cost and clearly defined benefits as well as the need to deliver to meet user need and source locally, but the focus is not on application of sustainability criteria.<br>No guidance document available. No evidence of incorporation of sustainability criteria in PPL, Regulation and Standard Bidding Document. | Not applicable | **Criterion is not met.**<br><br>Guidelines for enhancing Value for Money in Public Procurement were issued in June 2018 by the RPPA: 010/2017/2018 -1996/RPPA 80 . The guidelines to refer to the achievement of whole life cost and clearly defined benefits as well as the need to deliver to meet user need and source locally, but the focus is not on application of sustainability criteria. To date, no legal provisions setting out this specific requirement. Further any such guidelines need to be elaborated as specific guidance on how to apply it to specific bidding documents including in technical specification and as part of evaluation and selection criteria. | | The practical guidance on sustainability criteria, green procurement, Value-for - money considerations in bidding document and technical specifications needs to be issued which is aimed at energy efficient product, incorporation of life-cycle-costing and incorporation environmental, social, health and safety (ESHS) consideration as part of bidding documents. |

3(b) Obligations deriving from international agreements
Public procurement-related obligations deriving from binding international agreements are:

[77] 2019 Rwanda Voluntary National Review (VNR) Report (June 2019)
[78] http://rppa.gov.rw/old/fileadmin/user_upload/Guidelines/Guidelines_to_support_Buy_Made_in_Rwanda_Program.pdf

[79] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Guidelines/Guidelines_for_enhancing_Value_for_Money_in_Public_Procurement.pdf

[80] http://rppa.gov.rw/fileadmin/files/Legal%20Instruments/Guidelines/Guidelines_for_enhancing_Value_for_Money_in_Public_Procurement.pdf



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

| 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) clearly established** | In accordance with PPL A2, in case PPL conflicts with the provisions of a bilateral or multilateral treaty or other forms of agreement related to public procurement to which Government of Rwanda is a party, the provisions of those agreements prevail | Not applicable | **Criterion is met** | | |
| **(b) consistently adopted in laws and regulations and reflected in procurement policies.** | Rwanda considers regional economic integration as one of the crucial elements of achieving the vision 2050. Currently, Rwanda is a member of four key regional integration blocs: the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of the Great Lakes Countries (CEPGL) and Economic Community of Central African States (ECCAS). Rwanda is also engaged in a tripartite Agreement between EAC- COMESA-SADC and the African Union (AU) and has international trade agreements such as the Economic Partnership Agreements (EPA) and the Africa Growth and Opportunity Act (AGOA), with the EU and USA, respectively. It is not clear how these regional agreements are reflected in procurement policy | Not applicable | **Criterion is partially met.**<br><br>In the past there were dialogues with key regional integration blocs like COMESA, but these regional agreements are not specifically reflected in procurement policy. | | Linkage to be established between regional economic integration and procurement policies |

## 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:



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

| 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) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.** | **PPL A16 requires procuring entities to prepare an annual procurement plan**. Procurement planning must tie in with the budget process. There are provisions covering the situation where execution covers a period longer than a fiscal year, where the procuring entity allocates in the budget of the year money corresponding to the planned activities and the tender execution budget for the remaining years is provided for each fiscal year.<br>**PP Regulations A.3 require publication of the annual procurement plan** on the procuring entity website, the RPPA official website and in newspaper of wide circulation.<br>PP Regulations A.2 set out further details on timing for preparation and content of the annual procurement plan that includes identification of needs, identification of priorities, indication if it is necessary to carry out a prior study for tenders of works, identification of the procurement method to be used for any planned tender, estimation of the value of the planned tender, specification of the source of funds for that tender, determination of necessity to grant local preference to international tenders, specification of the need for request for approval prior to the award of contract, planning for the schedules in which different processes of tendering shall be carried out and planning for the execution schedules of the contract. A template procurement plan is available for download from the UMUCYO portal (follow links to "List of SBD"). In practice Procurement Plans are now published on the UMUCYO website on a dedicated section.<br>**PPL A.30 requires procurement officer to ensure**, prior to preparing tender documents, that the tender is included in the public procurement plan and relevant budget for its execution is available.<br><br>**PP Regulations A.5 requires procuring entities to submit monthly reports** to the RPPA showing how the procurement plan is being implemented<br>(for implementation of these provisions refer to Indicator 9 (a) under Pillar III).<br><br>The GoR prepares 3 years Medium Term Expenditures Framework (MTEF) based on strategic objectives embedded in the 7 years National Strategy for Transformation and other Sectors Strategies.<br><br>The annual budget approved by the Parliament is on cash basis. After the annual budget approval by the Parliament, an annual procurement plan is prepared by Ministries, Districts and Budget Agencies, and approved by the Chief Budget Manager, in line with the annual budget appropriations. Budget commitments cover only contracts performed within the budget fiscal year. | Not applicable | **Criterion is met** | | |
| **(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).** | PPL A.16 requires that: (i) every procuring entity must produce an annual procurement plan indicating the objectives to be achieved in accordance with public procurement regulations; (ii) the preparation and approval of public procurement plan are based on budget definitively adopted by the relevant organ; and (iii) during the procurement planning process, the procuring entity must ensure that there is sufficient budget allocation and must comply with regulations governing budget execution. | Not applicable | **Criterion is met** | | |
| **(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.** | The Law on State Finance and Property provides that all public entities shall prepare and submit their quarterly budget execution reports to the Minister (article 65 of organic law n° 12/2013/OL of 12/09/2013 on State Finances and Property). To ensure an effective budget performance monitoring, a monthly budget performance reporting is required by the PFM regulations), as part of a more comprehensive financial accountability mechanism. The implementation of the reporting requirement is supported by an adequate IFMIS and eProcurement system able to produce tailored feedback information on contracts completion. However, contract implementation part of eProcurement system is not functional.<br>Despite the above, the analytical information on contracts or major contracts completion within the monthly financial report is very limited. A progress report on ongoing large works contracts (and few consulting services contract) is provided in RPPA Annual Activity Report (reference Annex 3 for Fiscal 2017- 2018 dated November 2018), but it is not clear if the list is comprehensive and no analysis is available as to time or cost overruns and major issues affecting implementation of contract for each case. The last Audit Report for the period ending June 30, 2018[81] was presented to the parliament by the Auditor General on April 29, 2019 which refers to cases of delayed and abandoned contracts, stalled projects, continuing cases of idle assets, failure to recover advance payments and performance securities as well as non-compliance with taxation laws. The Annual Activity Report of RPPA provides a general list of issues affecting contract implementation and indicates a need for all procuring entities to report to RPPA all cases of contract failure<br>Refer to Indicator 9 (c) also on Contracts Management under Pillar III | Not applicable | **Criterion is partially met.**<br>Analytical information on contracts or major contracts completion within the monthly financial report is very limited. There are cases of delayed and abandoned contracts. There is a need to monitor and report cases of contract failure and take mitigating measures. | Yes | There is need to take a comprehensive look on implementation of major contracts, analyzing issues affecting implementation like change in design and/or site location, land acquisition/ expropriation of properties located in the area of implementation of infrastructure, delays in payment/budget constraint, capacity/capability of selected contractors and reasons for contract delays and failure and take timely corrective action. There is a need for effective contract monitoring and closing mechanism to ensure that both the Employer and Contractor have fulfilled their obligations, there are no dues certificate from the contractor without any pending dispute and facility is in effective use as intended. |

4(b) Financial procedures and the procurement cycle

[81] Rwanda- Audit Report of the Auditor General for period ending June 30, 2018 – Presented to the Parliament on April 29, 2019
http://www.oag.gov.rw/fileadmin/REPORTS/Annual_Report_2018_EXECUTIVE_SUMMARY.pdf



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

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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.** | As per PPL A.16 No tender solicitation can be made in case money for its execution is not provided for in the adopted budget As per the GoR PFM regulations), solicitation of tenders or proposals are preceded by existing budget allocation duly approved by the Parliament. No budget commitment on contract could not be done without prior check and availability of the related budget appropriations. This internal control regulation is reinforced by the existing IFMIS and e- Procurement which provide automatic control mechanism. | Not applicable | **Criterion is met** | | |
| **(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*** | The PFM law, regulations and procedures provide a clear segregation of duties for invoice processing and payment under the overall oversight of the Chief Budget Manager. The national regulations/procedures for processing of invoices and authorization of payments are significantly followed, publicly available and understandable to potential bidders. Invoices for procurement of goods, works and services paid on time ( 62.9 % of total number of invoices based on sample)-<br><br>Based on Survey results (refer to Indicator 10 (b) (b) 40-60% of participants indicated delayed payment as a constraint in accessing public procurement market<br><br>(Refer to Indicator 9 (c) under Pillar III) | Not applicable | **Criterion is partially met.**<br><br>Though there are procedures for processing of invoices and authorization of payments are followed, such information is not available publicly and clear to potential bidders.<br><br>This assessment is based on both qualitative and quantitative criteria. Though there are procedures but evidence of timely payment is not visible to potential bidder for each procuring entity leading to lack of information. Further there is no full compliance on timely payment of invoice (only 62.9% of invoices paid in time based on sample) | | A system to be evolved that provides a visibility to contractor on the status of their invoices and information to potential bidders on timeliness of payment of invoices |
| **// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):<br>- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).<br>Source: PFM systems.** | Of total contracts executed in the sample, the assessment found 51 contracts (representing 62.9%) whose invoices were paid within 45 days as required by PPL, while 14 contracts (representing 17.5%) were delayed, for 12 (14.8 %) contracts assessed, procuring entities did not have information | Please see information the left column | **Criterion is partially met**<br>As there are delays in payment of invoices | | RPPA to seek information from Procuring Entities on cases of delayed payment and reasons thereof and find ways to address concern from contractors and potential bidders to improve competition |

## 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: 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 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.** | The Rwanda Public Procurement Authority (RPPA) has been established by law and which has legal personality, administrative and financial autonomy (Article 1 of law no. 25/2011 of 30/06/2011 establishing the Rwanda Public Procurement Authority and determining its mission, organization and functioning (RPPA Law). The RPPA is an independent body under the supervision of Ministry of Finance and Economic planning (MINECOFIN).<br>The main mission of RPPA as determined in A.3 RPPA Law is : 1° to ensure organization, analysis and supervision in public procurement matters; 2° to advise the Government and all public procurement organs on the policies and strategies in matters related to the organization of public procurement; 3° to control activities of awarding public contracts and their execution; 4° to develop professionalism of the staff involved in public procurement; 5° to provide technical assistance as needed and develop teaching material, organize trainings and lay down the requirements which must be met by public procurement officers; 6° to collect and disseminate on a regular basis information on public procurement; 7° to put in place standard bidding documents, bid evaluation reports and other standard documents for use by public procuring entities; 8° to sensitize the public on matters related to public procurement; 9° to draw up and publish the list of bidders suspended or debarred from participating in public procurement; 10°to establish cooperation and collaboration with other regional and | Not applicable | **Criterion is met** | | |



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

| | | | | | |
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| | international agencies whose mission is similar to that of RPPA; 11°to perform such other duties as may be assigned by law and which are not contrary to its main mission.<br>Article 4: Powers To fulfill its mission, RPPA shall have the following powers: 1° to suspend, upon request or on its own initiative and in accordance with the provisions of the Law governing public procurement a public tender evaluation or award process to conduct an investigation; 2° to summon anyone and require him/her to provide any information relevant to the fulfillment of its mission; 3° to carry out investigations in any entity governed by the Law of public procurement and get copies of documents related to public procurement where need be; 4° to seek assistance from experts in order for it to fulfill its mission; 5° to suspend or approve the suspension or debarment of bidders from participating in public procurement. | | | | |

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:** 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) providing advice to procuring entities** | RPPA<br>A.3(1)2 Law no. 25/2011 of 30/06/2011 Establishing Rwanda Public Procurement Authority (RPPA) and determining its mission, organization and functioning (RPPA Law): to advise the Government and all public procurement organs. | Not applicable | **Criterion is met** | | |
| **(b) drafting procurement policies** | Not clearly assigned, but understand that MINECOFIN is policy making body<br>RPPA advises Government on policies and strategies in matters related to organization of public procurement RPPA Law A.3(1)2 | Not applicable | **Criterion is met** | | |
| **(c) proposing changes/drafting amendments to the legal and regulatory framework** | Not clearly assigned, although in practice undertaken by RPPA (see RPPA Annual Activity Report 2017-18) | Not applicable | **Criterion is met** | | |
| **(d) monitoring public procurement** | RPPA<br>PPL A.8 RPPA to undertake regular inspection in order to check implementation of laws and regulations governing public procurement<br>RPPA Law A.3(1)1 – supervision in public procurement matters | Not applicable | **Criterion is met** | | |
| **(e) providing procurement information** | RPPA<br>RPPA Law A.3(1)6 – collect and disseminate on a regular basis information on public procurement | Not applicable | **Criterion is met** | | |
| **(f) managing statistical databases** | RPPA<br>RPPA Law A.3(1) does not include specific reference to statistical database, but in practice maintained by RPPA | Not applicable | **Criterion is met** | | |
| **(g) preparing reports on procurement to other parts of government** | RPPA<br>RPPA Law A.3(1) 1 – ensure analysis in public procurement matters<br>Report?? | Not applicable | **Criterion is met** | | |
| **(h) developing and supporting implementation of initiatives for improvements of the public procurement system** | RPPA<br>Not expressed in these specific terms. Number of functions could fall within this wide-ranging role, including:<br>RPPA Law A.3(1)1 –organisation in public procurement matters, RPPA Law A.3(1) 4 – develop professionalism, RPPA Law A.3(1)5 -provide technical assistance , RPPA Law A.3(1)(8) public engagement, RPPA Law A.3(1)(10) establish cooperation and collaboration with other regional and international agencies whose mission is similar to that of the RPPA<br>See also PPL A.5 – RPPA issues standard procurement documents and guidelines aimed at achievement of the objectives of any duty under the PPL | Not applicable | **Criterion is met** | | |
| **(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement** | RPPA<br>RPPA Law A.3(1)5 -provide technical assistance as needed and develop teaching material, organize trainings and lay down requirements which must be met by procurement officers<br>RPPA Law A.3(17 – put into place standard bidding documents, bid evaluation reports and other standard documents for use by procuring entities<br>No specific mention of integrity training programs and there are resource constraints | Not applicable | **Criterion is partially met.**<br>Standard Bidding Document and Training materials require update. No specific mention of integrity training programs on RPPA website and there are resource constraints | | RPPA to review its resource requirement and budget to fulfill its mandate related to training and capacity development including update of standard bidding document and training material |
| **(j) supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)** | RPPA<br>RPPA Law A.3(1) 4 – develop professionalism of staff involved in public procurement<br>RPPA Law A.3(1)5 -provide technical assistance as needed and develop teaching material, organize trainings and lay down requirements which must be met by procurement officers<br>No specific reference to detail or to accreditation and certification schemes<br>Rwanda Association of procurement professionals is established by "law N°011/2016 of 02/05/2016 - Law establishing the Association of procurement professionals and determining its organization and functioning". The professional body's independence is compromised due to budget allocation from MINECOFIN through RPPA's operating and facilitation budget. Though the professional body is aspiring to become independent there is serious staff and financial constraints (Refer to Indicator 8 for more details) | Not applicable | **Criterion is partially met.**<br>No specific reference to detail or to accreditation and certification schemes. The professional body's independence is compromised due to budget allocation from MINECOFIN through RPPA's operating and facilitation budget. Though the professional body is aspiring to become independent there is serious staff and financial constraints | | RPPA to enhance its role on professionalization, development of role description, competency profile and certification and accreditation schemes. |



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

| | | | | | |
|---|---|---|---|---|---|
| **(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate** | Not specifically referred to in PPL or PP Regulations.<br>Contact details on UMUCYO portal are for RPPA- key functionalities are supported by the e- Procurement system as per details in Annex 3 of Volume III | Not applicable | **Criterion is met** | | |

