MAPS | Methodology for Assessing Procurement Systems

ASSESSMENT OF CABO VERDE'S PUBLIC PROCUREMENT SYSTEM

Indicator matrix

2024

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Pillar I. Legal, Regulatory, and Policy Framework

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

Sub-indicator 1(a) Scope of application and coverage of the legal and regulatory framework The legal and regulatory body of norms complies with the following conditions:
Assessment criterion 1(a)(a): Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.
Conclusion: No gap
Red flag: No
Qualitative analysis The Cape Verdean legal system is part of the *Civil Law* family of systems and, in the field of public procurement, finds its most important sources of influence in Portuguese law[1] and European public procurement law. The hierarchy of norms The legal system of Cabo Verde is very well structured, and the hierarchy of laws, as defined by the Constitution, is as follows: – Constitution (CRCV); – Laws of the National Assembly[2]; – Decree-Laws of the Government. Concerning **International Law**, Article 12 of the CRCV states that general or common international law shall form an integral part of the Cape Verdean legal order for as long as it is in force in the international legal order and shall be in force in the Cape Verdean legal order after its official publication and entry into force in the international legal order and for as long as it is internationally binding on the State of Cape Verde. The norms and principles of general or common international law and conventional international law that have been validly approved or ratified shall take precedence over all internal legislative and normative acts of infra-constitutional value after they enter into force in the international and internal legal order. In the field of **Administrative Law**, the following types of acts should be considered (which must be compatible with the legal texts mentioned above): - Ministerial Council Resolutions (of an administrative or political nature); - Executive Orders issued by Government members - Ministers and Secretaries of State - which are non-legislative implementing acts, i.e. (implementing acts); - Regulations issued by the ARAP Executive Board (implementing acts). The principle of legality requires that acts or regulations of an administrative nature must comply with the law (Constitution, laws and decree-laws), according to the respective hierarchy. The **most relevant legal acts in the domain of public procurement** are: – Public Procurement Code (PPC), approved by Law 88/VIII/2015, of 14 April, covering the whole formation of the contract (pre-award stage);

[1] There are many common features between the legal systems of the countries that make up the Community of Portuguese Speaking Countries (CPLP): Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé and Principe and Timor-Leste.

[2] The Public Procurement Code (PPC) has been approved by a Law issued by the National Assembly. Often the State Budget Law, enacted by the National Assembly, introduces changes to the PPC (e.g. Articles 5, 155, 193 of PPC have been amended by the National Assembly).

- Legal Regime of Administrative Contracts (RJCA), approved by Decree-Law 50/2015 of 23 September, covering the implementation of public contracts.
- Statute of ARAP, approved by Decree-Law 55/2015, of 9 October;
- Regulation on Procurement Management Units (UGAs and UGAP), approved by Decree-Law 46/2015, of 21 September;
- Statute of the Conflict Resolution Commission (CRC), approved by Decree-Law 28/2021, of 5 April);
- Regulation on the electronic government procurement (e-GP), approved by Decree-Law 11/2023, of 17 February.

Gap analysis

Recommendations

Assessment criterion 1(a)(b):
It covers goods, works and services, including consulting services for all procurement using public funds.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The PPC covers public works contracts, lease and acquisition of goods, acquisition of services, acquisition of consultancy services, public works and public services concessions. (PPC, Article 3/1).

Public Procurement Code 2015 (PPC)		
Stage of the procurement cycle and scope of norms	Distribution of content in the law **titles / chapters** / sections / provisions	
Key definitions, scope, general principles and rules	Title I	**General Principles and Rules** Chapter I - Purpose and scope Chapter II - Principles relating to public procurement Chapter III - Regulation of public procurement Chapter IV - Publicity
Contract life cycle coverage (***Up to the award decision and contract signing***)	Title II	**Types and Choice of Procedures (Procurement Methods)** Chapter I - Types of procedures Chapter II - Choice of procedure Chapter III - Procedure documents (Bidding documents)
	Title III	**Contract formation** Chapter I - Preparatory administrative actions Chapter II - Rules for participating in the procedures (eligibility) Chapter III - Applications Chapter IV - Bids Chapter V - Submission of applications and bids Chapter VI - Evaluation and rejection of bids and award Chapter VII – Securities (bid and performance) Chapter VIII – Contract signing
	Title IV	**Conduct of procedure** Chapter I - Public tender

		Chapter II - Two-round public tender Chapter III - Pre-qualification procedures Chapter IV - Closed tender Chapter V - Direct award Chapter VI -Procurement of consultant services Chapter VII - Framework agreement
	Title V	**Administrative Challenges**
	Title VI	**Administrative offences**
	Title VII	**Final and transitional provisions**

Gap analysis

- The CCP regulates the contracting of ***consultancy services*** as a special procedure in an autonomous chapter (see Article 29 (1)(1) PPC). We agree with the recommendation made in the *Diagnosis of the Application of the Public Procurement Code and the Legal Framework for Administrative Contracts (RJCA) and respective Standardised Documents* (hereinafter *Diagnosis*) that the particular procedure for contracting consultancy services should be abolished and that the acquisition of consultancy services should be subject to a general procedure used for other services. We no longer agree with the suggestion made in the *Diagnosis* to include in **Article 155(4) PPC** the indication that in the cases provided for therein, the procedure follows the restricted tender procedure regulated in Chapter IV of Title IV of the PPC, with the necessary adaptations, as such a solution does not seem to offer any gain in terms of transparency nor competition when compared to direct award.

- **Article 155(6)** of the PPC (Regime applicable to the contracting of consultancy services) states that contracts concluded with ***qualified staff*** for the execution of intellectual and continuous work are exempt from the regime of this Code (PPC) but must comply with the general principles of public procurement, in accordance with Chapter II of Title I, and other applicable laws. As mentioned in the *Diagnosis*, the non-application of the PPC regime (concrete provisions), while at the same time subjecting the procuring entity to respect for the principles of public procurement, is unclear. For example, the law may establish that direct award may be used below a certain threshold of estimated contract value, but even so, when this is done, the applicable legal principles must continue to be respected. Questions are: how would this solution materialise? What are the mechanisms for monitoring compliance with the principles in cases where the provisions have been exempted? Who, when, and how would compliance with the principles be checked, and with what consequences?

- **Article 155(7)** of the CCP provides for the adoption of the ***direct award procedure for the formation of consultancy service contracts of up to two million escudos***, by means of a ***reasoned order***, which is an approach based on a methodology different from that enshrined in the general rules applicable to the choice of procedures, which clearly distinguish the value criterion from the material criteria. This provision is based on the value criterion, so special reasons for opting for the direct award should no longer be required.

A Red Flag is assigned because addressing this gap requires a legislative initiative and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- The particular procedure for contracting consultancy services should be abolished by repealing PPC Chapter VI of Title IV and modifying all provisions that refer to the "consultancy services contracts";

- The principles of equality and the promotion of competition suggest that Article 155 (6) PPC should be repealed, even if Chapter VI of Title IV (Contracting of consultancy services), which establishes a specific procedure for the formation of this type of contract, remains.

- since there is no rationale for the coexistence of the value criterion with the special need for justification (a reasoned decision would only be necessary to explain how a material criterion for the choice of procedure applied to the specific situation), it is suggested to eliminating the requirement for justification for the choice of the direct award procedure set forth by Article 155 (7) PPC since, under the general terms of Article 30 PPC, the choice of procedure under the criterion of the value of the contract does not require any justification.

Assessment criterion 1(a)(c):
PPPs, including concessions, are regulated.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 2 PPC provides definitions for:

- Public works concession: a contract which, while having the same characteristics as a public works contract, has as its consideration the right to exploit a public work, whether or not accompanied by the payment of a price;
- Public services concession: a contract for the installation and temporary operation of a service, at the concessionaire's risk, whether or not accompanied by the payment of a price.

The following main provisions on concessions in the PPC are worth highlighting:

- Article 3(1)(e)(f) PPC, which states that the PPC applies to the formation of public works and public services concession contracts;
- Article 30 (5) PPC, which requires the adoption of a two-stage open tender procedure or a restricted tender procedure based on prior qualification for the formation of public works and public services concession contracts;
- Article 46 PPC, on procedural documents relating to public works contracts and public works concessions;
- Article 50 of the PPC stipulates that the tender specifications for the procedures to form concession contracts must include an operations document containing the rights and obligations of the parties, as well as, in justified cases, the rules for operating the work or public service in question, with a view to the interests of the respective users;
- Article 58 (1) states that the procuring entity must, before the start of the contract formation procedure, obtain the approval of the member of the Government responsible for finance regarding a) the technical and financial viability of the project, b) the structure of the project and the conditions of the specifications and other relevant procedural documents; and c) the guarantees to be provided by the contractor and/or the State.
- Article 70 (1) (f) on Impediments to candidates and bidders stipulates that a candidate or competitor may not submit a candidacy or proposal or be part of a group of f) they have been convicted, or, in the case of legal persons, the members of the management or administrative bodies in office have been convicted, by a final judgement, for the crime of participating in the activities of a criminal organisation, corruption, fraud or money laundering, or, if the procedure is aimed at concluding a works contract or a public works concession contract, for the commission of crimes which, under the terms of the legal regime for access to and permanence in the construction activity, prevent access to that activity;

- Article 73 (2) on professional qualifications and authorisations requires that in procedures aimed at concluding a public works contract or concession, candidates or bidders must hold a registration certificate, classification certificate or civil engineering contractor's licence issued by the legally competent authority;
- Article 76 (2) on the financial capacity of bidders or candidates in the case of procedures for the conclusion of public works contracts, public works concessions or public service concessions, a document issued by the Bank of Cape Verde or by a competent entity may also be required, in the month in which the procedure was launched or in the previous month, mentioning the company's liabilities in the financial system and, where appropriate, an equivalent document issued by the Central Bank or by a competent entity of the State of which the company is a national or in which its main establishment is located;
- Article 84 (3) on the documents accompanying and instructing the tender in the procedure for the formation of concession contracts;
- Article 85 (4), stipulates that in procedures aimed at concluding a public works contract or concession, the basic plans and variants drawn up by the tenderer must contain all the documents necessary for their perfect assessment and for justifying the calculation method;
- Article 102 (3) stipulates that in procedures for the conclusion of a public works contract or public works concession, no award shall be made: a) When, due to supervening circumstances, the procuring entity decides to postpone the execution of the work for a period of at least one year; or b) When, in the case of projects or variants authored by the tenderers, the projects and variants submitted are not convenient for the procuring entity, with paragraph (6) adding that the decision not to award the contract on the grounds indicated in paragraph (3) of this article must be communicated to the authority legally competent for the inspection of public works;
- Article 103 PPC on The provision of a bid maintenance bond, bidders may be required to provide a security deposit together with their bid to guarantee that their bid will be upheld: a) Public works or service concession contracts with a value of more than 5,000,000$00 (five million escudos);
- Article 106 PPC, on the Value of the security deposit, sets out in paragraph (1) the general rule that the value of the security deposit to be provided for the proper performance of the contract is 5% of the contract price. With regard to public works concessions and public service contracts, the procuring entity may exceptionally and duly justified and publicised, stipulate a higher minimum value for the bond, which may not, however, exceed 30% of the total price of the respective contract, subject to prior authorisation by the supervisory authorities, if any;
- Article 111 (2), on the content of concession contracts, stipulates that they must contain, under penalty of nullity: a) indication of the contractor's licence number, as well as any subcontractors involved in the works; b) specification of the works which are the subject of the contract, with reference to the project, where one exists; c) identification of the contractual list of unit prices; d) the time limit for carrying out the works, with the planned start and end dates; e) the binding conditions of the works programme; f) the form, time limits and other conditions on the payment and price review system;
- Article 119 on the deadline for submitting tenders in public tenders. In the case of a national public tender: i. Thirty-five days, if the purpose of the tender is to conclude a public works contract, public works concession or public services contract and b) In the case of an international public tender: i. Forty-five days, if the purpose of the tender is to conclude a public works contract, a public works concession or a public services contract;
- Article 147 on time limit for submitting tenders in restricted invitations to tender by prior qualification, 30 days (national invitation to tender) and 40 days (international invitation to tender).

Public Private Partnerships (PPP) are regulated by Decree-Law 63/2015, of 13 November, which defines the general rules applicable to the State's performance in prioritizing, designing, preparing, hearing and consulting public, tender, adjudication, alteration, inspection, global monitoring and extinction of public-private partnerships, PPP.

According to Article 3 of this Decree-Law, a public-private partnership is a legal relationship constituted by a contract or union of contracts, through which private entities, known as private partners, undertake, on a lasting basis, vis-à-vis a public partner, to ensure the development of an activity aimed at satisfying a collective need and in which (i) the financing and responsibility for investment and operation are incumbent, in whole or in part,

to the private partner, (ii) in which there is a need for the public partner to pay periodic instalments due to the absence or insufficiency of a system of fees and tariffs to make the private partner attractive in terms of the project's risk and return profile; or/and (iii) in which part or all of the risks of engineering, construction, maintenance, operation, integration of suppliers, demand and financing (via own and third-party capital) are allocated to the private partner, (iv) which may involve carrying out works and services with a high degree of specialisation and technical complexity.
With regard to the scope of application of this decree-law, it should be borne in mind that it concerns public-private partnerships established by contract, with Article 3(3)(f) excluding its application to concessions granted public entities by means of a specific legal instrument. Article 6(1) clearly states that this decree-law takes precedence over any other rules compatible with the PPP regime and Article 6(2) explicitly states that the Public Procurement Code applies to PPPs.

It is very important, in line with the PPC, that Article 2 (2) states that private partners may be any person who offers guarantees of good repute, technical qualification and financial capacity and fulfils the requirements set out in each public procurement procedure." (referring here to the contract formation phase).
The list of stages in the PPP lifecycle contained in Article 13(1) also helps to emphasise the applicability of public procurement rules The following are stages in the PPP lifecycle: a) Preliminary proposal and expression of interest by the private sector (MIP); b) Pre-feasibility; c) Feasibility; d) Public hearing and consultation; e) **Public procurement procedure**; f) Contract management, monitoring and follow-up. It is important to emphasise the obligation to publish feasibility studies together with the draft documents of any public procurement procedure under the PPP regime [Articles 13(12) and (15)]. According to Article 16(4) The competence of the jury and its functioning shall comply with the regime applicable to public procurement procedures.
Article 17(1) The choice of procedure for the formation of the partnership contract must comply with the regime laid down in the Public Procurement Code.

In 2016, through Decree-Law no. 57/2016 of 9 November, the government created the State Enterprise Sector Monitoring Unit (Unidade de Acompanhamento do Setor Empresarial do Estado) within the Ministry of Finance, as a result of the merger of the Privatisation and Public-Private Partnerships Unit (UPPP) and the State-owned Companies Service Department (DSPE), which was part of the Directorate-General for the Treasury.
The UASE is a central service, equivalent to a General Directorate (https://www.mf.gov.cv/web/mf/uase-page). Its mission was changed by the new organisational structure of the Ministry of Finance and Business Development (MFFE), approved by Decree-Law no. 76/2021 of 2 November, and it was given a mandate to support the Minister in exercising the State's shareholder function and in intervening in the so-called public business sector and in relations with independent regulators, as well as in leading and coordinating privatisation and public-private partnership processes.

Gap analysis

Recommendations

Assessment criterion 1(a)(d):
Current laws, regulations and policies are published and easily accessible to the public at no cost.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

All relevant legislative acts and respective implementing acts are published and freely accessible:

- On the online **Official Bulletin** (https://kiosk.incv.cv/): all legislative acts emanating from the National Assembly and the Government;
- On the **ARAP website** (https://arap.cv/): all types of legislative acts relating to public procurement and the organisation and operation of ARAP. Laws, decree-laws, regulatory decrees, resolutions, ministerial orders and directives issued by ARAP's Board of Directors are published;
- Eight legal texts have been published on the public procurement portal – (www.mf.gov.cv/web/ecompras), but this section requires significant improvement.

Gap analysis

The public procurement portal "***e-Compras***" - through which users can access the e-procurement platform in operation - contains a Legislation section that needs to be significantly improved, because:

- The information is not placed in a place that is easy for users to consult;
- It currently reproduces eight (8) legal texts, including one that has been repealed (the 2010 UGA Regulation), the Public Contracts Code in its original version (which is therefore out of date and does not reflect the changes that have been introduced in the meantime) and the 2019 State Budget Law (which, despite containing an amendment to the CCP - article 193 - is not the only one and should be presented with a short framing text (reproducing the cover page of the Official Bulletin and the page/s where the relevant content is located would suffice).

Recommendations

The following improvements are suggested:

- Insertion of the link to the "Legislation" page in a more visible place on the eCompras front page;
- Production of consolidated and updated versions of the legal texts that have been amended without prejudice to the publication of the individual amending texts. Among others, a consolidated version of the Public Procurement Code should be made available as a matter of urgency;
- Legislation and regulations (not all of which are legislative) should be published in the same way on ARAP's websites and eCompras or, if it is deemed safer to avoid discrepancies, eCompras should point to ARAP's "Legislation and Regulations" page.

Sub-indicator 1(b)
Procurement methods
The legal framework meets the following conditions:

Assessment criterion 1(b)(a):
Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.

Conclusion: No gap

Red flag: No

Qualitative analysis

Title II of the PPC (Types and Selection of Procurement Methods) includes a comprehensive set of rules governing procurement methods. Chapter I lists the types of procurement methods/procedures; Chapter II provides criteria and requirements for the choice of the procurement method/procedure, and Chapter III lists and defines the mandatory content of bidding documents.

The choice of the specific procurement method/procedure to follow is made based on two possible criteria:

(i) the *estimated value of the contract* according to the following thresholds:

Open tender procedure:

- Public works contracts with a value equal to or exceeding ten million Cabo Verde escudos
- (10.000.000$00); and
- Lease contracts and contracts for the procurement of goods and services with a value equal to or exceeding five million Cabo Verde escudos (5.000.000$00).

Restricted tender procedure:

- Public works contracts with a value equal to or exceeding three million and five hundred Cabo Verde escudos (3.500.000$00) and lower than ten million Cabo Verde escudos (10.000.000$00); and
- Lease contracts and contracts for the procurement of goods and services with a value equal to or exceeding two million Cabo Verde escudos (2.000.000$00) and lower than five million Cabo Verde escudos (5.000.000$00).

Direct award procedure only allows for the conclusion of public works contracts, and goods and services with a value lower than the thresholds indicated in the previous paragraph.

(ii) choice of the procurement method/procedure based on the so-called *material criteria* (not related on the estimated contract value)

As far as consultancy services contracts are concerned. PPC Article 161 (Selection methods in the procurement of consultant services) offers the following methods:

- Selection based on quality and price;
- Selection based on quality;
- Selection based on a fixed budget (only applicable in case it is possible to determine the consultant service budget accurately);
- Selection based on price (only possible to use where the required consultant services are standard or routine services governed by well-defined rules); and e) Selection based on consultants' background.

GPA equivalent	CABO VERDE	THRESHOLDS (CVE / USD)	Minimum time limits*	Legal base
Open tendering	**OPEN TENDER** (Concurso Público)	≥ 10.000.000 - public works contract ≥ 5.000.000- Supply of goods and services contracts	**National public tender *** 35 days – public works contracts, public works concessions or public service contracts 20 days- Supply of goods and services contracts **International public tender *** 45 days- public works contracts, public works concessions or public service contracts 30 days- Supply of goods and services contracts	Art. 30 (2) PPC Art.119 PPC
	TWO-STAGES OPEN TENDER	No financial threshold/ limit	**Request for first Technical proposal** **Submission of second technical proposal and financial proposal:**	Art.30 (5) PPC Art.131, 137(2) PPC

	(Concurso público em duas fases)	Regardless of value: public services concession contract*	35 days – public works contracts, public works or public services concessions 20 days- Supply of goods and services contracts **International public tender** 45 days- public works contracts, public works concessions or public service contracts 30 days- Supply of goods and services contracts	
Selective tendering	**SELECTIVE TENDER** (Concurso Limitado por Prévia Qualificação)	>5.000.000- consultancy services Regardless of value: public services concession contract *	**For Request for participation**: 15 days **For submission of Proposal:** **National public tender** 30 days – public works contracts, public works or public services concessions 15 days- contrato de aquisição ou locação de bens móveis ou de aquisição de serviços **Concurso público internacional** 40 days –contratos de empreitada de obras públicas, de conccessão de obras públicas ou de serviços públicos 25 days- contrato de aquisição ou locação de bens móveis ou de aquisição de serviços	Art.30 (5) PPC Art.141 PPC Art.147 PPC Art.155 PPC
Limited tendering	**RESTRICTED TENDER** (Concurso restrito) **DIRECT AWARD** (Ajuste Directo)	**Restricted Tender-** ≥3.500.000 e >10.000.000 - public works contracts ≥ 2.000.000 e > 5.000.000 – Supply of goods and services contracts **Direct Award** < 3.500.000 - public works contracts < 2.000.000- Supply of goods and services contracts **Direct Award - simplified procedure**	10 days	Art.30 (4) PPC Art 152 PPC Art.153 PPC Art.154 PPC

		≤ .300.000$00- Supply of goods and services contracts		

* For the formation of public works concession contracts or public service concession contracts, the two-stage open tender or restricted tender by prior qualification must be adopted, regardless of the contract estimated value.

** In cases of exceptional urgency, duly substantiated by the procuring entity, the deadline for submitting tenders may be reduced to ten days, regardless of the type and value of the contract.

Gap analysis

Recommendations

Assessment criterion 1(b)(b):
The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.

Conclusion: No gap

Red flag: No

Qualitative analysis

Articles 30, 34, 35, 36, 37, 38 and 39 PPC provide for (five) procurement methods/award procedures hierarchically listed from the most to the least competitive as follows:

- Public tender;
- Two-round public tender;
- Pre-qualification procedure;
- Closed tender;
- Direct award.

A specific procurement method/procedure applies to concluding consultancy services contracts (PPC, Articles 155 to 160).

The choice of the procurement method to use at each procurement depends on the estimated value of the contract to be formed or the verification of a specific situation that justifies the choice regardless of the value (the so-called *material criterion*). Articles 34 to 39 of >PPC detail the material criteria under which the choice of the procedure does not depend on the estimated value of the contract.

Gap analysis

Recommendations

Assessment criterion 1(b)(c):
Fractioning of contracts to limit competition is prohibited.

Conclusion: No gap

Red flag: No

Pillar I. Legal, Regulatory, and Policy Framework

Qualitative analysis

According to Article 60 (1) PPC, "(…), the expenditure to be considered shall be the full price of the contract." and Article 60 (2) PPC explicitly provides that "Splitting expenses with the intent to evade the regime provided for in this Code is prohibited".

Gap analysis

Recommendations

Assessment criterion 1(b)(d):
Appropriate standards for competitive procedures are specified.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPC, Title IV, Articles 117 to 152, comprises detailed rules governing each procurement method/procedure.

Gap analysis

Recommendations

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

Assessment criterion 1(c)(a):
The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 23 PPC requires the publication of Annual Procurement Plans and Annual Grouped Procurement Plan in the public procurement portal hosted and managed by the Ministry of Finance (https://www.mf.gov.cv/web/ecompras). The publication of these annual plans is mandatory, and the infringement of this obligation may constitute an offence that may be punished through fines imposed by ARAP (Article 189 PPC ff., Article 21 of the Budget Law, 2019 and Article 17 of the Decree-Law on the Budget Implementation, 2019).

Article 24 PPC mandates the publication of tender notices in the public procurement portal hosted by the Ministry of Finance (https://www.mf.gov.cv/web/ecompras) and on an international website in case of international tenders.

Article 28 PPC prescribes that bidding documents shall be published and downloadable from the public procurement portal (www.mf.gov.cv) and also available at the procuring entity premises. Bidding documents may be provided through the use of electronic means of communication).

IMPORTANT TO NOTE: here and elsewhere, when addressing procedural issues in the phase of contract formation, it must be noted that Cabo Verde is currently in a "*dual mode*" phase (paper/manual and e-GP),

which should end by 18 February 2024 per the provisions of the Decree-law 11/2023 which adopted the Regulation of the electronic processing of public procurement procedures, institutionalization of the «Electronic Public Procurement Platform» and establishment of the respective sanctioning regime.

Gap analysis

Recommendations

Assessment criterion 1(c)(b):
Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The deadline for submitting applications and bids must be clearly indicated and established in the tender notices and the bidding documents taking account of the complexity of the contract and the time necessary to prepare the applications and bids, without prejudice to the minimum deadlines established in this statute for each type of procedure (Article 94 PPC).

More specifically:

- Article 119 The deadline for submitting bids is the one stated in the announcement and in the tender program, and it starts running from the date of publication of the announcement, respecting the following minimum deadlines:
  a) In case of national public tender:
    i. Thirty-five days (35), for public works contracts, public works concessions or public utilities concession; or
    ii. Twenty days (20), for lease of personal property or services; and
  b) In case of international public tender:
    i. Forty-five days (45), for public works contracts, public works concessions or public utilities concessions;
    ii. Thirty days 30), for contracts for the procurement or lease of personal property or services.
  2. In case of exceptional urgency, duly substantiated by the contracting entity, the deadline for submitting bids may be reduced to ten days (10), regardless of the type and value of the contract.

- Article 141 (deadline for submission of applications) in pre-qualification procedures shall be freely set in the tender program and take account of the nature, characteristics, volume and complexity of the documents comprising the applications, in any case not less than fifteen days (15);

- Article 147 (Deadline to submit bids) In pre-qualification procedures the following minimum timelines shall be observed:
  a) for national public tenders:
    i. Thirty days (30) if the tender is for the execution of a public works contract, public works concession or public utilities concession; or

ii. Fifteen days (15) if the tender is for the execution of personal property purchase and sale or lease agreements or services agreements;

b) For international public tenders:

i. Forty days (40) if the tender is for the execution of a public works contract, public works concession or public utilities concession; or

ii. Twenty-five days (25) if the tender is for the execution of personal property purchase and sale or lease agreements or services agreements.

Article 152 (Deadline to submit bids) In closed tenders the deadline to submit bids may not be less than ten days (10) as from the date of delivery of the invitation.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Gap analysis

PPC Article 119 (2) provides that "in case of exceptional urgency duly substantiated by the contracting entity the deadline for submitting bids may be reduced to ten days (10), regardless of the type and value of the contract." Although there is an explicit requirement for reasoning the decision, the fact that the procuring entity is allowed to qualify the situation as of "*exceptional urgency*" on a discretionary basis may hinder the objectivity in the judgment.

While carefully avoiding creating a complex or lengthy mechanism that could jeopardize the ability to procure promptly when confronted with real urgency, the possibility of introducing a mechanism for sharing responsibility for such judgment with another entity, independent from the contracting entity, should be evaluated to introduce a further tool to prevent abuse in the choice of direct awarding. It is commonly known that one of the main reasons for this abuse lies precisely in a superficial or even fallacious invocation of a situation of "urgency" so the legal regime can be enhanced by adding another obstacle to the use of what should be considered the method of procurement of last resort.

It should be noted that an amendment such as the one recommended is not intended to speed up public procurement (as a general objective) but rather to help respond better to a situation which, if it is as the procuring entity claims and substantiates, is a situation of urgency, unforeseeable and to deal with which the "normal" tender deadlines are not adequate to meet the needs caused by the emergency. It will always be a more competitive alternative than going straight to direct award. The fact is that an "**urgent open tender**" would by definition start with a notice and a direct award with an invitation– and that makes all the difference.

Recommendations

It is recommended to:

- Consider adding a provision to PPC, allowing to reduce some procedural deadlines in cases of exceptional urgency (and not just the deadline for submitting tenders), as well as the non-application of certain requirements, such as those laid down in the rules on the preliminary report and the final report, while maintaining the essential aspects of the public procurement procedure, first and foremost the approach to the market by means of a notice rather than an invitation. In short, to create a sort of "**urgent open tender**".

Assessment criterion 1(c)(c):
Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).

Pillar I. Legal, Regulatory, and Policy Framework

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 11 of the PPC lays down the principle of transparency and publicity, according to which all the decisions and important documents of the procedure must be as widely publicised and known as possible to all interested parties. Such provision materialises an absolutely essential rule concerning the obligation for both the award criteria and the essential conditions of the contract to be formed to be defined before the procedure is launched. It is the obligation of procuring entities to ensure that their decision to award a contract and the decisions they take in the course of the procedure, including the award decision, are properly publicised or adequately brought to the attention of all interested parties [Article 11(2)]
More specifically, Articles 24, 25 and 28 establish the obligations of publicity and access to documents by interested parties. The default means of publicity is the public procurement portal on which public tender notices -as well as two-round public tender procedures and prequalification procedures - in the form of Schedules I, II and III - are published. In procedures of international nature notices shall be published on an international website as well. It is important to note that the above is considered the minimum required by law, which means that the procuring entities can publish, in addition to these, in any means they consider fit to inform as many interested bidders as possible.
The obligation to publish goes beyond the original tender documents and includes any amendments thereto, as well as awarded contracts' sheets, substantially in the form of schedule VI, on the public procurement website (Article 25 PPC).

Regarding the access to the procurement procedure documents the Cape Verdean regime is pretty open and transparent since such documents (with the exception of those which may be protected on the grounds of a commercial or industrial legitimate secrecy) may be consulted by any interested parties, from the date the procedure announcement is published or the date the invitation for bids is sent, in accordance with the adopted procedure, in the premises of the awarding entity, on the public procurement website or in any other place indicated in the procedural documents. Such documents may also be made available electronically. (Article 28).

Similar/equivalent provisions within the recently introduced e-GP

NOTE: Although the assessment covers e-procurement in other sections, the main provisions are equivalent to the previous ones in the PPC.

While it is hoped that the widespread use of electronic public procurement (e-GP) will make a decisive contribution to greater transparency and publicity, facilitated by the nature of the tools and applications used in it, we must highlight that (i) the preparation of much of the content to be published continues to be produced by the procuring entities manually and (ii) some decisions on the selection of content for publication, and its actual publication, are not or cannot be guaranteed to be automated.
It is expected, however, that the use of e-GP (i) drastically reduces the time to publication (ii) combined with appropriate communication tools, makes it possible to guarantee the timely receipt of announcements and notifications and to have an idea of the universe of recipients who have accessed the information.
Decree-Law 11/2023 of 17 February, which institutionalises the "Electronic Public Procurement Platform" and regulates the electronic processing of public procurement procedures, reiterates the principle of availability, according to which permanent access to the electronic platform must be guaranteed to all potential interested parties in public procurement procedures registered on the electronic platform, except in cases where access limitations are justified for reasons of maintenance or breakdown of the electronic platform and/or any of its systems.
It is also important to note that in Article 13 (1) of this Decree-Law, the legislator has provided an adequate list of (minimum mandatory) functionalities that more than sufficiently meet the needs of publicity and guaranteed

access to documents and information on the platform, namely the management and access to procedures and their documents; the sending of messages via the electronic platform, requests for clarification, the submission of applications and tenders, prior hearings, administrative challenges, the submission of qualification documents and proof of the provision of a security deposit and the viewing of all messages and notices created by the procuring entities to which they must have access.

Concerning the availability of public procurement procedure documents, they are published (accessible to all interested parties with internet access) by the procuring entity via the electronic platform in full on the date of publication of the notice of the procedure, with the remaining documents, namely those relating to clarifications and rectifications authored by the procuring entity, its decisions to extend the deadline, notifications and communications in the phase prior to the submission of applications or tenders, being made available only to interested parties registered and participating in the procedure in question (Article 36).

Gap analysis

Recommendations

Assessment criterion 1(c)(d):
The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Conclusion: No gap

Red flag: No

Qualitative analysis

The content published is enough for the potential bidders to decide whether to bid or not. In addition to a comprehensive list of documents that must be published, their minimum mandatory content is also explicitly defined in the law. In fact, everything from the annual procurement plans to all the relevant documents for each procurement procedure must be published on the public procurement portal. The list includes the tender documents, which include, first of all, the conditions for holding the tender (tender programme), as well as the description of the subject of the contract, the technical specifications, the award or qualification criteria and the model for evaluating tenders or applications, the essential conditions of the contract to be concluded.
Article 41 (2) PPC expressly states that procedure documents must contain all the information necessary to prepare and submit the application and/or the bid, in strict observance of the principles and applicable rules, to allow for full competition between all economic operators.

It is worth mentioning that although the topic is dealt with in another sub-indicator, standard bidding documents must be used by procuring entities, and only special rules regarding the specific contract to be executed may be introduced (Article 42 PPC).

Gap analysis

Recommendations

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

Assessment criterion 1(d)(a):
It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions

Pillar I. Legal, Regulatory, and Policy Framework

Conclusion: No gap

Red flag: No

Qualitative analysis

The rule is openness to participation rather than limitation, which expresses the principle of free, fair and wide competition. With this purpose, Article 8 (2) PPC (Principle of effective competition) provides that "In the formation and contract procedures that fall within the scope of this Code, the widest access to pre-contractual procedures shall be guaranteed to those interested in procurement".

Title II, Chapter II contains the Rules for participation in the procedures, dealing in Section I with general but fundamental provisions such as the Impediments of candidates and tenderers (Articles 70 to 72 PPC), professional qualifications and authorisations (Article 73), and Section II on Technical and Financial Capacity.

Gap analysis

Recommendations

Assessment criterion 1(d)(b):
It ensures that there are no barriers to participation in the public procurement market.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

In general, PPC rules on participation are non-discriminatory and promote the access to the public market. Article 8 (1) PPC (principle of competition) sets out that "the awarding entities shall ensure the promotion of effective competition in the award of public contracts" and stresses that "2. In the formation and contract procedures that fall within the scope of this Code, the widest access to pre-contractual procedures shall be guaranteed to those interested in procurement.".
PPC, Article 28 prescribes a very wide access to the procedure documents in order to stimulate the widest participation possible: 1. The procedure documents may be consulted by any interested parties, from the date the procedure announcement is published or the date the invitation for bids is sent, in accordance with the adopted procedure, in the premises of the awarding entity, on the public procurement website or in any other place indicated in the procedural documents. 2. The procedure documents may be made available electronically.

However, as far as international public procurement is concerned, the principle set out in Article 13 PPC leads, in practical terms, to the possibility of including preferences in favour of national bidders – e.g. tie break clause, local content, price preference, etc. - in the tender specifications. Also, the standard contract terms and conditions regarding the payments schedules, the means of payment, the requirement to offer bidding and performance securities may be regarded as discouraging the participation of economic operators in the public procurement market. The said requirements constitute a barrier to international trade.