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

| 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 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.** | RPPA Law A.1 establishes RPPA with legal personality, administrative and financial autonomy and provides that the RPPA shall be governed in accordance with general provisions governing public institutions As per RPPA Law A 6, RPPA shall be composed of two management organs: (i) the Board of Directors; and (ii) the Director General. As per RPPA Law A7, Board of Directors is a decision -making organ whose competence, responsibilities, functioning, terms of office of its members shall be determined by a Prime Minister's order There shall be a performance contract concluded between the supervising authority of RPPA and its decision- making organ indicating competence, rights and obligations of each party in order for RPPA to fulfill its mission. Members of the Board of Directors (BoD) including its Chair-person and Deputy Chair- person shall be appointed by Presidential Order. Members of BoD shall be selected on the basis of their competence and expertise and 30% of members shall be females Therefore, the head of the institution namely the Director General with the supervision of Board of Directors has a high level and authoritative standing in the government with a diverse and inclusive background | Not applicable | **Criterion is met** | | |
| **(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.** | RPPA Law A.1 establishes RPPA with legal personality, administrative and financial autonomy. RPPA Law A.14, A.15, A.16 and A.17 under Chapter V on property and finances determines that property shall come from the following sources: (i) property currently owned by RPPA; (ii) state budget allocation; (iii) state or donor's subsidy; (iv) donation and bequest. Budget of RPPA shall be adopted and managed by relevant legal provision. Further as per these provisions, there shall need for audit of property, adoption of budget by annual financial reporting to supervising authority of RPPA with approval of Board of Directors in accordance with laws governing management of State Finances and Properties. Even though RPPA Law A.1 states that RPPA has financial autonomy, with the stipulation in the given Articles as above, RPPA is dependent for its resources on the State Finances and it is not clear if the available finances ensure the function's independence and proper staffing to keep the services at the level of quality required. For details refer to item ( c ) below | Not applicable | **Criterion is partially met**.<br>It is seen that due to RPPA budget constraints during the year, the training was carried out only for those procuring entities who were able to organize and sponsor those trainings. The given budget is not sufficient compared to the overall scale of procurement and to demonstrate meaningful impact on the overall performance of public procurement system in the country. | Yes | Need to create additional sources of finances that provides some degree of financial independence to RPPA to ensure proper staffing and resources to keep the services at the level of quality desired and to fulfill mandate of RPPA as required by PPL. |
| **(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.** | As per Organization Chart on RPPA website (2014), RPPA (excluding Independent Review Panel) has a total staff of about 50, divided into four units, Office of DG ( 10 staff including DG), Monitoring & Audit Unit (10 staff including a Director), Capacity Development Unit ( 9 staff including a Director) and Administration and Finance Unit ( 10 staff including a Director). Based on RPPA Annual Activity Report 2017- 2018 (November 2018), for the given year the revised budget was Rwf 929, 959,824 with execution of Rwf 836,837, 492 (about 90% of budget), out of which 61.10 % related to compensation of employees and 30% on use of goods and services. However, there is no breakdown of expenditure by type of activities (like regulation and legislation, monitoring, providing clearances like authorization on use of less competitive method, auditing, work of Independent Review Panel, building capacity etc..) to determine the extent of focus of resources by RPPA. The execution amount of Rwf 836.837 million of RPPA budget constitutes an insignificant percent of reported total expenditure of procurement of Rwf 336.707 billion and a calculated public procurement expenditure of Rwf1066.5 billion in 2017- 2018 based on budget figures. Based on Paragraph 3.1 Training, it is seen that due to RPPA budget constraints during the year, the training was carried out only for those procuring entities who were able to organize and sponsor those trainings. From the Annual Activity Report for 2017- 2018, it is seen that there are certain good initiatives on the part of RPPA like focus on categorization to ensure that firms are selected in accordance with their technical and financial capacities, field visits to follow-up on implementation of construction contracts, monitoring of ongoing large contracts above Rwf five hundred million, advocacy of delayed payment , meeting with bidders, updating reference price of common goods, preparation of standard technical specification for office items, ranking of procuring entities. However, based on the given budget these activities though useful are not sufficient compared to the overall scale of procurement and to demonstrate meaningful impact on the overall performance of public procurement system in the country. (refer to Indicator 9 under Pillar III on public procurement practices achieve stated objective that includes statistics on delays in selection and implementation of contract and OAG's Annual Report for period ending June 30, 2018 presented to parliament on April 29, 2019, that includes cases of delayed and abandoned contracts) | Not applicable | **Criterion partially met** (explained above) | | RPPA to assess, through an independent agency, the focus of its activities compared to its mandate, adequacy of RPPA staffing, budget to find out if there is a meaningful impact on improving the overall public procurement system. |

5(d) Avoiding conflict of interest

| 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** |
|---|---|---|---|---|---|



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

| | | | | | |
|---|---|---|---|---|---|
| (a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*<br><br>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):<br>- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses).<br>Source: Survey. | Despite devolution of the transaction function to procuring entities, RPPA is still involved in procurement transaction, in particular on providing authorization to procuring entities on use of less competitive bidding (PPL Article 29) which shifts the accountability to RPPA for such decisions. Regarding situations of Conflict of Interest in procurement, the same is guided by Article 9 of Ministerial Instructions of 2011[82]<br>However, Independent Review Panel which is the appeals body at national level, is housed in RPPA which is its Secretariat and budget is provided by RPPA.<br><br>Based on results of survey, in response to question if there is a problem with Conflict of Interest in the normative and regulatory functions or procuring entity out of 30 responses, 60% responded -no, 20% indicated minor COI, 10% indicated obvious COI and 10% abundant COI.<br>In response to specific question if you or your company ever experienced COI there were only 7 responses, reasons being unclear competencies of officials, official position being used improperly to private advantage and improper personal gain, official's family or other relatives and political affinities of the official. This is not a substantive response and do not represent a wider pool of response. | Please see data on the left | **Criterion is partially met**<br>RPPA's involvement in transaction like authorization for less competitive method of bidding (other than open tender)<br><br>Incompatibility in the functions of RPPA: RPPA is responsible for functions and roles normally assigned to regulatory and normative bodies. There are however additional tasks such as: approval authority for use of methods other than open procedure and the role of secretariat to the Independent Review Panel (IRP), which put the RPPA in direct involvement with specific transactions, but also have the potential to create actual or perceived conflicts of interest, with each other but also vis-à-vis the other functions. Specifically, RPPA approves the use of methods other than open tender, while at the same time will be acting as secretariat/budget holder of the NIRP, which can potentially be faced with a complaint challenging the RPPA's approval of use of a non-competitive method. It is questionable how objective NIRP can be to overthrow the decision by RPPA, and bidders may not have confidence in the impartiality and independence of NIRP. More generally, involvement of RPPA in the authorization process and as secretariat of NIRP are not consistent with the primary function of RPPA as regulatory and oversight body where independence in assessing the functioning of the procurement system is required. RPPA cannot discharge such function with full independence and objectivity. | Yes | To avoid actual or perceived conflicts of interest, the RPPA's role in the approval process for use of methods other than open tender should be reconsidered in terms of criteria for approval, and its involvement with the complaints review function should be gradually eliminated. This would give NIRP some independence (though not fully) and will also improve accountability of Procuring Entities. |

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:** 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) Procuring entities are clearly defined.** | **Summary:**<br><br>PPL A.9 defines procuring entities as "central government organs, local administration organs, public institutions, national commissions, government projects or any other organs so empowered by the Chief Budget Manager". In addition, "commercial public institutions" where they use the State budget fall within the definition of procurement entities<br><br>The PPL does not use the term "utilities" and it does not contain specific provisions concerning the status of utilities companies with special or exclusive rights[83]. It is therefore not immediately apparent from the primary legislation what, if any, the nature and extent of coverage of the PPL is in respect of utilities. However, as noted above, "commercial public institutions" where they use the State budget fall within the definition of procurement entities.<br><br>PPL A.5 provides that, subject to other provisions of the PPL, commercial public institutions whose budget is not approved by Parliament are governed by special regulations of each institution approved by an Order of the Minister in charge of public investment. | | **Criterion is partially met**.<br>The status and definition of commercial public institution is not clear. For more details, refer to indicators 1(a) and 1(l). | Yes | Improve clarity of definitions, in particular concerning the status of utilities companies with special or exclusive rights and whether they are included in the definition of "procuring entity" (see comment under sub-indicator 1(a)). |

[82] Ministerial Instruction No. 001/11/10/TC of 24/01/2011establishing Code of Ethics Governing Public Agents involved in Public procurement
[83] Utilities, including the water and energy sectors, are subject to regulation by RURA, the Rwanda Utilities Regulatory Authority https://rura.rw/index.php?id=44



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

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| | However as per User's Guide establishing the procurement regulations and standard bidding documents. Law on Public Procurement no. 12/2007 of 29/03/2007 replaced the Presidential Order no. 28/01 of 19/07/2004 establishing public procurement procedures. The Law on Public Procurement applies to procurement conducted by Central Government authorities, Local Government authorities, public institutions, Commissions, Government projects, parastatals, agencies or specialized institutions. However, it shall not apply in the following exceptions:<br><br>Procurement of classified items meant for national defense and security. If the laws conflict with procurement rules of a multilateral or bilateral treaty or other form of agreement to which the Government of Rwanda is a party, the requirement of these agreements shall prevail. | | | | |
| **(b) Responsibilities and competencies of procuring entities are clearly defined.** | There is no single list of the responsibilities and competencies of procuring entities but their responsibilities and competences are defined in the PPL and PP Regulation: for example<br>PPL A. 10: establishment of public tender committee<br>PPL A. 11: appointment of procurement officers with responsibilities as defined in the PPL<br>PPL A.16 Preparation of procurement plan | | **Criterion is partially met**.<br>Need for single list of procuring entities with responsibilities and competencies including for commercial public institutions | | RPPA to publish list of all procuring entities including commercial public institutions with responsibilities and competencies |
| **(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.***<br><br>***// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):***<br>***- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).***<br>***Source: Normative/regulatory function.*** | PPL A. 11: appointment of procurement officers with responsibilities as defined in the PPL A.11<br><br>**Period** / Total number of procuring entities / procuring entities with a designated, specialized procurement function / % of total number of procuring entities<br>July 1, 2017 to 30 June 2018 / 135 / 1 (RISA – ICT procurement) / 100%<br>July 1, 2018 to March 31, 2019 / 150 / 1 (RISA – ICT procurement) / 100% | Please see table on the left | **Criterion is met** | | |
| **(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.** | **Summary:** Decision making authority on matters such as the conduct of procurement, contract award decision, award and executing of contracts, contract monitoring, invoicing and payments lies with the procuring entities and so is delegated to the lowest competent levels.<br><br>See, for example, list of responsibilities of procurement officers in PPL A.11 and activities and responsibilities of procuring entity tender committees set out in PPL | | **Criterion is met** | | |
| **(e) Accountability for decisions is precisely defined.** | Involvement of RPPA in authorization on use of less competitive bidding (other than open tender method) as per Article 29 of PPL, dilutes the accountability of procuring entities. Based on statistical data refer Indicator 7) and as per RPPA Annual Activity Report for 2017-2018 the use of non-competitive method is in the range of 40-45% of total expenditure (with open tender as 50% by value ) which is much above any norm for a competitive and transparent procurement system | | **Criterion is partially met**.<br>The current arrangement of having RPPA prior review and approving the use of non-competitive methods when conditions of PPL are not met, carries the risks identified under 1(b) (a). More importantly, it may be seen as diffusing the responsibility of procuring entities to justify and be accountable for their own decisions. As noted earlier, the prior review function by RPPA may be (mis)used by procuring entities, for example, to favor a particular contractor or as a way to deal with poor or dilatory conduct of public officials, such as leaving it too late to run an open procurement or insufficient market analysis to identify more than one potential provider. This is particularly the case if justifications can be in undefined broad terms such as being in "public interest". | Yes (covered in 6 (a) (a) | Procuring Entity should be accountable for use of less competitive method which should be subject to ex-post audit by RPPA and OAG. |

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.** | As per Article 3.9 of PPL, there is definition of "Central purchasing body: public entity which conducts the procurement process and concludes a framework agreement with the successful bidder for works, supplies and consultancy and non-consultancy services on behalf of other procuring entities"<br><br>However, it is not known how this operates in practice | Not applicable | **Criterion is partially met**.<br>Despite a provision in law the actual functioning of such a centralized body is not there in practice. In practice the lead for specialized procurement is taken by Ministries/ Procuring Entity with specific expertise who procure bulk item including requirements for other Ministries/ Procuring Entity (for example Ministry of Infrastructure for | | RPPA to consider benefits of centralized procurement body to implement the provisions of PPL |



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

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| | | | transport equipment, Rwanda Information Society Authority for Information technology) | | through specific guidance |
| **(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:**<br>**• Legal status, funding, responsibilities and decision-making powers are clearly defined.**<br>**• Accountability for decisions is precisely defined.**<br>**• The body and the head of the body have a high-level and authoritative standing in government.** | As in (a) above | Not applicable | As in (a) above<br>**Criterion is partially met** | | As in (a) above |
| **(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.** | As in (a) above | | As in (a) above<br>**Criterion is partially met** | | As in (a) above |

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

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

| Assessment criteria | **Step 1:** 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) 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.** | It is mandatory for all procurement entities to publish the procurement plan through the e-procurement system. The access to the website is free and the e-procurement staff provides free services also to suppliers for them to be registered. This registration has the advantage that is it done once for all.<br>The tenders are categorized in non-consulting, goods, works and consultancies. The tender notice gives all required information regarding the procurement process.<br><br>The information might also be published in newspapers and other publications, but not mandatory. | Not applicable | **Criterion is met** | | |
| **(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.** | **The criterion is met.** The UMUCYO e-procurement governmental website is easily accessible and free of charge. However, for the tender document might be chargeable, i.e. 5,000 RWF. The bidding documents are accessible without any registration and fees. | Not Applicable | **Criterion is met.** | | |
| **(c) The information system provides for the publication of: ***<br>**• procurement plans**<br>**• information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions**<br>**• linkages to rules and regulations and other information relevant for promoting competition and transparency.** | **The information system and RPPA website provides for publication of**<br>1. Procurement Plans: a procuring entity cannot publish a tender without previously published the procurement plan. The annual publication of procurement plans is required by the law.<br>2. Tender notice provide all information related to procurement opportunity as the title, the place to deliver, the bid security,etc<br>3. Linkage to rules and regulation can be found also in the website. The supplier can be informed on the debarment process, the ethics of the public procurement officer.<br>4. General Information<br>5. Tender Information<br>6. Standard Bidding Document Goods/Works/Services<br>7. Tender Document<br>8. Required Bidding Documents<br>9. User's Guide<br>10. Strategic Plan (2018- 2021) | Please see table on the left | **Criterion is met.** | | |



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

// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):
• procurement plans published (in % of total number of required procurement plans)
• key procurement information published along the procurement cycle (in % of total number of contracts) :
• invitation to bid (in % of total number of contracts)
• contract awards (purpose, supplier, value, variations/amendments)
• details related to contract implementation (milestones, completion and payment)
• annual procurement statistics
• appeals decisions posted within the time frames specified in the law (in %).
Source: Centralised online portal.

| Period | Total number of contracts (online) | Procurement Plans Published (% of total) (online) | Key Procurement Information Published (% of total number of contracts) | Invitation to bid (in % of total number of contracts) | Total number of appeals received (all received through Online only) |
|---|---|---|---|---|---|
| July 1, 2017 to 30 June 2018 | 3,269 | 4485 (100%) | 100% | 100% | 30 |
| July 1, 2018 to March 31, 2019 | 3214 | 5427 (100%) | 100% | 100% | 55 |

Source: e- GP Portal

Appeal Decisions are published in RPPA website. In e-GP, suppliers are notified through their inbox message (email and e-GP System). National Independent Review Panel (NIRP) has the access to e-GP appeal module, get appeal, send message to entities, but does not publish. They send scanned copies to RPPA, and it is accessible from the RPPA website (https://rppa.gov.rw/index.php?id=567.

**(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).**

The full set of bidding document is available and the bidder can consult them before he decides to bid. The system provides also form in excel to be fill in easy way.
At the opening stage an automatic report provides the list of bidders with their prices.
The same at the evaluation stage the bidder can consult the evaluation report and claim.
The full contract is available to the winner and it's reviewed and approved by the Ministry of Justice.

The e-GP System does not support OCDS.

**Criterion is partially met.**
Open *Contracting Data Standard (OCDS)*: Currently, the e-GP system does not support the Open Contracting Data Standard (OCDS) and does not publish data on machine-readable formats. There are some report formats available, but not adequate to get a complete picture of procurement sector.
Current e-GP system does not support OCDS and also does not have Comprehensive Business Intelligence system.

Recommended to develop and integrate a comprehensive business intelligence tool with visual representation of data and infographics. It is recommended to incorporate OCDS for structured data dissemination to facilitate transparency, citizen engagement



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

**(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format) ***

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a)**
**Assessment criterion (e):**
**- Share of procurement information and data published in open data formats (in %).**
**Source: Centralised online portal.**

Information published are structured standard formats prescribed by the RPPA, but not in machine readable format. The system does not support OCDS.

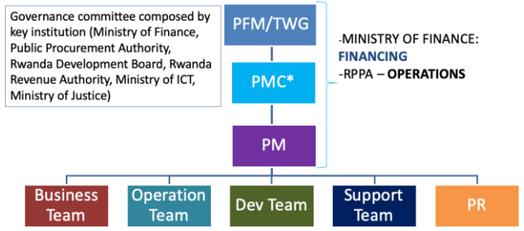
| Period | Total number of contracts Online and offline | % of contracts for which procurement information an published |
|---|---|---|
| July 1, 2017 to 30 June 2018 | 4,378 (336,707,190,486 FRW) | 100% |
| July 1, 2018 to March 31, 2019 | 3,848 (377,196,844,158 FRW) | 100% |

**Criterion is partially met.**
The system does not support OCDS.

OCDS functionality to be implemented

**(f) Responsibility for the management and operation of the system is clearly defined.**

There's a e-procurement team in charge of managing the system and another team in charge of helping suppliers to be registered.
Management is currently done by project team.