Article 99/4 needs to be reviewed and the margin of manoeuvre and discretion it allows to procuring entities should be cancelled or reduced depending on the outcome of the barrier's economic impact assessment.

Gap analysis

Pillar I. Legal, Regulatory, and Policy Framework

Article 99(4) PPC, in line with the principle set out in Article 13 PPC (National economic and social development), introduces a potential barrier to international trade[3] : "In the most economically advantageous bid factors may also be foreseen that grant greater weight to bids submitting goods produced, extracted or farmed in Cabo Verde, or relating to services provided or supplies made by entities of Cabo-Verdean nationality or with registered offices in Cabo Verdean territory."

Recommendations

- The government should assess the actual economic impact of barrier to international trade constituted by Articles 13 and 99(4) PPC and, depending on the result, decide to repeal this legal provision in case the barrier has no added value to the national economy and the country's public procurement system or, at least, its modification to reduce the room for manoeuvre and discretion allowed to procuring entities by detailing the key terms and conditions governing the use of this protection measure, e.g. by defining how locally produced goods and services, nationality of natural persons, maximum preference rate is factored in the award criterion/evaluation model, etc.

Assessment criterion 1(d)(c):
It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

In Chapter II, the PPC details the rules for participating in the procurement procedures to form public contracts for acquiring goods and services or doing public works.
Several provisions set out the requirements related to the professional qualifications and authorizations (Article 73), the possibility of grouping through the setup of consortia (Article 69), the use of third-party capacity (Article 78) and the assessment of the technical and financial capacity of tenderers (Articles 73).

As far as exclusions are concerned, PPC Article 70 lists the situations in which entities – natural or legal persons - are unable to participate individually or in a consortium:

- Any Entity who is insolvent or bankrupt, winding up, suspending its business activities, subject to court administration or in any other similar situation, or with any proceedings for any of the above pending against it;
- any Entity who has been or, in the case of a legal entity, any acting members of its management or administration bodies who have been, convicted of a crime or offense relating to their professional conduct by court ruling transited in *res judicata*;
- any Entity barred from participating in procurement procedures pursuant to the law;
- any Entity with outstanding contributions to social security in Cabo Verde or their home country or the country of their principal place of business;
- Any Entity with outstanding taxes to the State of Cabo Verde or their home country or to the country of their principal place of business; or
- Any entity who has or, in the case of a legal entity, if their acting members of its management or
- administration bodies have, been convicted of a crime of participation in a criminal organization,

[3] The Evaluation Team did not find any cases of practical application of this potential barrier to international trade resulting from the combination of Article 99(4) and 13 of the PPC.

- corruption, fraud or money laundering or, if the procedure is to form a works contract or public works concession, for the commission of any offenses which under the legal framework governing the construction sector which would bar their access to that activity. In all of the above situations a court ruling transited in res judicata is necessary as pre-requisite of the exclusion.

It is also relevant to mention that bidders/tenderers are required to attach to their bids/proposals two declarations regarding the grounds for exclusion and the unconditional acceptance of the tender specifications: PPC Annex IV (Model declaration concerning grounds for exclusion) and PPC Annex V (Model declaration of acceptance of the tender specifications).

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Gap analysis

- The wording of Article 70 (1) (c) of the PPC creates doubts as to whether the status of bidders or candidates (legal persons) is determined by the status of the members of their governing bodies, which seems to be the reasonable solution. Legislative revision is necessary to avoid doubts of interpretation.
- The list of grounds for disqualification under Article 70 of the PPC could be extended to include other situations such as those relating to the crimes of terrorism and terrorist financing, child labour and trafficking in human beings.

Recommendations

- It is recommended to revise Article 70 PPC in order to:
  - adding to Article 70(1)(c) of the CCP the provision that candidates or bidders are barred if members of their management or administrative bodies, in full exercise of their duties, are barred from participating in procurement procedures;
  - Including, among the causes of impediment to participation in Article 70 PPC, conviction for the crimes of terrorism and terrorist financing, child labour, and trafficking in human beings, the existence of a conflict of interest, an attempt by the candidate or competitor to influence the decision to contract, the existence of strong indications that the candidate or competitor has acted with the intention of distorting competition, and the verification of significant or persistent deficiencies in a previous public contract.
  - Providing for self-cleaning solution for some of the impediments enshrined in article 70 of the PPC;
  - Adapting Annex IV of the PPC to reflect the above changes.

Assessment criterion 1(d)(d):
It establishes rules for the participation of state-owned enterprises that promote fair competition.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Pillar I. Legal, Regulatory, and Policy Framework

There are no specific provisions in the PPC, nor in any other legislative act, regulating the terms and conditions for SOEs to participate in the public procurement market as bidders.

Gap analysis

There are no explicit provisions in the PPC nor the RJCA laying down the principle that the participation of public entities in the formation and execution of public contracts - as (i) bidders or candidates and (ii) contractors - must not distort competition or involve situations that constitute actual conflicts of interest.
Although this is not enough to c**onclude** that the participation of SOEs is not regulated at all, or that there is no guarantee regarding the occurrence and prevention of conflicts of interest, the analysis of the key applicable provisions leads us to recognise that there is a gap that needs to be filled **in** the next legislative review. Let's see why:

Article 10 of Law 104/VIII/2016 (Principles and Rules of the Public Business Sector) of 05/02/2016, as amended by Law 58/IX/2019, states that "(1) ... public companies are governed by private law, except as provided for in this law, in their statutes , as well as in other special provisions relating to entities that are part of the public sector, as applicable to them." and (5) adds that subsidiary companies are subject to the commercial, labour and tax legal regime applicable to companies whose capital and control is exclusively private, without prejudice to the provisions of this law.
In terms of how these companies participate in the market, it is important to emphasise that Article 11 requires them to comply with the rules of competition and financial transparency. According to this provision (1) companies in the Public Business Sector are subject to the general competition rules in force in Cape Verde and (2) Relations between companies in the Public Business Sector and the State or other public entities may not result in situations which, in any way, are likely to prevent, distort or restrict competition, in whole or in part, in the national territory.
Therefore, insofar as the formation of public contracts, as well as their execution, fall within the above-mentioned concept of "***relations between public companies and the state or other public entities***" it can be said that the law already provides a minimum framework for the participation of SOEs, but the question is whether such framework is sufficient.
And from our point of view it isn't, because the participation of SOEs, as well as other public entities, in the formation of public contracts and in their execution if they are awarded to them - increases the risks of conflict of interest situations occurring - e.g. when the procuring entity is run by managers who have some direct interference and communicate regularly with the management bodies of an SOE under their political tutelage.
While this rule (Article 10) is a good foundation for establishing a secure system for SOEs to participate in public procurement, here in the guise of competitors or candidates, it also seems to us that, in order to increase legal certainty and security, the solution needs to be replicated in the Public Procurement Code and the Legal Framework for Administrative Contracts, by inserting an express rule on the matter.
It therefore seems prudent for the PPC and RJCA to include an express provision on the matter.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

The inclusion in the PPC of an express rule on the conditions for the participation of SOEs, and other public entities that are in a position to act in the market, should be considered in order to guarantee that such participation is not based on conflicts of interest and does not distort competition**.**
This change, through the addition of a general rule (the enunciation of the principles guiding the SOEs' participation will suffice), must be made **within** the framework of the next legislative modernization and

enactment of missing implementing acts pack (pls refer to Indicator 2 (a) (a) below: implementing act regarding the List of Non-Eligible economic operators; contract price updates).

Assessment criterion 1(d)(e):
It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.

Conclusion: No gap

Red flag: No

Qualitative analysis

The following provisions of the PPC provide for detailed eligibility criteria and set out the procedures to follow and evidence that must be gathered (documents) for assessing it: Article 69 (Consortia), Article 73 (Professional qualifications and authorizations), Article 74 (Assessment of technical and financial capacity), Article 75 (Technical capacity), Article 76 (Financial capacity), Article 77 (Assessment of the capacity of applicant consortia), Article78 (Use of third-party capacity).
The procedures for assessing the bidders' eligibility are themselves embedded within the whole procurement procedure and do not have, from that point of view, autonomy – their only aim is to conclude whether a person, natural or legal, should be allowed to participate.

Gap analysis

Recommendations

Sub-indicator 1(e)
Procurement documentation and specifications
The legal framework meets the following conditions:

Assessment criterion 1(e)(a):
It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Article 40 PPC (Types of documents) lists the procurement documents that should be issued in order to conduct the procurement procedure. The minimum contents of each type of document are set in the following provisions: 43 (Invitation), 44 (Tender program and tender specifications), 117 (Tender notice), 118 (Tender program – public tender procedures), 133 (Tender program - Two-round public tender), 140 (Tender program – Pre-qualification procedures), 146 (Invitation to bid – Pre-qualification procedures), 150 (Invitation to bid – Closed tenders) 152 (Deadline to submit bids).

According to PPC, Article 42/1 standard bidding documents must be approved by the government member in charge of finance or public works upon proposal of ARAP. The use of existing procedure documents is mandatory, and only special provisions (clauses) regarding the specific contract to be executed may be introduced by the contracting entity (PPC, Article 42/2).

Gap analysis

- The "notice" is not listed among the bidding document (Article 40 PPC). However, for legal clarity it should be included, especially because of the precedence between the rules of the tender programme and the provisions of the notice [Article 118 (2) PPC]. As found in several cases in the sample analysed in Indicator 9, disagreements or interpretative doubts are not uncommon when interested parties are in possession of the various tender documents - the clearer the rule of precedence in the event of an inconsistency, the more certain the solution.
- Chapter III of Title IV of the PPC does not contain any provision establishing the rule of precedence in the event of non-conformity between the provisions of the contract notice, invitation and programme.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- Adding a paragraph 3 to article 146 PPC stating that, in the event of non-conformity, the rules of the invitation shall prevail over the provisions of the notice, and the rules of the tender programme shall prevail over the rules of the invitation, except for procedural matters which are regulated in the invitation, in which case the rules of the latter document shall prevail.

Assessment criterion 1(e)(b):
It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 45 (3) PPC prescribes that "*Technical specifications must describe in a clear, impartial and accurate manner the service and/or the goods to be supplied, the place of supply or delivery or installation of the goods, deadlines for the supply of the service or delivery of the goods, applicable minimum requirements, and any pertinent terms and conditions, including the definition of any tests, standards and methods to be used to assess compliance of the supplies provided for in the agreement*."
Article 45 (6) PPC adds that " *It is forbidden to establish technical specifications mentioning products of any given brand or source or to mention particular manufacturing processes resulting in the benefit or elimination of certain companies or products. It is also forbidden to use trademarks, patents or types of brand or to indicate one given source or production, save where it is impossible to describe the specifications, in which case those references are allowed accompanied by the expression "or equivalent"*.

Output-based (functional) or performance related specifications (in principle more neutral from a technological point of view) are not explicitly mentioned as such but should be considered as allowed by the spirit of PPC and the wording of Article 45 (3) when it prescribes that "*Technical specifications must describe (…) any pertinent terms and conditions*".
Article 45 (4) provides a clear preference for national technical specifications but does not rule out the "transposition" of internationally originated standards: "*Technical specifications shall be established by reference to: a) National technical specifications for design and use of products; and b) Other documents such as national rules transposing internationally accepted rules, or in their absence, other domestic rules or conditions of technical homologation*.".

Gap analysis

Recommendations

Assessment criterion 1(e)(c):
It requires recognition of standards that are equivalent, when neutral specifications are not available.

Conclusion: No gap

Red flag: No

Qualitative analysis

Same as 1 (e) (b)

Gap analysis

Recommendations

Assessment criterion 1(e)(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).

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 52 PPC governs the procedure for clarifications concerning the procurement documents. The entity overseeing the process may, either proactively or upon request from interested parties, offer necessary clarifications to ensure a comprehensive understanding of the documents. These clarifications, which remain anonymous, must be issued by the two-thirds mark of the bid submission deadline. Interested parties can subsequently seek additional clarification until the same juncture in the timeline.

Gap analysis

Recommendations

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

Assessment criterion 1(f)(a):
The legal framework mandates that the evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.

Conclusion: No gap

Red flag: No

Qualitative analysis

According to Article 99 PPC (*Award criteria*) one of the following criterion should be chosen:

- the lowest price, under which only price attributes are evaluated and

- the most economically advantageous tender (MEAT), under which price and non-price attributes are evaluated .

The award criterion should be explicitly set in the procurement documents and be applied by the award committee. Furthermore, Article 95 (1) PPC explicitly provides that "*bids shall be reviewed and evaluated in accordance with the award criterion defined in the procedure documents and respective weighting*." leaving no room for discretion to the award committee who has to reason all their decisions (failure to provide adequate reasoning is sufficient grounds for annulment).

Gap analysis

Recommendations

Assessment criterion 1(f)(b):
The legal framework allows the use of price and non-price attributes and/or the consideration of life cycle cost as appropriate to ensure objective and value-for-money decisions.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Both price and non-price attributes may be considered to set the award criterion (Article 99 PPC). Although the concept of life-cycle costing (LCC) is not explicitly mentioned in the PPC, the following provisions offer room for using it in the design of the bidding documents (especially the award criteria): Article 31 PPC (Contract value) provides that "(…) *the contract value corresponds to the total economic value that the winning bidder can benefit from, exempt from any tax. 2. The economic value referred to in the previous paragraph encompasses the price to be paid by the awarding entity, throughout the term of the contract, including possible extensions, renewals or options, as well as any consideration or advantage, even if non-pecuniary, that the winning bidder can benefit from as a result of the conclusion of the contract*.". So the LCC is (theoretically) among the possible practical applications of most economically advantageous tender criterion insofar as non-price attributes can be accommodated in the evaluation of proposals.
So, t**he law allows the use of attributes other than price, even without explicitly stating so, but it does not provide any guidance and does not specify the acceptable methods for calculating them, so it is not to be expected that, for example, the LCC will be used without a change in the law (which, in the current framework, may even raise some questions in terms of legal certainty and protection of competition).**
A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Gap analysis

The law lacks explicit provision(s) describing the method(s) the procuring entity should use to determine and quantify the life-cycle costs (*e.g.* the consideration of net present value) and the data bidders should provide to make this determination.

Recommendations

It is suggested that the next revision of the PPC introduces the provisions necessary to smoothly use the LCC in the framework of the award criterion based on the most economically advantageous tender.

Among other aspects, these rules should offer a safe practical guideline for building the evaluation model, taking into account (naturally) the costs related to the acquisition itself, but adding the costs of use, such as energy consumption, consumables, maintenance and technical assistance costs, end-of-life costs, end-of-life costs, such

as collection and recycling costs, costs attributed to environmental externalities linked to the good, service or work during its life cycle, as long as it is possible to determine and confirm their monetary value, which may include the cost of greenhouse gas emissions and other polluting emissions, as well as other climate change mitigation costs.

Assessment criterion 1(f)(c):
The legal framework mandates that quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

(See recommendation above under 1 (a) (b) – to abolish the particular procedure for forming consultancy services contracts.)

Article 161 (Methods for selecting bids in the procurement of consultant services) To select bids the following methods shall be used: a) Selection based on quality and price; b) Selection based on quality; c) Selection based on a fixed budget; d) Selection based on price; and e) Selection based on consultants' background. The law lays out the conditions under which the selection of consultancy services may be based exclusively on price attributes (Selection based on a fixed budget and Selection based on price). Selection methods nonexclusively based on price attributes are the majority. When the selection criterion combines both Quality and Price, the weight attributed to the quality and price shall be detailed in the appropriate procurement document and determined on a case-by-case basis in accordance with the nature of the service to be rendered, but within the within the following limits: 70% to 80% for quality (non-price related attributes) and of 30% and 20% for price related attributes.

"In the procurement of consultant services selection based on quality and price shall be the preferred method. (PPC, Article 162 - Selection based on quality and price)

Article 163 (Quality evaluation) "1. The evaluation committee shall evaluate the technical offer taking account of the following criteria: a) The specific experience in consultant services in light of the task to be assigned; b) The quality of the proposed methodology and/or the proposed work plan;
c) The professional qualifications of the proposed key personnel; d) The transfer of knowledge, if applicable."

Article 166 (Selection based on quality) "1. Selection based on quality shall be used in the following instances: a) Where the work is complex, highly specialized, where the intended deliverables are hard to
specify and where the awarding entity expects consultants to provide new and creative solutions in their offers; b) Whenever the awarding entity estimates that the quality of the work and the deliverables may have future repercussions; c) Whenever expert work is indispensable; d) Where the works may be performed in substantially distinct manners, so that the offers cannot be compared."

Gap analysis

Recommendations

Assessment criterion 1(f)(d):

The legal framework mandates that the way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.

Conclusion: No gap

Red flag: No

Qualitative analysis

According to Article 44 (1) PPC (Tender program and tender specifications) the tender program establishes the terms for the contract formation procedure, and these include the explicit mention to the applicable award criterion and the respective evaluation model.

Gap analysis

Recommendations

Assessment criterion 1(f)(e):
The legal framework mandates that during the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

Conclusion: No gap

Red flag: No

Qualitative analysis

During the evaluation phase the only situation where the award committee (jury) communicates with bidders is for requesting clarifications regarding the bids. Article 97 PPC provides that the evaluation committee may request bidders to provide clarifications regarding the bids for purposes of review and evaluation.
The clarifications referred to in the preceding paragraph shall be an integral part of the bid provided they do not run counter the procedure documents, do not alter or fill in any gaps in the aspects being evaluated or seek to correct omissions that determine the rejection of the bid pursuant to PPC or the procedure documents.
The communications referred above are to be undertaken in writing and both the requests for clarification and the replies to them shall be mentioned in the Preliminary and Final Evaluation Reports issued by the award committee (Articles 129, 130 PPC) and kept in the files in compliance with the principle of stability as set out in Article 17 PPC.
Accordiing to this principle, the procedure documents shall remain unaltered whilst the relevant procedures are pending. Except in specific circumstances established in PPC, namely whenever a contract is negotiated, the immutability of the respective documents shall be ensured throughout the entire procedure.

Gap analysis

Recommendations

Sub-indicator 1(g)
Submission, receipt, and opening of tenders
The legal framework provides for the following provisions:

Assessment criterion 1(g)(a):
Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.

Conclusion: Substantive gap

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Red flag: Yes

Qualitative analysis

Article 120 PPC prescribes that the bids submitted shall be opened, in a public session, at the place, date and time established in the announcement and in the tender program, and the session shall take place immediately after the expiry of the deadline for submitting bids. The proceeding of the public session for bids opening is detailed in Article 122 PPC (Opening of bids – public tenders).

Article 121 (2) PPC prescribes that the Prosecutor General of the Republic, or a representative, shall attend the public act for the opening of bids in procedures for the conclusion of a public works contract whose estimated value or base price is equal to or greater than 10,000,000$00 (ten million escudos).
Trying to clarify the meaning - or even trying to find a purpose - and giving some practical suggestions for action to the procuring entities, ARAP issued the Directive 2/2018 of 12 June in this regard. In the "Instructions" section, it describes the public act (Articles 120 to 125 PPC), repeats the requirement of mandatory participation of the Public Prosecutor that appears in Article 121 (2) PPC, adding that "Article 225(1) of the Constitution states that it is the Public Prosecutor's Office's responsibility to defend citizens' rights, democratic legality, the public interest and other interests that the Constitution and the law determine".
But the Directive adds that the Public Prosecutor's Office can only assist and not intervene, and that if it becomes aware of any "serious contradiction with the law" it must take appropriate action before the competent authorities, ARAP or the courts. The summary states that the procuring entities "must send the notice and the procedure documents to the Public Prosecutor's Office and inform it of the date, time and place of the public event on the day following the launch of the tender/publication of the notice and request confirmation of attendance at the event".
Although it doesn't make much sense to talk about a public act of opening tenders in an electronic public procurement environment, Decree-Law 11/2023 regulates this act [Article 1 (2) (e), Article 32 (e)] but, unsurprisingly, Article 36 (3) only mentions the "*opening of applications or tenders*", without detailing what this "public act" consists of.

Article 48 (1) (2) and (3) of Decree-Law 11/2023 will derogate most of Section II (Public Act) of Chapter I of Title IV of the PPC when Article 70 (2) ceases to apply (end of the dual mode paper/electronic period), *i.e.* on 18 February 2024, if this decree has not been amended by then.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Gap analysis

- The participation of the representative of the Public Prosecutor's Office in the public bid opening sessions which does not add value, and therefore becomes just another source of inefficiency in the application of resources or a potential source of systematic non-compliance, because:
  - the occurrence of a fact - act or omission - that could constitute an illegality and therefore an offence, whether administrative or criminal, does not have to be witnessed by the Public Prosecutor's Office, but rather by the interested parties present who have the right to complain or denounce it to the Public Prosecutor's Office;
  - the Public Prosecutor's Office should not exercise a preventive police function, but rather reserve itself for dealing with complaints from those who consider themselves wronged.

- Section II (Public Act) of Chapter I of Title IV of the PPC needs a profound modification to adapt to the e-GP once this is the only method for forming contracts.

Recommendations

- Repeal Article 121(2) PPC and Directive 2/2018 of 12 June;
- The public act as configured in Chapter I of Title IV of the PPC should be abolished when e-procurement becomes the sole form of forming public contracts and the relevant PPC provisions revised.

Assessment criterion 1(g)(b):
Records of proceedings for bid openings are retained and available for review.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Article 122 PPC (Opening of bids – public tenders) provides that "(…) 11. The minutes of the public session shall be drawn up and signed by the members of the evaluation committee and the bidders' representatives." and Article 125 PPC (Certificates of the minutes) refers that "Bidders or any interested parties may request a certificate of the public session minutes, which shall be issued within five days.".

This provision will also come into crisis at the end of the "dual-mode" paper/electronic period, as Article 61 (h) (Digital archiving and preservation) of Decree-Law 11/2023 will be sufficient to guarantee the archiving and preservation of the documents that make up public procurement procedures, including of course those relating to the opening of tenders (which, it should be borne in mind, is not as important in the electronic environment as it was in paper procurement).

Gap analysis
see above 1(g)(a)

Recommendations
See above 1(g)(a)

Assessment criterion 1(g)(c):
Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.

Conclusion: No gap

Red flag: No

Qualitative analysis

The security and confidentiality of tenders is prescribed by law at the stage where it makes sense, i.e. until the date and time of the opening of tenders.
Article 93 PPC establishes that once applications and tenders have been received by the entity responsible for conducting the procedure, it must keep them in a locked place until the date on which they are opened in public by the jury. The entity responsible for conducting the procedure must keep a record of the tenders submitted and the day and time they were received.
Here too, the electronic environment will bring changes, not in the legal objective of not allowing the disclosure of tenders and the documents that make them up before the date and time set for this, but in the means of guaranteeing it - today the material act of the jury opening the tenders, in the future the use of all the jury members' decryption keys on the platform (they are only opened with the use of the last of the decryption keys).

Gap analysis

Pillar I. Legal, Regulatory, and Policy Framework

Recommendations

Assessment criterion 1(g)(d):
The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 89 PPC (Confidentiality of the application and bid documents) "1. During the first third of the deadline to submit applications and bids, the interested party may request from the entity in charge of managing the procedure the confidentiality, *to the extent strictly necessary, of the documents comprising the bid as they may contain technical, industry, commercial, military or other legally relevant secrets*. 2. The entity in charge of managing the procedure shall decide on the request for confidentiality and serve the decision on all parties interested in the procedure by the end of the second third of the deadline to submit bids. 3. If the entity in charge of managing the procedure should not expressly authorize the confidentiality of the bid within the deadline set out in the preceding paragraph, the bid documents shall be presumed non-confidential. 4. The confidentiality of the bid may be lifted at any time during the procedure if the reasons for the confidentiality no longer subsist."

Law no. 10/X/2022 of 16 May regulates the access to and re-use of administrative documents and information. For the purposes of this law, administrative documents are considered to be any content or part of that content that is in the possession of or held on behalf of the bodies and entities referred to in the previous article, whether in graphic, sound, visual or computerised form or records of any other nature, namely, files, reports, studies, opinions, minutes, records, circulars, directives, circular letters, service orders, internal normative orders, instructions and guidelines for legal interpretation or for framing activities or other elements of information, including in particular those relating to: (…) Public procurement procedures, including contracts signed.

Article 10 (5) of this law is relevant to public procurement and states that "A third party has the right of access to administrative documents containing commercial or industrial secrets or secrets about the internal life of a company only if they have written authorisation from the company or if they can demonstrate on reasonable grounds that they have a direct, personal, legitimate and constitutionally protected interest that is sufficiently relevant, after weighing up, in the context of the principle of proportionality, all the fundamental rights at stake and the principle of open administration, to justify access to the information".
The legislator's wording corroborates the restrictive interpretation that should be given to confidentiality in public procurement law - therefore, in line with what was already regulated in the PPC (Article 89) which also provides for the possibility of protecting confidentiality but only "*to the extent strictly necessary*."

According to Article 89 of PPL (Confidentiality of application and tender documents), (1) during the first third of the time limit for the submission of applications and tenders, the *interested party* may may request the entity responsible for conducting the procedure to ensure the confidentiality, to the extent *to the extent strictly necessary*, of the documents that make up the tender because they contain *technical, industrial, commercial, military or other legally relevant secrets*.

Paragraph 2 adds that "The entity responsible for conducting the procedure shall decide on the request for confidentiality, notifying all those interested in the procedure at the end of the second third of the deadline for submitting tenders." And paragraph 3 wisely denies the possibility of tacit approval in such a sensitive matter for the economic operator requesting confidentiality, expressly stating that "If the entity responsible for conducting the procedure does not expressly authorise the confidentiality of the tender within the period

referred to in the previous paragraph, the confidentiality of the tender documents shall be deemed not to have been declared.
Finally, there is also the logical possibility of lifting confidentiality "(…) at any time during the course of the procedure, if the reasons that led to such confidentiality are no longer verified." (4), although such decisions must always have the consent of the economic operator holding the information or, failing that, the possibility of the latter withdrawing the proposal to avoid the disclosure of the relevant information

In conclusion, the solution offered by the PPL is very balanced, because:

- Respects the judgement of the "interested party" as to whether it is in their interest to protect some of the information contained in their proposal as confidential;
- It limits confidentiality to what is strictly necessary, in line with the best doctrine on transparency in public procurement (only to a certain extent in potential opposition to the values of competition e.g. protection of commercial secrets or the "internal life of the company");
- Both the interested party's request and the procuring entity's decision must be reasoned in accordance with a general principle of Cape Verdean Administrative Law [see Articles 95 (d) (e), and 142 (a) (c) of the Code of Administrative Procedure].

Gap analysis

Article 89(4) PPC does refer to the need of notifying interested parties about the decision to lift confidentiality. This should be further discussed also taking into account the rules of the new Code of Administrative Procedure.

Recommendations

Consider the need for revising Article 89(4) PPC to state that the Entity Responsible for Conducting the Procedure must notify interested parties of the decision to lift confidentiality.

Assessment criterion 1(g)(e):
The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.

Conclusion: No gap

Red flag: No

Qualitative analysis

The whole Chapter V of PPC deals with the Submission of applications and bids.
Applications and bids may be submitted in person against delivery of a receipt by the services of the entity in charge of managing the procedure, indicating the day and time of receipt, or by registered mail with recorded delivery [Article 92 (1) PPC]. Following the receipt of applications and bids by the entity in charge of conducting the procedure, the latter shall keep them locked until such time as they are opened at the public session by the procedure's evaluation committee (Article 93 PPC).
The mentioned provisions, coupled with the principle of favouring the procedure, bidders and bids, may contribute to a low rate of bids rejection.
Article 18 PPC "In case of insurmountable doubts regarding the interpretation of the law or the provisions in the procedure documents, the awarding entity must favour the maintenance of the procedure, bidders and corresponding bids, whereas the decision not to award the contract and ensuing cancelation of the procedure shall only be made under the terms of this Code."

[On e-GP pls. see Indicator 7 (b)]

Gap analysis

Recommendations

Sub-indicator 1(h)
Right to challenge and appeal
The legal framework provides for the following:

Assessment criterion 1(h)(a):
Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.

Conclusion: No gap

Red flag: No

Qualitative analysis

There are several review mechanisms available. Key legal provisions are:

- Article 183 PPC (Submission of claims), Title V (Administrative challenge), Article 182 (Types and nature of the challenge);
- Chapter IV (Administrative challenge) of Decree-Law 28/2021 of 5 April (Statute of Conflict Resolution Committee (CRC).

Challenges may be brought as follows:

- Through lodging a claim to the entity that performed the act;
- Through lodging an appeal to ARAP's Dispute Resolution Committee (CRC).

Administrative challenges as set forth in Article 182 (1) are optional and are not a prior requirement for filing a judicial challenge.
The decisions of the Conflict Resolution Committee (CRC) may be judicially challenged.

Gap analysis

Recommendations

Assessment criterion 1(h)(b):
Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Article 186 PPC (Effects of claims and appeals) provides that administrative claims and appeals suspend the effects of:

- Contract negotiation;
- The award decision; or
- Contract signing.

Gap analysis

Article 186 of the PPC must be analysed in conjunction with Article 42(1) of the RJCA, which regulates the annulment of contracts on the grounds of procedural faults. This Article of the RJCA refers to the "*suspension periods provided for in Article 186 of the Public Procurement Code*", however, the rule in Article 186 of the PPC does not contemplate suspension periods, but rather the suspension of the effectiveness of the (i) acts of negotiating the contract, (ii) awarding the contract and (iii) concluding the contract as a result of the submission of complaints and administrative appeals. For reasons of clarity and legal certainty, the wording should be improved.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

Consideration should be given to amending Article 42(1) of the RJCA, so as to clarify that contracts are voidable when they have been concluded at a time when the acts provided for in Article 186 of the PPC have been suspended.

Assessment criterion 1(h)(c):
Rules establish the matters that are subject to review.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Article 181 (1) PPC provides that administrative decisions (e.g. the choice of procurement method/procedure to follow, the award criterion and the evaluation model set by the procuring entity, etc..) taken as part of contract formation procedures conducted under may be challenged as provided for in this Title and (2) adds that procurement documents may also be challenged which should be seen as positive, because it provides an opportunity to scrutinise and avoid the accumulation of errors and difficulties if the problems detected can be remedied at an early stage in the procedure.

Gap analysis

As noted in the analysis of the sample of procurement cases (Indicator 9), the quality of tender documents is an issue that should be considered in terms of measures to improve the system and which it is not expected that maintaining the system of prior control by the DGPCP - which is recommended to be revoked [see 12 (a) (a)] - will ever resolve. As a (first) alternative, the improvement of standard bidding documents should be considered, as has been proposed, and this should be done, not least because of the introduction of e-GP and its generalisation.
This improvement, together with the possibility of challenging these documents, seems appropriate for making significant improvements to the system,

However, one difficulty needs to be resolved: the PPC does not specifically regulate this matter (in particular with regard to time limits for lodging appeals and decisions, and the effects of such appeals), unlike administrative decisions taken in the context of contract formation procedures, so this gap needs to be filled.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

In the next legislative review, the missing procedural rules regarding the challenging of the procurement/bidding documents should be added to regulate (i) which tender documents can be challenged - in principle, we would only exclude the notice; (ii) until when in the course of the procedure. As for the latter, it is suggested that the challenge should be possible until the contract is signed, as this is the moment when the power of the tender documents to shape the procedure is exhausted.

Assessment criterion 1(h)(d):
Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 184 PPC (Deadlines for filing claims and appeals)
1. Claims against the resolutions of the evaluation committee taken at the public session for bids opening shall be filed during that session and may be filed by statement dictated for the minutes or by written application.
2. Claims against other acts must be filed within five days as from their notice.
3. Appeals to ARAP's Dispute Resolution Committee shall be filed within ten days as from notice of the acts, except for appeals against the evaluation committee's decisions made during the public session which must be filed within five days.

Article 188 (3) PPC (Deciding on claims and appeals) "3. Appeals shall be decided within ten (10) days as from the date of filing or, where applicable, from expiry of the deadline for aggrieved parties to make their positions known."

The Statute of the Conflict Resolution Commission – CRC (approved by Decree-Law 28/2021, of 5 April) provides for detailed procedural rules on Chapter IV (Administrative appeal).

Gap analysis

Recommendations

Assessment criterion 1(h)(e):
Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Article 53 CRC prescribes that the deliberations and reports of the CRC regarding administrative appeals filed must be published on ARAP's website, and other means of communication may be determined. Practice shows that CRC deliberations are published in the ARAP website promptly.

However, with regard to "sensitive or confidential information", Articles 41 and 55 of the CRC must be analysed and their compatibility with the PPC and the principles of public procurement set out therein assessed: Article 41 (1) (g) CRC refers to the possibility of a "request for confidentiality, where appropriate, with a warning on the first and last page and a separate expurgated copy of the information considered confidential", with the applicant being able to instruct the request with the documents they deem appropriate, and Article 55 (3) CRC, regarding fees, states that a confidentiality fee is created for filing an administrative appeal before ARAP's CRC.

The two provisions combined (i) leave the question of under what circumstances this confidentiality can be requested (because if it is strictly linked to confidentiality in the procedure from which the appeal comes, it would be enough to mention that it would also have to be respected on appeal); and why confidentiality generates the need to charge a specific fee (does it increase the CRC's operating costs, is it a disincentive to request it?)
As far as "*sensitive information*" is concerned, which the Assessment Team interprets as referring to information that may merit the protection of confidentiality as an exception to the *golden rule of maximum publication of information dealt with in public procurement*, PPC provisions regarding confidentiality should apply in this remit as well.

Gap analysis

The only situation that should be protected in terms of confidentiality is the one regulated by Article 89 PPC, according to which the tenderer may request the entity responsible for conducting the procedure to maintain the confidentiality, to the extent strictly necessary, of the documents that make up the tender, on the grounds that they contain technical, industrial, commercial, military or other legally admissible secrets.

So in short:

- There seems to be no justification for introducing a system for treating information as confidential at the appeal stage that differs from the processing stage that took place before the appeal therefore, as a consequence, Articles 41 (1) (g) and 46 (2) CRC should be modified and Article 55 (b) repealed;
- The lifting of confidentiality must be notified in advance to those concerned and they must be given the opportunity to avoid publication.

Recommendations

- Amend Articles 41 (1) (g), 46 (2) to make them compatible with Article 89 PPC
- Repeal article 55 (b) CRC
- Addition to Article 89 (4) PPC of the duty of the procuring entity to notify interested parties of the decision to lift confidentiality of proposal elements

Assessment criterion 1(h)(f):
Decisions by the independent appeals body can be subject to higher-level review (judicial review).