**Criterion is met.**

7(b) Use of e-Procurement

| 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 |
|---|---|---|---|---|---|



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

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|---|---|---|---|---|---|
| **(a) E-procurement is widely used or progressively implemented in the country at all levels of government.***<br><br>***// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement***<br>***- number of e-Procurement procedures in % of total number of procedures***<br>***- value of e-Procurement procedures in % of total value of procedures***<br>***Source: e-Procurement system.*** | The e-procurement is used by all procuring entities now and made it mandatory. The pilot stage has been successful and from July 2018 it's mandatory for all procuring entities to use the e-procurement system.<br><br>e-GP System is still to be implemented in sectors, schools, health centers, district pharmacy are still to be implemented. RPPA is going to the district hospitals soon.<br>Currently, RPPA is working out on the engagement strategy for sectors, schools and health facilities.<br><br>The total value of expenditure was Rwf 336.707 billion and total number was 4378 for 2017- 2018 with breakdown of off-line and online procedure as under:<br><br>Off line by value / % — Rwf 221.270 billion — 65.72% of total<br>Online by value /% — Rwf 115.436 billion — 34.28% of total<br>Offline by No/% — 1571 — 35.88% of total<br>Online by No /% — 2807 — 64.12% of total<br><br>Source: e- Portal and Annual Activity Report of RPPA for 2017-2018 | Please see data in the column on the left for fiscal year 2017- 2018 | **Criterion is met.** | | |
| **(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.** | RPPA has trained Government Officials in the e-procurement system. The information on the number of trainings done by the e-procurement team is not available on website. This has to be clarified with the Ministry of Finances which is the Ministry in charge of the e-procurement project. | | **Criterion is partially met.**<br>The information on the number of trainings done by the e-procurement team is not available on website. This has to be clarified with the Ministry of Finances which is the Ministry in charge of the e-procurement project. Also, because, most of the personnel managing E-procurement are not yet integrated in the RPPA organizational structure | | Specific information on number of trainings to be compiled and steps taken to integrate personnel managing E-procurement in the RPPA organizational structure |
| **(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.** | All the Government procurement staff working in public procurement are trained from the time since roll-out after pilot (July 2017): total number so far is 2014<br>Retrained officers every year and auditors are also retrained (December, 2018).<br>Around 90 users from district hospitals will be trained for rolling out in district hospitals. | | **Criterion is met** | | |
| **(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.***<br><br>*** Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):**<br>**- bids submitted online (in %)**<br>**- bids submitted online by micro, small and medium-sized enterprises (in %)**<br>**Source: e-Procurement system.** | **.** The e-procurement does not provide this information. The categorization in micro, small and medium size enterprises is provided by the Rwanda Development Board, where all enterprises have to be registered.<br><br>System does not capture SMES, it is not possible to categorize the MSMEs in the system.<br>No references in Procurement law as well about the MSMEs. Though in practice most of local firms fall under the category of MSME | No data available | **Criterion is partially met.**<br>There is a need to identify micro, small and medium-sized enterprises (MSME) | | System needs to be enhanced to identify MSME and their share in the bids submitted online |
| **(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.** | e-Procurement system already in place and this criteria is not applicable | | **Criterion is met**<br>(Considered met)<br>**Not applicable** | | |

7(c) Strategies to manage procurement data

| 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 |
|---|---|---|---|---|---|



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

| | | | | | |
|---|---|---|---|---|---|
| **(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.** | The Monitoring and Audit Unit is in charge of collecting data on e-procurement. Their services are published online on e-procurement website | Not applicable | **Criterion met**. | | |
| **(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.** | The system allows to collect date from the e-bidding to awarding of the contract. The numbers of bidders, the prices submitted by each of them, the bidder and the amount of the contract.<br><br>The e-GP system does not have extensive analytical standard reports, but the RPPA has maintained an excel file generated from the e-GP System with data sets and analytics. | Not applicable | **Criterion partially met.** The e-GP system does not have extensive analytical standard reports, but the RPPA has maintained an excel file generated from the e-GP System with data sets and analytics. | | |
| **(c) The reliability of the information is high (verified by audits).** | The Monitoring and Audit Unit is actually using the e-procurement for providing various reports regarding the monitoring of public procurement expenditure. Auditors have separate access to e-GP system. They need permission to audit. Audit is done by Office of Auditor General (OAG). But there is need for audit by specialized firm to check reliability of information | Not applicable | **Criterion is partially met.**<br>Requirement for audit by specialized firm | | There is need for audit by specialized firm to check reliability of information |
| **(d) Analysis of information is routinely carried out, published and fed back into the system. ***<br><br>***// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):***<br>***• total number and value of contracts***<br>***• public procurement as a share of government expenditure and as share of GDP***<br>***• total value of contracts awarded through competitive methods in the most recent fiscal year.***<br>***Source: Normative/regulatory function/E-Procurement system.*** | The e-procurement system is designed to generate monitoring information without any manipulation. The information regarding all procurement phases (advertisement, bidding period, evaluation, contractual period) are available anytime. | Please see table on the left side of this column | **Criterion is met**,<br>Analysis of information is available publicly through Annual Activity Report.<br><br>Enhancement Needed as recommended | | e- GP system to be enhanced to enable. *Development of Comprehensive Business Intelligence System*: e-GP system in Rwanda currently lacks a comprehensive tool for data mining, analysis, and generating comprehensive reports with visualization and infographics for using in decision makings. But the system can be enhanced to incorporate OCDS and add the BI system. |

| Period | Total number of contracts | Total value of contracts in billion RWf | Total number of contracts awarded through competitive methods | Total value of contracts awarded through competitive methods<br><br>( %) | Volume of government expenditure (Public Procurement Expenditure)<br><br>billion Rwf | Public procurement as share of government expenditure | Volume of GDP in billion Rwf | Public procurement as share of GDP |
|---|---|---|---|---|---|---|---|---|
| July 1, 2017<br><br>to 30 June 2018 | 4378 | 336.707 | 3400 | 166. 658<br><br>(49.50%) | 2187.5<br><br>(1066.5) | 48.74 % | 7898 | 13.50 % |

The figure of Rwf 336.707 B is based on statistics of RPPA Annual Activity Report (2017-2018) at page 14. The figure of total public procurement expenditure of Rwf 1066.5 billion is derived from MINECOFIN Rwanda Updated Macro-Framework – Public Data set of May 2019. The competitive methods for this table is defined as open competitive tenders, both international and national and request for quotation. The remaining categories of restricted tender, single sourcing, community approach and force account are considered non-competitive

Based on the data as per Annual Activity Report of previous two years (2016-2017 and 2015- 2016), it is seen that share of IOT+ NOT was much higher compared to 2017- 2018 as tabulated below:

| Years | Total Procurement Expenditure in Rwf billion | % Share of IOT + NOT in terms of amount | % Share of Single Source in terms of amount | % Share of Force Account in terms of amount | % Share of RFQ in terms of amount |
|---|---|---|---|---|---|
| 2017-2018 | 336.707 | 49.11% | 17.56 % | 26.92 % | 0.33% |
| 2016- 2017 | 520.095 | 73.12 % | 16.52 % | 5.67% | 0.69% |
| 2015- 2016 | 546.933 | 85.03 % | 12.51% | 0.74% | 0.38% |

The incidence of high value of Single -source and Force Account in 2017- 2018 was due to emergency situations, need to start some strategic projects urgently and to unlock stalled projects due to poor performance of contractors



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

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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: 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) substantive permanent training programmes of suitable quality and content for the needs of the system.** | Based on RPPA Strategic Plan (2018-2021), one of the key issues is: improved skills and knowledge of trained public procurement officials. In terms of sub-program I.2 Improved skills and knowledge of trained public procurement officials, there is a list of indicators, baseline, targets in % and accountability (see details under 8 (c)), but there is no list on existing and proposed training programmes in procurement.<br><br>RPPA has a permanent department in charge of capacity development in the Rwanda public procurement system. The department conduct regularly needs assessment in training in public procurement. The RPPA develops training module for the use to provide basics in public procurement. The training modules are published on RPPA website. In the annual report 2017-2018 the E-procurement has trained 583 Internal Tender Committee members. Academic Institutions (University of Rwanda, University of Kigali) has academic programs providing procurement knowledge. The UR has undergraduate program coupled with Master's program in procurement. In recent past they also organized training of trainers in public procurement. The Rwanda Institute of Management in collaboration with Maastricht University (Netherlands) organizes sometimes Postgraduate Diploma Course in public procurement, but not in permanent way. In coming years with the increase of APP capacity, in the aim of accomplishing one of its missions regarding facilitation of providing procurement knowledge to procurement professionals and to other stakeholders, the professionals' body will be providing continuous education to members to the extent to which it will be mandatory for members to attend a minimum number of hours of training per year. In this way the system will be provided with permanent training framework.<br><br>The training modules are published on RPPA website, which are Introductory Module in Public Procurement (March 2012) and a draft Intermediate Level Training Module in Public Procurement (April 2012). As per RPPA Annual Activity Report 2017-2018 from July 2017 to June 2018, Capacity Building, Coaching and Mentoring Officers in Capacity Development Unit trained 583 officials from different public procuring entities that requested RPPA trainers. However, there was budget constraints on the part of RPPA and training was carried out for those procuring entities who were able to organize and sponsor those training. Therefor such training was guided more by the budget availability from PE rather than based on needs assessment<br><br>There was also a monitoring and evaluation of training performance to find out if the trained staff of previous years (2016-2017) applied their skills and knowledge as part of internal tender committee and stayed for a sufficient duration in that role, if the training was applied on the job and useful (97% said "yes") and if there was evidence on use of standard bidding documents<br><br>However, on RPPA website there is no evidence of permanent and relevant training programme for new and existing staff in government procurement, to judge the relevance, nature, scope and sustainability. | Not applicable | **Criterion is partially met**.<br>There is no permanent and relevant training programme for new and existing staff in government procurement, to judge the relevance, nature, scope and sustainability. Training is based on availability of budget from Procuring Entities rather than needs analysis<br><br>RPPA to consider strategic focus on training the procurement work-force in view of the following: The function of procurement has grown immensely over the past fifteen years in Rwanda. Within this period, along with the legal, regulatory and institutional reforms, the aim made was to empower procurement practitioners to help them carry out their duties in a proper way. However, procurement practitioners lack engagement in the professional body development, they do not provide enough support for its development and enable the body to provide in return the empowerment of procurement professionals in all needed aspects (required competence, independence and integrity), but more importantly in qualitative permanent education in public procurement. | | Need to institute a permanent and relevant training plan based on which as per a well-functioning system should be based on (i) "skills gap inventory to match the needs of the system; (ii) be sufficient in terms of content and frequency; and (iii)provide for evaluation of the training programme and monitoring progress in addressing capacity issues. Budget constraint of RPPA to be addressed so that training is provided as per needs assessment rather than availability of budget from PEs |
| **(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.** | The RPPA through the Department in charge of Capacity Development has been conducting needs assessment on regular basis, to assess PEs capacity and individual's capacities, changes in terms of personnel and tender committees. Then after they plan appropriate actions. The capacity assessment conducted during 2016-2017 has pointed out procuring entities with weakness in applying procurement procedures. The Office of the Auditor General has also identified weak procuring entities.<br>These procuring entities (30) have benefited from procurement training (annual report 2017-2018). | Not applicable | **Criterion is partially met**.<br>This assessment is not periodic and comprehensive. RPPA conducts needs assessment in training at the same time it carries out audits and monitoring and implement training programs and propose policies. | | RPPA continue to assess, monitor, audit and propose policies; but put in place analysis mechanisms to find out what are factors of weakness or bad performance found and plan for action, not only training, but also workshop aimed at changing behaviors. |



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

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|---|---|---|---|---|
| **(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.** | This is one of the missions of the RPPA provided in Article 1 of law n° 25/2011 of 30/06/ or 2011 establishing the RPPA. A hotline is also available. Advices are also provided in written way when it is needed. When RPPA finds it useful for more than one entity, It issues a notice for all entities in form of letter or instruction. | Not applicable | **Criterion is met** | |
| **(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.** | Meetings with suppliers all over the country have been done regarding the role of the public procurement in the national economy. Other meetings with procurement officers have also be prepared regarding the collaboration between the procurement officer and other departments and the role of user department (RPPA annual report 2017-2018).<br>Training in e-procurement for cyber-café and suppliers have been done.<br><br>Based on RPPA Annual Activity Report of 2017- 2018, for private sector other than a one day event on " The role of public procurement in development of national economy" which was attended by about 600 participants, there was no training to build capacity for private sector ( Refer Indicator 10 (a) also) or Civil Society Organization ( Refer Indicator 11 (a) or Integrity Training Programme for Procurement workforce ( Refer indicator 14 (d) or as a part of professionalization ( Refer indicator 8 (b) | Not applicable | **Criterion partially met**.<br>Relevant trainings not available to build capacity for private sector and Civil Society Organizations. There is no training program on integrity aspects in procurement | A sustainable and intensive training program to be instituted to train key actors in procurement, in particular private sector and Civil Society Organizations. These training should include integrity training programmes. More needs to be done in integrating training plan with financing as the Government has centralized finance for training public servants in the hands of RDB. Neither RPPA or PEs have the ownership of finance to organize training as per needs assessed. Some needs remain unsatisfied with the current management of trainings |

8(b) Recognition of procurement as a profession

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

| 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) 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.** | Rwanda Association of procurement professionals is established by "law N°011/2016 of 02/05/2016 - Law establishing the Association of procurement professionals and determining its organization and functioning". The professional body is formed in view of the government, as one of the procurement reform pillars.<br><br>An Association of Procurement Professionals has been established by the law n°011/2016 of 02/05/2016.The procurement professional body law has provision requiring procurement professionals to be member of the professional association to be hired by the public institutions. As a result, 99% of the current members are from the public institutions. Currently there are about 400 members. The list is available on RPPA website<br><br>Article 2 of this law defines procurement professionals as those who are qualified persons, registered and authorized to practice procurement profession as per this law. Article of this law defines procurement profession: permanent exercise of all procurement activities relating to purchasing, leasing of goods, works or services performed by the procuring entity or any activities enabling institutions wishing to acquire goods to obtain equipment, works or services including the preparation and distribution of bidding documents, the invitation and selection of suppliers, constructors, consultants as well as the stage of negotiation leading to signing of contracts.<br><br>Procurement professionals are categorized as follows: 1° assistant procurement professional; 2° procurement professional; 3° senior procurement professional (article 38 of law n°011/2016 of 02/05/2016). One of the requirements to be registered as a Procurement Professional is to hold at least degree in procurement, a post graduate diploma in procurement or a professional qualification in procurement recognized in Rwanda (article 35 of law n°011/2016 of 02/05/2016).<br><br>Also it is not clear from PPL or Regulation, the qualification and experience requirements of public tender committee members<br><br>However, there is no definition of procurement positions at different professional level, job descriptions and requisite qualification and competencies specified<br><br>The professional body's independence is compromised due to budget allocation from MINECOFIN through RPPA's operating and facilitation budget. Though the professional body is aspiring to become independent there is serious staff and financial constraints. Contribution from the members could only covered purchase of computers. | Not applicable | **Criterion is partially met.**<br>However, there is no definition of procurement positions at different professional level, job descriptions and requisite qualification and competencies specified.**)** not clear from PPL or Regulation, the qualification and experience requirements of public tender committee members<br><br>There are financial and budget constraints in Association of Procurement Professional to be independent and effective<br><br>There is need to train set of officials who do not have procurement skills or background but do work with or supervised qualified professionals | | To define procurement positions at different professional level, job descriptions and requisite qualification and competencies specified. PPL or Regulation to specify the qualification and experience requirements of public tender committee members.<br><br>Senior officials who supervise procurement professionals need to be trained<br><br>Association of Procurement Professional needs to be financially independent by (i) increasing membership fees, (ii) organizing trainings, (iii) certification. There is a plan to commence issuing membership certificates, (iv) engaging in study services and (v) supports from development partners |