Conclusion: No gap

Red flag: No

Qualitative analysis

PPC Article 182 (Types and nature of the challenge) "3. CRC's decisions may be judicially challenged." In line with this, Article 40 (1) of the Statute of the Dispute Resolution Commission of the Public Procurement Regulatory Authority (CRC Statute) also states that 1- Administrative appeal to the CRC is free and optional, and does not constitute a necessary precondition for judicial review.

The CRC's decisions on administrative appeals within its remit can be appealed against appeal to the competent judicial court in administrative matters, under the general terms (Article 54 of the CRC Statute).
Gap analysis
Recommendations
Sub-indicator 1(i) **Contract management** **The legal framework provides for the following:**
Assessment criterion 1(i)(a): **Functions for undertaking contract management are defined and responsibilities are clearly assigned.**
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis In addition to what is provided for in the contracts themselves, procuring entities have the powers defined in Article 5 (Powers of the public party) of Decree-Law nº50 / 2015 (Legal Framework of Administrative Contracts - RJCA): "Save where otherwise required by the nature of the contract or the law, the public party may on the terms of the provisions of the contract and this law: a) Direct how the delivery is performed; b) Supervise the performance of the contract; c) Unilaterally modify the clauses on content and manner of performance for reasons of public interest; d) Apply penalties in the event of breach or non-performance of the contract by the counterparty; e) Unilaterally terminate the agreement. " However, the reference to the supervision of the performance of the contract is made to the contracting entity as whole and not targeted to any function (or job profile) in particular. In fact, the Regulation of the Ministerial Purchasing Units, UGAs (Decree-Law 45/2015) does not empower these bodies with any specific competency beyond the award of the contract which may lead to the contract management trigger attention only/if serious breaches and irreparable damages have already occurred. A sound risk management calls for creating the figure of *contract manager*, ideally in connection with the setting up a public procurer cadre. **A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.**
Gap analysis Neither the Legal Framework of Administrative Contracts (RJCA) nor the Public Contracts Code (PPC) has foreseen the role and function of the *contract manager* which, coupled with the absence of a special cadre and career path for public procurers, makes the contractual management model very weak and vulnerable to significant risks arising from the lack of expert resources monitoring the contracts implementation on a daily basis as part of the entity's operations. A legislative change to create the "contract manager" function is included in the list of legislative acts mentioned under Ind 2(a) (a).

Pillar I. Legal, Regulatory, and Policy Framework

Recommendations

To include the contract manager function in the PPC in connection with:

- The introduction of a special career of public procurer;
- The reinforcement of specific training for public procurers.

Assessment criterion 1(i)(b):
Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Objective modifications to the contract

Article 22 of the Legal framework of Administrative Contracts (RJCA), Decree-Law 50/2015 provides that the contract may be amended in case (i)the circumstances on which the parties based their decision to enter into a contract suffered an abnormal and unforeseeable alteration, provided that the enforceability of the obligations it undertook is not covered by contract-specific risks; or (ii) for reasons of public interest arising from new requirements or a new appraisal of existing circumstances. Article 22/3 introduces an express safeguard clause meant to avoid negative impact on competition: "3. The amendment to the contract may not entail a change of the subject matter nor prevent or distort the competition guaranteed by the Public Procurement Code".
On the same vein, para 4. states that (…) amendments that do not arise from a supervening change in circumstances shall only be allowed where it is demonstrable that the order of bids evaluated in the contract formation procedure would not have been altered if the tender specifications had contemplated that modification save where the long-term nature of the contract and the course of time so warrant.

As far as Contract amendment consequences are concerned, Article 23 RJCA recognizes the right of the counterparty to the reinstatement of the financial balance provided that the amendment is based on a) an abnormal and unforeseeable change of the circumstances arising from a decision of the procuring entity adopted outside the scope of its powers to shape the contractual relationship that has a concrete impact on the counterparty's contractual situation; or b) For reasons of public interest. It is important to stress that an abnormal and unforeseeable change in circumstances not provided for in Article 23 (a) RJCA) shall entitle the party to an amendment to the contract or financial compensation in accordance with equity criteria.

Article 24 PPC provides for the publication of administrative acts by the procuring entity or agreements between the parties that involve any objective modifications to the contract and thus represent an accumulated value of more than 15 per cent (15%) of the contract price. However, the law is silent on the means of communication to be used - it is assumed that they should be the same as those used to publicise the award and the contract - and the consequence of failing to publish.

With regard to the assignment of the contractual position and subcontracting During the execution of the contract, the transfer of the contractual position and subcontracting require the authorisation of the public contractor, upon presentation by the co-contractor of a reasoned proposal accompanied by all the documents proving that the requirements for authorising the transfer and subcontracting in the contract itself have been met, under the terms of paragraphs 5 and 6. These basically require potential transferees and subcontractors to submit the qualification documents and fulfil the technical and financial capacity requirements required at the contract formation stage to the successful tenderer, now the transferor or subcontractor.

Particularly noteworthy, given the frequency with which these situations occur and the amounts usually involved, are the **objective modifications to public works contracts**:

- the so-called "extra works" are those whose type or quantity is not provided for in the contract and which have become necessary for the execution of the same work as a result of unforeseen circumstances and cannot be technically or economically separated from the subject matter of the contract without serious inconvenience to the owner of the work or, although separable, are strictly necessary for the completion of the work [Article 135 (1) RJCA]; the law sets a limit to this modification when it adds in paragraph 2 of the same article that the execution of additional works cannot be ordered when the overall price attributed to the additional works, including previous additional works, and discounting the value of the additional works, exceeds 25% (twenty-five per cent) of the contract price;
- Article 39 (1) (f) PPC states that in the context of public works contracts and service contracts, with a view to the award of additional works or services not included in the initial contract or project but which, as a result of unforeseeable circumstances, become necessary for the execution of the contract or the provision of services, provided that they cannot be technically or economically separated from the initial contract without serious inconvenience to the procuring entity**.**

Gap analysis

- Article 22 (3) of the RJCA contains only two limits on the objective modification of the contract: (i) "it must not lead to a change in the subject matter of the contract"; and (ii) "it must not constitute a means of preventing or distorting competition. However, there is no mention of the possible impact in terms of the contract price, which could result in an avoidable worsening of purchasing conditions for the procuring entity.
- Article 24 RJCA makes the obligation to publish the objective modification dependent on the verification of an impact (worsening) compared to the initial contract price of 15% and, in addition, is silent on the consequence of failing to publish the administrative act or the agreement through which a modification to the contract is introduced. Both situations should be corrected, the first by no longer making the obligation to publish conditional on any amount of financial impact (following exactly the same rules as for the publication of the award decision and the contract awarded), and the second by making it clear that the publicity is done through the same means of communication used for the contract award notice.
- the provisions of Article 39 (1) (f) of the PPC should be revised to limit the use of direct award in a way that jeopardises competition when circumstances do not prevent and the public interest is not harmed if the procuring entity goes back to the market and opens a new procedure to carry out the necessary "additional work". By allowing this direct award, regardless of the value, and without mentioning the specific regime of Article 135 (1) RJCA, it is possible that doubts may arise for the interpreter as to whether the use of one regime excludes the other, whether it is cumulative, to what extent, etc. Of course, in the event of a conflict, it could always be argued that the PPC has supremacy over the RJCA from a formal point of view, since the former is approved by a law of the National Assembly and the latter by a government decree-law. In any case, the issue should be considered and clarification introduced into the law.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- Amend the wording of Article 22 (3) RJCA to include the possibility of limiting the value of modifications to a maximum value by reference to the initial contract price and to prevent the modification of the contract from altering the economic balance of the contract by placing the Cocontractor in a more favourable situation than before the modification of the contract.

- Revise Article 24 of the RJCA to ensure that the obligation to publish is extended to all modifications of contracts, both objective and subjective, irrespective of the financial implications of these changes and their proportionality to the original contract value. Further, it should be specified that the methods of communication for such disclosures will align with those utilized for announcing the award and finalization of the contract. Additionally, it is proposed to explicitly stipulate the penalty of nullification for any contractual amendments that are not duly publicized.
- Review the wording of Article 39 (1) (f), bearing in mind the situations in which Article 135 (1) of the RJCA also applies, with the aim of limiting, as much as possible, the use of direct award in situations that would be better resolved by "reopening the market" and launching a new procurement procedure;

Assessment criterion 1(i)(c):
There are efficient and fair processes to resolve disputes promptly during the performance of the contract.

Conclusion: No gap

Red flag: No

Qualitative analysis

The RJCA allows for arbitration agreements, either originally in the administrative contract itself (arbitration clause - article 46) or during the course of the contract [arbitration commitment - Article 47(1)].
During the execution of the contracts, the competent courts or arbitral tribunal may be activated, pursuant to Articles 46 and 47 of the Legal Regime of Administrative Contracts – RJCA. The recourse to the arbitral tribunal is made under the terms of the Voluntary Arbitration Law approved by the Law 76 / VI / 2015, of 16 August.

According to Article 46 RJCA (Arbitration clause) clauses referring any disputes arising between the parties under an administrative contract to arbitrators shall be valid. And Article 47 RJCA (Arbitral tribunal) adds that if the parties choose to refer their dispute to an arbitral tribunal, the arbitration clause must be signed prior to expiry of the time limit to exercise their rights. (…). Where the value of the dispute is not greater than twenty million Escudos (20,000,000$00) a sole arbitrator may be appointed.
In the case of public works contracts, Article 200 RJCA introduces a special rule according to which in the event of a decision to submit the dispute to arbitration, once it has been notified to the parties, the arbitration file shall be delivered to the competent authority for the inspection of public works, where it shall be kept on file, and it shall be the responsibility of the member of the Government responsible for the area of infrastructure to decide everything relating to the terms of the respective enforcement by the administrative authorities, without prejudice to the jurisdiction of the courts for the enforcement of the contractor's obligations, and a copy of the arbitral tribunal's decision shall be sent to the competent judge for the purposes of the enforcement proceedings. A copy of the arbitral decision shall be sent to the competent authority for the inspection of public works.

Gap analysis

Recommendations

Assessment criterion 1(i)(d):
The final outcome of a dispute resolution process is enforceable.

Conclusion: No gap

Red flag: No

Qualitative analysis

The Civil Process Code is applicable to the enforcement of public procurement related rulings. The Law 76 / VI / 2015, of 16 August, states in Article 35 that the arbitral award is considered final as soon as it is not subject to annulment - which can only be requested before the Supreme Court of Justice within one month of its notification - and has the same enforceability as a judgement of a court of first instance.

Cabo Verde has acceded to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, on 22 March 2018, so foreign arbitral awards are enforceable within the national legal system.

Gap analysis

Recommendations

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

Assessment criterion 1(j)(a):
The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Although eight (8) years have passed since the entry into force of Article 199 of the PPC, which explicitly stated that "*It is the objective of the State to implement an electronic public procurement system, with a view to processing the procedures for the formation of contracts subject to this Code through an electronic platform.*", Decree-Law no. 11/2023 of 17 February begins in Article 2 *(3) by excluding from the application of this law, the electronic processing of the decision to contract, authorisation of expenditure and approval of procedural documents, until technical conditions are created for this purpose*."

The Strategic Agenda for the Modernisation of the State and Public Administration "Making it Happen" approved by Resolution 59/2022 of 27 May is silent on e-GP but contains strategic objectives and very relevant measures for its operation and efficiency, such as "Ensuring the interoperability and integration of the various information systems in use in the Public Administration; which is relegated to "when technical conditions allow".

Gap analysis

- one of the most important applications of so-called "interoperability" is the one that establishes the link between the public procurement information and management systems and those of public finance management (PFM), which is precisely excepted in Article 2 (3) of Decree-Law 11/2023;
- In addition to the lack of a consistent National Strategy and Roadmap for the generalisation of the use of e-GP, there is the observation that the public procurement system - here mainly represented by the Ministry of Finance and ARAP - are sailing, from the point of view of the digital transformation agenda, on a course that is not aligned with the Strategic Agenda for the Modernisation of the State and Public Administration. This misalignment needs to be overcome as a matter of urgency.

Recommendations

- Despite the provisions of Article 2 (3), the Ministry of Finance and ARAP must include in their 2024 activity plans and budget the adoption of the measures and the necessary investments to ensure that the electronic processing of (i) procurement decisions and (ii) the authorisation of expenditure is made possible very quickly (within a period to be publicly announced). "Homologation of bidding documents" (by the DGPCP) is not included here because we recommend its abolition [see 12 (a) (a)].

Assessment criterion 1(j)(b):
The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

Conclusion: No gap

Red flag: No

Qualitative analysis

The legal framework, mainly based on Decree-Law 11/2023 (hereafter referred to as e-GP), takes on board the principles and points to the standards and tools that characterise modern e-GP solutions in terms of privacy (in relation to third parties not participating in the procedures), information security and authentication. Noteworthy are the principle of integrity and security (Article 6 e-GP), the principle of interoperability (Article 7 e-GP), the whole of Section V on Data Security and Integrity.

The serious problems identified in the e-GP implementation process are far from being at this level. The legal text is in line with international best practice.

Gap analysis

Recommendations

Assessment criterion 1(j)(c):
The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

Conclusion: No gap

Red flag: No

Qualitative analysis

It is hoped that after the end of the transitional period referred to in Article 70 e-GP, during which the paper-based and electronic forms of conducting public procurement procedures coexists, only e-GP will be in force. There is nothing in the law to suggest that e-GP, which is in the process of being set up, does not have a holistic purpose, so the issue about "which parts of the process are to be managed electronically" does not seem relevant.

Gap analysis

Recommendations

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

Assessment criterion 1(k)(a):

A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.

Conclusion: No gap

Red flag: No

Qualitative analysis

Same as 1 (g) (d) above

Also of interest to public procurement from the Law 10/X/2022 provisions:

- Access to documents and information: everyone, without the need to declare any interest, has the right of access to administrative documents and information, which includes the rights to of consultation, reproduction and information on their existence and content [Article 5 (1)].
- The right of access is realised independently of the integration of administrative documents in archives [Article 5 (2)].

Gap analysis

Recommendations

Assessment criterion 1(k)(b):
There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 27 PPC and Article 6 of Law 42/VI/2004 on the general legal framework for archives are relevant here. In accordance with Article 27 PPC, procuring entities and/or entities responsible for conducting the procedure must keep a detailed register of their contracts, which must include the following information, in accordance with the model in Annex VII of the PPC:

- Identification of the subject matter of the contract to be formed through the procedure;
- Decision to contract, decision to approve the expenditure and decision to select the procedure;
- Budget line and economic heading;
- Bidding documents;
- Clarifications and withdrawals regarding of bidding documents;
- Identification of candidates and/or tenderers;
- Applications and tenders/bids;
- Clarifications regarding applications and, where applicable, tenders/bids;
- Minutes of the opening of applications and proposals, if applicable, as well as - other relevant minutes of the procedure (jury sessions);
- Reports on the evaluation of applications, where applicable, and the evaluation of tenders
- Negotiation documents, where applicable;
- Decision on the award of the contract;
- Identification of the successful tenderer;
- Value of the contract;
- Draft contract and contract; and

– Other relevant documents

This rule must be combined with the relevant provisions of Law 42/VI/2004, specifically Article 4 which states that "Archives" are made up of all documents, whatever their nature, date, form and material support, produced or received by a natural or legal person, public or private, in the context of their activities and intended for utilitarian purposes. Article 5 (a) adds that current or administrative archives are those that are considered to be in frequent use by the organisation that produced or received them and Article 5 (b) states that intermediate archives are those that have lost their current interest for the organisation that produced or received them but retain a potential interest for management.

Procedural documents can be considered part of "current archives" and, as such, must be kept for a maximum of five years by the organisation that produced or received them before they are transferred to the pre-archiving services [Article 7 (1)], without prejudice to the fact that they must be kept in the event of pending legal proceedings of any kind - administrative, criminal or civil - in which such file (the set of documents that constitute the procurement procedure) is the subject or relevant evidence of the legal action.

Gap analysis

Recommendations

Assessment criterion 1(k)(c):
There are established security protocols to protect records (physical and/or electronic).

Conclusion: No gap

Red flag: No

Qualitative analysis

See above 1 (j) (b)

Gap analysis

Recommendations

Sub-indicator 1(l)
Public procurement principles in specialized legislation
The legal and regulatory body of norms complies with the following conditions :

Assessment criterion 1(l)(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.

Conclusion: No gap

Red flag: No

Qualitative analysis

There are no special rules governing public procurement in specific sectors (or areas of specific public policy) such as health, internal security or national defence in Cabo Verde.

Gap analysis

Pillar I. Legal, Regulatory, and Policy Framework

Recommendations

Assessment criterion 1(l)(b):
Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis

Refer to 1 (a) (c) above.

Gap analysis

Recommendations

Assessment criterion 1(l)(c):
Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.

Conclusion: No gap

Red flag: No

Qualitative analysis

The Privatisation, Public-Private Partnerships and Concessions Service (SPPPC) - of the Ministry of Finance - is the technical and operational service whose mission is to draw up, propose and execute the reform, restructuring and privatisation of companies in the State Business Sector, as defined in government policy, as well as to implement and monitor public-private partnerships and major public service concessions.

The SPPPC is responsible in particular for:

- Leading and technically coordinating the privatisation, PPP and major concession processes, including within the scope of teams, commissions or task forces set up for this purpose;
- Promote, with the support of external consultancy, the realisation of the studies necessary to define the best scenario for the reform or restructuring of companies in the State Business Sector;
- To promote, with the support of external consultancy, the carrying out of prior evaluations of the assets and businesses of the companies to be privatised;
- Promoting feasibility studies prior to the launch of a PPP, directly or through companies interested in the PPP, as well as public hearings or consultations when applicable;
- Issuing opinions with recommendations on privatisation and PPP proposals;
- Promote the drafting of legal diplomas and documents necessary for privatisations, with the support of external consultancy, commission or task force created for the process, as well as their discussion with the decision-making bodies with a view to improvement and approval;
- Support procuring entities in launching PPP procedures;
- Implementing the various stages of the privatisation and PPP processes;
- Drawing up and publishing newsletters or announcements on each privatisation and PPP stage underway;
- Draw up reports on the privatisation and PPP processes implemented;
- Designing and implementing mechanisms to supervise compliance with the PPP contracts entered into and the assessment of costs and risks;

- Designing and implementing PPP and privatisation procedure manuals;
- Whatever else is assigned to it by law, regulation or higher order.

The SPPPC is headed by a sub-coordinator, equivalent to a Service Director, who is appointed in accordance with the law.

Gap analysis

Recommendations

Indicator 2. Implementing regulations and tools support the legal framework

Sub-indicator 2(a)
Implementing regulations to define processes and procedures

Assessment criterion 2(a)(a):
There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Key implementing acts that have been enacted in accordance with the PPC (2015) include:

- ARAP Statute, Decree-Law 55/2015 of 9 October;
- Legal Framework of Procurement Units, Decree-Law 46/2015 (RUGA);
- CRC Statute, Implementing Decree-Law 12/2015 (repealed by Decree Law 28/2021);
- Regulation on Accreditation, Regulation 1/2015;
- Standard Bidding Documents (SBD), Ministerial Order 60/2015.

Gap analysis

The following legislative acts are missing:

- implementing act regarding the List of Non-Eligible economic operators foreseen in Article 72 PPC;
- regulation about contract price updates foreseen in Article 146 of RJCA;
- creation of the “contracts manager” function (ideally in connection with the public procurement cadre and career path).

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

A Plan for the adoption of the following missing legal acts must be adopted:

- implementing act regarding the List of Non-Eligible economic operators foreseen in PPC Article 72;
- regulation about contract price updates foreseen in Article 146 of RJCA;
- creation of the “contracts manager” function (ideally in connection with the public procurement cadre and career path);

The legislative reform should be prepared as a single and consistent package taking into account, namely:

- a National Public Procurement Strategy [also missing at the moment as emphasised under 5 (b) (b)];
- the MAPS assessment recommendations;
- the recommendations contained in the Diagnosis
- the input received from all relevant stakeholders following a thorough public consultation.

Assessment criterion 2(a)(b):
The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.

Conclusion: Minor gap

Red flag: No

Qualitative analysis
All public procurement related regulations and policy documents are accessible via ARAP's website at www.arap.cv and through the official journal https://incv.cv/

Gap analysis

The documents downloaded from the portal of the Official Journal, although freely accessible, do not allow editing. Although it may seem like a detail, the lack of this feature prevents or makes unnecessarily difficult the work of legal operators, in this case, procuring entities and tenderers, their legal advisors and lawyers, among others. The ability to make rigorous (*verbatim*) citations that the availability of editable files allows should be generalised, and all access should be free of charge since the potential harm to the correct functioning of the system in terms of compliance supersedes in principle the revenue collected by the subscription fees.

There is also a gap in relation to the publication of court decisions which makes the interpretation of the rules very difficult and based almost exclusively on legal scholarship, which is also an area that deserves special attention from the Government and ARAP. There is a need for promoting the academic research and study of procurement related themes at universities and in different scientific areas e.g. law, economics, public affairs, international relations, accountancy, data science, ICT, etc.)

Recommendations

1. Ensure the publication of all legal, regulatory and policy documents on an easy and friendly readable format for All, allowing, among other tasks, the editing in view of copying and collating excerpts of texts as verbatim citations;
2. To propose a free subscription of the Official Bulletin containing the normal basic features for editing documents of interest to law enforcers, namely keyword search and text editing including the function of selecting, copying and pasting extracts from the text.
3. Promote the publication of all public procurement related court rulings (case law - jurisprudence);
4. Promote the integration of public procurement themes within university *curricula* (faculties of law, business administration, economics, accountancy, etc.).

Assessment criterion 2(a)(c):
Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly

Conclusion: No gap

Red flag: No

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Qualitative analysis

The responsibility for maintaining regulation lies with different entities according to the competences assigned to them by law. In the case of legal acts and respective implementing acts, responsibility lies with the Government or the National Assembly, depending on their constitutional competences.
In the case of regulations that are the expression of the regulatory function), the responsibility for issuance and update falls to the regulatory Authority, ARAP in accordance with Article 13 (Regulatory competences) of its Statute.

Gap analysis

Recommendations

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

Assessment criterion 2(b)(a):
There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 42 PPC states that standardised bidding documents must be approved by the member of the government with responsibility for finance or public works, on a proposal from ARAP, drawn up jointly with the relevant bodies[4].

Adopting the proposal made by ARAP, as provided for in the PPC, Ministerial Order 60/2015 of 9 December, approved the standardised documents to be used in public procurement procedures:

- Draft invitation, to be applied in: i. Direct award; ii. Restricted tender; iii. Tender restricted by prior qualification and iv. Two-stage public tender.
- Draft tender programme, to be applied in: i. Restricted tender by prior qualification; ii. Two-stage public tender; iii. Public tender.
- Draft specifications, to be applied to: i. Purchase of services; ii. Supply of movable property; iii. Leasing of movable property; iv. Public works contract; v. Public works concession; Public services concession.
- Draft terms of reference to be used in contracts for the acquisition of consultancy services.

Both Article 42 (2) of the PPC and Article 2 of Ministerial Order 60/2015 stipulate that the use of standardised documents is mandatory, with the former stipulating that procuring entities can only introduce special rules relating to the specific contract to be awarded.
Despite the mandatory nature of these rules, no sanctions are imposed for non-compliance.

Can a procedure conducted using documents that are manifestly out of step with the standardised ones be considered null and void for violating a mandatory legal norm? The answer will also depend on the substantive classification of the rule that has been breached, the one that orders the use of a template. In order to avoid doubt, consideration should be given to the eventual revision of the rule, arguing here that deviation from a standard should only jeopardise the validity of the contract formed if the deviation causes, or consists of, a breach of a mandatory rule of the PPC or another applicable to the formation procedure.

[4] It is not clear from the text of the law, or even from the implementing Ministerial Order, which relevant entities the legislator was referring to.

Pillar I. Legal, Regulatory, and Policy Framework

In the consultation carried out as part of the preparation of the *Diagnosis*, the public bodies that commented on the standardised documents identified the following as positive aspects: the standardisation of the drafts, which makes it easier to draw up the procedural documents and for them to be controlled/monitored by various bodies; the fact that they constitute a basis that complies with the applicable legal rules; and the fact that they provide guidance on the documents to be drawn up in accordance with the law. As negative aspects, the following were mentioned: too much repetition and length, and operational difficulty in application, excessive regulation, reproduction of legal rules with inadequate solutions that are difficult to interpret or apply and, finally, the fact that they are very long documents with errors and typos, which would contribute to further bureaucratisation of procedures.

We follow the Diagnosis to the extent it states that these standardised documents "... *are an invaluable guide and, despite some shortcomings, are a clearly preferable model to a total vacuum, in which each procuring entity would have to draw up all the procedural documents from scratch*".
Although these are "*mandatory guidelines*", each procuring entity must carefully adapt them to the characteristics of each contract, as is clear from Article 42(2). This brings us to the question of whether most entities have the specialised endogenous technical capacity to carry out an appropriate adaptation that does not amount to a simple *copy & paste* operation.

Gap analysis

- Standardised documents need to be revised and updated in order to simplify their structure and avoid repeating legal rules, except in cases where this is absolutely necessary to ensure compliance in a specific case.
- It is also needed to adapt the model procurement documents to the e-GP environment that is planned to be the sole means of forming contracts from 18th February 2024 [(Article 70 (1) e-GP)].

Recommendations

- Review standard bidding documents with a view to simplifying them limiting the (mandatory) text blocks to what is considered the minimum necessary to guarantee a good level of compliance with the law and to adapting them to the e-GP to the extent necessary;

- Develop an interactive platform for the production of procurement documents with the support of chatbots and AI tools (with the possibility of automatic revision or correction), guaranteeing online support in the document design and production process.

Assessment criterion 2(b)(b):
At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

please refer to 2(b)(a)

Gap analysis

please refer to 2(b)(a)

Recommendations

please refer to 2(b)(a)

Assessment criterion 2(b)(c):
The documents are kept up to date, with responsibility for preparation and updating clearly assigned.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As elaborated above under 2 (b) (a) there is a need for revising the existing procurement documents (after eight years of practical application under the PPC) in order to simplify and adapting them to the e-GP while making some digital tools tailored to help producing bidding documents available to practitioners.
The responsibility for preparing new standard bidding documents lies with ARAP who has the competency to propose the revision to the ministers responsible for finance and public works [Article 42(2) PPC].

In case it is decided to tackle the enforcement of the mandatory use of SBDs through the qualification of the contracts formed disregarding of models as null and void and Ordinance 60/2015 such a decision would require a legislative act to amend Article 42 PPC.

Gap analysis

Need to revise the standard bidding documents, simplifying and digitising them to make them easier and more reliable for practitioners to use.

Recommendations

Please refer to 2(b)(a)

Sub-indicator 2(c)
Standard contract conditions used

Assessment criterion 2(c)(a):
There are standard contract conditions for the most common types of contracts, and their use is mandatory.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In the case of goods, (general) services and works, as defined by PPC Article 44/2: “the tender specifications is the document containing the legal, financial and technical clauses to be included in the contract to be executed.” so it may be regarded as a draft contract subject to be detailed and finalised by incorporating the outcome of the procurement procedure (at the award decision stage). The same applies to the Terms of Reference in the context of consultancy services contracts.
The above means that general clauses of services (general and consultancy), goods and works contracts are provided through the tender specifications (comprised in the list of SBDs).

Notwithstanding, in addition to the clauses “imported” from the tender specifications there is a complete set of standard goods, services and works contracts comprising the respective general contract conditions (GCC).

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Gap analysis

- The draft contracts are not included in Ministerial Order 60/2015 of 9 December and are not binding in this way (they have been published as Annexures to the ARAP's Manual of Good Public Procurement Practices, 2015). These drafts are extensive, and a source of doubt and disruption, because in some parts they are reproductions of the Standard Specifications (contained in the aforementioned Ministerial Order no. 60/2015, of 9 December), in others they reveal small differences, and in still others they introduce more significant differences, situations that create doubt and instability (vide *Diagnosis*).

- There are no sector or category-related SBDs nor standard contract clauses e.g. tender specifications or contract clauses tailored for ICT contracts (acquisition of hardware, software licencing, software development, hard and software maintenance ,etc.), legal services, acquisition of aircrafts or ships.
  The same goes for the framework agreements and contracts concluded under them, which are already provided for in the PPC. The drawing up of SBDs and draft framework agreements and contracts under them is necessary if Cape Verde wants, as it must, to expand the scope of collaborative procurement, either through joint procurement initiatives or, as we advocate, through the autonomisation and significant strengthening of the UGAC's capacity (perhaps becoming a real central purchasing body for the state's central administration).

- Article 200 of the RJCA introduces a special rule applicable to public works contracts. In abstract terms, arbitration is an alternative solution to ordinary courts, and the advantages of specialisation and speed are recognised. In any case, **a bolder solution (providing for compulsory arbitration in certain cases) would depend on the existence of a number of conditions, such as operational arbitration centres, experienced arbitrators and repeated practice in the field**. It doesn't seem that the conditions exist at the moment to introduce such a solution, and it is cautious to maintain the possibility (and not the obligation) of resorting to arbitration, although the regime may undergo some improvements. Also in this regard, some of the issues related to the effectiveness of arbitration in resolving disputes arising from the execution of administrative contracts have to do with the law that regulates this matter in general (Law 76/VI/2005 of 16 August), as well as the need for arbitration decisions to be binding.

Recommendations

- Promote specialised training for public administration lawyers in public procurement, with a focus on the post-award phase, i.e. covering the issues of qualification and conclusion of the contract itself (without forgetting that the public contract in the substantive sense goes far beyond the instrument that is called a contract and is signed by the parties) and its execution;
- Reviewing the critical content of essential contract clauses - price, term, work plan, payment conditions – making them much more concise (focusing on the strictly necessary clauses) in conjunction with the broader review of (all) standardised procurement documents;
- Produce standard procurement documents and draft contracts for framework agreements and contracts concluded under them (call-offs);
- Produce standard procurement documents, including contract clauses, for the 10 most acquired categories of goods, services and works in terms of aggregate value.

Assessment criterion 2(c)(b):
The content of the standard contract conditions is generally consistent with internationally accepted practice.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 111 (Contract content) of PPC prescribes that the contract shall include the technical, legal and financial clauses of the tender specifications and sets out the elements which absence lead to declare the contract null and void.
The following are an integral part of the contract regardless of whether or not set to writing (as an autonomous document):
a) Clarifications and rectifications to the procedure documents;
b) The tender specifications or invitation in cases of simplified procedures;
c) The awarded bid; and
d) Clarifications on the awarded bid provided by the winning bidder. In the event of any inconsistencies between the documents referred to in the preceding paragraph, prevalence shall be determined by their order of priority and in the event of any conflicts between these documents and the contract, the former prevail.

It can be said that the content of the standard contractual conditions contained in the drafts made available by ARAP, although in need of revision (mainly aimed at removing repetitive content and concentrating on absolutely essential matters), corresponds to international standards in terms of public contracts for the purchase of goods, services and works.

Gap analysis

Recommendations

Assessment criterion 2(c)(c):
Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.

Conclusion: No gap

Red flag: No

Qualitative analysis

To some extent that the SBDs include already a significant part of what can be regarded as standard clauses (as explained above in 2/c/a/a). As far as the standard contract clauses or contracts are concerned the PPC establishes some minimum contents and elements that must contain (general contract conditions) , in addition to establishing a special process for submitting a draft contract to the comments of the counterpart and for its approval and before the conclusion (Articles 11, 112, 113, 114, 115, and 116).

Anthough the standard contract clauses (templates) for goods, services and works contracts have not been included within the scope of the Ministerial Order 60/2015 of 9 December (reason why they are not mandatory) they are widely disseminated within the public administration because they are Annexes to the ARAP's Manual of Good Public Procurement Practices, 2015).

Gap analysis

Recommendations

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

Assessment criterion 2(d)(a):
There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.

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Conclusion: Minor gap

Red flag: No

Qualitative analysis

There are manuals that explain the legal rules and which, together with the standard bidding documents, make it easier for practitioners to make decisions and prepare documents from drawing up the Annual Procurement Plan to awarding contracts, registering them and advertising them.

- Manual of Good Public Procurement Practices (2015)
- Jury Manual (2015)
- Jury Manual for Public Procurement Procedures of Local Authority (2019)
- Manual of Public Procurement Procedures for Local Authorities (2019)

All available for consultation at https://www.arap.cv/index.php/competencia/regulamentar/manuais

Gap analysis

All the manuals need to be improved and updated after a similar work has been done on the standard bidding documents [see above 2 (b) (a)].

All the manuals need to be improved and updated after the same work has been done on the bidding documents.

- do not take into account the Directives that ARAP has issued since then (19 Directives);
- do not take into account the legislative changes that have taken place (albeit few)
- more importantly for the future, they are far from serving the purpose of training and facilitating practitioners in the e-GP environment.

Recommendations

Promote the revision of the Manuals taking into account:

- legislative changes since 2015 and 2017;
- revision of bidding documents;
- the generalisation and beginning of the mandatory use of e-GP as the (only) means of contract formation and, therefore, with the end of the current transitional period (dual electronic-paper mode).

Assessment criterion 2(d)(b):
Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The ARAP's regulatory competence includes the drafting of manuals or any other instruments, with a view to facilitating the application of legal norms and good practices. [Article 13 (f) of the ARAP Statute, approved by Decree-Law no. 55/2015 of 9 October].

Gap analysis

All the manuals need to be improved and updated after similar work had been done on bidding documents [see above 2 (b) (a)].

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Recommendations

[see above 2 (b) (a)].

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

Sub-indicator 3(a) **Sustainable Public Procurement (SPP)**
Assessment criterion 3(a)(a): The country has a policy/strategy in place to implement SPP in support of broader national policy objectives
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Strategic Plan for Sustainable Development (PEDS II)[5] operationalises the Government Programme of the Tenth Legislature and Cape Verde's Strategic Agenda for Sustainable Development 2030 but is completely silent on public procurement. Economic and social development and environmental protection - the triple perspective of sustainable development - have the dignity of being principles of the Cabo Verdian public procurement. In fact, Article 13 PPC stipulates that contract formation procedures must take into account and consider factors such as the promotion of national economic development, the development of production, industry and services in Cape Verde, and respect for national social policies. On the other hand Article 14 PPC calls on the public and private entities involved to, whenever possible, prioritise environmentally friendly purchases, works, solutions and actions, understood as those that make the most significant contribution to reducing negative environmental impacts. Notwithstanding, there is no National Strategy or Plan for Sustainable Public Procurement. The legal formulation of the criterion for awarding the most economically advantageous tender (MEAT) states that it must be based on objective factors such as the price, the performance period of the services that make up the contract to be concluded, the technical value of the tender, the after-sales service and technical assistance, the guarantees offered or its environmental characteristics. Even when it comes to environmental aspects, the lack of an SPP strategy and, in particular, the lack of legal provisions on the concept of life cycle costing, among others, lead us to conclude that the legal framework needs to be revised in order to accommodate and promote a SPP oriented approach. This should be done in line with a national SPP strategy and not simply by introducing a few rules typical of an SPP system.
Gap analysis – Currently, there is no policy /strategy in place to implement SPP in a consistent and permanent way , no implementation plan or systems and tools to operationalize, facilitate and monitor the application of SPP.
Recommendations

[5] https://peds.gov.cv/caboverde4dev/en/

– The adoption and implementation of a National SPP Strategy and Plan should be included as a Strategic Goal in the next multi-annual strategic plan for public procurement[6]. –
Assessment criterion 3(a)(b): The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Please refer to indicator 3 (a) (a)
Gap analysis Please refer to indicator 3 (a) (a)
Recommendations Please refer to indicator 3 (a) (a)
Assessment criterion 3(a)(c): The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Please refer to indicator 3 (a) (a)
Gap analysis Please refer to indicator 3 (a) (a)
Recommendations Please refer to indicator 3 (a) (a)
Assessment criterion 3(a)(d): The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Please refer to indicator 3 (a) (a)
Gap analysis Please refer to indicator 3 (a) (a)
Recommendations Please refer to indicator 3 (a) (a)
Sub-indicator 3(b) **Obligations deriving from international agreements** **Public procurement-related obligations deriving from binding international agreements are:**
Assessment criterion 3(b)(a): Clearly established

[6] A Strategic Plan for the National Public Procurement System should not be confused with a Strategic Plan for the Regulatory Body (ARAP). However, the Assessment Team checked whether the ARAP's Strategic Plan 2022-2026 referred to the SPP among its strategic objectives (page 40), but this is not the case. This confirms that ARAP's Strategic Plan, which is not supposed to replace a National Strategy or Plan, does not contribute much to the development of one.

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Conclusion: No gap

Red flag: No

Qualitative analysis

Cabo Verde is asignatory of the following international conventions with particular interest concerning public procurement:

- **UNCAC** (United Nations Convention against Corruption): Cabo Verde is a signatory to the UNCAC, which includes provisions related to preventing corruption in public procurement processes. UNCAC promotes transparency, accountability, and integrity in public procurement to combat corruption**.**
- **ECOWAS** (Economic Community of West African States) Agreement: Cabo Verde is a member of ECOWAS, a regional organization that has established protocols and agreements related to public procurement. ECOWAS members, including Cabo Verde, are bound by the ECOWAS Public Procurement Code, which sets out rules and principles for public procurement in the region.
- **AfCFTA** (African Continental Free Trade Area) Agreement: Cabo Verde is a signatory to the AfCFTA, which aims to create a single African market for goods and services. The agreement includes provisions related to public procurement that promote fair competition and transparency among member states.

Article 4 (1) (b) PPC states that the PPC is not applicable to some contracts that are formed according to specific procedural rules, such as contracts concluded under the specific rules of an international organisation to which Cape Verde belongs, while Article 3(3) (a) and (b) RJCA provides that contracts concluded between the State of Cape Verde and third countries, foreign government entities or intergovernmental institutions under the terms of an international agreement, and which have as their subject matter the execution or joint exploitation of a given project are exempted from its application as well. Paragraph (b) is even more broad by extending that exemption from application to "contracts concluded under the specific rules of an international organisation to which Cape Verde belongs to". Although this issue is among the gaps identified in the *Diagnosis*, we believe that the combined interpretation of these two rules cannot lead to a conclusion other than the unity of the regime applicable to the pre-contractual and the execution phases of the contract.

Gap analysis

Recommendations

Assessment criterion 3(b)(b):
Consistently adopted in laws and regulations and reflected in procurement policies.

Conclusion: No gap

Red flag: No

Qualitative analysis
Please refer to 3 (b)(a)

Gap analysis

Recommendations

Pillar II. Institutional Framework and Management Capacity

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

Sub-indicator 4(a) **Procurement planning and the budget cycle** The legal and regulatory framework, financial procedures and systems provide for the following:
Assessment criterion 4(a)(a): Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Article 61 (1) PPC obliges procuring entities to include in an annual plan an indication of the goods and services to be purchased or hired in the following year, as well as the public works contracts to be carried out, duly approved by the authority responsible for authorising expenditure. The annual procurement plan is implemented by the entity responsible for conducting the procedure, in accordance with the provisions of this Code and the information contained in the plan, namely: a) Type; b) *Category c) Good, service or public works contract, duly specified*; d) Estimated date and place of delivery; e) Measured unit; f) Type of procedure. The annual procurement plans must be published on the public procurement portal, after being approved by the body responsible for implementing public procurement policies and controlling the procedures of the ministry responsible for finance - the **DGPCP**. For the current financial year (2023)[7], only **18 Annual Procurement Plans** (out of 102 possible) were listed on eCompras (Public Procurement Portal): ARAP, ARES, BCV, National Library, São Miguel City Council, Head of Government, EMEP, ENAPOR, ERIS, FICASE, IFH, INIDA, INPS, MAA, MAI, Ministry of the Community, Ministry of Finance and Business Development. For the financial years 2022 (17 Plans); 2021 (7 Plans); 2020 (15 Plans); 2019 (10 Plans)[8].
Gap analysis The lack of publication of Annual Procurement Plans is a cause for concern, and the average number of publications over the last few years raises major doubts about the effectiveness of the control carried out by the Directorate-General for Assets and Public Procurement (DGPCP), the body that has the power to approve Annual Procurement Plans and, in the case of purchases worth more than 4,000,000$00 (four million escudos), to verify the respective procedural documents [Article 41 (5) PPC]. It would be expected that, concomitantly with this verification, the DGPCP would start by confirming that the procedures whose documents are handed over to it were provided for in the Procurement Plan of the procuring entity requesting the verification. This plan, under the express terms of Article 61 (3) PPC, must be published on the public procurement portal, after being approved by the body responsible for implementing public procurement policies and controlling the procedures of the ministry responsible for finance - the DGPCP. Article 61(3) does not set a deadline for the publication of annual procurement plans which does not favour the perception of obligation and timeliness on the part of procuring entities. Inserting a reasonable deadline, say five working days, for publication on the *e-Compras* at the initiative of the procuring entity could help reinforce the perception of the obligatory nature of the publication and the timeliness (without which the exercise is useless or of little value to economic operators).The same applies, with the necessary adaptations, to grouped purchases (Article 63 PPC), a designation given by the legislator to a collaborative form of one-off,

[7] Consulta feita pela última vez em 17/10/2023.
[8] Idem.

non-systematic purchase [the period of performance of contracts for the purchase of goods and services for common use should not exceed one year, notwithstanding the possibility of renewal for an equal period up to a maximum of three years, Article 63 (2). And not institutionalised, i.e. without recourse to the creation of a central purchasing body. Bundled purchases must also be the subject of Annual Plans (Article 64 PPC).

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- Amend Article 61(3) of the PPC to add a reasonable deadline, for example 5 (five) working days from approval, for the publication of annual procurement plans on e-Compras.
- Ensure Enforcement of Procurement Plan Publication: the Public Procurement Regulatory Authority (ARAP) should enforce the consistent publication of procurement plans across all procurement entities through the e-procurement system and public procurement portal.
- Align Draft Annual Procurement Plans with Budget Proposals: procuring entities must align their planning processes by concurrently preparing and submitting their Draft Annual Procurement Plans alongside their Draft Annual Budget Proposals.
- Transition to an Online Platform for Procurement Plans: replace the current Excel-based Annual Procurement Plan with a more advanced and accessible online platform integrated within eCompras, to streamline processes and feed into a centralized National Procurement Plan database.

Assessment criterion 4(a)(b):
Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).

Conclusion: No gap

Red flag: No

Qualitative analysis

According to Article 57 (1) PPC, the expenditure inherent in the contract to be awarded must comply with the forecasts and policies for the application of resources entered in the respective budgets of the procuring entity and the schedule of budgetary resources, taking into account their actual availability in accordance with the respective cash-flow plan.
The **procuring entity may only commit to paying the amounts entered in its budget**, or in a law or resolution adopted for this purpose, and provided that there is a balance available in the corresponding budget category, except for the exceptions provided for in the basic budget law, in which case it must be stated in the notice of the procedure, or in the procedure documents when there is no notice, that the award will be dependent on the approval of the corresponding budget category [Article57 (2) PPC)].
If for any supervening reason the funds or financing obtained to meet the expenses inherent in the contract to be concluded are no longer available, the contract formation procedure must be immediately interrupted and no award made, under the terms of Article 102 (d) (d) PPC [Article 57 (4) PPC].

Article 11 of Decree-Law no. 57/2016 of 9 November (Organic Law of the Ministry of Finance) states that the General Directorate for Assets and Public Procurement (DGPCP) is the central service whose mission is to propose, implement and evaluate the national policy for the administration and protection of the State's public and private domain and, in articulation and conformity with the rules and guidelines of the Public Procurement Regulatory Authority (ARAP), the national public procurement policy in State public procurement. DPPCP has the competency to approve the Annual Procurement Plan and update it.

Gap analysis

Recommendations

Assessment criterion 4(a)(c):
A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

Conclusion: No gap

Red flag: No

Qualitative analysis

Budget implementation is guaranteed by the SIGOV system.
SIGOF is a central system for the whole of Cape Verde's public administration. It is currently the instrument for preparing, executing and monitoring the General State Budget (GSB) at all levels: Central Government and Autonomous Funds and Services. The system includes components relating to Budget Management, Treasury Management, Project Management and Evaluation, **Procurement (e-Procurement)**, Contract Management, Asset Management, Electronic Payments, Human Resources Management and Salary Processing, Revenue Management, Public Debt Management, Single Income Tax (IUR), and Value Added Tax (VAT).
It is important to note that since the amendment to the Organic Law of the Court of Auditors (2019), full access to the Integrated Budgetary and Financial Management System (SIGOF) has been allowed and operationalised for concomitant auditing by the judges and technicians of the Court of Auditors (TC).

Gap analysis

Recommendations

Sub-indicator 4(b)
Financial procedures and the procurement cycle
The legal and regulatory framework, financial procedures and systems should ensure that:

Assessment criterion 4(b)(a):
No solicitation of tenders/proposals takes place without certification of the availability of funds.

Conclusion: No gap

Red flag: No

Qualitative analysis

[Article 57 (2) PPC] The **procuring entity may only commit to paying the amounts entered in its budget**, or in a law or resolution adopted for this purpose, and provided that there is a balance available in the corresponding budget category, except for the exceptions provided for in the basic budget law, in which case it must be stated in the notice of the procedure, or in the procedure documents when there is no notice, that the award will be dependent on the approval of the corresponding budget category.

Gap analysis

Recommendations

Assessment criterion 4(b)(b):
The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 12(1) of the RJCA governs the **execution of pecuniary obligations** arising from contractual agreements. Unless expressly stipulated otherwise within the contract, the following provisions shall apply:

The pecuniary obligation shall be considered due without the requirement for any additional notice under the following circumstances:

- Thirty (30) days after the date on which the public contractor receives the invoice or any equivalent document.
- Thirty (30) days following the actual receipt of goods or provision of services in cases where the precise date of invoice receipt remains uncertain.
- Thirty (30) days after the actual receipt of goods or provision of services when the public contractor receives the invoice or equivalent document prior to the receipt of the goods or services.
- 30 (thirty) days after the date of acceptance or verification when a procedure is established to ascertain the conformity of goods or services, and the public contractor receives the invoice or equivalent document at an earlier date.

Should the contract establish a specific payment date or timeframe for the public procuring entity, such payment must be made within thirty days following the delivery of the respective invoices, which may only be issued subsequent to the due date of the corresponding obligation.

The contract may specify a deadline that deviates from the one delineated in the preceding paragraph, but this period must not exceed 60 (sixty) days.

Late Payments as per Article 32 RJCA

Article 32 of the RJCA addresses late payments and enumerates the subsequent provisions:

- In instances where the public procuring entity delays in fulfilling its pecuniary obligations, it is obliged to remunerate the co-contractor with default interest, at the legally mandated rate, for the duration corresponding to the delay.

- The obligation to remit interest on arrears is automatically triggered, without the necessity for additional notification, once the pecuniary obligation matures in accordance with Article 12(1), or when the timeframes specified in Article 12(3) and (4) have elapsed.

- Contractual clauses that seek to absolve liability for late payment, as well as clauses that unreasonably restrict liability for late payment, in light of the specific circumstances, shall be subject to rigorous examination.

The Cape Verdean government acknowledges the impermissibility of persisting delays in state payments to suppliers and aims to rectify this issue through the implementation of the PAYLOG electronic platform, publicly introduced on July 24, 2019.
Deputy Prime Minister Olavo Correia of Cape Verde, during the platform's presentation, emphasized the imperative nature of timely state payments. He contended that the state must act ethically, ensuring punctual

payments, and that any deviation from this practice, without bearing the costs associated with late payment, is unjust, immoral, and possibly even criminal. PAYLOG, he elucidated, serves as a platform designed for the negotiation of rights and obligations emanating from public contracts forged between the state and private enterprises. This initiative, developed in collaboration with the Ministry of Finance's Technology, Innovation, and Communication Unit (UTIC-MF), establishes a marketplace for the buying and selling of rights and obligations inherent in public contracts.

Furthermore, it is noteworthy that the Medium-Term Fiscal Framework will receive substantial technical support from the World Bank. Authorities have expressed their commitment to continue utilizing the Treasury cashflow monitoring plan and the PAYLOG system as pivotal tools for enhancing expenditure management and mitigating the accumulation of payment arrears. They have also been encouraged to uphold the practice of mid-term budget execution reviews, aimed at identifying corrective measures necessary to safeguard the attainment of fiscal objectives.

Quantitative analysis

*// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):*
- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).
Source: PFM systems.

The quantitative indicator was not calculated due to a lack of information, despite numerous requests from the assessment team.

Gap analysis

Recommendations

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

Sub-indicator 5(a)
Status and legal basis of the normative/regulatory institution function
The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criterion 5(a)(a):
The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

Conclusion: No gap

Red flag: No

Qualitative analysis

According to Article 2 of its Statutes, approved by Decree-Law 55/2015 of 9 October, ARAP is an independent, institutionally-based administrative authority, endowed with regulatory functions and legal personality, with administrative, financial and asset autonomy.
The law that defines the legal framework for independent regulatory authorities (Law 14/VIII/2012, of 11 July) enshrines and emphasises and highlights regulation, supervision and sanctioning as the basic functions of regulation (article 3).

The exercise of the regulators' functions is subject to scrutiny by the National Assembly and the government regarding the establishment of guidelines for action, as well as "acts subject to ministerial supervision by law and by statute" (article 6 - functional independence).

Financial sustainability is ensured by the fees arising from the provision of services, the fees charged in respect of contracts awarded, appropriations and transfers from the state budget, the proceeds of fines imposed in the course of sanctioning activities, 25 per cent of the net profit for each financial year, among other revenues.

ARAP's statutes establish eight organisational competences:

- Advisory: Pronouncing on specific matters within its sphere that are submitted by the National Assembly, the government, procuring entities, economic operators or representatives of civil society.
- Auditing: Planning, organising and conducting audits of the public procurement system and procedures.
- Regulatory: Drawing up and approving internal regulations in the cases provided for by law; Drawing up and issuing technical standards and directives designed to ensure the smooth running of the UGA - Procurement Management Unit, the juries and the procuring entities; Drawing up (and approval by the member of the Government) standardised documents.
- Government) of documents standardising procurement procedures; Preparation of various instruments to facilitate the application of legal rules and good practices;
- Training and Accreditation: training of those involved in the National Public Procurement System - economic operators and procuring entities - and accreditation of officials assigned to the UGA.
- Information and Publicity: Dissemination of information, namely legislation, regulations, directives and procedures, and making available standardised documents on procurement processes; annual regulatory report, audit reports, publication of contracts concluded in relation to
- Publication of the resolutions of the Conflict Resolution Committee, list of entities sanctioned in the context of administrative offences.
- Sanctions: Termination of accreditation of the AMUs and disqualification of their members under the terms of the Regulation of the UGA and the Public Procurement Code, imposition of fines on those responsible for procedures, public administration officials and economic operators, drawing up and updating the list of ineligible companies for the purposes of opposing tenders.
- Appeals body: Resolving conflicts by examining and settling disputes between candidates or tenderers and procuring entities.

ARAP's bodies are the Board of Directors, the Statutory Auditor, the Advisory Board and the Conflict Resolution Committee (CRC).

Gap analysis

Recommendations

Sub-indicator 5(b)
Responsibilities of the normative/regulatory function

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:
Assessment criterion 5(b)(a): providing advice to procuring entities
Conclusion: No gap
Red flag: No
Qualitative analysis The ARAP's **consultative function** consists of "issue opinions on regulatory issues submitted by procuring entities, economic operators or representatives of civil society." [(Article 11(2) of Decree-Law no. 55/2015 of 9 October]. At the same time, the DGPCP should "**Support**, coordinate and monitor the activity of the various entities in the regulated public procurement system;" [Article 11 (2) (j) of the Organic Law of the Ministry of Finance, approved by Decree-Law 57/2016/ of 9 November]. As such, the DGPCP, as a central unit, can fulfil requests for opinions from the procuring entities that implement the national public procurement policy, which translates into an activity of an advisory nature. Thus, it can be said that both the DGPCP and ARAP can provide advice to procuring entities, but the former is clearly subordinate to the latter and, in the event of a disagreement, the latter should prevail over the former.
Gap analysis
Recommendations
Assessment criterion 5(b)(b): drafting procurement policies
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Article 11 of Decree-Law no. 57/2016 of 9 November provides that the General Directorate for Assets and Public Procurement (DGPCP) is the central service whose mission is to propose, implement and evaluate (…) in articulation and conformity with the rules and guidelines of the Public Procurement Regulatory Authority (ARAP), the national public procurement policy (…).
Gap analysis – There is no document that can be considered a document that could be considered a "*National Public Procurement Strategy and Policy*" in which a vision, mission, strategic objectives, and commensurable objectives based on KPIs, etc. are defined. – The approach to public procurement is still very much limited to the logic of budgetary management and control of public spending, but even at this level there is no economic analysis of the procurement function or its efficiency. Nor are there quantified objectives and targets for the system's performance (for example, there is no public statement on how to use centralised purchasing to rationalise purchases, standardising service levels and quality across the entire public administration and setting economic objectives (savings rate on a given basket of categories of goods and services to be centralised), environmental (by setting quantified targets for the use of TCO/Life Cycle Costing and

mandatory award criteria and sub-criteria or terms that fulfil predetermined environmental efficiency requirements) and social (by setting quantified targets for the gradual introduction of social aspects in public procurement).

– The gaps pointed out in terms of e-GP (lack of a roadmap and an integrated Action Plan for its uptake) or SPP (what is the strategy for using public procurement as an instrument for pursuing cross-cutting or sectoral policies) could (should) be filled by closing this gap.

Recommendations

It is recommended that the DGPCP, in its capacity as the central agency dedicated to public procurement - which includes its powers of prior control of bidding documents and annual procurement plans – considers the possibility of:

- Prepare and propose National Public Procurement Strategy and Policy document to be endorsed by the Minister of Finance and approved by the Council of Ministers (the duration must coincide with the Government term and be aligned with its political Programme, not only with the State Budget). Such policy document should include should include, among others, the following topics:
    - Context of national public procurement (characterization of the national public procurement system, especially from an economic point of view (public market) – market size, characterisation of the main players, regulation
    - Strategic priorities for public procurement and how procuring entities can support their delivery
    - Duration and review
    - The national priorities for public procurement
    - Commercial and procurement delivery
    - Skills and capability for procurement

Assessment criterion 5(b)(c):
proposing changes/drafting amendments to the legal and regulatory framework

Conclusion: No gap

Red flag: No

Qualitative analysis

As for the **legal framework**, ARAP has the capacity to study and evaluate the rules in force and, as a result, to propose modifications to existing laws or the enactment of new ones if gaps are detected. An example of this work ARAP's commissioning of the "Diagnosis of the application of the Public Procurement Code and the Legal Framework for Administrative Contracts (RJCA) and respective standardised documents", having publicly stated that it "is in the process of revising the Public Procurement Code (CCP) and the Legal Framework for Administrative Contracts (RJCA)." Despite the fact that Article 11 (1) of ARAP's Statute states that it shall pronounce itself on all matters within its specific sphere of competence that are submitted to it by the National Assembly or the Government, thus referring to the idea that it could only exercise advisory powers when called upon to do so, the interpretation in conjunction with Article 9 (b), which instructs it to Promote the priorities and objectives of national policy and development, authorises the understanding that ARAP may, on its own initiative, prepare and make proposals to revise the legal framework to the extent that this appears necessary for the fulfilment of any of the duties in Article 9.

As for the **regulatory framework**, competences are set out in Article 13 of ARAP's Statute and comprise:

- The issuing of technical standards and directives designed to ensure the proper functioning of the UGA and the juries, as well as the Procuring entities, in the fulfilment of their legal duties and the improvement of public procurement procedures from the point of view of compliance with the applicable legal standards and good practices (point b);

- To approve the Code of Conduct for ARAP stakeholders, 2017, which sets out a set of principles and values in terms of professional ethics to be observed by all stakeholders in the regulated public procurement system;
https://arap.cv/images/centro_conhecimento/legislacao/regulamentos/ARAP-Cdigo-de-Conduta-2017.pdf

- Draw up the standard procurement documents and propose them for approval by the competent member of government (Documents published at
https://www.arap.cv/index.php/competencia/regulamentar/modelos-e-minutas ;

- Draw up manuals or any other instruments to facilitate the application of legal rules and good practices. There are four manuals: (i) Manual of good public procurement practices, 2015, which contains a detailed explanation of the public procurement procedures for the formation of contracts to which the Public Procurement Code applies, as well as the formalities that must be observed and the public procurement cycle; (ii) Manual of the Jury, 2015, with the aim of supporting the functions of which the following stand out: carrying out the public act, analysing applications and bids, evaluating bids, and drawing up the preliminary and final reports on the qualification of candidates and the evaluation of bids. ; (iii) Manual for juries in local government procurement procedures, 2019; (iv) Manual for local government procurement procedures, 2019
https://www.arap.cv/index.php/competencia/regulamentar/manuais

Gap analysis

Recommendations

Suggestion for improvement:

- Explicitly include in ARAP's competences specific matters relating to the execution phase of contracts. Within the framework of regulatory competence, the issuing of technical standards and directives (although not binding when it comes to the interpretation of legal texts), would help guiding procuring entities in relation to relevant issues concerning the compliance of administrative contracts (identified in audits, or in studies or analyses that may be drawn up by the Regulator).

Assessment criterion 5(b)(d):
monitoring public procurement

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

According to Article 12 (Audit powers) of ARAP Statute, in pursuing its audit remit, ARAP shall, inter alia, plan, organise and conduct audits of the public procurement system and procedures from the point of view of compliance with public procurement legislation and applicable regulations.

This wording of Article 12, in conjunction with Article 13(c), which refers to "monitoring and supervising the System in order to better fulfil the regulatory competence" raises doubts as to whether the scope of action is limited to the pre-contractual phase or also covers the execution of contracts and, in general, the functioning of the system. In a first revision of the Statutes it will be worth improving the wording in order to dispel doubts, naturally defending a holistic vision for the regulatory function that goes far beyond the pre-contractual phase and covers the entire procurement lifecycle.

The ARAP Directive 6/2019 of 19 July does not dispel all doubts or hinder the desirable legislative review, but it does provide some interpretative elements that should be considered in favour of a more comprehensive interpretation of the regulatory function, for example when it states, with regard to the Audit Competence (Article 12), that it includes "*Supervising the execution phase of contracts, in order to ensure that the principles and reasons that led to the award are not distorted*", or with regard to the Regulatory Competence when it states that "*Directives are produced to regulate the entire National Public Procurement System on matters relating to the creation and/or execution of public contracts* (...)".

Gap analysis

- Doubts about the scope of the ARAP's "monitoring and supervision" function [Article 12 and Article 13(c) of the ARAP Statute];
- Annual Audit plans and follow-up reports are not published.

Recommendations

- Improve the wording of articles 12 and 13 of the ARAP Statute in order to unequivocally state ARAP's regulatory competence over the entire life cycle of public contracts;
- ARAP should publish annual audit plans and follow-up audit reports.

Assessment criterion 5(b)(e):
providing procurement information

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Article 15 of ARAP Statute sets the information and publicity competences of the regulatory body. The Table below summarises the status the status of ARAP's fulfilment of these obligations:

TASKS FORESSEN IN ARTICLE 15 ARAP STATUTE	VERIFIED STATUS
Providing information on the ARAP, including legislation, rules and procedures	OK
Publish an annual regulatory report	OK
Publish the audit reports carried out on the procuring entities	Partially OK. No information on the follow-up on recommendations implementation.
Publish records of contracts awarded by procuring entities	NOK
Keep and publish records of activity plans, budgets and management accounts within the scope of its activity	OK

Make standardised documents for public procurement processes available to all ARAP players	OK
Inform ARAP stakeholders and other interested parties of any changes to legislation and rules on public procurement.	Partially OK. Legislation and regulations are published but the format used does not allow editing without a password (!)
Publish directives, rules and regulations issued to the ARAP as part of its regulatory activity	OK
Publish resolutions issued by the Dispute Resolution Commission (CRC)	OK
Publicise the criteria for including entities on the list of those ineligible for public procurement procedures	NOK
Inform procuring entities and publish the list of entities ineligible for public procurement procedures	NOK
Publish records of entities sanctioned in the context of administrative offences in public procurement procedures	NOK
Publish the list of Procurement Management Units (UGAs) accredited to conduct public procurement procedures.	NOK

According to law, information and records referred to in the previous paragraph may be consulted by interested parties, and the information may be provided and accessed in person or not, and supplied on paper or digitally. In order to facilitate access and promote transparency, it must maintain an institutional website for the purposes of necessary publications and registers.

Gap analysis

The market analysis function (trends, constraints, characterisation of operators on the demand and supply side, main statistical data) is not present in ARAP's dynamic communication (website) and is relatively limited in the Regulation Report itself.

In addition, the following information and data are not published:

- Annual Audit Plans;
- Post-audit follow-up reports (implementation of recommendations);
- List of entities ineligible for public procurement procedures;
- Records of entities sanctioned in the context of administrative offences in public procurement procedures.

Finally, the format of the documents does not allow you to edit and work with them, most of them have a password-protected editing function. All documents of a regulatory and training nature should be free to edit.

ARAP's Strategic Plan 2022 - 2026 sets the strategic objective of "Building partnerships to optimise information resources *because it recognises that "(…)* ***there is a great deal of difficulty in gathering information about open or planned tenders and facts about processes and procedures****. Given this limitation, and as long as the electronic public procurement platform is not fully operational, it is necessary to the electronic public procurement platform is not fully operational, it is necessary to exchange information between different organisations, particularly those responsible for external control. The aim of this objective*

is therefore to operationalise institutional relations regarding the exchange of information and to identify a type of information useful for fulfilling the responsibilities of the entities involved."
In addition, the same Plan also provides for "Developing information systems to support activity, insofar as ARAP's desirable growth in terms of people, resources and activity must be combined with an increase in the efficiency of its operation and an increase in productivity. Support for organisational processes structured in an information architecture is certainly the basis for promoting efficiency and productivity. This approach differentiates between information, software and support technology. The aim of information architecture is to classify information according to the different organisational processes, the objectives of the processes, the people involved, individual productivity and the destinations to be given to the work carried out. This approach must also take into account the national guidelines for digital transformation."

Recommendations

Publish on the ARAP website - synchronised with eCompras:

- Annual Audit Plans
- Post-audit follow-up
- Publicise the criteria for including entities on the list of those ineligible for public procurement procedures.
- Inform procuring entities and publish the list of entities ineligible for public procurement procedures.
- Publish records of entities sanctioned in the context of administrative offences in public procurement procedures.
- Publish the list of Procurement Management Units (UGAs) accredited to conduct public procurement procedures;
- The format of the documents does not allow you to edit and work with them, most of them have a password-protected editing function. All documents of a regulatory and training nature should be free to edit.

Assessment criterion 5(b)(f):
managing statistical databases

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There are no known specialised public procurement databases managed by ARAP. It can be expected from the implementation of e-GP that the electronic platform will feed a database that covers, in the short term, at least the entire pre-contractual phase.

Gap analysis

- The market analysis function (trends, constraints, characterization of operators on the demand and supply side, main statistical data) is not present in ARAP's dynamic online communication (website) and is relatively limited in the Annual Report on the Regulatory Function itself.

Recommendations

- ARAP should seriously invest in the market analysis function. Firstly, to cover the entire pre-contractual phase. Combined efforts and the promised interoperability should make it easy to monitor the public market, to know the total number of contracts awarded, their aggregate value,

the distribution by type of contract and procurement method. Then, to cover the contract implementation phase in which there are specific risks, particularly in the area of extra work and other contract modifications with particular potential to increase spending.

– Devise a consistent and comprehensive **performance measurement system** based on key public procurement performance indicators.
Note: to be meaningful such a system of KPIs should be aligned with the issuance of a national public procurement strategy and policy (which does not exist yet in Cabo Verde) so that each policy goal is measured through a set of synthetic and basic basic indicators calculated on available data and information).

Assessment criterion 5(b)(g):
preparing reports on procurement to other parts of government

Conclusion: No gap

Red flag: No

Qualitative analysis

ARAP publishes the following annual Reports:
- Annual Report on the Regulatory function;
- Annual ARAP Activity Report.

Gap analysis

Recommendations

Assessment criterion 5(b)(h):
developing and supporting implementation of initiatives for improvements of the public procurement system

Conclusion: No gap

Red flag: No

Qualitative analysis

Since its creation, ARAP has been an ever-present partner in the life of the national public procurement system (ARAP). Examples of projects developed or supported by ARAP include:
- Commissioning of the *Diagnosis of the Application of the Public Procurement Code and the Legal Framework for Administrative Contracts (RJCA) and respective Standardised Documents* (Diagnosis), 2021;
- Draft legislative revisions (e.g. revision of the Statute of the Conflict Resolution Commission, Decree-Law 28/2021;
- Decree-Law 11/2023 on electronic public procurement;
- Capacity building, through thematic seminars and training initiatives.
- MAPS Assessment of the Cabo Verde Public Procurement System, 2023.

Gap analysis

Recommendations

Pillar II. Institutional Framework and Management Capacity

Assessment criterion 5(b)(i):
providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

ARAP has made the following tools and guidance available:

- Handbook of Good Public Procurement Practices (2015). It does not cover most of the aspects relating to the execution phase of contracts (regulated by the RJCA) and essentially covers the contract formation regime. It was actually produced as part of a 2015 legislative reform package to support the practical application of the (then) new Public Procurement Code (PPC);
- Handbook on the role and activities of the Jury in Procurement Procedures (2015). Like the Manual of Good Practices mentioned above, this publication also met the need to support the performance of the tasks and procedures of the judges, faced in 2015 with the entry into force of a new Code of Civil Procedure.
- Handbook on the role and activities of the Jury in Procurement Procedures undertaken by local governments (2019);
- Handbook of Good Public Procurement Practices undertaken by Local Governments (2019).

Gap analysis

The following tools and publications need to be updated and improved:

- Manual of Good Public Procurement Practices (2015): At the time, e-GP was neither regulated nor did it exist in practice; the Public Contracts Code (PPC) only contained one rule of a programmatic nature - Article 199. This article stated that it was the state's objective to implement an electronic public procurement system, with a view to processing the procedures for the formation of contracts subject to this Code through an electronic platform, to which it added, in paragraphs 2 and 3 of the same precept, that its regulation would have to be done by a specific statute which would, among other things, set the deadline from which e-GP would become compulsory.
  It took eight (8) years for the programme of Article 199 to be implemented, through the publication and entry into force of Decree-Law 11/2023.

- It is now important to revise and update this Manual in order to fill the following gaps:
  - It does not deal with the contract execution phase (RJCA)
  - It does not reflect the current e-GP regime, which will soon be "the regime" applicable to the formation of contracts.
-

Recommendations

- Full revision (replacement) of the Handbook of Good Public Procurement Practices (2015)
- Design a tailor-made Training Programme on Integrity in Public Procurement (covering not only the legal framework – hard law – but also existing Codes of Conduct, generic for all public administration and specific for public procurers and economic operators participating in procurement procedures

Assessment criterion 5(b)(j):

supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Although there is an accreditation system for the Procurement Management Units (UGA) and their members, it cannot be said that there is any real professionalisation of the public procurement function.

Within the scope of its training and accreditation remit, ARAP shall, in particular a) Promote appropriate training for ARAP players, in consultation with them and b) Accredit the members of the UGA, and the respective changes or revocations, under the terms and for the purposes of the provisions of the UGA Regulations and other applicable regulations. (Article 14 of the ARAP Statute).

Gap analysis

ARAP's Strategic Plan 2022-2026 reads:

"At the request of the Deputy Prime Minister and Minister of Finance, a survey was recently carried out of the current constraints on public procurement processes. From the important document, the following conclusions can be drawn, among others, with regard to the UGA and its members:

- *A permanent lack of trained technicians to conduct procedures that necessarily, have different levels of complexity depending on the subject of the tenders.*
- *The assignment of different functional contents to the technical staff involved in the tendering procedures, not promoting specialisation and exclusive dedication, whenever and wherever necessary. necessary.*
- *Lack of an area of technical specialisation in conducting procurement processes and procedures, associated with a specific career path.*
- *processes and procedures, associated with a specific career, so as to make the transition between different functional areas difficult areas.*
- *The inefficiency of the training model due to the constant transfer of technicians to different functional areas other than those in which they were trained under the Public Procurement Code.*
- *The inoperability of many UGAs due to frequent emptying and the excessive mobility of of technicians between government departments.*

If we look at the history of the National Public Procurement System, these are chronic problems that will not be solved unless changes are made to the rules for assigning technicians to this functional area and, at the same time, for cases in which the existence of specialised and dedicated organic units is relevant, the clarification of conditions that require the constitution of UGA, namely due to the quantity and complexity of the type of objects being tendered."