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

| | | | | | |
|---|---|---|---|---|---|
| | General meeting of the association is planned in near future and strategic plan on how to become independent of the government is top of the agenda. | | | | |
| **(b) Appointments and promotion are competitive and based on qualifications and professional certification.** | The appointment is done through the Rwanda Public Service e-recruitment portal. There is no written system in place for appointments and promotions based on qualification and professional certification for procurement staff.<br>The recruitment of procurement staff follows the process of recruitment of public servants which is **competitive** and based of qualification required for the job. There is no common requirement for procurement job; it is rare to find requirement of professional certificate in procurement, but what has started to happen is requirement of academic qualification in procurement, but also it is not exclusive as sometimes requirement may be a range of various possible academic areas such as management, Business Administration, economics, law etc., including procurement. The law establishing the Association of Procurement Professionals allows academic qualification or professional certification holders to apply for membership; meaning that it is not necessary to possess procurement professional certificate to practice procurement profession.<br><br>**Example of procurement job requirements in Hospitals:** A0 in Procurement, Management, Accounting, Law, Public Finance, or Economics.<br><br>**Key Technical Skills & Knowledge required:** - High Analytical Skills; - Knowledge of basic business and purchasing practices; - Excellent Communication Skills; - Knowledge of state contracting laws, regulations and procedures; - Knowledge of grades, qualities, supply and price trends of commodities; - Time Management Skills; - Decision making Skills; - Computer Skills; - Fluency in Kinyarwanda, English and/ or French; knowledge of all is an advantage (Official Gazette n° 47 of 21/11/2016) | Not applicable | **Criterion is partially met**.<br>There is no written system in place for appointments and promotions based on qualification and professional certification for procurement staff. The recruitment of procurement staff follows the process of recruitment of public servants which is competitive and based of qualification required for the job. There is no common requirement for procurement job | | RPPA should act in order to harmonize the way recruitment requirements are set in public service regarding public procurement job |
| **(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.** | Based on RPPA Annual Activity Report 2017- 2018, all RPPA staff prepared their performance contracts " Imihigo" in the system of RBM and committed themselves to implement them in due time. The evaluation performance contracts were carried out and marks were given to every employee accordingly. All RPPA staff performed well and were given bonus. not clear if such a system is followed by all Procuring Entities<br><br>About performance evaluation, procurement staff is evaluated on 6 months period as it is a general rule for public servants (Although it extends over a period of twelve months (12), the program of performance appraisal includes an evaluation by the direct supervisor after six months (6). This assessment provides the supervisor the opportunity to recognize performances of the agent and make the necessary required adjustments (See Article 19 of the Prime Minister's Order N°121/03 of 08/09/2010 establishing the procedure of performance appraisal and promotion of public servant, Official Gazette n°41 of 11/10/2010)<br>About staff development and adequate training, RPPA conducts regular training of members of tender committees and also is working closely with other training institutions such as University of Kigali to provide Master degree to RPPA staff. Through the PFM basket fund, procurement staff pursue the professional courses delivered by the CIPS-UK. The University of Rwanda the College of Business and Economics has a undergraduate program in procurement. | Not applicable | **Criterion is met**<br><br>Enhancement and improvements suggested<br>Performance evaluation procedure may it be set in the PM Order for all public servant, but we observe in general that it is not customized to capture realities of a professional area and consider the real power of a procurement professional in an arranged management. | | Suggested improvements<br>The APP/RPPA should develop a system to evaluate performance of professionals on a regular and consistent basis, and professional development and adequate training |

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8(c) Monitoring performance to improve the system

| 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 established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.** | RPPA has also publish a 3 years' strategic plan (2018- 2021) which indicate the framework with goals, actions, indicators with baseline, targets and accountability both in qualitative and quantitative terms. These include under the Outcome II: " Improved skills and knowledge of trained public procurement officials" host of activities that *inter alia* inclue: (i)establish inventory of higher learning and training institutions that offer procurement courses in Rwanda and organize and conduct meetings with such institutions; (ii) establish and update database of information relevant to procurement training, trainers and trainees; (iii) adopt and disseminate Internal Regulations & Code of Ethics for Association of Procurement Professionals; (iv) establish conditions and procedures for selecting candidates to undertake CIPS under government sponsorship; (v) conduct training of officials of procuring entities which will be able to organize such training; (vi) Update, approve and publish induction and refresher course training modules to reflect the applicable public procurement legal regulatory framework and best practices; (vii) Update the list and Identify newly recruited procurement officials, specialist, tender committee members and plan for their training and design training schedule of every category; (viii) develop and publish a detailed capacity building plan/strategy/programme informed by capacity needs assessment; (ix) establish activities on capacity building methodology which builds partnership between RPPA and Procuring Entities in addressing persistent issues faced by Procuring Entities; and (x) approve the annual performance measurement tool to be used.<br><br>The e-procurement provides the monitoring of the system based on the procurement method used, the type of tender, the annual analyzed appeal, the published awarded tenders and the tender value vis-à-vis the budget line. This performance system is not translated into specific procurement outcomes in terms of quantitative and qualitative aspects including those related to contract implementation | Not applicable | **Criterion is partially met**.<br>This performance system is not translated into specific procurement outcomes in terms of quantitative and qualitative aspects including those related to contract implementation. | | The e-procurement should provide information to measure post contract award activities about contract management which is the actual time of effecting procurement (amendment, payments, delivery). |



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

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|---|---|---|---|---|---|
| **(b) The information is used to support strategic policy making on procurement.** | The RPPA strategic plan 2018-2021 has developed a 3 years' strategy based on the assessment done regarding the performance indicator from the previous years. There is a mid-term review of Strategic plan in June 2020 | Not applicable | **Criterion is met**<br>Suggestion:<br>Annual report to cover progress on strategic plan | | Suggestion:<br>Annual report to cover progress on strategic plan |
| **(c) Strategic plans, including results frameworks, are in place and used to improve the system.** | Covered in the RPPA strategic plan 2018-2021. | Not applicable | **Criterion is met**<br>Suggestion:<br>Annual report to cover progress on strategic plan | | Suggestion:<br>Annual report to cover progress on strategic plan |
| **(d) Responsibilities are clearly defined.** | See the RPPA strategic plan 2018-2021 on tabulation describing goals, actions, indicators with baseline, targets and accountability/responsibility | Not applicable | **Criterion is met** | | |

# Pillar III. Public Procurement Operations and Market Practices

## 9. Public procurement practices achieve stated objectives

### 9(a) Planning

| 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) Needs analysis and market research guide a proactive identification of optimal procurement strategies.** | The assessed cases showed that needs analysis was undertaken in all the 15 procuring entities, all entities had cost estimates in their respective plans with approved budgets in place. However, when Assessment Team look at number of responsive bids, it was found that market research did not guide identification of procurement strategies. There were instances in almost all cases where the NCB was chosen as selection method by the PEs in return, they got a very limited number of bids between 1 and 4 for around 50% of sampled contracts (regardless whether they were responsive or not). If the market research was conducted, but it did not lead the choice of procurement methods and strategies in many cases. All despite the fact that the law on public procurement implicitly provides market research (article 42 of the current law where it allows the tender committee to reject a bid with abnormal higher or lesser price comparing to the market price). In the same direction the previous regulations, especially in RPPA circulars, it was provided a mandatory market survey before tendering process. The RPPA uses to avail prices on the market, but this is not enough to set a procurement strategy and choose appropriate method. | On a total number of 15 PEs sampled, 100% cases were provided with procurement plan with costs estimates and budget approved, but only 39 out of 81 cases declared to have updated their procurement plans (only one PE showed sample) | **Criterion is partially met.**<br><br>The assessment found that there is no appropriate market research that can lead the choice of methods and strategies and procurement plans are updated by only 40% of sampled entities. | Yes | Beyond the market raw prices, RPPA should constantly conduct market research to avail information that can enable PE to make choice of procurement methods and strategies. Further there is need to update procurement plan by all procuring entities. |
| **(b) The requirements and desired outcomes of contracts are clearly defined.** | Except 1 case and were PEs used Force Account and Community Participation, all assessed cases had bidding documents or Request for Proposals that were containing clear requirements, description of specifications goods to be supplied or descriptions of works and Bill of Quantities (for works) or Terms of Reference (for Consultancy services). | 73 cases that used competitive methods (open and restricted bidding) were successful and contracts executed, except 1 which was not executed | **Criterion is met.** | | |
| **(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.** | Rwanda has a legal framework on safety and environment protection, but neither the law on public procurement and related regulations nor the practice integrate clearly and systematically measures to ensure sustainable procurement taking into account environment. The assessment acknowledges provision in public procurement law obliging the successful bidder to respect all laws and regulations in force and ensure that they are respected by his/her staff. The assessment recognizes the integration of social criteria in selection of bidders and in contract management where it is provided that in case of non-payment of social security contribution a bidder cannot be eligible, or where in some contracts clauses where it is provided that in case of non-payment of the labor by the contractor, the procuring entity will be allowed to deduct and pay amounts due to workers.<br>Another criterion which is being used in implementing policy and country priority which is reflected in criteria is local preference that the assessment found in some sampled contracts, where PES used 10% of local preference. Although there are ways to use sustainability criteria, there no verifiable technique ensuring to use them in balanced manner to ensure value for money. | | **Criterion is not met**.<br>Based on policies in place regarding environment, social justice in labor policies, value for money there is no enough evidence of the use of sustainability criteria to ensure value for money when they are used. Instead, as mentioned under other indicator, the practice struggles to comply with legal and regulation constraints, but the compliance is not balanced with sustainability and effectiveness. One of the instances of implementing national policy is local preference criteria.<br>The use of preference is not well defined in the law and may create a risk of misuse. There is need of guidance in regulations defining what is local (most of suppliers are Rwandan, but the content of supplies is foreign; contractors may be Rwandans, but in the same time using key staff from outside or contractors may be from foreign countries, but employing Rwandan Labor. | | The procurement system should integrate clear measure ensuring the implementation of laws and regulations aimed at promoting sustainability, but it should guide practitioners how to use in balanced manner and achieve both; sustainability and value for money e.g. take into account the disposal of assets policy, lifecycle costing measures, consideration of environmental issues.<br>Regarding the use of preference (local or regional) there should be guidance in |



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

| | | | | | |
|---|---|---|---|---|---|
| | | | | | regulations how to implement it. |

9(b) Selection and contracting

| 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) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.** | Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process. | Among the assessed cases one case used two-stage tendering procedure; where, after a call for expression of interest, four bidders participated in and all were qualified for the second stage and were distributed RFP and required to submit their technical proposals and financial proposals. | **Criterion is met** | | |
| **(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.** | In all sampled cases where competitive methods were used there were clear integrated standardized procurement documents, but the assessment is not satisfied with the participation which counted between 1 and 4 bids in more than 50% percent of cases all types of procurement combined. | 100% of cases, PEs used SBDs in the bidding process and contract | **Criterion is partially met**.<br>But the assessment is not satisfied with the participation which counted between 1 and 4 bids in more than 50% percent of cases for all types of procurement combined | | RPPA and PE to find out reasons for lack of competition and take measures to remove constraints |
| **(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.** | In the assessed cases procurement methods were chosen, but only non-competitive methods were assumed to be documented and justified in accordance with the purpose and in compliance with the legal framework. Practically and mandatorily before the launch of procurement process, the tender committee members met to approve the procurement method that was proposed by the procurement officer within the procuring entity. But there was no justification of choice based on the market research. | | **Criterion is partially met**.<br>There is no mandatory justification requirement for the choice of open competitive methods. In all cases choices are based on assumption that market is competitive (even when the market is monopolistic or when retailors of one manufacturer of a product are the ones who will be competing) | | The same as at 9 (a) (a) |
| **(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.** | Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. Indeed, the assessment found that all assessed cases, where competitive bidding was used, PEs followed and complied with the standard documents availed by the RPPA. Considering data collected of sampled cases it was found that procedures for bid submission, receipt and opening of bids were found clearly described in the procurement documents and complied with. Bidders or their representatives were allowed to attend bid openings, the procedures for bid submission, receipt and opening was made open to the public so that all stakeholders, including civil society representative, and interested parties could attend the opening. But there is no system of monitoring of bid submission, receipt and opening by a civil society | | **Criterion is partially met.**<br>There is no system of monitoring of bid submission, receipt and opening by a civil society | | RPPA to consider independent monitoring of bid submission, receipt and opening by civil society organization for better transparency |
| **(e) Throughout the bid evaluation and award process, confidentiality is ensured.** | Throughout the bid evaluation and award process, confidentiality was ensured. Actually, Tender committees' members are trained trough inductions courses by RPPA where they receive courses on public procurement principles, their respective objectives and how they are implemented in practice; the course content covers also presentation on law and regulations on public procurement, where confidentiality and its coverage is emphasized. After the induction course tender committee members are aware of confidentiality as being paramount. Only tender committee members dealing with a determined bid evaluation are allowed to have access to the documents throughout the process and no oral communication is allowed between bidders and the PE. Having mentioned the above practice, the assessment found in all cases where PEs used competitive bidding, confidentiality was observed throughout the bid evaluation and award process. | | **Criterion is met** | | |
| **(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.** | There was no other indication in assessed cases of use of other techniques other than compliance with principles of competition (without appropriate financial analysis of the market and the outcome of the procurement). Just routine activities complying with transparency, equal treatment of bidders etc. compliance with the law and regulations on public procurement on the use of open competitive method, publication of procurement plan, publication of bid invitation (or solicitation of proposal) and bidding documents based on current standards with clear requirement guaranteeing competition (clear specifications and other terms and | | **Criterion is partially met**<br>There is need of using other techniques like taking into account life cycle costing to achieve value for money. | | The RPPA should promote other techniques that may enable PEs to achieve value for money |

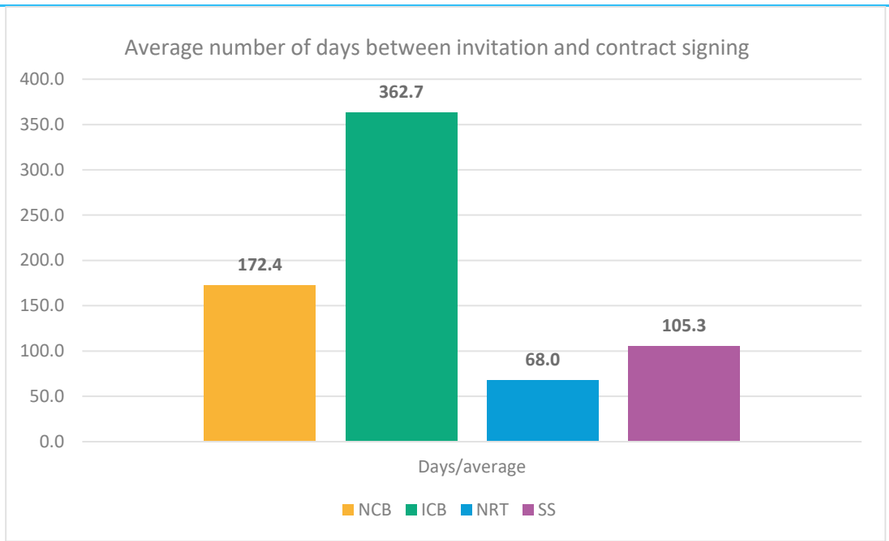


*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

<table>
<tr><td></td><td>conditions securing agreed quality and quantity, delivery period), bid (or proposal) opening with the access of the public, publication of contract awards (for cases conducted through e-procurement system and other few cases on some PEs websites), assurance of bidders rights to claim against malpractice, that prevented cases from financial risks and promoted value for money. In brief the assessed cases complied with legal, regulations and standards, but the assessment did not record any other technique for the purpose of increasing value for money what is required by national procurement law, no other techniques assessed to have been applied to determine best value for money based on the criteria stated in the procurement documents and to award the contract.</td><td></td><td></td><td></td><td></td></tr>
<tr><td>(g) Contract awards are announced as prescribed.</td><td>Criterion is not met Except contracts processed through e-procurement system, contract awards for sampled cases were not announced as prescribed, only bidders who participated in the processes may have received notification. Verification on respective websites of sampled entities (showed that contract awards were not published), meaning that contracts which were processed off line are unknown from the public.</td><td></td><td>Criterion is partially met<br>Contracts processed offline were not published</td><td></td><td>All contract awards whether online or offline needs to be published</td></tr>
<tr><td>(h) Contract clauses include sustainability considerations, where appropriate.</td><td>. As mentioned above in this assessment procurement practice in Rwanda focuses more on compliance than on efficiency or meeting sustainability considerations Control mechanisms in place have led and maintained practitioners in this way (e.g. OAG reports and follow up made by Parliament Through PAC and consequent prosecutions). There were no specific contract clauses including sustainability, this is due to lack of such clauses as a separate section in standards contracts</td><td></td><td>Criterion is partially met.<br>There were contract clauses on compliance to labor, safety and environmental as required by law but not a specific section to cover sustainability as per international practices</td><td></td><td>Future Standard contract should provide clauses for sustainable considerations, where appropriate as a separate section to cover Environmental, Social, Health and Safety aspect and related aspect as per international practices</td></tr>
<tr><td>(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.</td><td>Contract clauses did not provide for incentives for exceeding defined performance levels. Contrary there are usually penalty clauses and threat of the seizure of performance guarantee which has financial consequences on the contractor (or supplier) that discourage bad performance or failure to perform or induce contractor and supplier (particularly SME) in making forged documents or abandoning contract execution in course. Measures that keep the contractor in substandard behavior. Therefore, there is failure of dissuasive measures as mitigating factors of risk of non-performance. But there are</td><td></td><td>Criterion is partially met.<br>Contract clauses did not provide for incentives for exceeding defined performance levels.</td><td></td><td>Standards contracts should provide for incentive for timely excellent performance (that exceed expectations about agreed terms like time, quality and costs) (e.g. a % of bonus)</td></tr>
<tr><td>(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *<br><br>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):<br>- average time to procure goods, works and services<br>number of days between advertisement/solicitation and contract signature (for each procurement method used)<br>- average number (and %) of bids that are responsive (for each procurement method used)<br>- share of processes that have been conducted in full compliance with publication requirements (in %)<br>- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)<br>Source for all: Sample of procurement cases.</td><td>• The criteria is partially met as average time to procure goods, works and services were very high compared to a norm of award within initial validity
<table>
<tr><td>Methods</td><td>Days/average</td></tr>
<tr><td>NCB</td><td>172,4</td></tr>
<tr><td>ICB</td><td>362,7</td></tr>
<tr><td>NRT</td><td>68,0</td></tr>
<tr><td>SS</td><td>105,3</td></tr>
</table>
NCB- National Competitive Bidding; ICB- International Competitive Bidding; NRT- National Restricted Tender SS- Single -Sourcing<br>• average time to procure goods, works and services
<table>
<tr><td>Type of procurement</td><td>Numb of cases assed</td><td>Average time (days)</td></tr>
<tr><td>Consultancy services</td><td>21 cases assessed</td><td>327,8</td></tr>
<tr><td>Goods</td><td>33 cases assessed</td><td>289,1</td></tr>
<tr><td>Works</td><td>23 cases assessed</td><td>376,9</td></tr>
<tr><td>Other services</td><td>4 cases assessed</td><td>491,7</td></tr>
</table>
number of days between advertisement/solicitation and contract signature (for each procurement method used</td><td>Please see column on the left</td><td>Criterion is partially met<br>As average time to procure goods, works and services were high compared to a norm of award within initial validity</td><td></td><td>RPPA to monitor timely award of contract and seek feedback from Procuring Entities on constraints face by them</td></tr>
</table>