The **UGA and UGAC Regulation**, approved by Decree-Law 46/2015 of 21 September,

The wording of Article 2 (3) poses some difficulties of interpretation as it states that each procuring entity must define, with a view to proposing for ARAP's approval, for each member of the UGA (official), in an associated manner, the following aspects: a) the professional profile, b) the identification of the type of contracts to be covered by the procedures to be conducted and c) the identification of the budget forecast. Now, while it is clear that point a) in number 3 concerns specific people (officials), the matters in points b) and c) concern the expected aggregate volume of work for the UGA in question.

But more important is the fact that the aforementioned "professional profile" is neither defined nor densified in the law, thus leaving the procuring entities with a margin of manoeuvre that is not compatible with the idea of regulating a professional activity, a profession and a career in central public administration (where the constitution of the UGA is compulsory).

Article 3 explains that the accreditation process verifies the legal requirements for the creation and operation of an UGA OR certifies that an individual (employee) is authorised to work there.so the cocept of “accreditation” is applied to both entities (UGA) and UGA officials.
Once again, in Article 3 (3) the law states that the decision to accredit the UGA and qualify its members is based, among other aspects that it lists, on the professional profile - training and experience - of the members that the procuring entity proposes to assign to the UGA.

In conclusion, without providing a precise definition of the relevant training and experience to be considered a suitable and sufficient "professional profile", the accreditation exercise is more dependent on what the procuring entities can propose than on the ideal requirements that guarantee a high level of professional performance.

ARAP's Internal Regulation 1/2015, which defines the levels of accreditation of the UGA and the qualifications of its members, defines the different levels of accreditation (I, II and III) according to a hybrid criterion based, on the one hand, on professional profile (Article 3) - academic qualifications or experience in conducting 2 procurement procedures for level I; - academic qualifications or experience in conducting 4 procurement procedures for level II; - academic qualifications or experience in conducting 6 procurement procedures for level III.
In terms of the training of the members of the UGAs to be accredited, 25 hours of training in contract formation (PPC) + eProcurement are envisaged and, for Level II, 25 hours of training in contract execution (RJCA) and for Level III 25 hours of training in contract execution (RJCA) and in the execution of contracts and concessions and PPPs are added.
It then establishes value thresholds up to which the UGA can conduct contract formation or execution procedures depending on their value.

Although it is commendable that in 2015 ARAP regulated this sensitive issue, eight years later it seems justified to point out the following shortcomings:

- It is not made clear how many members with what level of accreditation are required for a UGA to carry out the procedure depending on the value of the contract in question (training and/or execution);
- It does not approve a syllabus describing the subjects to be taught in the specific training for access to accreditation:
- Does not define/describe the profile of the trainers
- Does not establish the rules for assessing trainees acquired knowledge.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- Regulation 1/2015 should be replaced by a new one adapted to the current reality of public procurement (global and national)
- A proper ***syllabus*** must be approved within the framework of this new Regulation according to the following development programme

- Establish a comprehensive and standardized curriculum that aligns with national and international best practices in public procurement.
- Ensure that the course provides the necessary knowledge, skills, and competencies required for public procurers to perform their duties effectively and ethically.
- Promote transparency, accountability, and efficiency in public procurement processes.

The syllabus development should cover, at least, the following key areas:

- Introduction to Public Procurement
- Legal and Regulatory Framework
- Procurement Planning and Strategy
- Tendering and Contract Award Processes
- Contract Management and Administration
- Ethics and Integrity in Public Procurement
- Risk Management
- Dispute Resolution
- Case Studies and Practical Exercises

– In connection with the above (they should be aligned), the approval of a legal text should be promoted which includes **Professional Profile Definition, including**:
  – Role Definition: A public procurer is a professional responsible for overseeing and managing the purchase of goods, services, or works on behalf of a public sector organization in a manner that ensures value for money, transparency, and adherence to regulations.
  – Core Competencies: Procurement strategy development, Contract management, Supplier relationship Management, Legal and regulatory compliance, Market research and analysis, Negotiation and communication skills, Ethical procurement practices.
  – Qualifications: Educational background (commonly in fields such as business administration, law, economics, or finance).
  – Relevant certifications (e.g., Chartered Institute of Procurement & Supply certification).
  – Key Attributes: Analytical thinking, Detail-oriented approach, Strong interpersonal skills, Ethical and transparent decision-making, Adaptability to evolving procurement landscapes and technologies.
  – Job Description: Key Responsibilities:
  – Performance Metrics: Indicators such as cost savings achieved, vendor performance scores, timeliness of procurement processes, and compliance rates.

– Complete the exercise with the approval of a special career in public procurement
: Entry-level; Mid-level; Senior-level; Leadership.

Assessment criterion 5(b)(k):
designing and managing centralised online platforms and other e-Procurement systems, as appropriate

Conclusion: No gap

Red flag: No

Qualitative analysis

ARAP's regulatory competences are also exercised in the field of e-GP but do not include competences to design or manage e-Procurement platforms or other technological applications or systems to support public procurement (and that is the right approach).

ARAP's powers of regulation and supervision over the e-GP system consist, according to Decree-Law 11/2023 of 17 February, (Article 17) of:

- Proposing the adequacy of the electronic platform, namely in order to ensure its consistency with the legal framework applicable to public procurement methods/procedures in force;
- Notifying the departments responsible for the operational management and technical and functional management of the electronic platform of the need to adapt the platform under the terms referred to in the previous paragraph or to correct procedural nonconformities;
- Regulate and audit public procurement procedures carried out under the electronic platform;
- Promote and recommend internationally recognised good practices in the field of electronic public procurement;
- Make available on the electronic platform and update the list of ineligible entities provided for in article 72 of the CCP.

Gap analysis

Recommendations

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

Assessment criterion 5(c)(a):
The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.

Conclusion: No gap

Red flag: No

Qualitative analysis

The attributions and competences attributed to ARAP by law correspond to the typical regulatory powers/function.
The legal nature of ARAP is appropriate in that it is an independent, institutionally-based administrative authority, endowed with regulatory functions and legal personality, with administrative, financial and patrimonial autonomy. (Article 2 of ARAP's Statutes, approved by Decree-Law 55/2015)
The status of ARAP's leadership is high and places the institution on a respected level within the framework of the State and the Public Administration. This conclusion is evidenced by the following facts:

- - the very qualification of the organisation as an independent administrative authority, a status that is only attributed to a very limited number of entities (find out how many there are in Cape Verde);

- ARAP is headed by a Board of Directors made up of 3 (three) members, comprising 1 (one) Chairman and 2 (two) Directors appointed by Resolution of the Council of Ministers on a joint proposal from the member of the Government responsible for State Assets and the area of Infrastructures and Public Works, from among persons of recognised good repute, independence and technical and professional competence, with more than 10 (ten) years of professional experience.
  It is also important to bear in mind that according to the provisions of the Legal Framework for Independent Regulatory Entities (RJERI), approved by Law 14/VIII/2012, as amended by Law 103/VIII/2016, of 6 January, the appointment of members of the Board of Directors is preceded by a hearing of the nominees in the competent specialised committee of the National Assembly, and the proposing member of government must submit their CVs and a justification for their choice.

- The Chairman of the BoD of these organisations also has a competence that expresses his position in the context of the state and public administration - that of ensuring relations with the National

Assembly, the government and other public bodies. As far as the first two are concerned, this is a competence that is not even attributed to high-level public administration leaders such as the Directors General.

- Article 53 of the RJERI also establishes a very exceptional regime for the dissolution of the Board of Directors, placing it at a high level within the framework of state institutions and public administration. According to this provision, the Board of Directors of an ERI (Independent Relatory Entity) can only be dissolved by Resolution of the Council of Ministers, following an opinion from the Regulatory Body's Advisory Board and notification to the National Assembly, which may hear the member of the Government referred to in Article 9 and the members of the Board of Directors, in the following cases: a) For serious reasons of collective responsibility established in an enquiry carried out by an independent body; b) Considerable excess of expenditure over that budgeted, without justification, b) Considerable excess of realised expenses over those budgeted, without adequate justification, declared by the Supervisory Board; c) Serious violation, by action or omission, of the law or the articles of association of the entity.

Gap analysis

Recommendations

Assessment criterion 5(c)(b):
Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 43 ARAP's Statute, as is common with public organisations with financial and patrimonial autonomy, presents an extensive list of revenues that ARAP can collect. As these are the ones on which it is most likely to act in the future, we would like to highlight the following:

- The fees due for the services it provides;
- The emoluments collected through the contracts awarded, for the proper regulation of the public procurement market, in accordance with the emoluments table annexed to the ARAP Statutes. The schedule of fees provided for in point b) may be revised, by means of a proposal from ARAP approved by the Council of Ministers.
- Proceeds from fines imposed by ARAP in the exercise of its sanctioning activity, up to a limit of 40 % of the respective amount, with the remainder reverting to the State, which must be transferred through the Treasury at intervals established by order of the Government responsible for the area of Finance;
- 25% of the net profit for each financial year, with the remainder going into a Fund to improve the overall system of regulation and competitiveness of the economy, to be created by a separate statute, with non-compliance being considered a serious breach, punishable under the terms of this statute
- The costs of appeal proceedings provided for in the Code of Court Fees/emoluments;
- Any other income or revenue assigned to it by law, namely the Budget Law, in exceptional situations of insufficient revenue necessary for its operation, contract or otherwise.

Situation reported in ARAP's Activity Report (2022)

Pillar II. Institutional Framework and Management Capacity

In 2022, the strategy created to facilitate revenue collection was reinforced by drawing up a Revenue Collection Strategy Document for the period 2022 to 2025, which aims above all to systematise a set of actions to be taken to achieve the desired financial autonomy.

In the period from 2018 to 2022, an accumulated amount of seventy-seven million, one hundred and eighty-two thousand, four hundred and sixty escudos (77,182,460$00) was collected, which is 11 per cent more than forecast for the period.

Breakdown by revenue source

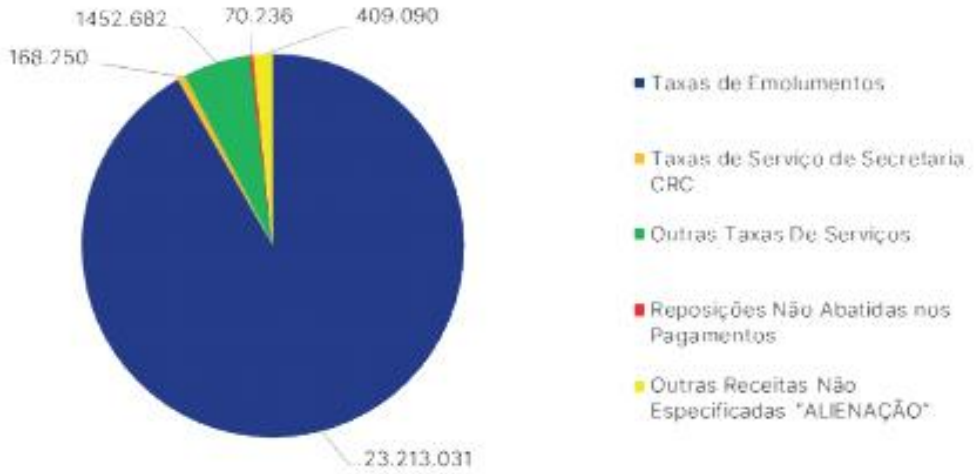


Gráfico 16: *Valor de receitas*

Rúbrica económica	Orçamento funcionamento 2022	Orçamento investimento 2022	Orçamento privativo ARAP 2022	Total orçamento publicado	Peso (%) orçamento publicado
Total	**40 097 530**	**3 007 733**	**25 521 685**	**68 626 948**	**100,00%**
02.01 - Despesas com pessoal	38 520 675	250 000	4 138 348	**42 909 023**	**62,53%**
02.02 - Aquisição de bens e serviços	1 317 149	2 757 733	18 067 311	**22 142 193**	**32,26%**
02.08 - Outras despesas	259 706	0	200 000	**459 706**	**0,67%**
03.01 - Ativos não financeiros	0	0	3 116 026	3 116 026	4,54%

In addition to the above-mentioned amounts, during the 2022 financial year, ARAP's budget was allocated the sum 3,554,813 CVE, funding from the ADB, E-Procurement And Assessment Assistance Project (E-PAAP) (2022 * B.A.D), to carry out the Study tours activity within the scope of evaluating the national public procurement system using the MAPS II methodology.

On a very positive note, in the 2021/2022 biennium, the operating expenditure fell by 4.5 per cent compared to 2021, while ARAP's budget increased by 30.93 per cent.

Quadro comparativo orçamento da arap - período 2021 - 2022				
Fonte de Financiamento	**Ano 2021**	**Ano 2022**	**VAR 2021/2022**	**VAR 2021/2022 (%)**
Funcionamento_Fin Tesouro	41 903 385	40 097 530	-1 805 855	-4,50%
Funcionamento_Fin ARAP)	17 627 726	25 521 685	7 893 959	30,93%
Investimento IPE_Fin Tesouro	3 007 733	3 007 733	0	0,00%
Total geral	**62 538 844**	**68 626 948**	**6 088 104**	**8,87%**

ARAP's Strategic Plan 2022-2026 includes a strategic objective to develop a **revenue collection programme**. The high level of financial dependence on the State Budget will probably make it difficult to hire new staff, so the possible way out is to collect the revenue due, which so far has been far less than desirable. However, it should be borne in mind that this increase in human resources through financial resources via revenue should be matched by a greater demonstration of the cost-benefit ratio of ARAP's actions.
The Strategic Plan sets targets for the revenue collected by ARAP at:

- 40 per cent of the budget by the end of 2023 and
- 80 per cent of the budget by the end of 2026.

Gap analysis

Recommendations

Assessment criterion 5(c)(c):
The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

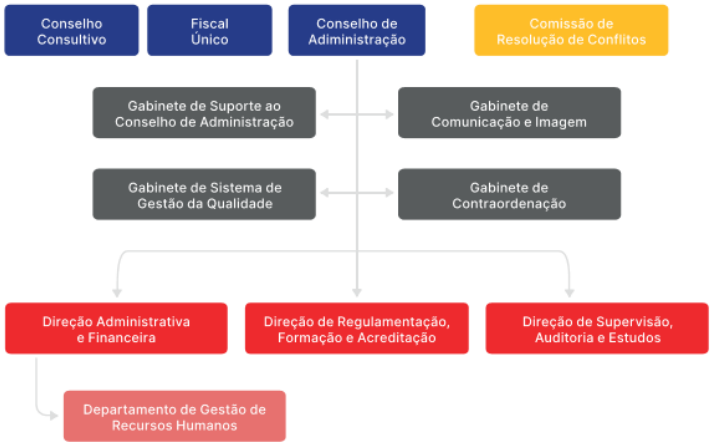
Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Although the units for production and support could have been arranged differently, it is understandable that the choice of a hybrid model - hierarchical and matrix organisation - has led to the current organisation chart (which the 2022-2026 Strategic Plan intends to maintain):

Pillar II. Institutional Framework and Management Capacity



A total of 17 employees serve this organisational structure, as shown in the Table below:

Quadro V - Relação de funcionários ano 2022					
Função	Situação Inicial	Mobilidade		Situação Final	Sexo
		Entrada	Saída		
PCA	1	0	0	1	F
Administradores	1	0	0	1	F
	1	0	0	1	F
Técnico Superior	5	0	1*	4	F
	8	1*	2**	7	M
Secretária Executiva	1	0	0	1	F
Auxiliar Administrativo	0	0	0	0	F
Motorista	1	0	0	1	M
Auxiliar Serviços Gerais	1	0	0	1	F
Total	**19**	**1**	**3**	**17**	

* requisição

** comissão serviço e licença sem vencimento

The ratio of management and support functions (6) *versus* production (11) reveals the need to intensify the growth of production (basically ensured by experts of the "Técnico Superior" category).

Gap analysis

Balancing Management and Production Roles

- In recent years, the paradigms of public administration have shifted towards optimizing organizational structures to deliver value to the public more efficiently. One striking observation in the structure of ARAP is the proportion of management and support roles to production roles, currently standing at **6 to 11**. This ratio suggests a significant leaning towards administrative functions as opposed to core productive operations. In line with contemporary best practices in public administration management, it's crucial to maintain an appropriate balance between support and production staff. Over-representation in management and support roles can lead to bureaucratic inefficiencies, increased overhead costs, and potential bottlenecks in decision-making processes. Furthermore, it might inadvertently stifle innovation and responsiveness, which are both essential attributes for modern public institutions aiming to meet dynamic societal needs.

Recommendations

To enhance agility and effectiveness of the regulatory body, a two-pronged approach is recommended:

- Firstly, there must be a concerted effort to strengthen the production output, mainly by hiring more qualified experts who can improve the organisation's core functions;
- Second, it's vital to critically evaluate and streamline support functions, ensuring they remain lean and directly aligned to the institution's primary objectives. This approach will not only enhance the body's operational efficiency but also better align its structure with the demands and expectations of modern public administration.

Sub-indicator 5(d)
Avoiding conflict of interest

Assessment criterion 5(d)(a):
The normative/regulatory institution has a system in place to avoid conflicts of interest.*

Conclusion: No gap

Red flag: No

Qualitative analysis

The Regulatory Authority (ARAP) nor its members, do not participate in any concrete procurement procedures or operations and are therefore independent.

As far as conflicts of interest are concerned PPC, Article 20 explicitly sets out that: “3. Any employees of the public entities involved in certain public procurement procedures shall mention, in writing, any personal interest resulting from special relations with any bidder or potential bidder involved, in which case they shall ask to be excused from participating in the procedure. 4. The situation referred to in the above paragraph must be included in the employee’s personnel file in the procedure documentation. 5. The duty of ethical conduct shall be enshrined in the Code of Conduct drafted by ARAP.”

The **Code of Conduct** (Decision 7/2017, adopted by the Executive Board of ARAP) enshrines the principles and values of professional ethics to be observed by all persons who, in the performance of their duties, intervene in the National System of Public Procurement, , ARAP, and procuring Entities and all perform their functions as Public Interveners of the National System of Public Procurement. The Code shall also apply to all economic who are candidates or tenderers in procedures and contractors (Private Stakeholders of the National System of Public Procurement.). The application of the Code of Conduct and its observance does not hamper the implementation of existing legislation, in particular the regulatory framework which governs public procurement and the conduct of public officials, in particular the Disciplinary Statute of Administrative Officers and the one that provides for the different modalities of civil, financial, disciplinary and criminal responsibility.

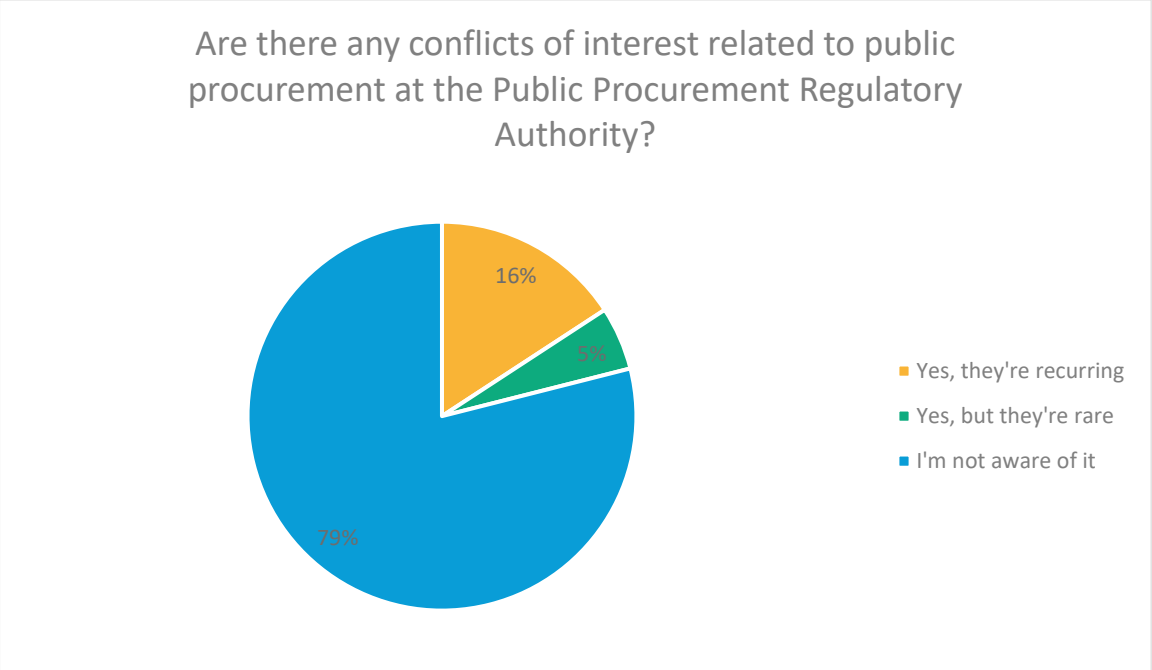
Finally, Decree-Law 2/95 establishes the legal regime of the public administration a fortiori applicable to public procurers. This act comprises provisions dealing with impediments, suspicions, conflicts of interest, incompatible private functions, either of public senior managers or other civil servants.

Although the universe of the survey was exceptionally limited, the responses obtained suggest that there are no conflicts of interest that affect the independent performance of the regulatory body.

Pillar II. Institutional Framework and Management Capacity

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):*
- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.



Gap analysis

Recommendations

Indicator 6. Procuring entities and their mandates are clearly defined

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

Assessment criterion 6(a)(a):
Procuring entities are clearly defined.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Article 2 (p) PPC defines "procuring entity" as the public entity interested in public procurement with a view to the future conclusion of a contract, whether or not it is the direct beneficiary of such contract.

Article 5 PPC then lists the following procuring entities by type:

- The State and the services of its Direct Administration;
- Local Authorities;
- Public Institutes, whatever their degree of autonomy, including public foundations and regulatory entities;

- State-owned enterprises (both owned by the Sate and by the Local Governments);
- Public associations, associations of public entities, or associations of public and private entities that are mostly financed by the entities provided for in this article or subject to their management control. management control.

Gap analysis

- "Bodies of Public Law" are not explicitly defined as procuring entities within the provisions of the current Public Procurement Code (PPC). To clarify, a procuring entity is an entity, whether public or private, that is principally financed, controlled, or the majority of whose governing bodies are appointed by established procuring entities. Despite the broad scope that Article 5 of the PPC seems to suggest, indicating the 2015 legislator's intent to be expansive, it conspicuously omits the inclusion of "Bodies of Public Law" within the remit of public procurement.

  The concept of "Body of Public Law" typically refers to a body that (i) has legal personality, (ii) has been established for the specific purpose of meeting needs in the general interest which do not have an industrial or commercial character, and (iii) it is financed for the most part, or controlled, by the State, regional or local authorities, or any other body governed by public law.

  The compelling argument for their inclusion within the scope of public procurement law is clear. When there is the utilization of public funds or when public control is exerted over an entity's activities, it becomes crucial to ensure transparency, fairness, and efficiency in the award and execution of public contracts. Including "Bodies of Public Law" in the public procurement framework would further these goals, ensuring that public resources are used judiciously and that procurement processes are held to the same standards of accountability and transparency as other entities governed by the PPC."

Recommendations

- The next major legislative review should include a technical, legal and political debate on (i) clarifying the scope of associations subject to the PPC and RJCA and (ii) considering the application of the PPC and RJCA to "Public Law Bodies", mixed and private associations financed mainly by public funds, and projects financed mainly by public funds, regardless of the private or mixed nature of the promoters.

Assessment criterion 6(a)(b):
Responsibilities and competencies of procuring entities are clearly defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPC for the pre-contractual phase - which ends with the signing of the contract - and the RJCA for the contract execution phase, define responsibilities and competences with an adequate level of detail. In other words, in general there are no matters or acts for which practitioners do not know who is responsible for.

The responsibilities and competences of the procuring entities are described in detail in the PPC with regard to the entire process, from the decision to contract (Article 55 PPC) to the award of the contract (Article 100 PPC) and its signing (Article 115 PPC).

Similarly, with regard to the contract execution phase, the RJCA sets the competencies and powers of procuring entities, then transformed into contractors. Title II of RJCA under the heading "Conformation of the contractual

realisation" of the RJCA, approved by Decree-Law 50/2015, defines the powers of the public contractor quite precisely in Article 5 et seq:

- Directing the execution of contractual services;
- Supervising the performance of the contract;
- Unilaterally modifying the clauses concerning the content and manner of performance of the services provided for in the contract for reasons of public interest;
- Apply sanctions in the event of non-compliance or non-performance of the contract by the co-contractor;
- Unilaterally terminate the contract.

Many of the powers described above go far beyond the powers of the parties in private law contracts, which is why we are dealing in public procurement with what are known as *administrative contracts*, in which the legal position of the public party enjoys supremacy, sometimes criticised as exaggerated and unfair, but also moderated by the requirement, in the vast majority of situations, to invoke and prove the public interest as the basis for the action or omission by the public party.

Gap analysis

Recommendations

Assessment criterion 6(a)(c):
establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In the 2015 Reform, the legislator defined the organisational framework and detailed the competences of the organisational units that, within each procuring entity, must ensure public procurement operations (throughout the entire procurement lifecycle, from planning to contract execution).

The Public Procurement Code (PPC) defines the "Procurement Management Unit" (UGA) as the functional, non-structural entity that brings together the entities responsible for conducting the procurement procedure, Article 66 (2) adds that in Central Public Administration the entities responsible for conducting the procedure are called Procurement Management Units - UGA, and the entity responsible for conducting grouped procedures, of a similar nature, is called Centralised Procurement Management Units - UGAC.

It's hard to understand why the legislator made a point of categorising these organisational units - the UGAS and the UGAC - as functional rather than structural units. If this was intended to reduce the permanent nature or vocation of these units, it was wrong, because the aim all over the world is precisely to professionalise and specialise procurement professionals in permanent units within the organisational structures of the state and private companies.
In accordance with the Regulation on Public Procurement Units (Unidades de Gestão de Aquisições – UGA), approved by the Decree Law no. 46/2015 of 21 September, procuring entities must set up a UGA. Such units can only start their functioning once accredited by ARAP. The **UGA**s are responsible for conducting public procurement procedures, from the decision to contract to the submission of the award proposal, in close collaboration with the procuring entities with which it works (Article 10).
Under Article 11, these procurement units have the following competences:

- Drawing up and submitting to the procuring entity's management for approval the proposal for the contracting decision in order to meet the needs set out in the annual public procurement plan;

- Compiling procurement information, keeping records of contracts awarded by procuring entities and submitting it every six months to ARAP and the Directorate-General for Assets and Public Procurement (DGPCP);
- Choosing the procurement method, drawing up the bidding documents and submitting them to the competent authority for approval, including the appointment of the jury,
- Submitting the bidding documents for DGPCP's *ex ante* control prior to the approval referred to in the previous paragraph;
- Initiate the procedure by publishing the contract notice or sending out the invitation;
- Provide clarifications necessary for a proper understanding of the procedural documents and rectify them when necessary;
- Submitting the final evaluation report to the procuring entity and notifying the bidders of the decision;
- Supporting the procuring entity in drawing up the six-monthly procurement report and submitting it to the DGPCP and ARAP;
- Sending all contract records and providing clarification to ARAP on the procedures it has conducted, whenever requested.

It is very important to note that the attributions and competences of the UGA and UGAC end with the signing of the public contract and therefore **do not cover the execution phase** as can be seen from Article 66 (7) of the PPC, which expressly states that the UGA and UGAC are "(...) carrying out all their work, from the administrative phase of the formation of contracts to their conclusion, (...).

According to the List of Entities with accredited UGA published by ARAP and referring to 30/06/2022 there are **22 UGA, which represent 17% of the total number of procuring entities (127)**.

Procuring Entity	Staff		
	Level II	Level I	Total
Ministry of Agriculture and Environment	3	2	5
Ministry of Infrastruture and urban planning and housing	11	1	12
Ministry of Health	2	1	3
Ministry of the Sea	0	2	2
Ministry of Industry, trade and energy	0	4	4
Minsitry of Justice	4	1	5
Ministry of Familiy and Social Inclusion	2	1	3
Ministry of internal affairs	0	6	6
Infrastructure of Cabo Verde	14	0	14
Cape Verdian Foundation of Education and Social action	0	3	3
Multiscetoral Regulatory Agency	0	2	2
Hospital Agostinho Neto	0	5	5
Ministry of Education	3	1	4
Nation Institute for rural research and development	2	0	2
Emprofac	1	0	1
Local Government São Miguel	3	0	3
Local Government Santa Cruz	2	0	2
National Institute for Social Security	2	1	3
National Water Agency	0	4	4
UGAC	1	5	6
ENAPOR	8	5	13

Total	58	44	102

Quantitative analysis

*// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):*
- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).
Source: Normative/regulatory function.

The quantitative indicator is presented in the qualitative analysis above.

Gap analysis

- From a practical point of view, the system's coverage rate by specialised units (UGA) is low (17%), as is the number of officials accredited for the job (102) if we consider the strategic and operational importance of public procurement.
- Although it is accepted that the extension of the coverage of procuring entities with UGA should be complied with as long as it is prescribed by law (on a compulsory basis and not on a voluntary basis depending on the assessment of each entity), it will not, by itself, resolve the deficiencies detected in terms of the system's capacity (number and qualifications of specialists and degree of accreditation requirement). Furthermore, the feasibility of withdrawing purchasing powers in the categories of goods, services and works of a transversal nature that could be centralised in a central purchasing body - integrated into the hierarchical structure of the Ministry of Finance or autonomous in the nature of a public institute or even a state-owned enterprise - should be analysed. It should be noted that, in practice, those 102 officials accredited as public procurers spread over 22 procuring entities will in most cases be consuming time with truly equal purchases that could (and should) be centralised in a body with highly qualified resources.

Recommendations

- It is urgent to reinforce the capacity of UGAC and increase the number of categories of goods, services and works addressed through the “grouping” mechanism.
- Study the feasibility of creating a Central Purchasing Body responsible for cross-cutting procurement needs.

Assessment criterion 6(a)(d):
Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The organisational rationale of the system may be considered, to some extent, already based on delegation, operated by legal means. To explain:

By prescribing the setup of a UGA within each procuring entity and granting it the powers described above in 6 (a) (c), it has already carried out a significant delegation which, in this case, does not even depend on the associated risks and/or the estimated value of the purchases. Although the UGA is responsible for the conduct of procurement procedures the decision to contract and to award remain with the top management of the procuring entity.

Notwithstanding, it should be noted that Article 59 PPC states that the competences provided for in the PPC may be delegated in accordance with the law, which in this case is the Code of Administrative Procedure [9]. Therefore, it does not prohibit the procuring entity from delegating the power to rectify bidding documents, to decide on errors or omissions identified by interested parties, or to decide on the qualification of candidates or the award decision.

More specifically, it refers to Article 19 (1) of Legislative Decree 2/95 of 20 June (General Regime for the Organisation and Activity of the Central Public Administration) the administrative bodies competent to decide on a given matter may, whenever they are authorised to do so by law, allow another body or agent to carry out administrative acts on the same matter by means of an act delegating powers. In this case, the enabling law is Article 59 PPC.

Gap analysis

The rule enabling the delegation of competences in Article 59 PPC is too broad. It should be revised at the first opportunity to revise the PPC in order to add the reference to some acts of the procuring entity which should be considered as non-delegable, namely:

- The rectification of the bidding documents;
- The decision on errors or omissions identified by interested parties on the bidding documents, and
- The decision on the qualification of candidates or the award decision.

Although the delegation of powers does not, in Cape Verdean administrative law, actually mean that the delegating entity is relieved of responsibility vis-à-vis the delegated entity, the aim of such a legislative precision to be introduced is to ensure that some of these powers can be delegated to the jury, which would place the duty to propose and the duty to decide on the proposal in the same body.
On the other hand, it is also important to emphasise that the responsibility for the procurement procedure remains with the top management of the procuring entity, with the jury functioning as an occasional body for analysing and evaluating proposals, with the duty to issue reports and proposals for decisions that it does not have the power (even delegated) to make. Accountability will be perfectly guaranteed by ensuring the segregation of the functions of analysing, evaluating and proposing decisions (for the jury) and deliberating (for the procuring entity).

-A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

Add a provision to current Article 59 PPC to restrict the possibility of the procuring entity' top management to delegate the following acts:

- rectification of the bidding documents;
- decision on errors or omissions identified by interested parties on the bidding documents;

[9] Legislative Decree 1/2023, 2 October, has just approved the new Code of Administrative Procedure which comes into force on 2 April 2024. This new Code of Administrative Procedure does not affect the interpretation made in the light of the law now replaced, since Article 42 (1) reproduces Article 19 (1) of Legislative Decree 2/95.

- decision on the qualification of candidates; and
- award decision.

Assessment criterion 6(a)(e):
Accountability for decisions is precisely defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

It can be said that, in general, the responsibility of procuring entities and their agents is based on four dimensions, corresponding to four different sources of norms:

- the component related to the principle of accountability as formulated in the PPC (with the possibility of civil, financial and disciplinary liability); and in the General Regime for the Organisation and Activity of the Central Administration
- the component of unethical behaviour (with the possibility of criminal liability);
- the soft law component contained in the Manual of Conduct published by ARAP; and finally,
- the component related to the execution of contracts (RJCA).

The main actors responsible for conducting procurement procedures are, first of all, accountable for their decisions insofar as these constitute *administrative acts* or *acts preparatory to their adoption* explicitly described in the PPC (pre-award phase) or RJCA (contract execution phase).

However, the legislator wanted in Article 19 (1) PPC to emphasise the importance of accountability in this area of action and included among the principles relating to public procurement the **principle of accountability**, according to which procuring entities and their officials must be held civilly, financially and disciplinarily liable for acts that breach the provisions of this Code.
Unethical behaviour deserving criminal sanctions, on the other hand, is dealt with in **Article 194 (1) of the PPC**, according to which those involved in the National Public Procurement System, namely those interested in the procedure, those responsible for conducting the procedure, the jury, and public administration officials, and economic operators, may not commit acts of corruption, fraud, collusion, coercion and obstruction, under penalty of exclusion from the tender or cancellation of the award. These acts must be communicated to ARAP by all those who become aware of them, without prejudice to the other communications required by law, in particular to the Public Prosecutor's Office for the purposes of criminal prosecution.
The **Code of Conduct** issued by ARAP is also worth mentioning among the sources of rules on accountability, insofar as it includes principles and provisions applicable to all actors in the system – procuring entities, economic operators, regulator and oversight bodies. Noteworthy are Articles 13 (Prevention of corruptive practices) on the side of public players, 14 (Competitive integrity and fairness), 15 (Environmental and social responsibility), 17 (Prohibition of collusion) and 18 (Coercive practices, translated into direct or indirect threats to other public or private players involved in public procurement).