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




- average number of bids that are responsive (for each procurement method used)

| Methods | Numb of cases found | Average time (days) | average number of bids that are responsive |
|---|---|---|---|
| NCB | 69 | 172,4 | 4.6 |
| ICB | 3 | 362,6 | 6 |
| RT (Short List) | 1 | 68 | 3 |
| SS | 4 | 105,2 | N/A |
| Force Account | 3 | N/A | N/A |
| Community Participation | 1 | N/A | N/A |
| | 81 | | |

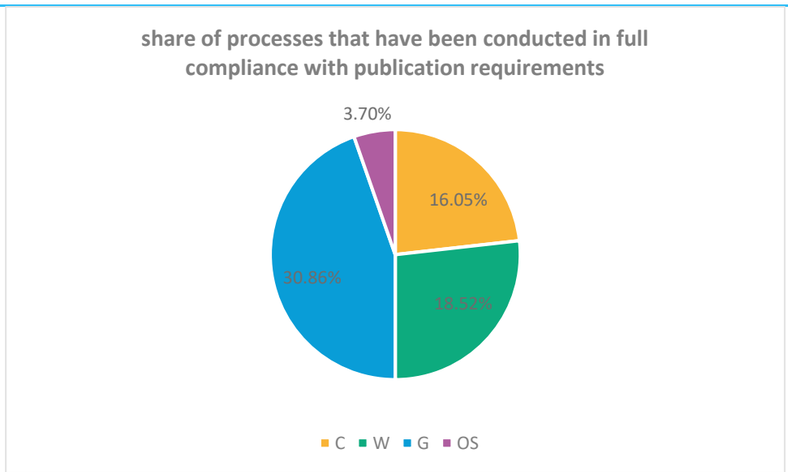
- share of processes that have been conducted in full compliance with publication requirements (in %)

24.6% of tenders were not in full compliance with publication requirements; 69,1% have been conducted in full compliance with publication requirements; and 6.1% contracts were awarded trough non-competitive (SS, Force Account and community participation).

| Type | numb of compliant/method | % |
|---|---|---|
| C | 13 | 16,05 |
| W | 15 | 18,52 |
| G | 25 | 30,86 |
| OS | 3 | 3,70 |
| | 56 | 69,14 |



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




number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time

| Competitive method | Number of processes | Number of successful processes (awarded) | % of successful processes (awarded) | No. of processes failed to conduct under the initially planned procurement method | % of processes failed | No. of processes cancelled | % of processes cancelled | Number (% ) of processes awarded within timeframe |
|---|---|---|---|---|---|---|---|---|
| Open tenders | | | | | | | | |
| ICB | 3 | 3 | 100 | 0 | 0 | 0 | 0 | 0 ( o%) |
| NCB | 74 | 74 | 100 | 0 | 1 | 1 | 1,3 | 30 ( 40,5%) |

9(c) Contract management

| 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) Contracts are implemented in a timely manner.***<br><br>**Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)** | The criterion is met partially some contracts assessed were implemented in timely manner, while other were not. The assessment was conducted on a sample of 81 cases; 25 (30.8%) contracts had time overrun, 37 (45.6%) had not, 14 (17.2%) contracts did not have clear or complete data, 3 (3.7%) contracts were executed through force accounts and 1 (1.2%) contract was not executed. Contract management constitutes a suffering area in public procurement and most of time the cause is lack of capacity to manage contract properly. | Please see column on the left | **Criterion is partially met**<br>The identified weakness is shared between contractors/suppliers and public officials involved in contract management. Another reason found in the cases assessed, we found cases where selection entity was different from the one which was in charge of payment and both being different from the user entity (which was the actual procuring entity). The intervention of multiple entities may cause unnecessary bureaucracy and delay processes. Another area of weakness is the disputes management, people involved is contract management lack skills of dealing with issues arising during the contract execution, especially the lack of capacity of risks assessment (costs, time, public trust, etc.) when rises a disagreement between the procuring entity and the contractor/supplier/consultant. The general tendency is to persevere without any assessment of consequences. | | Improve capacity of procuring entities on contracts management by suitable staffing and training |



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

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|---|---|---|---|---|---|
| **(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.***<br><br>**Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)** | The assessment found that 68 contracts (83.9%) had measures for inspection, quality control, supervision of work and final acceptance of products where goods, services or works were received in good quality and appropriate quantity, 6 contracts (7.4%) had not report showing how receptions were done, 3 (3.7%) contracts were executed under force account method, 1 contract was not executed while the assessment did not find information on 3 contracts (3.7%). The assessment found that in most of cases which are among the 83.9% the procuring entity was represented by more than 3 persons at the reception of goods, works or consultancy deliverables. | Please see column on the left | **Criterion is partially met**<br><br>Inspection, quality, control, supervision of work and final acceptance possesses the final key to ensure that the procuring entity is satisfied and the public who is the end beneficiary of the procurement will be satisfied. Briefly, they are the last musts that should ensure the effectiveness of procurement. This stage may cause loss to the procuring entity and render all previous stages unfruitful. In every contract, inspection or control of quality and quantity for final acceptance should be ensured and evidenced. . | | |
| **(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**<br><br>**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).** | On total contracts executed, the assessment found 51 contracts (representing 62.9%) whose invoices were paid within 45 days as required by PPL, while 14 contracts (representing 17.5%) were delayed, for 12 (14.8%) contracts assessed PEs did not have information as payment files are elsewhere , so the Assessment did not find that information. Normally the PPL provides for 45 days maximum to pay invoices, the official policy of the Government is to implement this provision. Penalty to employee of procuring entity for delayed payment was provided in the new public procurement law (art.185,2°). RPPA is taking action on some cases of delayed payment as advocacy measure as per Annual Activity Report | Please see column on the left | **Criterion is partially met**.<br>There was evidence of timely payment for 62.9% of the contract. | | RPPA to monitor timely payment of invoices and in case of delays interest of delayed payment be made, not just penalty to the officer who delays or refuses to pay without reasonable ground |
| **(d) Contract amendments are reviewed, issued and published in a timely manner.***<br><br>**Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)** | Some contract managers (from both sides PEs and contractors or suppliers) do not perform well the contract management duty. We remember some explanations, especially for works contracts where they claim that the study was not well done (or specifications were not clear), may it be true, some of these issues are brought when seemingly they should have been foreseen) Number of sampled cases were amended, but most of them remained unamended. Amendments which were done were not published. | 75.3% of contracts assessed were not amended and 16% were amended and for 4.9% contracts amendment was not possible due the nature of contracts (force account 3 contracts and one Community Participation contract) and 3.7% of contracts remained without clear data for assessment.<br>The average increase of contract was 11% | **Criterion is partially met**<br>Under this indicator procuring entities do not keep track of timely implementation as part of contract clause; they do not evaluate time cost (time is money). When the duration of contract lapse and both parties continue to execute contractual obligations, no one consider that as a de facto amendment. Therefore, the statistics presented here do not account that kind of modification (amendment) of contract. Instead, the procuring entity is only applying penalties when invoices come. Penalties are not the goal (final end) of procurement; they should be avoided as much as possible with diligence ensuring that the execution plan (provided by PPL) is adequately done and respected. Most of procuring entities are acting at very beginning of the execution, they wait and act when it comes to apply penalties. | | Contract amendments to be ensured in a timely manner to be monitored through e procurement system |
| **(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.** | The Annual Activity Report published by RPPA is a good source of information on procurement statistics. | | **Criterion is met.** | | |
| **(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.***<br><br>**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) Source for all: Sample of procurement cases.** | If we consider in general terms stakeholders; certainly, relevant external stakeholders have opportunities for direct involvement in public procurement. Regional and international organizations (COMESA, AFDB, DFID, Transparency International Through Transparency Rwanda, have participated in assessment of public procurement legal framework (2007) and to some extent the recommendations of some institutions were the core justification of 2013 amendments. On the field of practice some stakeholders (NGOs) which participates in some development activities in rural area, especially at the local in Government level, take part in planning activities (including procurement aspects). Some procurement managers in PEs consider representatives or co-managers of projects (where the practice exists) as a direct involvement in procurement. On the other hand, there is no tangible involvement of local civil society, In data collected District declared that Civil society has been participating at the procurement planning stage, some entities functioning at the central government level affirmed that the Civil society has fully participated in the process of the sampled cases. | The data collected show that Civil society members were involved in 29.6% of contracts in planning, selection and contract management processes, while they participated in procurement plan only in 37 % | **Criterion is partially met**<br>There are limited opportunities for direct involvement of civil society in bid/proposal opening, evaluation and contract award and contract implementation. There were limited instances of TI, Rwanda being involved at district level | | RPPA in consultation with Rwanda Development Board and Procuring Entities should enhance engagement of CSO for their meaningful participation at all stages of procurement cycle including in contract implementation. |



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

| | | | | | |
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| | | contracts (but no sample was provided) | | | |
| **(g) The records are complete and accurate, and easily accessible in a single file.***<br><br>***// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):***<br>***- share of contracts with complete and accurate records and databases (in %)***<br>***Source: Sample of procurement cases**** | The assessment found number of records, but there some which appeared to be confidential, such as payment information while it is not know as part to be kept in confidentiality. Records are not in a single file some payments, if not all, most of them are executed by different entities from the PEs; and payors keep the records for themselves. There is a hope that with the improvement of the use of e-procurement system procurement records could be found in the future in one place or file. | Please see column on the left | **Criterion is partially met**.<br>Records are not in a single file | | A system to be put in place where all records are available in a Single file. A formal system of contract closing procedure (which requires availability of all documents for the entire procurement cycle) to be instituted to make it possible. |

## 10. The public procurement market is fully functional

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

| 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 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.***<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):**<br>**- perception of openness and effectiveness in engaging with the private sector (in % of responses).**<br>**Source: Survey.** | 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?", only 11.11% of respondents indicated "always"; 25.93% indicated "usually";33.33 % indicated "sometimes"; 14.81% indicated "rarely" and 14.81% "never". Therefore, 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 limited<br><br>However, based on feedback from PSF the situation is as under:<br><br>• The Rwanda Private Sector Federation comprises of 70+ Associations under 10 Chambers. The assessment team met with PSF Director of Advocacy, on 28 February 2019 and discussed on PSF's perception on Rwanda public procurement legal framework and practices and the regulatory body, RPPA;<br>• The PSF is given the opportunity to take part in consultation during the drafting/amendment of procurement laws. The PSF proposed and pushed for "Made in Rwanda" clause to be included in the public procurement law and succeeded. PSF is also given access to directly give its comments on the procurement laws to the parliament. Currently the PSF is reviewing the draft "Partnership Law"; | Please see figures in the left column on results of perception survey | **Criterion is partially met**<br>Based on the results of the perception survey evidence of an open dialogue with the private associations including a transparent and consultative process when formulating changes to public procurement framework is weak.<br><br>It appears the above evidence is based on limited data as based on PSF perception as an association there is some evidence of dialogue and partnership with private sector.<br><br>However, there is lack of a formal mechanism on partnership and absence of ethics and integrity related training programs | | Government to establish a formal mechanism and enhance its dialogue and partnership with private sector both on changes to legislative process and for information and training programmes tailored to the needs of small businesses as well to support supplier diversity and it should include a module on ethics and integrity in public procurement |
| **(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.** | Based on the Strategic Plan of RPPA for 2018/19 to 2020/21, there is no indication of RPPA or the government getting into the role of building capacity among private companies including small business.<br><br>As per, RPPA Annual Activity Report of 2017- 2018, one day public procurement awareness meeting on the topic: "The Role of public procurement in development of national economy" was held in Kigali and four provinces with more than 600 participants of private sector. These events were opened by respective Governors and Mayor of the City of Kigali, District Executive Secretary by Province and City of Kigali, and attended by representatives of PSF, Transparency International (TI) and other government official like e- Procurement Project and Rwanda Revenue Authority. Presentation was given by representatives of RPPA (Total cost of event was Rwf 15.142 million).<br><br>No formal programme or training is available for small businesses to help new entrants into the public procurement marketplace.<br><br>However, based on feedback from PSF RPPA organized training specific to the PSF on public procurement system including on E-Procurement | | **Criterion is partially met**.<br>There is no formal programme in place to build capacity of private sector | | Covered in recommendation 10(a) a |



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

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

| 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 private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.***<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):**<br>**• number of registered suppliers as a share of total number of suppliers in the country (in %)**<br>**• share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)**<br>**• total number and value of contracts awarded to domestic/foreign firms (and in % of total)**<br>**Source: E-Procurement system/Supplier Database.** | • The PSF perception towards RPPA is positive, in terms of its capacity and in reaching out and involving the private sector on every public procurement -related issues;<br>• RPPA organized training specific to the PSF on public procurement system including on E-Procurement;<br>• Despite, the private sector expressed their dissatisfaction on missing provision in the law that would require foreign firms to inter joint venture with local firms for large tenders. Some of the challenges pointed out by the PSF are:<br>- PSF has a perception that E-Procurement could be a challenge for small enterprise. Some small enterprises have already been complaining about their bids not reaching RPPA (the E-Procurement portal), though seemingly has been addressed now,<br>- Technological challenges: when the system gets down, the bidders lose all the data and redo,<br>- Payment delays are an issue. There are frequent complaints from the private sectors that interim payments are commonly delayed to the extent they default with Bank loans.<br>No data available on share of registered supplier that are awarded contracts. No data available on number and value of contracts awarded to domestic/foreign firms | Please see data on the left column. | **Criterion is partially met**,<br>As there are constraints for participation through e- procurement system due to technological challenges | | RPPA to discuss with Private sector associations on constraints faced by them and take corrective measures to improve competition |
| **(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.**<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):**<br>**- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).**<br>**Source: Survey.** | Based on the results of survey in response to question " Do you think that the following conditions in public procurement market are met for participation for public contracts?", based on 26 responses, about 40-60% of participants indicated on major constraints for participation, as access to financing ( 38.46%), procurement methods and procedures that are proportionate to the risk and value in question (44 %), procurement rules are simple and flexible ( 50%), contracting provisions that do not fairly distribute risks ( 58.31%) and lack of effective appeals mechanism and dispute resolution( 56%) . About 62 % of respondents identified absence of fair payment provisions as constraint as it does not help offset cost of doing business with the government. | Please see column on the left | **Criterion is partially met**.<br>There is need to take measures that can improve access by the private sector to the government market place | | As at (a) above |

10(c) Key sectors and sector strategies

| 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) Key sectors associated with the public procurement market are identified by the government.** | There is no evidence of sector market analysis to determine sector specific risks and government's scope to influence specific market segment | Not applicable | **Criteria is not met**<br>As there is no evidence of sector market analysis | | Based on government's priority spending areas, key sectors to be identified for sector market analysis to strengthen competition, integrity, sustainability and innovation in public procurement |
| **(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the** | No such assessment is carried out by the government | Not applicable | **Criterion is not met**<br>As indicated above | | As in (a) above |



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

| | | | | | |
|---|---|---|---|---|---|
| **government, and sector market participants are engaged in support of procurement policy objectives.** | | | | | |



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

# 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:** 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) A transparent and consultative process is followed when formulating changes to the public procurement system.** | Civil society organizations (CSO) in Rwanda remain weak due to a variety of constraints. | Not applicable | **Criterion is partially met**.<br>Civil society organizations (CSO) in Rwanda remain weak due to a variety of constraints | Yes | Government to take measures to enhance consultation |
| **(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.** | The Capacity and Development Unit has included in their targets in the strategic plan 2018-2021 to organize and conduct consultative meetings with various stakeholders in order to identify inadequacies in the current public procurement law and regulations. | Not applicable | **Criterion is partially met**<br>No evidence of build capacity of relevant stakeholders including CSO | | Government to take measures to enhance capacity of CSO |
| **(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.** | The CSO is not so well organized and need training in procurement field before playing adequately his role. Transparency International is the entity which is involve deeply in combatting the corruption. This imply that they members had knowledge in public procurement. This Institution has been consulted during the drafting of the public procurement law. But it is not clear if input, comments and feedback received from civil society is considered by the Government | Not applicable | **Criterion is partially met**<br>To clarify with CSOs if their views are taken into account | | Feedback of CSO to be taken into account |