Also the general principles of public administration set out in Legislative Decree 2/95 of 20 June * (General Regime for the Organisation and Activity of the Central Public Administration) apply, as explicitly stated in Article 2 (1) (a), to all acts of public administration bodies, including those in the field of public procurement *latu sensu* (pre and post-award).

Finally, as mentioned above in (6)(a)(b), the whole of Title II "*Conformity of the contractual relationship*" of the RJCA, approved by Decree-Law 50/2015, defines quite precisely, in Article 5 et seq. the powers of the public

procuring entity, in relation to which the responsibility of those acting on behalf of the procuring entity is assessed, and whose actions and omissions are assessed in this light.

Gap analysis

Recommendations

Sub-indicator 6(b)
Centralized procurement body

Assessment criterion 6(b)(a):
The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.

Conclusion: No gap

Red flag: No

Qualitative analysis

The country has recognised in its regulatory and institutional framework the importance of creating a body with powers to centralise purchases through the setup of UGAC, although proper and detailed feasibility studies have never been conducted.

Gap analysis

Recommendations

Assessment criterion 6(b)(b):
In case a centralised procurement body exists, the legal and regulatory framework provides for the following:
• Legal status, funding, responsibilities and decision-making powers are clearly defined.
• Accountability for decisions is precisely defined.
• The body and the head of the body have a high-level and authoritative standing in government.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The UGAC is responsible for coordinating the entire process of grouped purchases in accordance with the directive approved by the Council of Ministers, in close liaison with the procuring entities.
It should be noted that the UGAC is also acting as the UGA for the Ministry of Finance. The UGAC has the following competences under Article 15 of Decree Law no. 46/2015 of 21 September:

- Drawing up the grouped annual procurement plan;
- Conducting grouped public procurement procedures;
- Supporting the implementation and dissemination of best public procurement practices;
- Gathering information on the execution of contracts concluded as a result of grouped procurements, especially in order to gauge the level of savings;
- Proposing to the member of the Government responsible for Finance the categories of purchases subject to grouped procurement.

UGAC works under a Department of the Ministry of Finance. Decision-making powers are clearly defined but not sufficient to pursue the objectives of an effective and efficient Central Purchasing Body.

Gap analysis

- The country lacks a proper Central Purchasing Body and is certainly wasting public resources when exactly the same purchases are made by a myriad of different procuring entities, not taking advantage of the scale effect and leaving procurement in the hands of technicians with very uneven levels of specialised technical training.
- Although working within the Ministry of Finance, UGAC doesn't have a high-level and authoritative standing in the government.
- The roles and responsibilities of UGAC cease with the signing of public contracts, as per Article 66 (7) of the Public Procurement Code (PPC). This means their involvement does not extend to the execution phase of contracts. The operational capacity and organizational structure of UGAC are notably limited, hampering its effectiveness.
- UGAC, serving both as the Central Purchasing Body and the Ministry of Finance's Procurement Unit, faces a critical shortage of human resources. With only a coordinator and a staff member, as reported in 2023,

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- The positioning of the UGAC within the central administration structure should be reviewed to give it more direct access to the Ministry of Finance and, through it, to the government.
- UGAC should be replaced by an appropriate central purchasing body, in accordance with the respective feasibility study.

Assessment criterion 6(b)(c):
The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

UGAC operational capacity and organizational structure is very limited.
The UGAC, which acts simultaneously as the country's Central Purchashing Body and the Ministry of Finance Procurement Unit, does not have enough human resources, with only 1 coordinator and 1 staff, as recognised in its 2023 Report and activity plan. Even so, UGAG managed to finalise 15 procurement procedures in 2022, in their capacity as the UGA of the Ministry of Finance.
On the other hand, the aforementioned report recognises that more than 90% of the purchases made by the UGAC are unplanned, contrary to one of the main objectives of this type of structure.

Gap analysis

- UGAC' s legal statute, internal organization and staffing are far from is far from what can be expected from a proper Central Purchasing Body.

- The country lacks a proper Central Purchasing Body and is certainly wasting public resources when exactly the same purchases are made by a myriad of different procuring entities, not taking advantage of the scale effect and leaving procurement in the hands of technicians with very uneven levels of specialised technical training.

Recommendations

see above 6(a)(c) – study the feasibility of launching a proper Central Purchasing Body as a matter of urgency.

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

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

Assessment criterion 7(a)(a):
Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Information on procurement is partly accessible (off-line) in media of wide circulation. Procuring entities issue and publish tender notices in media of wide circulation. However, award notices are not published, making it impossible to monitor outcomes, results and performance.
Even with the introduction of e-GP, this situation seems unchanged, as the number of Tender and Award Notices published in the Portal is insipient.
General (or specific) monitoring reports are not available and/or easily accessible.

Gap analysis

- The limited information available does not allow for monitoring outcomes, results and performance by the interested parties.

Recommendations

- As the Country is introducing the e-GP, efforts should be made to allow for real-time monitoring of procurement. Data, information and documents from the different phases of the procurement process should be published in a machine-readable format, using Open Contracting Data Standards (OCDS) to provide data analytics for interested parties.

Assessment criterion 7(a)(b):
There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.

Conclusion: Substantive gap

Red flag: No

Pillar II. Institutional Framework and Management Capacity

Qualitative analysis

In February 2023 the GoCV launched its e-GP solution, the eCompras portal, accompanied by Decree-Law no. 11/2023 of 17 February, which "establishes the Electronic Public Procurement Platform and regulates the electronic processing of public procurement procedures".
This e-GP solution is intended to cover the procurement cycle from planning to drawing up the contract.
At the cut-off date for the report, 18 Annual Procurement Plans had been published for 2023, and fewer than that in the previous 4 years (2019, 2020, 2021 and 2022).

Gap analysis

- Extremely low adoption (close to irrelevant) of e-GP

Recommendations

- A maturity assessment should be conducted to evaluate the conditions of the current system and look for the causes of such low adoption.
- The e-GP expansion plan, which initially envisaged full adoption by February 2024, needs to be revised and consider the current uptake level in realistic terms.

Assessment criterion 7(a)(c):
The information system provides for the publication of: *
• procurement plans
• information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions
• linkages to rules and regulations and other information relevant for promoting competition and transparency.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis
The eCompras Portal has serious shortcomings in terms of the information it provides.

Quantitative analysis

// 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.

Procurement Plans Published
Table 1: Number of Annual Procurement Plans published

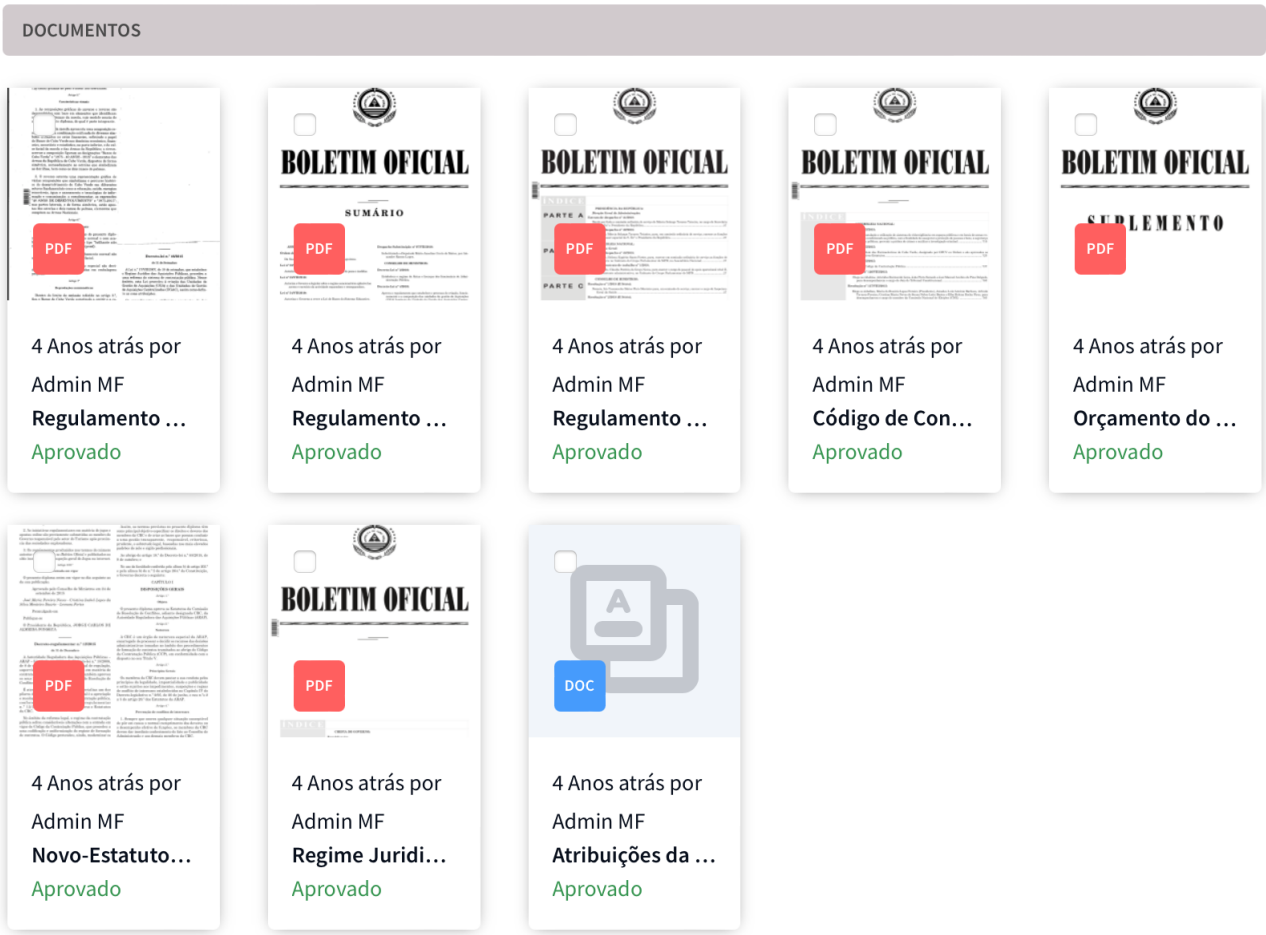
2019	2020	2021	2022	2023

10	15	7	16	18

Source: e-GP System - https://www.mf.gov.cv/web/ecompras

Gap analysis

- The number of Annual Procurement Plans published represents a tiny proportion of those that should be published.
- Tender notices are published in an unstructured way, and it is not clear where an economic operator should look for opportunities.
- Contract awards are not published. There are some records (13) for 2022, but it is unclear whether they represent individual contracts or blocks of contracts awarded by one organisation. There are no records for 2023.
- The Portal has 8 FAQs, none of which are aimed at economic operators.
- The portal offers the possibility of downloading 8 documents in the Legislation tab, but does not identify the objects in advance, forcing users to download each file.



A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- Reinforce, in the PPC and RJCA, the mandatory nature of the publication of the main documents and information relating to the contract formation and the execution phase;
- Establish the sanction of the nullity of contracts - and consequent impossibility of producing effects, namely financial ones – when any of the following documents or information is not published: (i) contract notice, (ii) contract award notice (based on the contract forms), (iii) main objective changes to the contract (e.g. subject matter, term, price) and subjective changes (assignment and subcontracting). This amendment should be included in the next revision of the PPC and the RJCA and come into force on the date on which the transition process to e-GP is completed, thus accompanying the concrete implementation of the objective enshrined in Article 10 (1) of Decree-Law 11/2023 (e-GP).

Refer to 7(a)(b).

Assessment criterion 7(a)(d):
In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The information published is considered insufficient overall. As in other areas of public procurement management, the problems become even worse when we move from the pre-contractual phase to the execution phase [10].

Gap analysis

- The information published is insufficient or published in a way that needs to be improved in order to facilitate access, intelligibility and practical use by the recipients, especially the operators of public markets (procuring entities and economic operators).
-

Recommendations

- In line with the commitment made by Cape Verde to the Open Government Partnership[11], ARAP must publish public procurement information in open format.

- Every effort must be made to implement the Cabo Verde's OGP 2023–2025 Action Plan[12], that includes the strategically important Commitments 1 and 2: Open data and statistics. "This cluster promises to increase public access to government-held data and statistics through the establishment of an open data policy and portal.".

Assessment criterion 7(a)(e):
Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*

[10] Under the RJCA's rules.
[11] https://www.opengovpartnership.org/wp-content/uploads/2022/12/Cabo-Verde_Action-Plan_2023-2025_EN.pdf
[12] https://www.opengovpartnership.org/wp-content/uploads/2023/10/Cabo-Verde_Action-Plan-Review_2023-2025_EN.pdf

Pillar II. Institutional Framework and Management Capacity

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
Information is not published under an open data standard.

Quantitative analysis

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

Gap analysis

- Information is not published under an open data standard.

Recommendations

Refer to 7(a)(d).

Assessment criterion 7(a)(f):
Responsibility for the management and operation of the system is clearly defined.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Decree-Law 11/2023, of 17 February (**e-GP**) clearly distributes management responsibilities for the electronic public procurement platform:

- The Directorate-General for Assets and Public Procurement (DGPCP), as the department responsible for the Public Procurement System, is the department responsible for the **operational management** of the electronic public procurement platform (Artigo 14 e-GP)
- The Information, Innovation and Communication Technology Unit (UTIC), as the service responsible for the **technical and functional management** of the Ministry of Finance's Information Systems, is in charge of the technical and functional management of the electronic platform (Article 15 e-GP)
- The National Directorate for the Modernisation of the State (DNME) is the entity responsible for carrying out the **technological supervision** of the electronic platform (Article 16 e-GP)
- The Public Procurement Regulatory Authority (ARAP), as the **regulator of the National Public Procurement System**, is responsible for the following functions:
  - Proposing that the electronic platform be adapted, in particular to ensure that it is consistent with the legal framework applicable to public procurement procedures in force;
  - Notifying the departments responsible for the operational management and technical and functional management of the electronic platform of the need to adapt the platform under the terms referred to in the previous paragraph or to correct procedural nonconformities;
  - Regulate and audit public procurement procedures carried out under the electronic platform;
  - Promote and recommend internationally recognised good practices in the field of electronic public procurement;

- Making available on the electronic platform and updating the list of ineligible entities provided for in article 72 of the PPC.

Gap analysis

- The list of ineligible entities foreseen in article 72 of the PPC is not implemented.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- See 2 (a) (a)
  implementing act regarding the List of Non-Eligible economic operators foreseen in PPC Article 72

Sub-indicator 7(b)
Use of e-Procurement

Assessment criterion 7(b)(a):
E-procurement is widely used or progressively implemented in the country at all levels of government.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
The e-GP ptafform has been launched on 18 February 2023.

The use of the e-Platform (eCompras) until September 2023:

- number of e-procurement procedures since going live: 3 open tenders
- method of procurement: open tender for goods and services
- 1 awarded, 2 ongoing
- published contracts: 0
- total expenditure addressed: 95.6 million Escudos (approx. 950 MUSD)

Currently, the use of the e-GP system is free of charge. However, the aforementioned decree stipulates that an access charge may be levied, which is not expected to happen until 2026.
The system is integrated with a set of Portals and Systems, namely the PFM System (SIGOF).

Quantitative analysis

*// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):*
uptake of e-Procurement
- number of e-Procurement procedures in % of total number of procedures
- value of e-Procurement procedures in % of total value of procedures
Source: e-Procurement system.

The quantitative indicator is presented in the qualitative analysis above.

Gap analysis

- Considering the more than 8 months that have passed between the e-GP system being made available and the time of writing this Assessment Report, a greater use of the system by both public bodies and

economic operators could be expected. The extremely low adoption (close to irrelevant) of e-GP is one of the most critical aspects of the whole assessment.

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Recommendations

- The e-GP expansion plan, which initially envisaged full adoption at the beginning of 2024, needs to be revised;
- The entities with management, control and regulatory responsibilities over the e-GP system (DGPCP, UTIC, DNME, ARAP) should draw up an Emergency Plan to address the gaps identified. This plan must be adopted and published as soon as possible and allow enough time for the generalisation of e-GP in a safe and smooth manner.
- In addition to the measures included in Emergency Plan the Cape Verdean Government could already request the support of the MDBs that currently have a significant portfolio of projects being implemented in the country (in number and aggregate estimated contracts value) to initiate the review of the national e-GP system to assess the feasibility of using it to award contracts financed by MDBs as a way of speeding up the generalisation of its use. Either through the MAPS e-GP module (already foreseen in the Concept Note of this evaluation) or through a faster process based on the Guide For The Assessment of Electronic Government Procurement Systems Intended For Use Under MDB Financed Operations (2023).

Assessment criterion 7(b)(b):
Government officials have the capacity to plan, develop and manage e-Procurement systems.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

So far, e-GP has been implemented without a strategic direction or action plan (roadmap).

Gap analysis

A month and a half[13] before the deadline set by Decree-Law 11/2023 (Article 70) for the end of the transitional period (17 February 2024) and the switch to the electronic single mode (e-GP), the following shortcomings persist:

- Lack of a National e-GP Strategy
- Lack of an Action Plan (roadmap) that organises and plans the resources needed to meet the time target set for full e-GP - 17 February 2024.
- The implementation of e-GP has not been preceded by an economic and financial feasibility study (five-year investment and operating budgets) and nothing is known about the business model to be adopted except that a fee will be charged to private users [Article 19 and 70 (3)]. Will fees be the only source of funding for investment and operation? Will there be an untaxed portion of the state budget? To what extent?
- There is no (multi-annual) Investment Plan associated with the implementation and generalisation of e-GP in the country, as well as the development and updating of the system in the future.
- There is no financial programme for the annual operating budget

[13] On the date of completion of the draft of this report i.e. 22 December 2023.

- The Ordinance provided for in Article 11 (1) e-GP on the technical requirements for electronic access, consultation and practice of acts in public procurement procedures through the electronic platform by interested parties has not been approved and published.
- The "installation and user manual" [Article 5 (2)] has not been produced.

Recommendations

- Same as 7(b)(a) (Emergency Plan)

Assessment criterion 7(b)(c):
Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

So far, 10 training sessions have been held on the e-GP Platform

- Trainees: 88 technicians;
- Procuring entities represented: 5 organisations (28 technicians);
- Economic operators: 30 companies (34 technicians);
- Technicians from the e-GP Project Team - UTIC, DGPCP, ARAP, UGAC, DNOCP - (26 technicians)

Gap analysis

- Taking only the demand side into account, out of a total of 127 [14] procuring entities in the country only 5 organisations have had initial contact with e-GP in terms of training. Without even discussing the workload of the training and its syllabus, this is around 4% of the universe.

Recommendations

- Same as 7 (b) (a) above.

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

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

See 7 (a) (b) and 7 (b) (a) above.

Quantitative analysis

** Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):*
- bids submitted online (in %)
- bids submitted online by micro, small and medium-sized enterprises (in %)

[14] Fonte: ARAP

Source: e-Procurement system.

The quantitative indicator was not calculated due to the absence of e-submission in the country.

Gap analysis
See 7 (a) (b) and 7 (b) (a) above.

Recommendations

See 7 (a) (b) and 7 (b) (b) above.

Assessment criterion 7(b)(e):
If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

Conclusion: No gap

Red flag: No

Qualitative analysis
Not assessed as not applicable.

Gap analysis

Recommendations

Sub-indicator 7(c)
Strategies to manage procurement data

Assessment criterion 7(c)(a):
A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

See 7 (b) (a) above.

Gap analysis
See 7 (b) (a) above.

Recommendations
See 7 (b) (b) above.

Assessment criterion 7(c)(b):
The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
See 7 (b) (a) above.

Gap analysis See 7 (b) (a) above.
Recommendations See 7 (b) (a) above.
Assessment criterion 7(c)(c): The reliability of the information is high (verified by audits).
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed
Gap analysis Not assessed
Recommendations
Assessment criterion 7(c)(d): Analysis of information is routinely carried out, published and fed back into the system. *
Conclusion: Choose an item.
Red flag: Choose an item.
Qualitative analysis Not assessed
Quantitative analysis *// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):* *• total number and value of contracts* *• public procurement as a share of government expenditure and as share of GDP* *• total value of contracts awarded through competitive methods in the most recent fiscal year.* *Source: Normative/regulatory function/E-Procurement system.* Not assessed
Gap analysis
Recommendations

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

Sub-indicator 8(a) **Training, advice and assistance** There are systems in place that provide for:
Assessment criterion 8(a)(a):

Pillar II. Institutional Framework and Management Capacity

Substantive permanent training programmes of suitable quality and content for the needs of the system.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis During 2022, ARAP organised 5 training courses: **4** for procuring entities (Introduction to Public Procurement Course), with a duration of 30 hours and 145 participants, and **1** for economic operators (How to participate in Public Procurement", with a duration of 10 hours and (only) 9 participants. IMPORTANT NOTE: it wasn't until 2022 that knowledge assessment was introduced as a requirement for successful completion of training. The scale is from 0 to 100 points, with a score of 70 required for successful completion of the training. Overview of participants / passed: 4th e-learning class : (7 June 2021 - 16 July 2021): 48 participants, 44 passed 5th and 6th e-learning class : (1 September - 15 October 2021): 53 participants, 46 passed 7th and 8th e-learning class : (12 May to 23 June 2022): 84 participants, 78 passed 9th and 10th e-learning class : (6 September to 17 October 2022): 49 participants, 45 passed The Introduction to Public Procurement Course comprises 6 modules (all relating to the contract formation phase): Modulo 1- Âmbito e Princípios da Contratação Pública - Modulo 2- Planeamento das Aquisições –Indira Cardos Modulo 3- Condução de Procedimentos- Aécio Ferreira Modulo 4- Avaliação e Adjudicação – Sandra Andrade (Modulo 5- Impugnações Administrativas – Any Teixeira Modulo 6- Portal da Contratação Pública – Indira Cardo The structure and contents are inspired by the approach followed by the Manual of Good Public Procurement Practices (2015) and therefore follow the sequence of the Public Procurement Code (PPC). Among the suggestions for improvement identified by the trainees, the following stand out: – preferring the second period of working hours (afternoon) – provide exercises and practical cases, including simulation of executive procedures by groups of trainees – sessions should not be during working hours - there are constant interruptions by colleagues – insert practical component of eCompras – materials promised by trainers must be delivered
Gap analysis – The discrepancy in the effort spent on offering (basic introductory level) training courses to participants from procuring entities and economic operators does not help to level the playing field between demand and supply side players[15].

[15] Well-prepared bidders and incompetent procuring entities, poorly-prepared bidders and competent procuring entities or both parties being incompetent are binomials that are unlikely to lead to good results.

- The effort to build capacity therefore needs to be seriously stepped up among supply-side players. And since it is often claimed that economic operators "aren't interested in capacity building actions, they think they're a waste of time and money", the efforts of organisations like ARAP should go towards persuading them that they are wrong. How: by demonstrating the costs of poor quality for both parties in public procurement (failure in tenders, loss of market share to more competent competitors, lower profitability and financial losses due to poor preparation of tenders (pricing, negotiation with suppliers upstream of the successful tenderer, etc.).
- Moreover, the content and duration of the action for companies is relatively insignificant given the subject matter that companies need to master - which is practically the same as that of procuring entities, perhaps with the exception of budget management matters.

The hierarchical level of the trainees (demand side)

As noted in a study carried out at the request of the Deputy Prime Minister and Minister for Finance, "*the appropriation and awareness by senior managers of procuring entities of their statutory responsibilities as heads of public services can lead to greater care being taken to ensure in-house technical expertise in the organisations of which they are managers and to become more involved in tendering procedures*."
The study concludes with the proposal for "*urgent training for all those involved in the Ministry of Finance in the field of public procurement, especially the Directors General, National Directors and all the others who authorise expenditure, issue information, proposals and send files to the UGAC to launch procedures; sign contracts; etc..., with a view to effectiveness and efficiency and the standardisation of procedures*".
Source: ARAP Strategic Plan 2022-2026

On **the economic operators side**, too, it would be good to test the production of training and information programmes and tools (e.g. chatbots and other AI-based tools) aimed at senior management. Top management should have an informed perception of public markets, especially in cases where the companies' experience is mainly of private markets.

Recommendations

- rebalance the financial effort and the allocation of human resources (e.g. in house trainers) to reinforce actions aimed at economic operators;
- offer the Introduction to Public Procurement Course to economic operators;
- design and offer more advanced courses, in addition to the Introduction to Public Procurement Course for the procuring entities and economic operators
- substantially reinforce the e-GP (eCompras) related component in all training courses and modules
- design and offer a Course on Contract Implementation
- design and offer a Course on formation and Implementation of public contracts (full cycle) targeted to managers at the various levels of public administration, making their attendance a condition for recruitment and selection and/or career promotion
- design and offer a Course on formation and Implementation of public contracts (full cycle) targeted to top managers of businesses

Assessment criterion 8(a)(b):
Routine evaluation and periodic adjustment of training programmes based on feedback and need.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Training courses are assessed by participants only.

Gap analysis

- Training courses are assessed by participants only. No evaluation and monitoring scheme to assess the effectiveness of the capacity building program against performance by a third independent party.

Recommendations

- Develop an evaluation and monitoring scheme to assess the effectiveness of the capacity building program against performance.

Assessment criterion 8(a)(c):
Advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.

Conclusion: No gap

Red flag: No

Qualitative analysis

In 2022 ARAP received 147 requests for clarification, 18 of which were from economic operators.
With regard to the topics of the consultations, 68 per cent relate to the interpretation of the law and regulations, 26 per cent to the conduct of procurement procedures and 6 per cent to other issues.

Gap analysis

Recommendations

Assessment criterion 8(a)(d):
A strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

A strategy that is well-integrated involves a holistic approach to capacity development. It recognizes that isolated training sessions, short term courses or workshops might not suffice in instilling best practices and ensuring lasting change. Instead, it combines training with mentorship programs, peer-to-peer learning, practical on-the-job experiences, and continuous performance assessments. This strategy also dovetails with the necessary tools, such as modern procurement software, standardized templates, and guidelines. Moreover, it aligns with broader governmental policies, legal frameworks, and institutional structures that support and regulate public procurement.

Furthermore, a truly well-integrated strategy also acknowledges the interconnectedness of various stakeholders in public procurement. It emphasizes collaboration between government departments, the private sector, and civil society. By fostering an atmosphere of mutual trust, shared objectives, and open communication, the strategy ensures that all parties involved understand their roles, responsibilities, and the larger goal of achieving efficient, transparent, and accountable public procurement processes.

Gap analysis

- There is no holistic approach to capacity development and it should be part of and aligned with (a) a National Public Procurement Strategy, (ii) a Public Procurement Policy.

- The lack of integration with a National Strategy means that, for example, the (relatively isolated) training courses that are being developed are still mainly geared towards (i) the legal aspects of procurement (ii) the contract formation phase and (iii) almost entirely from the perspective of the procuring entities (what their staff need to know in order to fulfil the role entrusted to them within the UGAs).

Recommendations

- Adoption of a *National Public Procurement Strategy and Policy* [as above 5 (b) (b)], designed to address the system's main deficiencies and guide decision-makers in the allocation of resources and investment in reform programmes
- Include, among the main pillars of such a National Strategy, the objectives and priorities of the Training Programme, including the necessary KPIs to measure performance and effectiveness.

Sub-indicator 8(b)
Recognition of procurement as a profession
The country's public service recognises procurement as a profession:

Assessment criterion 8(b)(a):
Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

There is no definition of a public purchaser and no cadre of public procurement professionals.

Gap analysis

There is no definition of public procurer nor a public procurement cadre.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system

Recommendations

The approval of a legal text including the following minimum elements:

- Role Definition: A public procurer is a professional responsible for overseeing and managing the purchase of goods, services, or works on behalf of a public sector organization in a manner that ensures value for money, transparency, and adherence to regulations.
- Core Competencies: Procurement strategy development, Contract management, Supplier relationship Management, Legal and regulatory compliance, Market research and analysis, Negotiation and communication skills, Ethical procurement practices.
- Qualifications: Educational background (commonly in fields such as business administration, law, economics, or finance).
- Relevant certifications (e.g., Chartered Institute of Procurement & Supply certification).

- Key Attributes: Analytical thinking, Detail-oriented approach, Strong interpersonal skills, Ethical and transparent decision-making, Adaptability to evolving procurement landscapes and technologies.
- Job Description: Key Responsibilities;
- Performance Metrics: Indicators such as cost savings achieved, vendor performance scores, timeliness of procurement processes, and compliance rates.

In connectyion with the above, a special public procurement career should be created in the public sector (all procuring entities as per the PPC definition) and include at least the following levels: Entry-level; Mid-level; Senior-level; Leadership.

Assessment criterion 8(b)(b):
Appointments and promotion are competitive and based on qualifications and professional certification.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
As a rule, civil servants are appointed by public tender, which establishes the qualifications required and the professional certifications, if any, suitable for the specific position / vacancy.

Gap analysis

- There is no definition of the professional qualifications required to fill public procurers vacancies, which cannot be resolved without the creation of a specific cadre.

Recommendations

- Same as 8(a)(a)

Assessment criterion 8(b)(c):
Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Staff is evaluated on a regular and consistent way but public procurement related levels of compliance and performance reached by the procuring entities is not included in the assessment criteria (and KPIs) because the entity's own performance is not measured from such point of view.

Gap analysis

- The human resources appraisal system that is applied to public procurers - civil servants – does not consider and assess specific public procurement levels of individual and collective compliance and performance.
  See also 8(a) (a)

Recommendations

- Including specific public procurement related KPIs in the appraisal system of public procurers.
- See also 8(a) (a)

Sub-indicator 8(c)
Monitoring performance to improve the system

Assessment criterion 8(c)(a):
The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

A performance monitoring system based on relevant and pre-established Key Performance Indicators is needed.

Gap analysis

- The national public procurement system (as a whole) is not assessed in terms of performance on a permanent basis. Exception is this MAPS Assessment and other more scope-limited assessments but these are all made on a one-off basis.

Recommendations

- [same as above (5)(b)(f)] Devise a consistent and comprehensive performance measurement system based on key public procurement performance indicators.

Assessment criterion 8(c)(b):
The information is used to support strategic policy making on procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is no National Public Procurement Strategy and Policy.

Gap analysis

- There is no global public procurement policy and the quantitative component of monitoring is far from satisfactory. The situation is expected to improve significantly when the use of e-GP becomes more widespread in the country. But even then, it should be borne in mind that the e-Procurement platform is designed for and contains the technical features of the pre-contractual phase, so the performance assessment will have to be expanded to cover the contract execution phase.

Recommendations

- [same as above (5)(b)(f)] Devise a consistent and comprehensive performance measurement system based on key public procurement performance indicators.

Assessment criterion 8(c)(c):
Strategic plans, including results frameworks, are in place and used to improve the system.

Pillar II. Institutional Framework and Management Capacity

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

As mentioned above in **5 (b) (b)** Cabo Verde lacks a National Public Procurement Strategy and Policy, although it does, of course, have many of the pieces that can inform the production of such a guiding document.
On the other hand, It is positive that ARAP has adopted a **Strategic Plan 2022 - 2026** but it should be remembered that, as the name suggests, it is not a National Public Procurement Strategic Plan, nor would it be up to the regulator to do so. Such a plan and policy are clearly the responsibility of the government, through the body it appoints to lead the implementation of public procurement strategy and policy (e.g. the DGPCP).

However, there is a worrying shortcoming in such Strategy Plan, because when it tries to characterise the market to be regulated, it does so from a perspective that is excessively linked to recent legislative history - from the 2015 PPC to the present day - but without ever providing the quantitative picture that a regulatory authority is expectedto present. As is the case with the Regulation Reports and Activity Reports, stakeholders and observers are left without an idea of the size of the national public market, even if it is only focussed on some of the most basic indicators, such as: volume and total aggregate value of contracts, by type of contract (goods, services, works), by level of government (central, local, other entities) and by procurement method, by origin of bidders and bidders (domestic *versus* foreign).
When some of this information is made available - such as the distribution between domestic and foreign contractors - it is limited to cases where ARAP became aware of through the monitoring and auditing function (for example, the mention of 509 contracts in the 2022 Activity Report).

The ARAP Strategy 2022-2026 corroborates our understanding when it admits with regard to knowledge of the system that "*There is a lack of knowledge of how the public procurement system works, both in terms of data and studies analysing this data*", but then adds a recipe for a solution of questionable effectiveness when it says that since many organisations don't provide the requested data "*a sanctioning intervention may be required on the part of ARAP, migrating from a more pedagogical stance to a sanctioning stance*". This enforcement approach would be acceptable if we were not, as we are, on the eve of being able to spread the use of e-GP throughout the whole universe of procuring entities - at least for the contract formation phase - but since we are, the most reasdonable action is to accelerate the take-up of e-GP (which is also mandatory by law). In an e-GP system, which is interoperable and correctly integrated with budget management (PFM), the data is neither requested nor collected - it comes from the (single) system in which the contracts are formed. And later where, ideally, their implementation is monitored.
With a strong positive (expected) impact, due to their transformative potential (and not "more of the same"), we highlight two "strategic perspectives" that should be strongly supported:

- Effectiveness of the system: This refers to the leadership and dynamisation of the construction of a **national system to for monitoring and evaluating** public procurement, (…).
- Financial perspective: This refers to maximising the use of available financial resources and those that can be mobilised through fundraising and that will **support the costs of strategic activities**, (…).

Gap analysis

- As mentioned above in 5 (b) (b) the national public procurement system does not have a National Strategy and Plan. This is highly needed for the characterisation of the public market, e.g. its overall size, players profiles, trends. Without such characterisation based on a consistent set of KPIs, it is not possible to set quantified targets and measure performance. As mentioned, ARAP's Strategic Plan, while containing other positive aspects, does not resolve this shortcoming. More than ARAP, the country needs a vision for the national public procurement system and quantified performance targets.

Recommendations

- [same as above (5)(b)(f)] Devise a consistent and comprehensive performance measurement system based on key public procurement performance indicators.
- [same as above (5)(b)(b)] Prepare and propose National Public Procurement Strategy and Policy document to be endorsed by the Minister of Finance and approved by the Council of Ministers

Assessment criterion 8(c)(d):
Responsibilities are clearly defined.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

According to Article 11 (2)(f) of Decree-Law no. 57/2016 of 9 November (Organic Law of the Ministry of Finance) the DGPCP is responsible for i) Proposing, promoting within the Public Administration, execute and evaluate the implementation of a policy.
The solution seems appropriate to us and could only be improved by adding an explicit reference to the National Public Procurement Strategy and Policy, as the legislator does in the same article when referring to state assets ("…the DGPCP is responsible for proposing the general strategy for managing state assets).

Gap analysis

- There is no explicit reference to the competence to propose a National Public Procurement Strategy and Policy among the competencies of DGPCP.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- For clarity revise the wording of Article 11 (2) (f) in order to expressly include the competence (duty) of the DGPCP to propose the National Public Procurement Strategy as it already does for "Policy".

Pillar III. Public Procurement Operations and Market Practices

Indicator 9. Public procurement practices achieve stated objectives

Sub-indicator 9(a) Planning
Assessment criterion 9(a)(a): Needs analysis and market research guide a proactive identification of optimal procurement strategies.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is a not widespread practice of consulting the market before starting a purchase. However, this consultation is merely an attempt to obtain information to determine the estimated price of the acquisition.
Gap analysis Acquisitions are not led by market analysis or market research. A Red Flag is assigned because it is considered that the absence of mechanisms for defining procurement strategies hinders the achievement of public procurement objectives .
Recommendations ARAP must promote the realization of market studies. To this end, it must promote the training of public procurers and, at an early stage, prepare model documents to facilitate the market consultation process.
Assessment criterion 9(a)(b): The requirements and desired outcomes of contracts are clearly defined.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Assessment Team found several examples in which the requirements and outcomes were adequately described. However, there were several cases in which the definition of requirements and outcomes was so weak that it led to changes in procurement. In fact, especially in the use of (the regular – above 300.000,00 CVE) Direct Award, the Assessment Team found that in several cases the definition of requirements is made lightly, or even frivolously, causing a significant change to the subject of the contract, with consequent changes to the expenditure, which requires new approval processes.
Gap analysis The evaluation team noted in several cases that the requirements and outcomes were not clearly defined. It should be noted that this absence is particularly glaring when the document templates provided by ARAP are not followed.
Recommendations Considering that use of the standard documents made available by ARAP is lower when the procurement method is the Direct Award, and considering that this method represents 76% in number and 39% in value of the total procedures that served as the basis for selecting the sample (the source of which are the contracts awarded or planned by 11 public entities in the years , 2019, 2020, 2021 and 2022, totalling 2643 contracts), which represents 58% in number and 20% in value of the total sample, made up of 166 contracts, **measures should be taken to increase compliance with the obligation to adopt the standard documents, as well as incentive measures to its usage, such as training and capacity building programmes for public bodies.**

Assessment criterion 9(a)(c):
Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis
As mentioned in 3(a)(a), the country does not have a policy or strategy for implementing Sustainable Public Procurement.
In addition, when analyzing the Bidding Documents of the sample cases, no situations were identified in which sustainability criteria were considered when evaluating tenders.

Gap analysis
Sustainability criteria are not used.

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

Recommendations
In line with what is suggested in 3(a)(a), the GoCV should establish a Sustainable Public Procurement Policy/Strategy that clearly outlines an action plan for the practical implementation of sustainability criteria in procurement. This Policy/Strategy should be aligned with the 17 Sustainable Development Goals.

Sub-indicator 9(b)
Selection and contracting

Assessment criterion 9(b)(a):
Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
PPC offers two multi-stage procedures. The first one, the “two-round public tender”, must be adopted when "*the nature or technical complexity of the services covered by the contract to be awarded does not permit the precise definition of the technical specifications best suited to the needs of the procuring entity*" (Art. 36). The second, the selective tender (“Concurso Limitado por Prévia Qualificação”) "*must be adopted when the work to be carried out, the equipment and services to be supplied, are of a particularly complex nature or **require a particular technique**, or when the amount involved is very high*” (Art. 37).

ARAP's 2022 Activity Report shows that only 1 “two-round public tender” and 1 selective tender were identified, out of a total of 641 procedures identified. The Assessment Team, in gathering information to select the sample cases, identified only 4 selective tenders, out of a total of 2643 identified contracts.

Gap analysis
The use of multi-stage procedures is not a practice in Cape Verde.

Recommendations
Procuring entities should be made aware of the existence of multi-stage procedures and the benefits of using them for complex procurements, to ensure that only qualified and eligible participants are included in the competitive process.

Assessment criterion 9(b)(b): Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The use of Standard Bidding Documents is mandatory. Those are updated and made available on ARAP's website[16].
Gap analysis Refer to 9(a)(b). In practice, there are some deviations from the use of SBD's and even cases in which, although the use of certain documents, Invitation to Bid ("Convite") and Terms of Reference ("Caderno de Encargos"), is mandatory, this does not happen and those are replaced by simple (e-mail) notifications.
Recommendations Refer to 9(a)(b).
Assessment criterion 9(b)(c): Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis The choice of procurement method must, according to the PPC, always be substantiated. While the general rule, based on the estimated value of the expenditure, is straightforward, in cases where there is a deviation from this general rule, the justification must be particularly careful. In practice, however, the grounds for adopting Direct Award (according to the material criterion) are often poor.
Gap analysis The choice of procurement method is not made with the purpose or even the requirements of the PPC in mind. The method for determining the value of procurements is unclear and is sometimes based on *so-called market studies* that are no more than a request for a pro-forma invoice from a supplier – refer to 9(a)(a). In the case of the choice of direct award according to the material criterion, the scenario worsens as the justification is often lacking or of questionable merit. A Red Flag is assigned because the use of unjustified non-competitive bidding hinders the achievement of public procurement objectives.
Recommendations Refer to 9(a)(a). In addition, measures should be taken to increase compliance with the obligation to substantiate the chosing of the the procurement methods, as well as incentive measures to its improvement, such as training and capacity building programmes for public bodies.

[16] https://arap.cv/index.php/documentacao.

Assessment criterion 9(b)(d): Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.
Conclusion: No gap
Red flag: No
Qualitative analysis Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. The procedures for submitting proposals are defined in Article 92 PPC – refer to 1(g)(e) – and are replicated in the SBD's. Article 120 PPC establishes that the place, date and time of bid opening must be mentioned in the tender notice and bidding documents – refer to 1(g)(a).
Gap analysis
Recommendations
Assessment criterion 9(b)(e): Throughout the bid evaluation and award process, confidentiality is ensured.
Conclusion: No gap
Red flag: No
Qualitative analysis Under the circumstances and conditions set out in PPC, Article 89/1 (Confidentiality of the application and bid documents): “1. During the first third of the deadline to submit applications and bids, the interested party may request from the entity in charge of managing the procedure the confidentiality, to the extent strictly necessary, of the documents comprising the bid as they may contain technical, industry, commercial, military or other legally relevant secrets.”, confidentiality is ensured.
Gap analysis
Recommendations
Assessment criterion 9(b)(f): Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The Evaluation Team can verify the application of award criteria, the application of which helps determine the best value for money - the most economically advantageous tender.
Gap analysis Cases have even been detected (direct awards inviting more than one economic operator) in which, although

the award criteria is not explicit, it is clear that the bids are evaluated according to the criterion of the most economically advantageous tender.
There is a **clear tendency to overvalue the price factor**.

Recommendations
The criteria for evaluating tenders must always be explicit. Price overestimation must be analysed and potentially corrected.

Assessment criterion 9(b)(g):
Contract awards are announced as prescribed

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
The award of contracts should be widely communicated. **Firstly**, within the procedure, through the notification of the Final Tenders Evaluation Report issued by the award committee (juri) and the award decision issued by the contracting entity to all participants in the procedure. **Secondly**, as stipulated by PPC, Article 25 (Publicity of procedure documents and contracts) the entities in charge of managing the procedure shall publish on the public procurement website the contract award notices, substantially in the form of schedule VI of PPC.
Publications that are required by international agreements, as well as those deemed appropriate to ensure an adequate level of publicity, shall be promoted by ARAP, the General Directorate for Property and Public Procurement and the awarding entities (PPC, Article 26).

Gap analysis
In practice, the publication of contract awards either on e-GP or on the ARAP portal does not occur or occurs to a very limited extent.
The ARAP portal has a "Contracts Register" section, where it publishes some details of the contracts awarded. However, the number of public entities actually communicating this information is very small compared to the total number of public procuring entities. On the other hand, there is a time gap not covered by the portal, the years 2019 to 2021.
The sample shows that in 142 out of 166 contracts, the award was not communicated.

Recommendations
ARAP should work on the enforcement of the provision that determines the publication of awards, as this is critical for CSOs to fulfil their role.
Refer to 9(b)(j).

Assessment criterion 9(b)(h):
Contract clauses include sustainability considerations, where appropriate

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
Contract clauses do not include sustainability considerations.

Gap analysis
The absence of sustainability considerations in contracts calls for including the topic – sustainable procurement - in all capacity building programmes designed to help procuring entities to make use of the existing legal provisions, notably the preference for the use of the most economically advantageous tender criterion (as a possible expression of the value-for-money principle) to include environmental and social award criteria.

The lack of adequate and feasible sustainability oriented considerations in procurement reduces the potential for reaching value-for-money which is a concept that is already imbedded to several principles and provisions of the PPC e.g. principle of environmental protection (PPC, Article 14) and principle of economy and efficiency (PPC, Article 15).

Recommendations
To devise a national sustainable public procurement strategy and policy.

Assessment criterion 9(b)(i):
Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance

Conclusion: Minor gap

Red flag: No

Qualitative analysis
Neither the template contracts made available by ARAP on its Portal nor the contracts consulted by the Assessment Team include positive measures to incentivise performance. They do include penalties for non-compliance with agreed service levels.

Gap analysis
There are no known contracts with clauses that provide incentives for exceeding defined performance levels.

Recommendations
The production and incorporation of such clauses in existing standard, provided that compliant with the PPC, should be considered so that one more contract type is offered to procuring entities in view of optimizing the outcome of contract performance.

Assessment criterion 9(b)(j):
The selection and award process is carried out effectively, efficiently and in a transparent way*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

In general, the procurement process is conducted efficiently, even using competitive methods. The procurement of services is more time-consuming, taking almost nine months to finalise an open tender.
It can also be seen that in competitive procedures a healthy level of competition is achieved, with the average number of bids exceeding 5. However, bids are often rejected for various reasons, resulting in procedures that are not very competitive or not competitive at all.

In terms of transparency, there is a serious gap. In fact, of the 166 contracts that made up the sample, only 24 (14%) were publicised in accordance with legal requirements. Furthermore, in the majority of cases where information is published, it is not in a machine-readable format, preventing or greatly hampering the watchdog work that can be done by civil society.

Quantitative analysis

**Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):*
- average time to procure goods, works and services

number of days between advertisement/solicitation and contract signature (for each procurement method used)
- average number (and %) of bids that are responsive (for each procurement method used)
- share of processes that have been conducted in full compliance with publication requirements (in %)
- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)
Source for all: Sample of procurement cases.

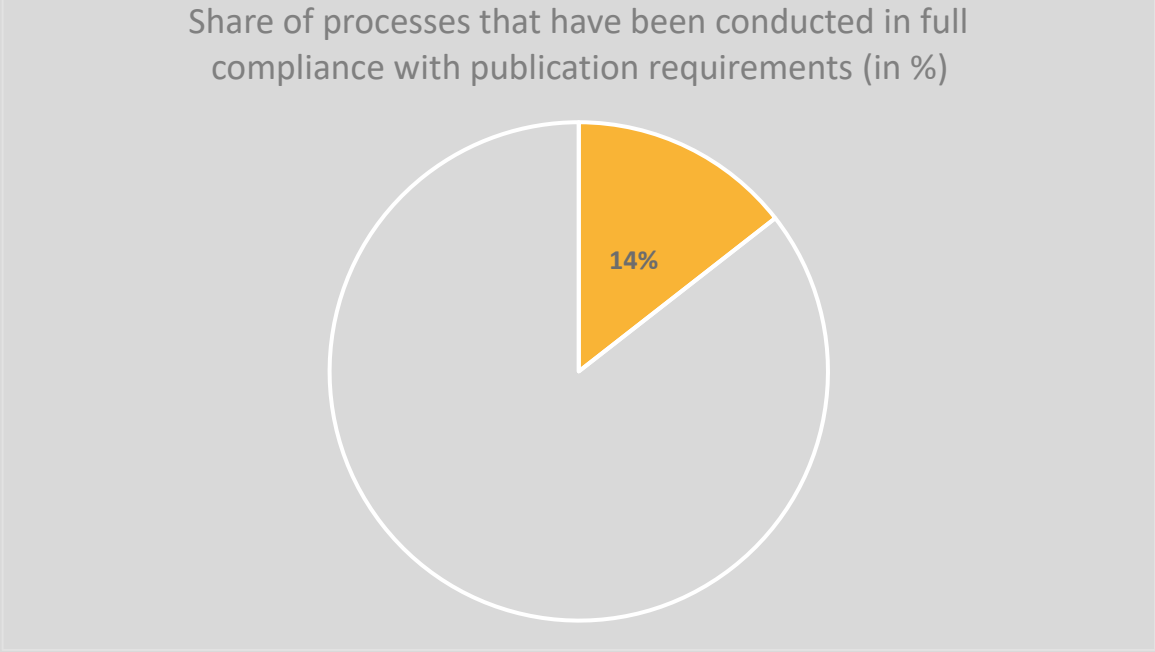
Time to procure goods, works and services:

Type of Contract and Procurement Method	Average number of days
Goods	**79**
Direct Award	55
Open Tender	137
Restricted Tender	63
Works	**32**
Direct Award	86
Open Tender	57
Restricted Tender	61
Services	**130**
Direct Award	32
Open Tender	268
Open Tender with pre-qualification	223
Restricted Tender	142

Responsive bids:

Procurement Method	Average Number of Bids received	Average Number of responsive Bids
Direct Award	**1,28**	**1,21**
Open Tender	**5,81**	**4,26**
Open Tender with Pre-qualification	**2,75**	**2,00**
Restricted Tender	**2,35**	**1,96**
Consulting Services	**4,00**	**1,00**

Publication requirements:



Gap analysis
The Assessment Team found several cases in which the number of admitted bids in competitive methods was manifestly low in relation to the total number of received bids, undermining the effectiveness of the public procurement process. In several cases, this was due to qualification requirements that were perhaps too demanding, others due to document requirements.

Only 14% of the contracts were made public on the ARAP's or e-GP portal.

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

A Red Flag is assigned to this gap due to the lack of transparency provided during the procurement process.

Recommendations
ARAP should produce guidelines for procuring entities so that they can better establish technical and/or financial capacity requirements.

The publication of contracts should be established as a priority for the GoCV as it allows for watchdog work by Civil Society, which is critical to ensure independent monitoring of contract outcomes.

Sub-indicator 9(c)
Contract management

Assessment criterion 9(c)(a):
Contracts are implemented in a timely manner.*

Conclusion: No gap

Red flag: No

Qualitative analysis
Analysing the sample revealed that most contracts are implemented within the established deadlines. However, it was also possible to see that the high dependence on imports causes major constraints, as it sometimes leads to long delays in receiving goods.

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days).

Source: Sample of procurement cases.

Gap analysis

Recommendations
Suggestion for improvement
Given the dependence on imported products in some sectors, a culture of procurement planning must be created.

Assessment criterion 9(c)(b):
Inspection, quality control, supervision of work and final acceptance of products is carried out.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
The Assessment Team noted that in most cases there are quality control procedures in place. However, it was also possible to see that from an organisational point of view, the existence of the UGA can, in some cases, cause constraints since this unit loses track of contracts once they have been signed (the execution of contracts is the responsibility of the technical areas).

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %).
Source: Sample of procurement cases.

Gap analysis
The existence of the UGA can, in some cases, cause constraints since this unit loses track of contracts once they have been signed (the execution of contracts is the responsibility of the technical areas).

Recommendations
ARAP should create guidelines that help the different areas to establish clear lines of governance between the UGA and the technical areas, in order to ensure that the monitoring of contracts until their closure is carried out successfully and that lessons learnt are recorded.

Assessment criterion 9(c)(c):
Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

Conclusion: No gap

Red flag: No

Qualitative analysis
The assessment noted that invoice verification processes are in place and that the necessary procedures are in hand to ensure that invoices are paid in accordance with the executed contract. Payment deadlines vary, ranging from 15-30 days for domestic purchases to 120 days for imports.
In the cases we checked, payments were made on time, but situations were reported in which delays occurred.

Quantitative analysis

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).
Source: Sample of procurement cases.

Gap analysis

Recommendations

Assessment criterion 9(c)(d):
Contract amendments are reviewed, issued and published in a timely manner.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
The sample revealed only three contract addenda. In none of the cases was the addendum, or the original contract itself, published.

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %).
Source: Sample of procurement cases.

The sample revealed only three contract addenda. In none of the cases was the addendum, or the original contract itself, published.
In the cases identified, the price increase averaged almost 20 per cent.

Gap analysis
The limited number of issued contract amendments suggest that there is a gap.

Recommendations
Procuring entities to review, issue and public contract amendments.

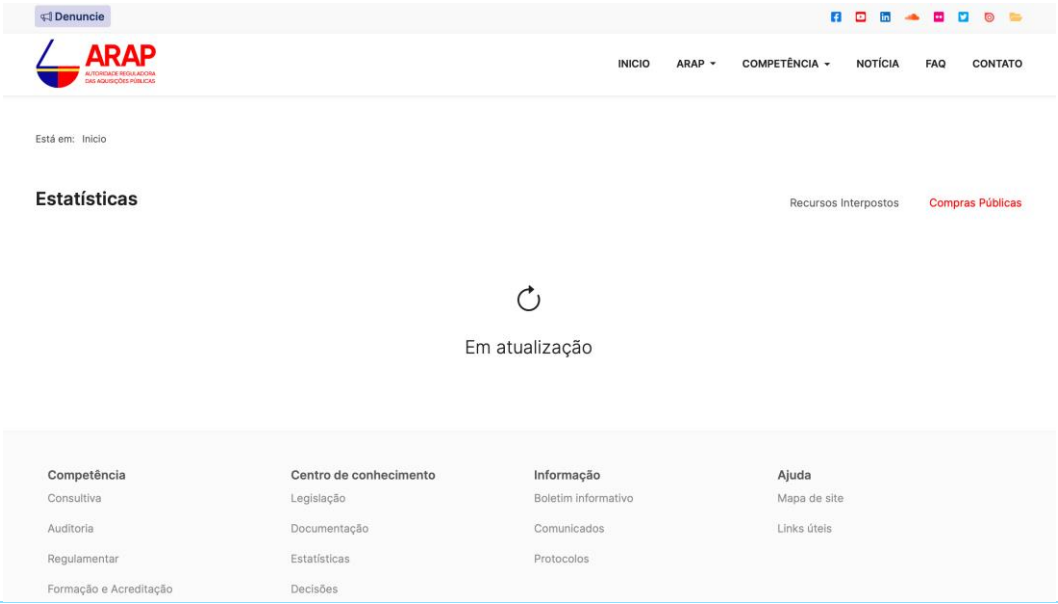
Assessment criterion 9(c)(e):
Procurement statistics are available and a system is in place to measure and improve procurement practices.

Conclusion: Substantive gap

Red flag: No

Pillar III. Public Procurement Operations and Market Practices

Qualitative analysis
No statistics on public procurement are available. The ARAP Portal presents its section dedicated to this topic as "being updated"[17].



Gap analysis
No statistics on public procurement are available. The available data is not publish on a machine readable format.

Recommendations
Same as in 7(a)(a).

- As the Country is introducing the e-GP, efforts should be made to allow for real-time monitoring of procurement. Data, information and documents from the different phases of the procurement process should be published in a machine-readable format, using Open Contracting Data Standards (OCDS) to provide data analytics for interested parties.

Assessment criterion 9(c)(f):
Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
CSOs have no direct involvement in any stage of public procurement procedures, apart from being allowed to attend the public opening of tenders like any other organisation or individual.

Quantitative analysis

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: Sample of procurement cases.

[17] https://arap.cv/index.php/compras-publicas - last consultation held on 30 October 2023.

Pillar III. Public Procurement Operations and Market Practices

Gap analysis
CSOs have no direct involvement in any stage of public procurement.

Recommendations
It is recommended that:

- ARAP recommends that procuring entities promote public consultation (simultaneously on their websites and on eCompras) of draft bidding documents (i) in procedures for the formation of contracts above a value to be defined and (ii) always in the case of procedures for the formation of framework agreements;
- open a specific consultation process with the CSOs in order to collect their specific demands[18] in this area (not just vague statements like "we don't participate" but concrete measures per phase of the procurement cycle);
- carry out a study on the possibility and desirability of authorising and promoting the participation of CSOs in the various phases of procurement procedures. This study should point to specific advantages, disadvantages and recommendations, and have as its minimum content of analysis what is normally considered to be the possibilities for CSO participation, namely:
    - Planning Phase
    - Observer Role
    - Evaluation and Contract Award
    - Evaluation Process
    - Transparency in Awarding
    - Contract Implementation:
    - Monitoring and Oversight
    - Feedback Mechanism
    - Reporting Irregularities
    - Post-Implementation Review
- Draw from the conclusions and recommendations of this study possible inputs for the National Public Procurement Strategy and Policy;
- Prepare any legislative changes that may be necessary.

Assessment criterion 9(c)(g):
The records are complete and accurate, and easily accessible in a single file.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis
Cape Verde does not yet have a fully functioning public procurement system, and most public procurement is paper-based. Refer to 7(a)(b).
The PPC instituted, within public entities, the creation of UGAs separated from functional/beneficiary areas. Refer to 6(a)(c).

[18] It is natural that in a context of insufficient preparation of CSOs in the field of public procurement, the responses to these consultations are of a relatively vague nature, so the absence of responses with specific suggestions should not interrupt the rest of the process which is recommended at the next two levels i.e. the in-depth study of the problem and the eventual legislative amendment to accommodate new forms of participation.

Pillar III. Public Procurement Operations and Market Practices

Quantitative analysis

*// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):*
- share of contracts with complete and accurate records and databases (in %)

Only one procuring entity was able to provide the full set of required documents for just 5 contracts. This represents less than 5% of the sample cases.

Source: Sample of procurement cases.

Gap analysis
There is no single repository for procurement information. As such, the existence of complete and accurate records is jeopardised.

A Red Flag is assigned because it is considered that the absence of complete, accurate and easily accessible records hinders the achievement of public procurement objectives.

Recommendations
Same as in 7(b)(a).

- The e-GP expansion plan, which initially envisaged full adoption at the beginning of 2024, needs to be revised;
- The entities with management, control and regulatory responsibilities over the e-GP system (DGPCP, UTIC, DNME, ARAP) should draw up an Emergency Plan to address the gaps identified. This plan must be adopted and published as soon as possible and allow enough time for the generalisation of e-GP in a safe and smooth manner.

Indicator 10. The public procurement market is fully functional

Sub-indicator 10(a)
Dialogue and partnerships between public and private sector

Assessment criterion 10(a)(a):
The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*

Conclusion: No gap

Red flag: No

Qualitative analysis

The GoCV has demonstrated and encouraged dialogue with the private sector. In fact, even while conducting the evaluation, the GdCV, through ARAP, promoted a public consultation seeking contributions for the Revision of the CCP and the Legal Framework for Administrative Contracts - the consultation was publicised on ARAP's website[19] and was open until 30 September 2023.

[19] https://arap.cv/index.php/noticia/participe-da-revisao-do-codigo-da-contratacao-publica-e-do-regime-juridico-dos-contratos-administrativos.

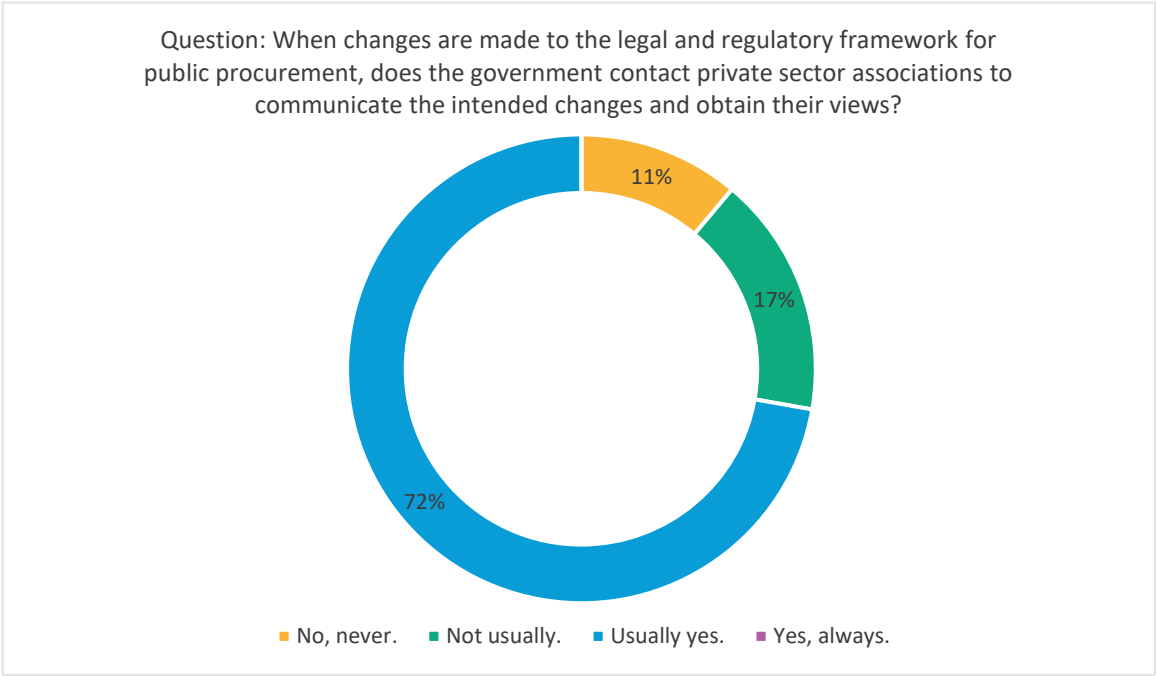
Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):*

- perception of openness and effectiveness in engaging with the private sector (in % of responses).

Source: Survey.

To the question "When changes are made to the legal and regulatory framework for public procurement, does the government contact private sector associations to communicate the intended changes and obtain their views?", 72 per cent of respondents answered, "usually yes".



Gap analysis

Recommendations

Assessment criterion 10(a)(b):
The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

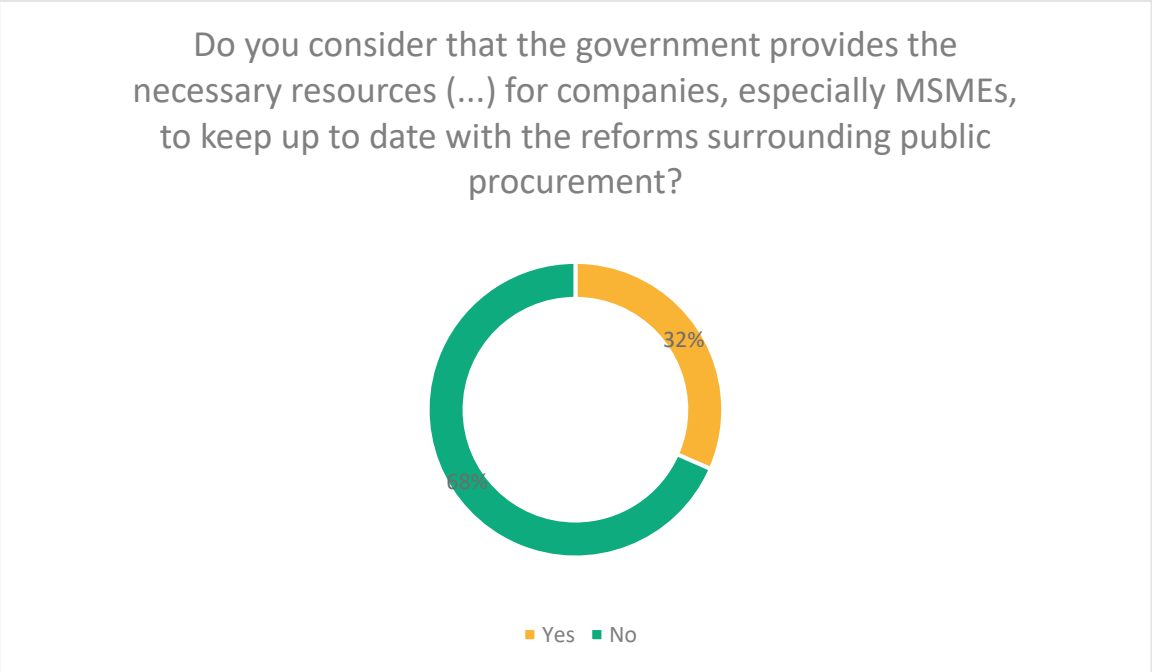
Conclusion: No gap

Red flag: No

Qualitative analysis

The GoCV, through ARAP, regularly organises training courses for economic operators. These courses are widely publicised, in particular through the publication of news on the ARAP website where, at the time of the consultation[20], there were more than 5 courses on different islands of the archipelago.

Nevertheless, to the question "Do you consider that the government provides the necessary resources, namely training sessions, the dissemination of technical guidelines, telephone helplines and support programmes for companies, especially MSMEs, to keep up to date with the reforms surrounding public procurement?", 68% of the participants in the Private Sector Survey answered "No".



In addition, ARAP provides a contact form on its website, as well as telephone and e-mail contacts.

Gap analysis

Recommendations

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

Assessment criterion 10(b)(a):
The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.*

Conclusion: No gap

Red flag: No

[20] October 23rd, 2023.

Pillar III. Public Procurement Operations and Market Practices

Qualitative analysis
Cape Verde's private sector is organised, with two Chambers of Commerce representing a total of nearly 1000 companies/entrepreneurs (460 members of the Sotavento Chamber of Commerce and more than 500 members of the Barlavento Chamber of Commerce), around 10%[21] of active companies. According to INE, in 2019, 71.1% of active companies were sole proprietorships.

There is an incipient "Suppliers Register" or Public Procurement suppliers database in Cape Verde, accessible through the link https://www.mf.gov.cv/web/ecompras/rede-de-fornecedores. On the date of the last consultation, 24 October, 25 suppliers were registered. However, according to the information provided by ARAP/DGPCP, there are 85 suppliers registered in the system.

The supplier registration process is not accessible. Despite the fact that it is free of charge, the Assessment Team found that the e-GP portal is not prepared to support multiple browsers (in the supplier registration process, at least the Safari browser is not supported).

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):*
• number of registered suppliers as a share of total number of suppliers in the country (in %)
• share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)
• total number and value of contracts awarded to domestic/foreign firms (and in % of total)
Source: E-Procurement system/Supplier Database.

The number of registered suppliers is less than 1% of the number of suppliers in the country

Refer to 7(a)(c).

Gap analysis

Recommendations

Assessment criterion 10(b)(b):
There are no major systemic constraints inhibiting private sector access to the public procurement market.

Conclusion: Minor gap

Red flag: No

Qualitative analysis
The small number of participants in the Private Sector Questionnaire does not allow conclusions to be extrapolated. However, a reflection on some of the conclusions drawn from the responses should be initiated.

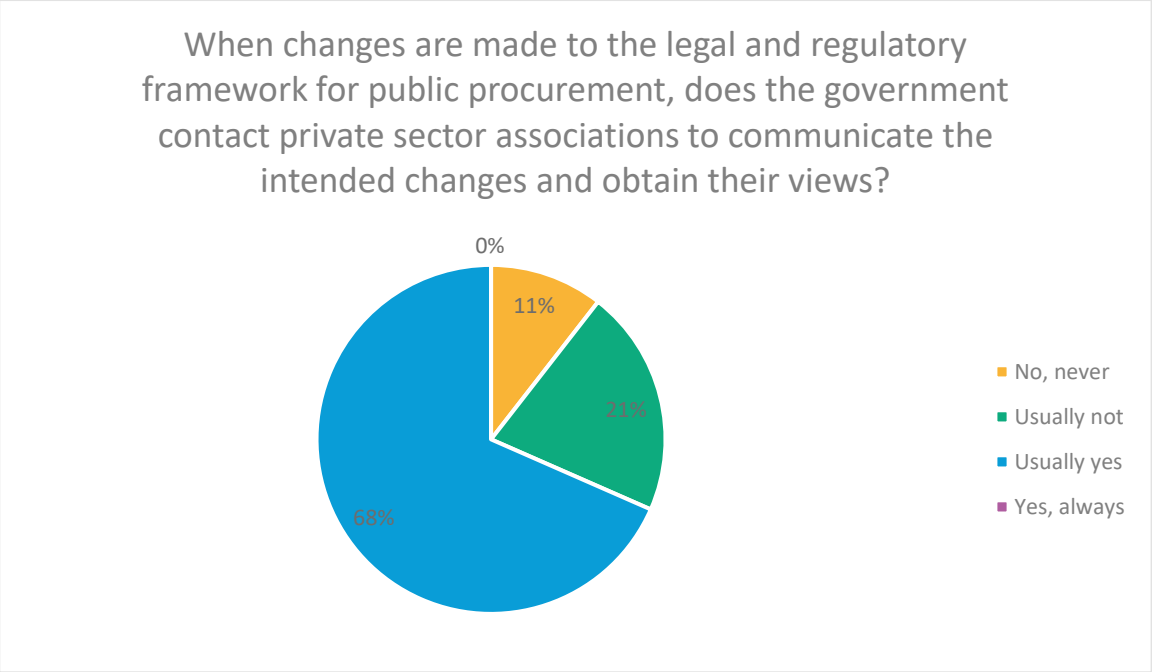
Respondents point to difficulties in accessing funding, the quality of the award criteria (they are neither simple nor objective) and the speed with which conflicts are resolved.