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

| 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) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.** | The e-procurement system is accessible to all stakeholders to access the information before taking the decision to participate to a tender. The deadline is clearly indicated and the documentation easily accessible. The e-procurement team also provide a short training and information regarding the website whenever the bidder requests it. However, there is absence of Open Contracting Data Standards (cross refer to sub-indicator 7(a)) | Not applicable | **Criterion is partially met.**<br>The e-GP system does not publish data on machine-readable formats. There are some report formats available, but not adequate to get a complete picture of procurement sector.<br>Current e-GP system does not support OCDS and also does not have Comprehensive Business Intelligence system. | | Recommended to develop and integrate a comprehensive business intelligence tool with visual representation of data and infographics. It is recommended to incorporate OCDS for structured data dissemination to facilitate transparency, citizen engagement |

### 11(c) Direct engagement of civil society

| 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 legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:**<br>**• the planning phase (consultation)**<br>**• bid/proposal opening (observation)**<br>**• evaluation and contract award (observation), when appropriate, according to local law**<br>**• contract management and completion (monitoring).** | **The Criteria not met.**<br>• The legal framework does not provide for the citizens to participate in the planning process of the procurement phase<br>• With the e-procurement system all process in done online. The opening and the evaluation are done electronically<br>• There was no provision in the law for the citizens to participate or monitor contract management and completion.<br>(With the e-procurement system the transparency of the awarding of tenders have been improved) | Not applicable | **Criterion is not met.**<br>The legal framework does not provide for citizens engagement in planning, selection and implementation phases of procurement | Yes | Procuring entities should allow citizens to participate to the planning of their activities.<br>The execution of the contract citizens/CSO should be invited to monitor the execution of the works including through application of innovative techniques like geotagging and social audits. |



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

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|---|---|---|---|---|---|
| **(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.** | RPPA has Private Sector representative as Board members and the National Independent Review Panels have also Private Sector and CSO representative (PPL Article 13). They are consulted every time public procurement has to improve the regulation and policies. However, there is limited involvement of citizen/CSO in procurement process at district level<br>However, citizen engagement should be enhanced In needs assessment and contract monitoring including any gaps in e-procurement implementation | Not applicable | **Criterion is partially met**<br>No citizen engagement in needs assessment and contract monitoring including identification any gaps in e-procurement implementation | | Citizen's involvement to be enhanced as indicated at (a) above including any gaps in the implementation of e-GP system. Rwanda Development Board may support a policy on engagement of CSO and citizen |

## 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:** 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) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies** | The Organic Law on State Finances and Property and the Ministerial Order N° 003/17/10/TC of 27/10/2017 set the regulation for Internal Audit and Audit Committees. As per these regulations, Public entities , central or decentralized, shall have an Internal audit function (i) to enhance and protect the value of public entities by providing objective assurance in risk monitoring; and (ii) to advice public entities on their statutory and fiduciary responsibilities by providing an independent, objective and systematic evaluation of whether the entity's risk management, control, and governance processes, are properly designed, comply with laws and regulations, are effective and efficient in achieving the entity's objectives. The Internal audit performs assignments stemming from financial audit, compliance audit and performance audit. Every Public entity had an Internal Auditor in charge of ensuring that financial transactions are done as recommended by the law.<br>Internal Procurement audit is done by RPPA through the Monitoring and Audit Unit. The Public Procurement Law provides also that all procuring entities should have at least one Procurement Officer ensuring that the procurement process is well done (article 11 of the PPL).<br>The external procurement audit is carried out by the Office of the Auditor General (OAG). | Not applicable | **Criterion is met.** | | |
| **(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** | A clear mechanism for the of monitoring the Internal audit and external audit recommendations exist. The mechanism involves the Audit Committee and the Parliament. The overall implementation rate is above the average but require continuous and monitoring enhanced. Efforts.<br>Regarding the procurement audit, The Monitoring and Audit Unit of RPPA ensures the follow up of contract execution and receives different reports related to all procurement procedures. It carries out audit operations in different procuring entities.<br>These reports are published on RPPA website and the e-procurement website. | Not applicable | **Criterion is met.** | | |
| **(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation** | Different institutions are in charge of regular controls to timely mitigate any identified risks as said in 12 (a) (a): RPPA, the procurement entity Internal Auditor and the Office transactions and include as well of the Auditor General. | Not applicable | **Criterion is met.** | | |
| **(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** | The OAG is the Supreme Audit Institution. The OAG was established by Law n° 79/2013 of 11/09/2013 determining the mission, organization and functioning of the office of the Auditor General of State finances. The Constitution of the Republic of Rwanda (Article 165) mandates the Auditor General of, (i) auditing revenues and expenditures of the State as well as local administrative entities, public enterprises, parastatal organizations and government projects domestically or externally financed; and (ii)auditing the finances of the institutions referred to above, particularly verifying whether the expenditures were in conformity with laws and regulations.<br>The OAG applies audit standards compliant with international audit standards. The OAG conducts audit engagements in accordance with the International Standards of Supreme Audit Institutions and the Code of ethics consistent with the Code of Ethics of INTOSAI.<br>There is appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management | Not applicable | **Criterion is met.** | | |
| **(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)** | The Auditor General has to submit to each Chamber of Parliament, prior to the commencement of the session devoted to the examination of the budget of the following year, a complete report on the consolidated state accounts for the previous year indicating the manner in which the budget was utilized.<br>The OAG applies audit standards compliant with international audit standards. The OAG conducts audit engagements in accordance with the International Standards of Supreme Audit Institutions and the Code of ethics consistent with the Code of Ethics of INTOSAI. | Not applicable | **Criterion is met.** | | |



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

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|---|---|---|---|---|---|
| | The OAG produces the States consolidated and MDAs audit reports which are discussed by the Parliament. The Public Account Committee play a critical role and Head of Public Entities are usually invited for hearings on the management of the public resources. The hearings are public (except for security organs) and channeled through the Parliament radio and other public or private radios and in some cases on TV. | | | | |
| **(f) clear mechanisms to ensure that there is follow-up on the respective findings.** | There is a clear mechanism for the of monitoring the Internal audit and external audit recommendations exist. The mechanism involves the Audit Committee and the Parliament. The overall implementation rate is above the average but require continuous and monitoring enhanced efforts.<br><br>Regarding the procurement audit RPPA ensure a close monitoring of procuring entities identified as weak by them and also by the OAG in procurement field. RPPA provide trainings performance and ensure that internal committee are receiving full package of knowledge and skills in procurement field.<br><br>Some the critical indicators from PEFA 2016 is given below for reference: | Please see data on the left | **Criterion is met.** | | |

| PI-8 | Dimension | Score | Justification |
|---|---|---|---|
| **Performance information for service delivery** | | **D+** | **Scoring Method M2** |
| 8.1 | Performance plans for service delivery | D | A framework of performance indicators is not in place for the ***majority*** of MDAs. |
| 8.2 | Performance achieved for service delivery | C | The Annual Budget Execution report captures performance results for the ***majority*** of service delivery functions. |
| 8.3 | Resources received by service delivery units | D | No system currently exists to monitor resources received by service delivery units as planned. |
| 8.4 | Performance evaluation for service delivery | D | Surveys by TI-Rwanda are independent performance evaluations of service delivery, but while recommendations for enhancing delivery are included, they do not cover 25% of expenditure. |

| PI-25 | Dimension | Score | Justification |
|---|---|---|---|
| **Internal controls on nonsalary expenditure** | | **A** | **Scoring Method M2** |
| 25.1 | Segregation of duties | A | Appropriate segregation of duties exists throughout the process, in accordance with the OBL, which specifies clear responsibilities. |
| 25.2 | Effectiveness of expenditure commitment controls | A | Expenditure commitment controls remain in place that effectively limit commitments to actual cash availability and approved budget allocations. |
| 25.3 | Compliance with payment rules and procedures | B | The degree of compliance is good and is improving but some variations do occur and are reported. |

| PI-26 | Dimension | Score | Justification |
|---|---|---|---|
| **Internal audit** | | **C+** | **Scoring Method M1** |
| 26.1 | Coverage of internal audit | A | Internal Audit is operational at all government entities. |
| 26.2 | Nature of audits and standards applied | B | Internal audit in MDAs follow audit plans (approved by Audit Committees and copied to the GCIA) and are focused on evaluations of the adequacy and effectiveness of internal controls. |
| 26.3 | Implementation of internal audits and reporting | C | While IA is decentralized to MDAs and Districts, the GCIA monitors the implementation of individual plans of IA units. |
| 26.4 | Response to internal audits | C | Implementation of audit recommendations at budget agencies averaged 70% in the 31st March 2015 GCIA quarterly report, but there is a growing number of MDAs implementing 100%. |



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

| PI-30 | Dimension | Score | Justification |
|---|---|---|---|
| **External audit** | | **D+** | **Scoring Method M1** |
| 30.1 | Audit coverage and standards | B | OAG uses INTOSAI standards when auditing CFS, and covers ***most*** government revenue and expenditure, assets and liabilities: this has been the practice for the last three FYs. |
| 30.2 | Submission of audit reports to the legislature | C | OAG has submitted the audit reports to the legislature within 8 months. |
| 30.3 | External audit follow-up | C | OAG reports that only a proportion of previous year's recommendations are fully implemented. |
| 30.4 | SAI Independence | D | While many of the requirements are met, financial independence is not: the OAG's budget is controlled by MINECOFIN |

| PI-31 | Dimension | Score | Justification |
|---|---|---|---|
| **Legislative scrutiny of audit reports** | | **B+** | **Scoring Method M2** |
| 31.1 | Timing of audit report scrutiny | C | All the audited public accounts for the period under review have been fully examined and adopted by the Legislature, within 8 months from receipt of the reports. |
| 31.2 | Hearings on audit findings | A | Parliament has been consistent in the scrutiny of audited public accounts submitted by the Auditor-General. It has conducted in-depth hearings covered by radio and national television coverage and by senior officials /ministers and alike linked to audit findings. |
| 31.3 | Recommendations on audit by the legislature | B | The PAC recommends actions to be taken, and those endorsed by Parliament are formally issued to the executive for action. The PAC keeps track of follow-up actions and conducts field visits. Nonetheless, not all recommendations are implemented. |
| 31.4 | Transparency of legislative scrutiny of audit reports | A | All hearings are conducted in public (except security organs). Committee reports are debated in the full chamber of legislature and published on official website. |

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

| 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) There are written procedures that state requirements for internal controls, ideally in an internal control manual.** | The RPPA has issued an internal procurement control and audit manual in 2010 which states the requirement for internal control procedures. | Not applicable | **Criterion is met.** | | |
| **(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.** | The RRPA internal procurement control and audit manual provides a checklist of self-audit and monitoring to guide procurement officers to assess their systems. Such procurement audits are conducted and reported in RPPA Annual Activity Report. OAG also conducts a rigorous performance and compliance audit as evidenced in their Report of the Auditor General of State Finances for the year ended June 30, 2018. But it is not clear if there is a protocol or MOU between RPPA and OAG on exchange of information on audit. Based on discussion with RPPA, it is understood that OAG has a mandate to oversee the acts of executive branch which is RPPA (MINECOFIN) and therefore, their activities on audit have different focus and area of responsibility. | Not applicable | **Criterion met. Improvements needed**<br>But it is not clear if there is a protocol or MOU between RPPA and OAG on exchange of information on audit | | Suggestion for improvement<br><br>Collaboration and exchange of information needed between RPPA and OAG |
| **(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.***<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion** | Article 166 of the Constitution stipulates that the Auditor General shall each year submit to each Chamber of Parliament, prior to the commencement of the session devoted to the examination of the budget of the following year, a complete report on the consolidated state accounts for the previous year indicating the manner the budget was utilized. The specialized procurement audit is done by RPPA. Based on the report of OAG it is seen that OAG reports covers issues beyond compliance and there are substantive finds and recommendation to cover procurement performance and contracts management in OAG report. So the percentage could be considered as 100% | Based on RPPA Annual Activity Report of 2017-18, the procurement audit was planned for 70 Procuring Entities but actually audited for 68 for 1276 tenders for a value of Frw 390.793 trillion. There is no data to differentiate OAG report as performance or specialized procurement audit, but based on the nature of findings | **Criterion is met.** | | |



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

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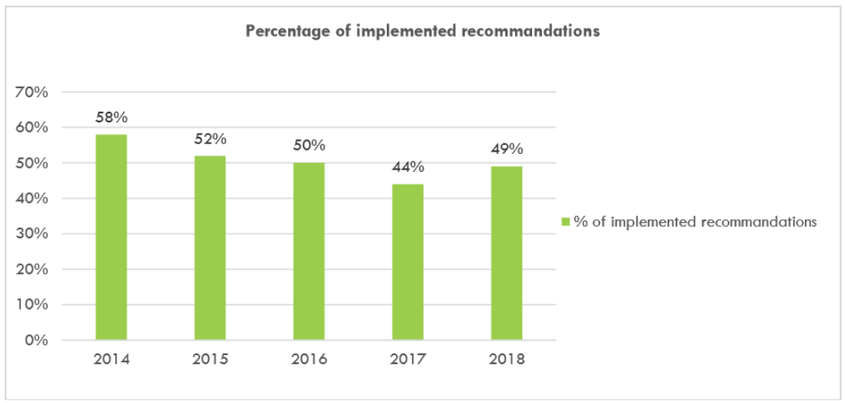
| **(c):**<br>**- number of specialised procurement audits carried out compared to total number of audits (in %).**<br>**- share of procurement performance audits carried out (in % of total number of procurement audits).**<br>**Source: Ministry of Finance/Supreme Audit Institution.** | | and recommendation, the share of performance/procurement audit could be considered as 100% | | | |
| **(d) Clear and reliable reporting lines to relevant oversight bodies exist.** | It is not clear if the audit carried out by OAG and by RPPA are harmonized and there is a forum to make these audits mutually reinforcing | Not applicable | **Criterion is met.**<br>Improvements needed<br>It is not clear if the audit carried out by OAG and by RPPA are harmonized and there is a forum to make these audits mutually reinforcing | | Suggested improvements<br>Need for a formal mechanism of collaboration between RPAA and OAG to make audit mutually reinforcing |

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

| 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) Recommendations are responded to and implemented within the time frames established in the law.***<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):**<br>**- Share of internal and external audit recommendations implemented within the time frames established in the law (in %).**<br>**Source: Ministry of Finance/Supreme Audit Institution.** | **The criterion is partially met**. The submission deadline (9 months after the year closure) for State consolidated audited financial statement to the Parliament appears not effective. Since financial information relevance for decision making depends on their timeliness, nine months after the closure of the fiscal year, information may have evolved, and a new fiscal year is nearby. Furthermore, the Auditees have limited time (3 months) to address the audit findings before the end of the following year.<br><br>Based on the Report of the Auditor General of State Finances for period ending 30 June 2018 "The trend on the status of implementation over the past 5 years shows that the rate of implementation of Auditor General's recommendations is still low. The average rate of implementation stood at 49% in 2018, representing 5% improvement from the prior year 2017. However, it is noted that government entities are still shy of the all-time high implementation rate of 58% of 2014" The following table is extracted from Auditor General's Report ending 30 June 2018:<br><br>  <br><br><br>Based on the table under Sub-indicator 12(a) above as per PEFA Report of 2016, the score under PI-26 on implementation of internal audit report was "C", the response to internal audit was "C". On the follow-up of External Audit under PI-30 as depicted in table under sub-indicator 12 (a), the score was "C" | Please see data on the left | **Criterion partially met**. There were gaps on implementation of recommendations as per the report of OAG for 2018 and low score on follow-up of internal and external audit recommendations as per PEFA report of 2016 | | Auditor General's recommendation and also PEFA recommendations to be followed |



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

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| | | | | | |
| **(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.** | The report by Auditor General is very detailed with regard to implementation and enforcement of audit recommendation. | | **Criterion is met.** | | |

12(d) Qualification and training to conduct procurement audits

| 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) 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.***<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):**<br>**- number of training courses conducted to train internal and external auditors in public procurement audits.**<br>**Source: Ministry of Finance/Supreme Audit Institution.**<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):**<br>**- share of auditors trained in public procurement (as % of total number of auditors).**<br>**Source: Ministry of Finance/Supreme Audit Institution.** | As indicated above a part of procurement audit is carried out by qualified staff of RPPA. Based on the Report of the Auditor General for year ending June 30, 2018, it is seen that one of the key focus area of strategic plan is continued capacity building and training of OAG staff covering Graduate Recruitment Plan ( GRP)- 19 staff recruited from the university, professional training and development - OAG has 47 staff with professional qualification, OAG staff pursuing profession courses, 73 staff were in preparation for June 2019 sitting and there are in-house training. Then under Continuous Professional Development, 132 staff participated in various workshop with focus *inter alia* on report writing, strategic planning and enhancing performance audit. It appears There is no specific training on public procurement audit<br><br>Share of auditor's trained in public procurement- No data available | Please see data on the left | **Criterion is partially met**.<br>Based on available information it is seen that auditors are adequately trained., However, it is noted that OAG staff need to collaborate with RPPA on devising and conducting specific course on procurement audit in additional to their general training to conduct audit | | Auditors to be trained in the area of public procurement |
| **(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.** | Auditors are selected by the Ministry in charge of Labour like other public servants. The selection is made through writing exams and interviews. However, it is not clear if auditors are trained on procurement or there is collaboration and exchange of staff between OAG and RPPA and if procurement specialist or consultants support OAG office | Not applicable | **Criterion is partially met**.<br>It is not clear if auditors are trained on procurement or there is collaboration and exchange of staff between OAG and RPPA and if procurement specialist or consultants support OAG office | | Collaboration and exchange of information between OAG and RPPA to be enhanced |
| **(c) Auditors are selected in a fair and transparent way and are fully independent.** | Based on Report of Auditor General and as indicated at (a) above, the recruitment is carried out under Graduate Recruitment Plan (GRP) and such staff go through an induction program to equip them with knowledge and skills before deployment for audit | Not applicable | **Criterion is met** | | |



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

## 13. Procurement appeals mechanisms are effective and efficient

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

| 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) Decisions are rendered on the basis of available evidence submitted by the parties.** | **Summary:** Decisions are rendered on the basis of available evidence submitted by the parties, which may include an oral hearing.<br><br>PP Regulations A.53 lists the contents of the request for review which includes information on the decision or conduct against which a review is requested and any other relevant document the panel may request from the complainant.<br>PP Regulations A.55 requires the National Independent Review Panel to send a request in writing to the procuring entity to provide the necessary documents in order to examine the substance of the complaint. Documents to be provided by the procuring entity within 5 working days (3 in the case of entities within Kigali City. Documents are submitted together with its arguments in response to the complaint (PP Regulations A.57).<br>Consideration may be paper based but there is the option for the National Independent Review Panel to invite both sides to a hearing before the members of the panel (PP Regulations 57). Bidders are entitled to be represented by a lawyer (PPL A.54). There is no equivalent right for procuring entity. Also, it is not clear if in case of complaints challenging the award decision, the proposed winner can be a party to the complaint proceedings. | Not applicable | **Criterion is met.** | | |
| **(b) The first review of the evidence is carried out by the entity specified in the law.** | **PPL A.51** provides that at any time from the publication of the tender to the signing of the contract a bidder may request a review in writing to the procuring entity. The procuring entity is required to provide a written decision on the request within 7 days, where grounded, indicating the corrective measures to be taken. | | **Criterion is met** | | |
| **(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. ***<br><br>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):<br>- number of appeals.<br>Source: Appeals body.<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions.**<br>**Source: Appeals body.** | **PPL A.53** provides that the decisions of the National Independent Review Panel are final and binding unless the decision has been reviewed by the court adjudicating the case on merit.<br><br>In practice the decisions of the Review Panel are executed (100%), unless they are appealed before Courts; and since 2007 there have been very few court cases (less than 5 five cases), but in the last three years there is no any appeal against decision of the IRP.<br><br>In one case, the PE refused to comply with the IRP decision in the FY 2017-2018.In another case, the PE tried to ignore the decision taken by the Review Panel and acted otherwise, the case was dealt with strong action of RPPA informed by the NIRP. RPPA used its power to force the concerned PE to execute the decision. | 100% of the decisions of the Review Panel are executed<br><br>**2017-2018**<br>Appeals received 68, [dossiers considered 71 (some from previous year)]<br>[2016-17 35 appeals, 2015-16 57 appeals, 2014-15 58appeals]<br>**Of 68 appeals received in 2017-2018:**<br>**51 admissible (75%)**<br>• 16 admissible and founded (24%)<br>  ○ 14 ordered re-evaluation, 1 suspended, 1 dismissed<br>• 35 admissible (considered) and unfounded (35%)<br>**6 terminated** appeals (9%)<br>**11 inadmissible -irregular** (16%)<br><br>Source: NIRP Annual Activity Report 2017-2018 | **Criterion is met.** | | |
| **(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.** | **Summary:** the time frames specified for submission and review of challenges should not unduly delay the procurement process or make an appeal unrealistic<br>(7 + 30 days, with one extension if necessary of 30 days)<br><br>Initial complaint is filed with the procuring entity which must make a decision in 7 days.<br>PPL A.52 sets out the timeframes for decisions to be made by the National Independent Review Panel; an initial period of 30 days, with one extension of 30 days.<br><br>In the event of a failure to reach a decision within the specific period the complainant may lodge his/her claim with the competent court.<br><br>Indeed, as per the statement of the criteria 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. | The average time of the Review Panel is acceptable. In 2015-2016 it was more or less 22 days; more or less 6 days in 2016-2017; more or less 28 days in 2017-2018 and more or less 28 days the last FY 2018-2019 (3 quarters).<br><br>The longest duration in 2015-2016 was 54 days. Out of a sample of 46 cases 10 cases spent between 30 and 39 days; 4 cases between 40 and 49 days and two cases between 50 and 59 days.<br>In 2016-2017 the longest time took 28 days; in 2017-2018, 15 appeal cases spent between 30 and 39 days, 6 appeal cases between 40 and 49 days and 2 cases between 50 and 59 days; in FY | **Criterion is met.** | | |



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

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| | Actually, the Public Procurement system has in place measures to mitigate that risk. When an appeal is submitted the E-Public Procurement System provided a way of pre-screening where the secretary checks the fulfilment of the admissibility requirements (as per article 54 of PP Regulations) such as: evidence of illegal acts or omissions; evidence of the decision of the first review made by the PE; whether the appeal was lodged within the time limit. The admissibility requirements intend to mitigate the risk of frivolous appeals and other events that can just delay procurement process (e.g. no provision of evidences of what we argue or grounds).<br><br>PPL says 7 days in the PE and 30 days which may be extended for additional 30 days does not mean that all appeals reach the extended number of days. In general, the average for review by NIRP is 29 days. We do not have data on the duration of review in the PE. But we assume the PEs handle the complaint as quick as possible as they are most concerned with the timely completion of the procurement process.<br><br>In addition to above, the NIRP meets every week and they can meet even twice if there is need to do so. If parties provide necessary and sufficient evidences concerning the case and if there is no need for hearings, the case can take as long as one (1) day.<br><br>The view of the NIRP is that the E-public procurement system shortened the duration in improving the clarity of the information which in return improved the clarity of complaints. The facility made easy the pre-screening phase (check of admissibility). | 2018-2019 (3 quarters) the longest duration was 45 days, 12 appeal cases spent between 30 and 39 days and 4 appeal cases took between 40 and 45 days. (Analysis from NIRP Report, 2015-2016; 2016-2017; 2017-2018 and three quarters of 2018-2019). | | | |

13(b) Independence and capacity of the appeals body
The appeals 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** |
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| **(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions** | **Independence of appeals body:**<br>**PPL A.12** The secretariat of the National Independent Review Panel is in the RPPA<br>**PPL A.14:** the National Independent Review Panel is provided with a budget by the RPPA<br>**A.13** Minister appoints National Independent Review Panel members.<br>**A.15** Minister dismisses National Independent Review Panel members for incapability, misconduct or poor performance.<br><br>**Individual panel members:** PP Regulations A.49 provide that National Independent Review Panel members may not be members of a tender committee, staff and members of the RPPA Board of Directors, Members of the District Council.<br><br>PP Regulations A.59 is a provision dealing with Conflict of Interest, requiring a panel member (1) not to take part in "deliberations on the request until the decision thereof has been taken" where the member has applied for review; and (2) not take part in review proceedings where a member has "any relationship or misunderstanding with the complainant" – and to inform the IRP in writing.<br><br>Based on discussions with NIRP, it is understood the they are not involved in procurement transactions. They acknowledge the fact that some members are members of private sector (i.e. doing business sometimes with the Government), but if there is conflicting interest the member concerned has to declare it and cannot take part to any activity regarding the very claim. Actually the art. 54 of Regulations stipulates that when a member of the NIRPl has applied for review, he/she will not take part in the deliberations on the request until the decision thereof has been taken.<br><br>If a member of the NIRP has any relationship or misunderstanding with the complainant, the former shall inform, in writing, the Panel of the issue and request for not taking part in the review proceedings. | Not applicable | **Criterion is partially met**<br><br>Though MAPS methodology is not specific as to what independence means, in the World Bank and other international institutions independence is generally assessed based on the funding, location, subordination or support to the body, and appointment and dismissal of the members. MAPS explanatory notes are particularly instructive in saying that "*indicator [13(b)(a)] assesses the degree of autonomy that the appeals body has from the rest of the system, to ensure that its decisions are free from interference or conflict of interest. It is crucial that the body is not involved in any capacity in procurement transactions or in the process leading to contract award decisions.*"<br><br>In this respect, while strictly speaking the IRP is not involved in transactions, it has minimal autonomy from RPPA (RPPA provides budget and secretarial support to IRP), a body itself involved in transactions through ex-ante process (under A.29 of PPL) and from the Ministry of Finance in terms of appointment and dismissal of members. IRP takes the budget from RPPA and is appointed and dismissed by Minister of Finance (NB. The Ministry of Finance itself is a procuring entity and IRP may be asked to review complaints related to decisions made by Minister of Finance himself). | Yes | In order to enhance the perceived independence of the IRP and its members, it may be appropriate to consider some changes such as direct budget allocation (if possible, within the budgetary system), appointment of members by open public competition and tightening of the grounds for dismissal to limit discretion. |



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

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| | | | Furthermore, the qualifications of IPR members are not clearly defined in the PPL, nor are the dismissal criteria subjecting the IRP to potential political influence. The assessment team has nonetheless found that in practice, the IRP and RPPA do not interfere in each other's functioning. For that reason, we have assessed the *criterion as "partially met".* | | |
| **(b) does not charge fees that inhibit access by concerned parties** | PP Regulations A.52 sets fees for the National Independent Review Panel as follows:<br>Tenders up to RwF 20 000 000 (Twenty million Rwandan Francs) RwF 50 000 (fifty thousand Rwandan Francs)<br>Tenders over RwF 20 000 000 (Twenty million Rwandan Francs) RwF 100 000 (one hundred thousand Rwandan Francs)<br>The above amounts appear reasonable.<br>Fees which are set in the PP Regulations A.52 are paid to the Government treasury. NIRP does not receive any fees as per services it renders. | Not applicable | **Criterion is met** | | |
| **(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available**<br><br>*// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c):*<br>*- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).*<br>*Source: Appeals body.* | The procedures for review are clearly defined in the PPL and PP Regulations which are publicly available but are not presented in a user -friendly format | *Quantitative data is given at 13 (a) (d) above Time frame is not excessive* | **Criterion is met.**<br><br>Suggested improvements.<br>The manner in which information about process of complaints is disclosed is not user friendly and easy to use. | | Develop a simple user guide to submission of complaints, aligned with the e-procurement system, available on the NIRP section of the RPPA website |
| **(d) exercises its legal authority to suspend procurement proceedings and impose remedies** | PPL A.52 provides for automatic suspension of procurement proceedings pending decision of the National Independent Review Panel.<br>○ Remedies imposed: in 16 cases where claim was held to be founded, remedies ordered were 14 re-evaluation, 1 suspended, 1 dismissed | 100% of the decisions of the Review Panel are executed | **Criterion is met** | | |
| **e(e) issues decisions within the time frame specified in the law/regulations*** | Explained at 13 (a) (d) | *Quantitative data is given at 13 (a) (d) above Time frame is not excessive* | **Criterion is met** | | |
| **(f) issues decisions that are binding on all parties** | **PPL A.53** provides that the decisions of the National Independent Review Panel are final and binding unless the decision has been reviewed by the court adjudicating the case on merit. | 100% of the decisions of the Review Panel are executed | **Criterion is met** | | |
| **(g) is adequately resourced and staffed to fulfil its functions.** | NIRP is fully staffed with 11 members and composition in accordance with PPL Article 13 | | **Criterion is met** | | |

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:** 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** |
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| **(a) based on information relevant to the case.** | **Summary:** Procedures governing decision making process provide for decision to be based on information relevant to the case.<br><br>PP Regulations require the complainant to set out the nature of their complaint and for the procuring entity to provide documents requested by the National Independent Review Panel (see 13(a)a above on available evidence.<br><br>PP Regulation 58 requires that decisions of the National Independent Review Panel must take into account "all aspects of the tender documents and the law and regulations governing public procurement in an impartial manner" . There is also provision for inter partes hearings.<br><br>Review of sample cases (2017-18) demonstrate that National Independent Review Panel does take into account arguments submitted and tender documents plus other relevant information – such as operation of the e-procurement system, in coming to their decisions | | **Criterion is met.** | | |



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

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| **(b) balanced and unbiased in consideration of the relevant information.***<br><br>**Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):**<br>**- share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey.**<br>**- share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.** | Based on limited response of 10 participants, 70 % perceive appeals system as: (i) trustworthy and fair and (ii) decisions consistent. | Please see on the left | **Criterion is met**<br>(based on majority of perception) | | |
| **(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.***<br><br>*** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c):**<br>**- outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.** | Please see 13 (a) (c) above. Of 68 appeals received:<br>51 admissible (75%)<br>• 16 admissible and founded (24%)<br>• 14 ordered re-evaluation, 1 suspended, 1 dismissed<br>• 35 admissible (considered) and unfounded (35%)<br>• 6 terminated appeals (9%)<br>• 11 inadmissible -irregular (16%)<br><br>Source: NIRP Annual Activity Report 2017-2018 | Please see on the left | **Criterion is partially met**<br><br>Based on the given data | | Better data needed for analysis of the criterionTo improve transparency the web-page/site of IRP should include easily accessible and easily searchable up to date information on complaints received and conduct of those complaints |
| **(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.***<br><br>*// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):*<br>*- share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralised online portal.** | Not all decisions of the NIRP are published in the website. No data available on when decisions were published and no timelines are specified in PPL for such publication. Database of decisions is not searchable. Currently there are – non searchable PDFs with referencing to case name only | 2017-18 35 decisions published on line on RPPA website (68 appeals received in 2017/18). | **Criterion is partially met.**<br><br>There is a lack of transparency in the functioning of the review system due to the failure to publish all of the decisions of the Independent Review Body. | | To improve transparency the web page/site of the Independent Review Body should include easily accessible and easily searchable, up to date information on complaints received and the conduct of those complaints.<br><br>There should be prompt publication of all of the decisions of the Independent Review Body in an easily searchable format which allows for a range of search terms. |

## 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:** 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** |
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| **(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with** | **PPL A.3 definitions:**<br>**corrupt practices**: promising to offer, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly a civil servant or government entity; | Not applicable | **Criterion is met** | | |



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

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| **obligations deriving from legally binding international anti-corruption agreements.** | **obstructive practices**: destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators deliberately in order to materially impede investigation into allegations of a corrupt, coercive or fraudulent practice, and threatening, slandering or intimidating any party to prevent it from disclosing its information about matters relevant to the investigation or from pursuing the investigation;<br><br>**collusive practices**: an arrangement between two or more parties designed to achieve an illegal purpose, including influencing improperly the acts of another party or a civil servant;<br><br>**fraudulent practices**: any legal violation, including acts of deliberate misrepresentation, intentional recklessness, misleading or attempting to mislead a civil servant to obtain financial or other benefit;<br><br>**PPL A.89 Conflict of Interest** – sets out circumstances (defines) where conflict of interest arises - contains provisions prohibiting certain persons and institutions from bidding in public tenders. | | | | |
| **(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.** | **Summary:** The PPL provides for cancellation of procurement procedures in the event of fraud or lack of fairness, rejection of offers in the event of corruption or fraud and cancellation of contracts due to forged or fraudulent practices. The Code of Ethics sets out both principles and ethical standards and the consequences of non-compliance, without prejudice to other provisions in the criminal law.<br>**PPL A.48** provides that procurement proceeding may be cancelled if it is established there was fraud and lack of fairness in the tendering process<br>**PPL A.87 Anti-corruption measures** prohibit acceptance or solicitation of bribes and for rejection of bidder's offer where it is established that the bidder was engaged in any corrupt or fraudulent practice while bidding for a public procurement.<br>**PPL A.93 Cancellation of the contract due to forged or fraudulent practices** at any time before or during execution of contract<br><br>**PPL A.188 Offence** - Participation directly or indirectly in award of tender where there is a conflict of interest is an offence liable to imprisonment and fine.<br>**Ministerial Instruction No. 001/11/10TC of 24/01/2011 Establishing the Professional Code of Ethics Governing Public Agents Involved in Public Procurement: Chapter IV: Sanctions –** on public agents disciplinary and deduction from salary (without prejudice to criminal and other provisions) and on bidders, categories of sanctions, right of defense, disciplinary process, administrative right of appeal. Reference to offences under Penal Code, Law Relating to prevention, repression and punishment of corruption and related offences | Not applicable | **Criterion is met** | | |
| **(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.** | **Summary:** The PPL sets out circumstances where conflict of interest arises. The Ministerial Instruction No. 001/11/10TC of 24/01/2011 Establishing the Professional Code of Ethics Governing Public Agents Involved in Public Procurement also covers Conflicts of Interest and requires (in Chapter III) a declaration of interest in the event that a conflict is identified. There is a cooling off period for former public officials of 5 years (PPL A.89).<br>**PPL A.89 Conflict of Interest** – sets out circumstances where conflict of interest arises - contains provisions prohibiting certain persons and institutions from bidding in public tenders. These include members of the Cabinet, heads of procuring entities, civil servants, member of District councils for tenders advertised by their districts, institution or company where a civil servant (parent, spouse or child) holds 50%+ shares, or is a representative, director or employee, *former employee of procuring entity* – 5 year period (carve out for consultancy services)<br>**PPL A.89 Other prohibitions** – sets out other prohibitions including prohibition on participation in certain tender processes of a member of a tender committee or other person involved in the award process or management of the contract. Prohibition is linked to level of kinship, employment, financial interest, employment contract or other benefit as well as a consultant hired by the procuring entity to provide consulting services for preparation or implementation of the tender or company connected with such consultant. | Not applicable | **Criterion is met** | | |

14(b) Provisions on prohibited practices in procurement documents

| 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** |
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| **(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.** | **Standard Bidding Documents (January 2019)** contain instructions, provisions and self-declaration for bidders to complete including a clause on conflict of interest and debarment, but *not a declaration confirming that the bidder has not been prosecuted or convicted of fraud, corruption or other prohibited practices* (see (b) below for contract provisions. | Not applicable | **Criterion is met** | | |



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

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| | The Instructions to Bidders contain a section on Fraud and Corruption which includes definitions of Corrupt practice" "fraudulent practice" , " collusive practice", "coercive practice", "obstructive practice" and confirms that proposals will be rejected in the event that the bidder has engaged directly or indirectly in these practices and impose sanctions<br>For example, SBD For the Supply of Goods:<br>• Part A 4.4 provision on conflict of interest, definition of conflict of interest and disqualification<br>• Bid Submission form – includes self-declaration on conflict of interest and debarment | | | | |
| **(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.** | **Summary** The Standard Bidding Documents (January 2019) contain contractual provisions concerning fraud, corruption and other prohibited practices as specified in the legal framework.<br>For example, SBD For the Supply of Goods<br>**General Conditions of Contract (part of SBD): Clause 5 Fraud and corruption** – Cancellation in the event of fraud or corruption in competing for or execution of contract. Detailed/comprehensive clause including definitions of "Corrupt practice" "fraudulent practice", "collusive practice", "coercive practice", "obstructive practice". Clause 39 Termination for default also refers. | Not applicable | **Criterion is met** | | |

14(c) Effective sanctions and enforcement systems

| 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** |
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| **(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.** | There is no such requirement for procuring entities to report and there are no clear procedure in place. It is not known if Procuring Entities in practice report allegations of Fraud and Corruption to law enforcement authorities. There is a MOU between RPPA and the Office of Ombudsman (March 2019) that requires sharing of information regarding blacklisted companies and persons convicted of corruption, requires undertaking joint- awareness campaigns to make general public and the parties more alert on corruption situations in public procurement. | Not applicable | **Criterion is partially met**,<br>As no clear procedure in place to handle procurement related corruption cases<br>Based on available information procurement entities are not required to report allegation of fraud and corruption. No information was available on the website on Ombudsman | | Specific guidance to be issued to Procuring Entities by RPPA and the Office of Ombudsman on reporting cases of Fraud and corruption |
| **(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.** | Based on available information, even though the Office of Ombudsman follows a due process as per Organic Law of the Penal Code 8, it is not known how procurement related corruption cases are handled. From the office of Ombudsman, no reports are available either in English or Kinyawandan for the last two fiscal. The last report was in 2015-16 in Kinyarwandan and in English the last report was published for 2013-14. Based on this last report of 2013-14, there were total 19 cases of procurement related corruption cases out of a total of 102 and out of these 19 cases, 3 cases were forwarded for prosecution or Police | Not applicable | **Criterion is partially met**<br>As no evidence is available on how procurement related corruption cases are handled<br><br>The assessment team was not able to get any evidence from any published sources. | | The Office of Ombudsman to publish in English its Annual report including evidence of enforcement on procurement related corruption cases. |
| **(c) There is a system for suspension/debarment that ensures due process and is consistently applied.** | **Summary:** There is a system for temporary and permanent debarment that ensures due process<br>**Debarment provisions**<br>**PPL A.176 Temporary debarment from bidding in public procurements** -for 7 years- grounds include violation of laws, for 5 years – collusion, fraudulent over estimate of prices<br>**PPL A.177 Permanent debarment** – grounds include use of fraudulent means to evade sanctions of debarment<br>**PPL A.179 Procedures for debarment from public procurement:** The RPPA has power to debar a bidder from participation in public procurement. The debarment process requires the RPPA to inform that bidder in writing of charges made and to respond to those charges within a specified period of 15 days for nation bidders and 30 days for foreign bidders. Bidders are entitled to a hearing and have the right to be represented or assisted by a lawyer. The hearing is recorded and all evidence is filed with a debarment decision made within 45 days. Debarment is takes effect from date of issue of the decision until expiry or annulment by a competent court. A list of debarred bidders must be published on the RPPA website, the UMYCON e-procurement portal and in the newspapers. **PPL A.180 provides for a right of appeal** against an RPPA debarment decision to a competent court.<br><br>Based on discussions with the Office of Ombudsman, a failure by bidder to obtain good completion certificate does not lead to automatic debarment. | Not applicable | **Criterion is met**.<br><br>*Suggestion for improvement*:<br>According to the list of debarred entities/individuals, poor performance is one of the two main grounds (other being false information) for debarring firms and individuals. PPL A.48 sets out the requirements for procuring entities issuing certificates of good completion at the end of each contract, however, it is not clear when such certificate is denied and on what grounds. Lack of specific guidance on these may lead to abuse of discretion by procuring entities and lead to misconduct. | | All these aspects need to be addressed in the PP Regulations and/or User's Guide for transparency and certainty This guidance may be issued as per existing MOU between RPPA and the Office of the Ombudsman |
| **(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*** | The website of RPPA contains information on blacklisted or debarred firms and individuals with names, grounds for debarment (generally poor performance or false information), duration of debarment. Link to RPPA website given below:<br><br>http://rppa.gov.rw/index.php?id=605 | Please see data in the left column | **Criterion is partially met**<br>As no data is published by the Office of Ombudsman on Government officials found guilty of fraud and corruption in public procurement or number of officials prosecuted/convicted. | | Office of Ombudsman to regularly publish data on government officials found guilty of fraud and corruption related to procurement. |



*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(c) Assessment criterion (d):<br>- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).<br>Source: Normative/regulatory function/anti-corruption body.<br>- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.<br>Source: Normative/regulatory function/anti-corruption body.<br>- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).<br>Source: Survey.** | There is no such list published by the Office of Ombudsman on Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.<br><br>In response to question" do you believe that company are expected to give a gift to secure a contract in the public sector?" out of 22 responses 31.82% stated "Yes" and 68.12 % stated "No" | | | | |

14(d) Anti-corruption framework and integrity training

| 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** |
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| **(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.***<br><br>***Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):<br>- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).<br>Source: Survey.** | **Rwanda** has put in place institutional and legal frameworks to deal with fraud and corruption cases. The NPPA prosecutes cases on F&C after investigations. The legal provisions are strong for investigation, prosecution and prevention of fraud corruption; corruption is comprehensively defined in the Organic Law of the Penal Code 8 and complemented by several other laws to help fight, prevent, investigate and punish fraud and corruption. Organic Law no 61/2008 of 10/09/2008 on the Leadership Code of Conduct is also in place to promote integrity in the public sector. Implementation and enforcement of these laws are quite robust in the public sector in general.<br>The Rwanda Anti-corruption Policy represents the country's commitment under Vision 2020 to achieve good governance through preventing and fighting corruption. It focuses on people, systems and organization and on building a culture when integrity is valued and corruption rejected. Furthermore, there is an ad hoc committee composed of leaders of government organs in charge of fight against corruption and headed by the Chief Ombudsman.<br><br>Based on benchmarking of Rwanda along the various dimensions of governance Rwanda's international ranking is high on control of corruption. Rwanda ranks 48 out of 180 countries in 2017 for Control of Corruption a vast improvements over 2006 ranking of 2006. | Please see data on the left column | **Criterion is met** | | |
| **(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.** | The Office of the Ombudsman has put in place a mechanism of annual declaration of assets which is mandatory for all persons involved in the management of public finance and property and all responsible in public tenders in central administration. The declaration shall indicate the source of the declared property, the date of acquisition, its value at that time, assets of his/her spouse if married under community of property, property of his/her children below eighteen (18) years of age, donations made from his/her own patrimony and others.<br>After receiving the declared assets, the Declaration of Assets Unit examines what has been declared in order to find out if they were regularly obtained. Declarers whom it is found out that they have provided wrong information about their assets are handed over to the National Public Prosecution Authority.<br>This mechanism is helpful in mitigating risk of corruption. However, the identification of the corruption during the procurement cycle cannot be detected at that stage.<br><br>It may be useful to learn lessons from cases of procurement related Fraud and Corruption as preventive measures by publication of cases as part of the Annual Report of the Office of Ombudsman. The report of 2013-14 of the Office of Ombudsman has a section on cases on procurement and irregularities in contract execution. | Not applicable | **Criterion is partially met**<br>However, the mechanism for identification and detection of corruption risk and mitigating these in procurement cycle is not available. | | Anti-corruption strategy needs to include the use of modern technology to detect case of fraud of corruption through electronic e-GP portal by suitable enhancement to the system and by analysis of cases of fraud and corruption to identify "red flags" and publishing cases as part of the Annual Report of the Ombudsman on certain good practices being followed by other similar agencies. |



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

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| | There are certain good practices being followed by the Anti-Corruption Office of European Commission (OLAF). Link https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2018_en.pdf | | | | |
| **(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.** | The Office of the Ombudsman publish every year an annual report on their activities and the list of people sanctioned for corruption. However, the report covers the corrupted cases in general. It's not easy to find which cases is related to procurement and therefore, at which stage of the procurement cycle the corruption has been identified. | Not applicable | **Criterion is not met**. As after 2013-14 no Annual Reports were published in English and after 2015-16, no Annual Reports were published either in English or in Kinyarwandan | | The Office of Ombudsman to regularly publish its Annual Report |
| **(d) Special measures are in place for the detection and prevention of corruption associated with procurement.** | In the Ombudsman strategic plan they've planned to audit government projects and programs but they did not provide specific measures for detection and prevention of corruption in public procurement. | Not applicable | **Criterion is partially met.** No specific measures for detection and prevention of corruption in public procurement. | | Anti-corruption strategy need to include the use of modern technology as indicated above under (b) |
| **(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.** | **Yes, the criterion is met.** The Office of the Ombudsman planned to sensitize different categories of civil servants on the content of Leadership Code of Conduct and on the law relating to the access to information. 2,000 civil servants have train in 2018 in the prevention and fighting corruption. However, there is no evidence of procurement related integrity training | Not applicable | **Criterion is partially met** There is no evidence of procurement related integrity training | | RPPA to work with Ombudsman to prepare and conduct procurement related integrity training |

14(e) Stakeholder support to strengthen integrity in procurement

| 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) There are strong and credible civil society organisations that exercise social audit and control.** | . Civil society organizations (CSO) in Rwanda remain in an embryonic state due to a variety of constraints. Transparency International Rwanda (TI-Rwanda) appears to be the main player among the civil society and is involved in social audit, control, control activities and advocacy. To that effect, TI-Rwanda has been conducting a number of annual initiatives such as the Rwanda Bribery Index since 2010, analysis of the Auditor General's reports since 2013, and data collection on other specific issues. However, there are no home grown independent and credible CSO | Not applicable | **Criterion is partially met** There are limited instances of involvement by CSO | | Government with lead taken by organization like Rwanda Development Board to consider encouraging home-grown credible and independent CSOs to play a role in social audit and control with suitable financial incentives provided to such CSOs |
| **(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.** | The legislation (Organic Law no. 55/2008 of 10/09/2008) governing Non-Governmental Organizations (NGOs) and decentralization has opened up space for increased civil society involvement in policy-making. But there is no clear provision on this subject in procurement legislation | Not applicable | **Criterion is partially met** There are limited instances of third- party monitoring | | As above |
| **(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*** <br><br> *** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):** <br> **- number of domestic civil society organisations *(CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement.*** <br> ***Source: Survey/interviews.*** | Transparency International is one of the CSO engaged to help governments, businesses and civil society to fight corruption in the field of public contracting and procurement. TI is implementing as first country in Africa the Integrity Pact in Rwanda) But there is limited involvement by CSOs in public procurement in Rwanda and CSO who are actively engaged in public procurement is limited. | Please see information on the left (limited participation) | **Criterion is partially met** <br><br> There is limited involvement by CSOs in public procurement in Rwanda | | As above |
| **(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*** | Internal compliance measures not in place. It appears this concept is not prevalent or understood in Rwanda <br><br> Number of suppliers with internal compliance measure in Rwanda- NIL | Please see data on the left (absence of a system) | **Criterion is not met** <br><br> Based on given data | | RPPA/ Office of Ombudsman to discuss with Private Sector Federation, the mechanism for internal compliance |



*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):<br>- number of suppliers that have internal compliance measures in place (in %).<br>Source: Supplier database.** | | | | | measures for private firms in Rwanda |

14(f) Secure mechanism for reporting prohibited practices or unethical behaviour

| 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) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.** | . The Office of Ombudsman (OM) receives and investigates cases of fraud, unethical behavior and corruption including as relates to public procurement. Denunciations are done through whistle blowing and informal information. | Not applicable | **Criterion is met.** | | |
| **(b) There are legal provisions to protect whistle-blowers, and these are considered effective.** | **Yes, the criterion is met.** The Law n° 35/2012 of 19/09/2012 provides measures for the protection of whistleblowers like receiving information in secret and the filing of disclosures by using a code. | Not applicable | **Criterion is met.** | | |
| **(c) There is a functioning system that serves to follow up on disclosures.** | As per discussions with the office of Ombudsman, the system is in place | Not applicable | **Criterion is met.** | | |

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

| 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) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*<br><br>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):<br>- 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).<br>Source: Normative/regulatory function.** | **Summary:** There is a professional code of ethics applying to all government agents involved in public procurement.<br>**Ministerial Instruction No. 001/11/10TC of 24/01/2011 Establishing the Professional Code of Ethics Governing Public Agents Involved in Public Procurement**<br>Governs public agents and all other participants involved in public procurement process in accordance with PPL<br>**Chapter II: Principles, values and conduct** clearly defined – both guiding principles and ethical values<br>**Chapter III: Incompatibilities, prohibitions and conflicts of interest**<br>**Chapter IV: Sanctions**<br><br>**The Mandatory code of conduct is applicable for all procuring entities** | Not applicable | **Criterion is met.** | | |
| **(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*<br><br>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):<br>- officials involved in public procurement that have filed financial disclosure forms (in % of total required** | **Summary:** The Code of Ethics Requires a declaration of interest in the event of conflict of interest (including financial)<br>**Ministerial Instruction No. 001/11/10TC of 24/01/2011 Establishing the Professional Code of Ethics Governing Public Agents Involved in Public Procurement**<br>**Chapter III: Incompatibilities, prohibitions and conflicts of interest** – including compromising situations, improper inducement, entertainment and hospitality, fraudulent practices, conflict of interest – personal and financial & *declaration of interest requirement (A.9)* , impartiality. gifts, professional secrecy, disclosure of information, fairness, obligations on public agent, obligations of bidder<br>Based on discussions with the Office of Ombudsman, the compliance is 100% | Please see data on the left | **Criterion is met.** | | |



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

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| **by law).**<br>**Source: Normative/regulatory function.** | | | | | |
| **(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.** | **Summary:** The Code of Ethics governs public agents and all other participants involved in public procurement process in accordance with PPL and includes disciplinary sanctions, without prejudice to criminal and other provisions<br>**Ministerial Instruction No. 001/11/10TC of 24/01/2011 Establishing the Professional Code of Ethics Governing Public Agents Involved in Public Procurement**<br>Governs public agents and all other participants involved in public procurement process in accordance with PPL<br>**Chapter IV: Sanctions –** on public agents disciplinary and deduction from salary (without prejudice to criminal and other provisions) and on bidders, categories of sanctions, right of defence, disciplinary process, administrative right of appeal.<br>Reference to these sanctions being in addition to offences under Penal Code, Law Relating to prevention, repression and punishment of corruption and related offences<br>**PPL A.188 Offence** - Participation directly or indirectly in award of tender where there is a conflict of interest is an offence liable to imprisonment and fine. | Not applicable | **Criterion is met.** | | |
| **(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.** | The strategic plan of the Ombudsman provides different sessions to train civil servants and leaders.<br>The training concern different category of civil servant, from the leaders to simple civil servant. | Not applicable | **Criterion is met.** | | |
| **(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.** | The Declaration of Assets Unit of the Office of the Ombudsman is in charge of receiving the declaration of assets of all government officials. The list of government official is published on the website.<br>Based on discussions with the Office of Ombudsman, there is full compliance | Not applicable | **Criterion is met.** | | |



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