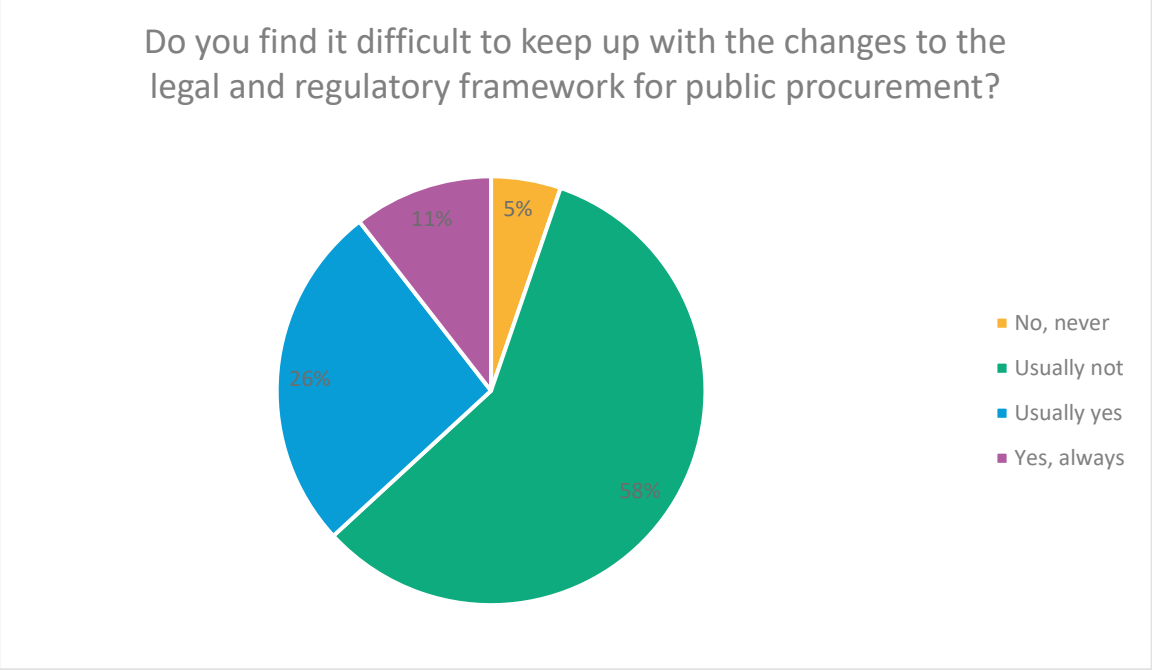
[21] Data from 2019 indicated that there were around 11,000 active companies in Cape Verde (https://www.proempresa.cv/index.php/imprensa-2/noticias-blog/189-numero-de-empresas-em-cabo-verde-cresceu-7-5-em-2019-ine).

On the other hand, the survey reveals that although companies do not experience any difficulties in keeping up with legislative changes, the lack of training is indicated as a barrier.

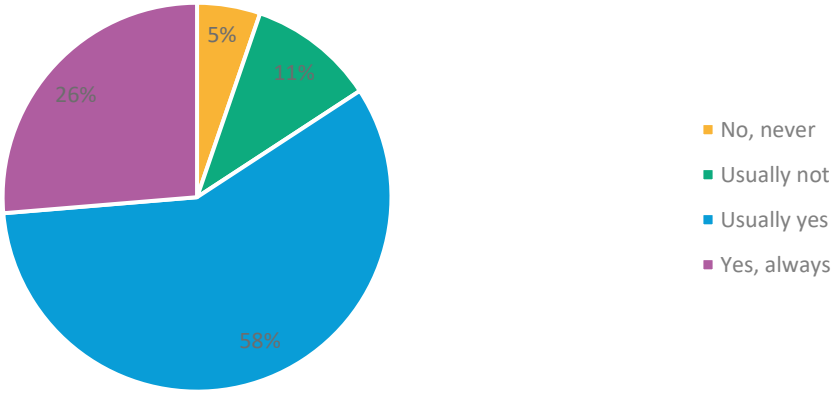
Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):*
- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.

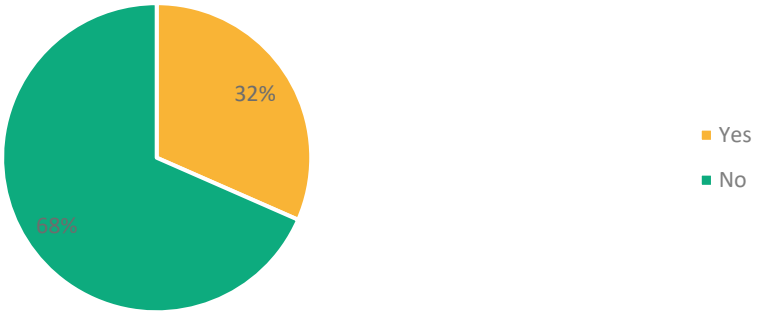


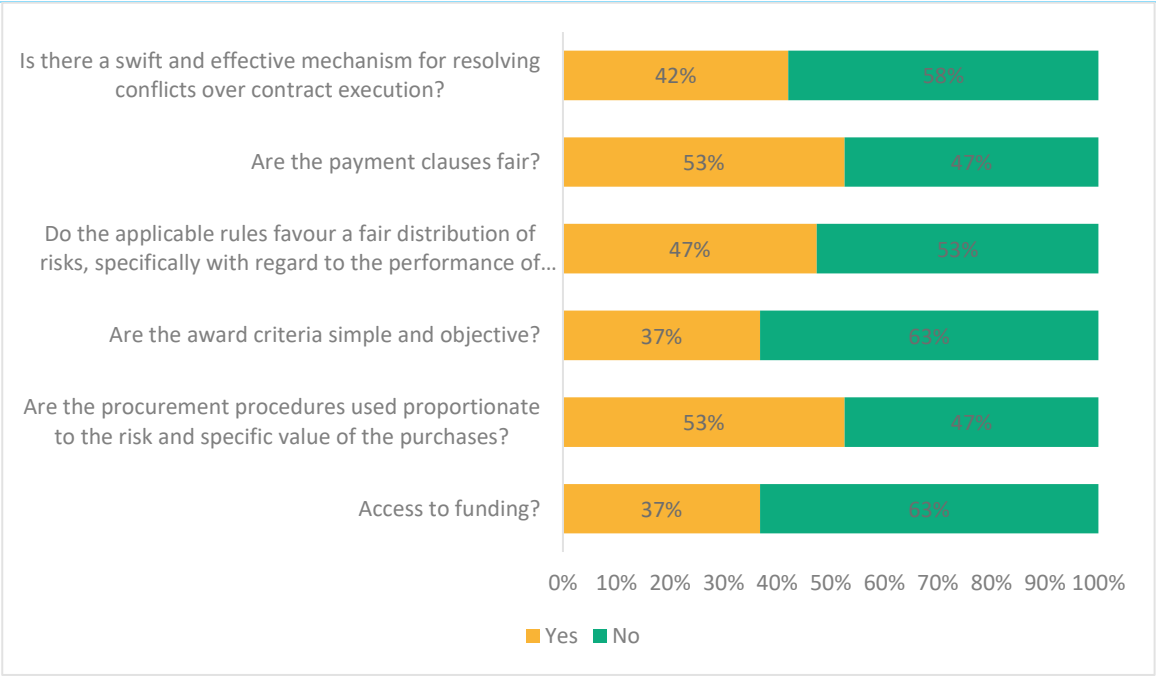


Does your company have the necessary resources to keep up with the changes made to the legal and regulatory framework for public procurement?



Do you think the government is providing the necessary resources, such as training courses, the dissemination of technical guidelines, telephone helplines and support programmes for companies, especially MSMEs, to keep up to date with the reforms surround





Gap analysis
The small number of participants in the Private Sector Questionnaire does not allow conclusions to be extrapolated.
Barriers have been identified.

Recommendations
ARAP should commission an exhaustive study involving economic operators to gauge their real difficulties. In addition to other aspects, an attempt should be made to identify the reasons for such low participation by economic operators when called upon to intervene in the framework of public procurement.

Sub-indicator 10(c)
Key sectors and sector strategies

Assessment criterion 10(c)(a):
Key sectors associated with the public procurement market are identified by the government.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis
There are no sector strategies or public procurement related policy documents.

Gap analysis
There are no sector strategies or public procurement related policy documents.

A Red flag is assigned to this gap as the absence of sector strategies can significantly impede achieving the objectives sought through public procurement.

Recommendations
Sector strategies, in line with development objectives, should be drafted to ensure the desired outcomes are achieved.

Assessment criterion 10(c)(b): Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Refer to 10(c)(a).
Gap analysis Refer to 10(c)(a).
Recommendations Refer to 10(c)(a).

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

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

Sub-indicator 11(a) Enabling environment for public consultation and monitoring
Assessment criterion 11(a)(a): A transparent and consultative process is followed when formulating changes to the public procurement system.
Conclusion: No gap
Red flag: No
Qualitative analysis Major legislative changes are usually preceded by a period of public consultation and organising public events for discussion and debate (seminars, workshops, etc.). The most recent example is the public consultation that took place between mid-August and the end of September 2023 on the revision of the Public Procurement Code (PPC) and the Legal Framework for Administrative Contracts (RJCA) which was inspired by the conclusions of the Diagnosis and will certainly await the conclusions and recommendations of this MAPS Evaluation.
Gap analysis
Recommendations
Assessment criterion 11(a)(b): Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis According to some civil society organizations (CSO) *"there is no known training strategy and civil society has never been trained to promote its active participation.. There is a need to understand civil society's needs in this area and to devise a strategy that is appropriate for this target group."*. Capacity building has been almost all focused on the formation of contracts (pre-award phase) and targeted to procuring entities and economic operators.
Gap analysis – There is no global strategy for empowering and capacitating civil society.
Recommendations – ARAP should gather as many CSO as possible interested in public procurement related issues and discuss and agree upon a CSO Capacity Building Program tailored to these organizations; – See also:

8 (a) (d):

- Adoption of a National Public Procurement Strategy and Policy [as above 5 (b) (b)], designed to address the system's main deficiencies and guide decision-makers in the allocation of resources and investment in reform programmes
- Include, among the main pillars of such a National Strategy, the objectives and priorities of the Training Programme, including the necessary KPIs to measure performance and effectiveness.

5 (b) (b):

- There is no document that can be considered a document that could be considered a "National Public Procurement Strategy and Policy" in which a vision, mission, strategic objectives, and commensurable objectives based on KPIs, etc. are defined.
- The approach to public procurement is still very much limited to the logic of budgetary management and control of public spending, but even at this level there is no economic analysis of the procurement function or its efficiency. Nor are there quantified objectives and targets for the system's performance (for example, there is no public statement on how to use centralised purchasing to rationalise purchases, standardising service levels and quality across the entire public administration and setting economic objectives (savings rate on a given basket of categories of goods and services to be centralised), environmental (by setting quantified targets for the use of TCO/Life Cycle Costing and mandatory award criteria and sub-criteria or terms that fulfil predetermined environmental efficiency requirements) and social (by setting quantified targets for the gradual introduction of social aspects in public procurement).

Assessment criterion 11(a)(c):
There is ample evidence that the government takes into account the input, comments and feedback received from civil society.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Based on discussions and written input received, CSOs do not consider that their views are taken into account while formulating changes to public procurement system.

Gap analysis

There is no evidence that the CSO's views are taken into consideration. The real situation calls for a cautious formulation of the gap because the real situation is not that of a country in which CSOs have their own critical thinking about public procurement policy and the necessary preparation to carry out technical scrutiny based on facts and are not listened to by the authorities with competences in the sector.
Furthermore, the situation in Cape Verde is characterised by the need to prepare CSOs to fully exercise their supervisory role and collaborate with the regulatory authority and the entity with the power to propose and define national public procurement policy. This is the gap.

Recommendations

- ARAP's Advisory Committee should meet more often (the law prescribes a minimum of two meetings a year but does not set it as a limit).
- Proper communication about ARAP's Advisory Committee should be published in the ARAP website (there is literally no information about it on the website), namely:
  - List of Members
  - List of Members' Representatives
  - Meetings agendas
  - Meetings minutes
  - Deliberations and opinions

- ARAP should engage with as many CSO as possible interested in public procurement related issues and discuss and agree upon the best way to collect their views.

Sub-indicator 11(b) **Adequate and timely access to information by the public**
Assessment criterion 11(b)(a): Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation..
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Based on regular observation made during the assessment, ARAP's website provide a significant amount of information on the activities performed by the Regulator, e.g. their Annual Reports, the primary and secondary public procurement legislation.
Gap analysis The lack of statistical information about the public procurement market may make the decision of some economic operators to participate more difficult (such information, for instance on the contract performance indicators is key for a sound risk assessment, commercial strategy and marketing approach to public procurement opportunities by economic operators. The public procurement portal – eCompras – seems like a website under construction which quite unacceptable for a country who is right now running a "dual mode" paper-electronic stage in the transition towards the full implementation of e-GP.
Recommendations It is recommended that: – Public procurement market information and data are collected, treated and made available to the community by ARAP (its corporate website) and the Ministry of Finance (eCompras); – Open Contracting Data Standards should be implemented.

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

Sub-indicator 11(c) Direct engagement of civil society
Assessment criterion 11(c)(a): The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring).
Conclusion: Substantive gap
Red flag: No
Qualitative analysis See 9 (c) (e)
Gap analysis See 9 (c) (e)
Recommendations See 9 (c) (e) ,
Assessment criterion 11(c)(b): There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Same as for the CSO – see above 9 (c) (e)
Gap analysis Same as for the CSO – see above 9 (c) (e
Recommendations Same as for the CSO – see above 9 (c) (e

Indicator 12. The country has effective control audit systems

Sub-indicator 12(a) Legal framework, organisation and procedures of the control system The system in the country provides for:
Assessment criterion 12(a)(a): laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies

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

Conclusion: No gap

Red flag: No

Qualitative analysis

The national legislation establishes which agencies are responsible for oversight of the procurement function. Key controlling institutions are:

- the Court of Auditors of Cabo Verde (TCCV) is the Supreme Audit Institution of the country and undertakes the key functions of external *a priori* and *ex-post* control (external control);
- the regulatory body, ARAP, which also performs some oversight functions, including monitoring and auditing (external control);
- the Inspectorate-General Finance (internal control), and
- the DGPCP (internal control)

The Court of Auditors

Pursuant to the provisions of article 219 of the Constitution of the Republic of Cape Verde (CRCV), in conjunction with articles 2 and 5 of Law no. 24/IX/2018, of 2 February, which regulates the Organisation, Composition, Competence, Process and Functioning of the TCCV, hereinafter referred to as the LOFTC, the mission of the Court of Auditors of Cape Verde (TC) was redefined in the IV Strategic Plan 2020-2024 (IV SDP) as follows: "*to oversee the legality and regularity of public finance management, to judge the accounts that the law requires to be submitted to it, to issue an opinion on the General State Account and to exercise the other powers attributed to it by law. The IV SDP enshrines the* ***vision*** *of Cape Verde's Supreme Audit Institution* ***to be an institution that promotes and guarantees excellence and transparency in the management of public finances****."*

According to Article 213 (1) (b) of the Constitution of Cape Verde (CCV), the Court of Auditors is one of the courts and, as such, is a sovereign and fully independent body. Article 216 (1) of the CCV states that the Court of Auditors is the supreme body for auditing the legality of public expenditure and for judging the accounts that the law requires to be submitted to it, with paragraph (3) of the same article adding that the law (in this case the Organic Law of the TC) regulates the organisation, composition, competence and functioning of the Court of Auditors.

The scope of the Court of Auditors' jurisdiction is defined in Article 3 of LOFTC, which regulates the organisation, composition, competences, procedure and operation of the Court of Auditors.

The following entities are subject to the jurisdiction and financial control powers of the Court of Auditors:

- The State and its departments and units;
- Local authorities and their departments and units;
- Public institutes;
- Social security institutions;
- State-owned enterprises;
- Companies that are concessionaires or managers of public services and public works;
- Public associations, associations of public and private entities that are mainly financed by public entities or subject to their management control;
- Private law foundations that receive regular annual funding from the state budget or local authorities from the state budget or local authorities regarding the utilisation of these funds;
- Municipal, inter-municipal and regional-owned enterprises;
- Entities of any nature, public or private, which have received public money from the State Budget, to assess its use's conformity, effectiveness and efficiency;

- Entities of any nature that have public capital holdings or are beneficiaries, in any capacity, of public money or other public values, to the extent necessary to monitor the legality, regularity and economic and financial correctness of the application of the same public money.

Among the competences of the Court of Auditors [Article 5 (1)], the following stand out, with particular interest in the field of public procurement:

- issue an opinion on the General State Account;
- verify in advance the legality and budget appropriateness of acts and **contracts** that generate expenditure or represent any direct or indirect charges and liabilities for the entities referred to in Article 3(1)(a) to (c);
- pass judgment on the financial responsibilities of those who manage and use public money, regardless of the nature of the entity to which they belong, under the terms of this law;
- assess the legality, economy, effectiveness and efficiency, according to technical criteria, of the financial management of the entities referred to in Article 3 (1) and (2), including the organisation, functioning and reliability of the internal control systems;
- carry out audits and other legality control actions, including sound financial management and the internal control system, on an occasional basis or at the request of the Plenary of the National Assembly on the entities referred to in Article 3;

The judgements of the Court of Auditors are binding on all public and private entities, take precedence over those of any other authority and constitute an enforceable title under the terms of the Tax Procedure Code, which can be sued by the Tax and Customs Court based in Praia and Mindelo.

According to Article 13 (1) the internal control services, namely the general inspectorates (such as the General Inspectorate of Finance) or any other control or audit bodies of the services and organisations of the Public Administration, as well as of the entities that make up the public business sector, are subject to a special duty of collaboration with the Court of Auditors.

Types of financial control exercised by the Court of Auditors [Article 42 PPC]

The purpose of the e priori control (prior approval – "visto") is to:

- Verify that the acts, contracts or other instruments generating expenditure or representing direct or indirect financial responsibilities comply with the laws in force;
- Check that the respective charges are covered by the appropriate budget.

The effects of the Court of Auditors' prior approval (visto) [Article 43.º]

Acts, contracts and other instruments subject to the prior scrutiny of the Court of Auditors only take effect or are executed after the respective extract has been published in the Official Gazette, with an express statement that it has been approved on a certain date, and all authorities or officials who execute them are jointly and severally liable.
Exceptionally, the non-financial effectiveness of acts and contracts subject to the Court's preventive supervision may relate back to the date prior to approval and publication, provided that the competent member of the Government declares in writing that there is an urgent need for service and that they relate to: i) Contracts that extend other previous contracts permitted by law, provided that the conditions are the same, (ii) Contracts awarded following a direct award procedure for reasons of extreme urgency resulting from events unforeseeable by the procuring entity, which are in no way attributable to it, and the deadlines inherent in the other procedures provided for by law cannot be met.
In the cases provided for in the previous paragraph, the refusal of authorisation means that the acts or contracts are legally ineffective after the date of notification of the decision.

Work carried out or goods or services purchased after the act or contract has been signed and up to the date of notification of the refusal of approval may only be paid for after this notification and provided that the value does not exceed the contractual programme established for the same period.

Grounds for refusing prior approval (visto) [**Article 44**]

The grounds for refusal of prior approval are the non-conformity of the acts, contracts and other instruments referred to with the laws in force, which implies, in particular, nullity, charges not covered by the appropriate budget or violation of financial rules or illegality that alters or may alter the respective financial result. The Court may replace the decision to refuse authorisation with recommendations to the departments and bodies to remedy or avoid such illegalities in the future, only in the cases of illegality that alters or may alter the respective financial result, in a reasoned decision and taking into account the seriousness of the illegality, the amounts affected and any previous history.

Contracts with an estimated value of **more than 20,000,000 CVE** are subject to a priori control (visto) while contracts with a lower value are subject to concomitant and successive supervision

Incidence of *a priori* control [**Artigo 45 PPC**]

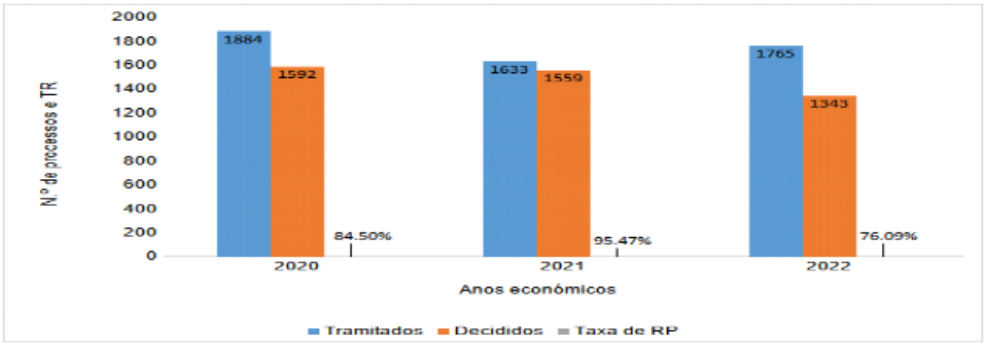
1. The following are subject to prior inspection by the Court of Auditors, under the terms of Article 5(1)(b):
   a) Contracts of any nature, when entered into by entities that are part of the state's direct and local administration.
   b) Acts that result in an increase in the public debt of the entities referred to in subparagraphs
   a) to c) of Article 3(1), as well as acts modifying the general conditions of the loans in question.
   c) Public works contracts, the acquisition of goods and services, as well as other property acquisitions that involve expenditure under the terms of article 46(3), except when not reduced to writing by law;
   d) The drafts of contracts subject to public deed and/or the drafts of contracts with a value equal to or greater than
   fixed in the Budget Laws under the terms of Article 46(3), the costs of which, or part of them, must be met at the time of their conclusion;
   e) Acts or contracts that formalise objective changes to the contracts in question and that imply an increase in the respective financial costs or liabilities;
   f) Acts or contracts that formalise objective modifications to non-targeted contracts that imply an increase in the respective financial costs or liabilities by an amount greater than that provided for in Article 46(3).
2. For the purposes of sub-paragraphs d), e) and f) of the previous paragraph, agreements, protocols, workbooks or other instruments which result or may result in financial or property charges shall be deemed to be contracts.
3. The Court and its support services shall exercise their powers of prior review in conjunction with the forms of successive review.
4. A priori control is carried out by means of prior approval (visto) or a declaration of conformity, and fees are payable in both cases.
5. For the purposes of paragraph 1, the Court of Auditors shall be sent the documents that represent, formalise or give effect to the acts and contracts listed therein.
6. Whenever the conditions are met, the processes subject to prior inspection may be submitted for approval by dematerialised means.

Evolution of *a priori* control 2020 – 2022

The judge in charge of the 1st Chamber is responsible, within the scope of the *a priori* control, for

homologating the list of cases declared compliant by the Directorate General, recognising exemption from visa requirements in the cases provided for by the law, as well as requesting additional elements or information from the respective services or bodies; deciding on the refusal of a visa; imposing the fines referred to in article 67 of the LOFTC in the cases within its jurisdiction.

Figura 4. *Processos tramitados e resolvidos na FP, 2020-2022*



Note: Number of cases processed, resolved and respective resolution rates for each year of the three years 2020 to 2022. Where PR = Rate of cases concluded.

With regard to the origin of the cases submitted to *a priori* control, there are far fewer from the local administration, with a marked decrease from 2020 onwards. The data for 2023 should be analysed with particular attention to this distribution to see whether the trend is continuing or even worsening and what the causes are[22].

Tabela 2. *Proveniência processual na FP no triénio 2020/2022.*

um: unidade e %

Anos económicos [a]	Administração Central		Administração Local		Total
	Qtde	Repres.	Qtde	Repres.	
2020	1 223	79.57%	314	20.43%	1 537
2021	1 481	93.91%	96	6.09%	1 577
2022	1 356	93.71%	91	6.29%	1 447

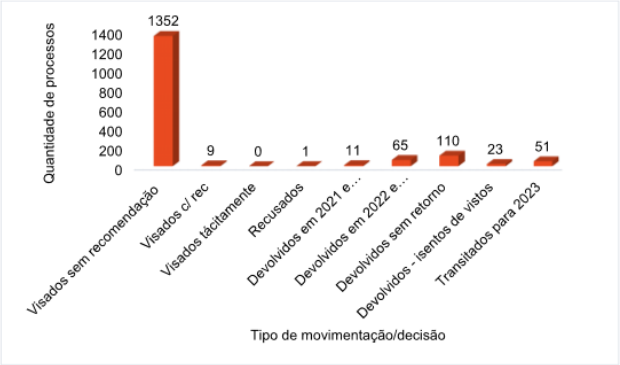
Nota. Número e representatividade dos processos das Administrações Central e local no triénio findo em 2022, por ano. Onde Qtde = Quantidade e Repres.= representatividade.
[a] Referem-se apenas a processos entrados pela primeira vez, no respetivo ano económico.

The Figure below shows that the overwhelming majority of *a priori control* processes culminate in visas[23] being issued without recommendations. In 1,352 cases, only 9 visas were issued with recommendations and 1 was refused. The procedural shortcomings detected in the returned cases were corrected in 65 cases insofar as the Court re-examined them after being resubmitted and given prior approval. This in itself demonstrates the benefit of the Court's supervisory action and shows that the legal provisions that were initially violated have been complied with shortcomings corrected.

[22] It will be interesting to see if, for example, the intervention of municipalities in preventing and combating Covid 21 has led to an abnormally higher number of procedures subject to prior inspection in 2020.

[23] Similar to a "no-objection" or "prior approval".

Figura 1. *Movimentação processual da FP, em 2022.*



Nota. Reflete a movimentação geral dos processos da FP, não se devendo somar os dados, pois existem processos que foram devolvidos e reentraram, acolhendo o visto prévio, onde rec. = recomendação.

Source: Court of Auditors

The 1st section (preventive inspection) inspected acts and contracts with a total aggregated value of 16,535,311.00 CVE, of which 16,423,153.00 CVE related to cases in which prior approval was granted. Of the total VRF in cases inspected, 2,487,792.00 CVE relates to personnel cases, 2,618,580.00 CVE to public works contracts and 11,316,781.00 CVE to other contracts.

Concomitant control [**Article 47**]

The Court of Auditors may carry out concomitant audits by the 1st Chamber on administrative procedures and acts involving staff expenditure and **contracts that are not required to be referred for a priori control by law**, as well as on the **performance of contracts that have already been referred to such control**.

The judge in charge of the 1st Chamber is responsible for concomitant control: ordering audits of procedures and acts that involve staff expenditure; contracts that should not be referred to a priori control by law; as well as the execution of contracts that have already been audited; and approving reports on concurrent supervision.

In 2022, 7 audits were planned, 6 of which focusing on the procedures for the recruitment and hiring of human resources from the Ministries of Education and Health, Social Security and Internal Administration (including the National Police), the municipalities of São Miguel, São Salvador do Mundo, Santa Catarina de Santiago and São Domingos and 1 of the Public Procurement procedures of the Municipality of Praia.
Of those planned, only one audit was carried out. In the meantime, an audit was carried out on Infrastructures of Cabo Verde[24], which was not initially planned in the PAA 2022. Of the audits carried out, 1 report had been drawn up by 31 December and 1 preliminary draft report was in progress.
The audits of the aforementioned ministries and the municipalities of Santa Catarina de Santiago and São Miguel were rescheduled for 2023, while those of the municipalities of São Salvador do Mundo and São Domingos were rescheduled for later years.

***Ex post* control** [Article 49]

Within the scope of *ex post* control, the Court of Auditors checks the accounts of the State and the entities referred to in Article 51, assesses their internal control systems, evaluates the legality, economy, efficiency and

[24] A state-owned enterprise.

effectiveness of their financial management and ensures control of the application of financial resources from international cooperation.

ARAP (monitoring and auditing)

ARAP carries out periodic audits of public procurement procedures carried out by organisations subject to the application of the Public Procurement Code and other applicable laws (Article 12 ARAP Statute).
The audit of the National Public Procurement System aims to ensure that the processes are conducted in accordance with the objectives of good management of public money, guaranteeing healthy competition in the market and ethics in the management and procedures of public procurement.

INSPECTORATE GENERAL FINANCE (IGF)

The IGF is the central control service for the state's financial administration and specialised technical support for the government department in charge of Finance. It is an inspectorate that operates under the direct supervision of the government member responsible for Finance (as stated in Article 1 of Decree-Law no. 48/2004 of 15 November, which approves the organisation of the General Inspectorate of Finance).
Its purpose is to promote the legality, regularity, and sound financial management of public resources and the economy and the effectiveness and efficiency of public revenue and public expenditure.

The IGF's human resources situation
The IGF began 2022 with 27 staff members, including two administrative staff and 25 inspectors. Of these 25 inspectors, seven left, but at the end of 2022, six new inspectors joined as part of the recruitment competition for inspectors no. 8/MF/2019, and are on probation for a period of one year.
The legal procedures for the entry of five more inspectors are still underway as part of the aforementioned competition, which could be finalised in 2023.

DGPCP / Ministry of Finance

It should also be noted that the DGPCP (of the Ministry of Finance) has two competencies that can be considered as part of the internal control to be exercised before concrete acquisitions by the procuring entities are undertaken:

- The annual procurement plans must be published on the public procurement portal, after being "approved" by the body responsible for implementing public procurement policies and controlling the procedures of the ministry responsible for finance. [Article 61 (3) PPC];

- Bidding documents with a contract value equal to or greater than 4,000,000$00 (four million escudos) must be submitted to the entity responsible for monitoring procedures in the ministry responsible for finance for verification purposes. [Article 41 (5) PPC].

Gap analysis

Recommendations

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

Assessment criterion 12(a)(b):
internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The bodies with internal control competencies - the IGF and the GGPCP - need special attention in the reform to be undertaken after the MAPS assessment, for reasons that are not entirely coincidental.
The IGF, as the central control service for the state's financial administration, cannot fulfil its mandate with the resources made available to it for this purpose[25]. The IGF reports directly to the Minister of Finance and communicates through the Minister the results of its control activities and, like any public body, has a general duty to report to the Public Prosecutor's Office acts or omissions that constitute a criminal offence and of which he/she has become aware in the course of his/her duties.

The DGPCP's internal control competences, contained in Articles 41(5) and 61(3) PPC, do not add value and cause entropy in the system. Its abolition will allow the DGPCP to focus and allocate its resources on the area that it is already responsible for dealing with according to its organic law and which constitutes one of the most concerning gaps in the national public procurement system - the absence of a National Public Procurement Strategy and Policy, including the sustainable public procurement related aspects.

Gap analysis

Inspectorate-General Finance

From the interviews conducted with the IGF top management, the Assessment Team concluded that the level of resources allocated to the entity is well below the minimum necessary for the IGF to fulfil its mission as prescribed by the law. The following key weaknesses have been identified:

- Very little specialisation by the IGF in matters relating to public procurement, which is reflected in the almost total absence of references to the subject in its reports and activity plans; this is not due to a lack of strategic vision on the part of top management, but purely and simply due to a lack of allocated budgetary resources;

- Lack of statistical treatment of the work carried out hampers the possibility of developing analyses on the performance of the inspected entities, the main shortcomings, errors or deviations detected, the rate of compliance and the adoption of corrective measures.

In addition to the above and corroborating what the IGF itself recognises in its 2023 Activity Plan, the following eight (8) constraints can be considered as substantive gaps that need to be addressed urgently:

- Audit teams draw up action plans without first having all the relevant information about the audited organisation, especially with regard to its specific management risks.

[25] The situation is becoming chronic and calls for a serious change that has to be sponsored at the highest political level.

- Excessive consumption of time during the data collection, data processing and draft report phases.
- Excessive consumption of time during the phase of analysing and discussing draft reports between the team and its coordinator.
- Inspection manual not implemented.
- There is no system for evaluating the quality of the IGF's products and performance.
- Low number of complaints by citizens about mismanagement or misuse of state resources.
- The results of IGF audits are not properly processed for presentation in activity reports and used as risk indicators.
- Low rate of follow-up actions. Low number of inspectors.

Directorate General for Assets and Public Procurement (DGPCP)

- Article 61 (3) PPC (annual procurement plans): The use of the expression "visa"[26] in the context of this competence of the DGPCP is difficult to interpret because it is either a mere acknowledgement (without the power to approve or reject) or a true approval. In any case, it seems like a control that adds no value. Even if the interpretation is that it must be a real "approval", what happens to the countless annual procurement plans that aren't published?" Were they approved and not published? Were they rejected, with what practical consequences? This is one of those measures that does not add efficiency, so the planning function should be strengthened in other ways, as suggested in the recommendations.

- Article 41 (5) PPC (approval of bidding documents). This competence must also be analysed in terms of the value it can add. It should be borne in mind that in all contracts (regardless of value) the draft contracts (standardised documents) are compulsory [Article 42 (2)] and, furthermore, those with a higher value (above the threshold for prior approval by the Court of Auditors) are still subject to this control, so this provision should be repealed and this power of the DGPCP abolished.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

Inspectorate-General Finance

The following urgent actions are recommended, while realising that some of the measures will have to be carried out over several exercises:

- Approval of the Strategic Plan 2023 - 2026, with which all the improvement measures mentioned here should be aligned as far as possible.
- Develop a system for collecting and storing information on entities subject to IGF control and update it annually;
- Identify all existing applications, their respective instruction manuals and provide training in Excel, databases, SIGOF, SIM and GRE.
- Create an IGF website

[26] In Portuguese the same word (“visto”) is used for the prior approval granted by the Court of Auditors in the framework of the *a priori control*.

- Create a form on the website that allows citizens to submit their complaints
- Carry out publicity and awareness-raising campaigns via the IGF and Ministry websites
- Implementation of the "Management of Results of Control Actions" application.
- Recruit six inspectors a year in stages until a total of 30 inspectors is reached
- Implement the "Monitoring the Implementation of Recommendations" application

Directorate General for Assets and Public Procurement (DGPCP)

- Revise the wording of Article 61 (3) providing only for the publication of annual procurement plans on the public procurement portal and repeal the DGPCP's " power for approving the annual procurement plans at the earliest revision of the PPC.
- Repeal Article 41 (5) PPC at the first opportunity for a broader legislative review of the PPC

Assessment criterion 12(a)(c):
internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The internal *a priori* control mechanism is foreseen in PPC, Article 41 (5) (Preparation and approval of the documents) according to which the bidding documents of procedures to form contracts which value is equal to or greater than four million Escudos (4,000,000$00) must be submitted to the entity responsible for monitoring the procedures within the ministry in charge of finance for verification purposes (DGPCP/Ministry of Finance). For contracts which estimated value is below that threshold there is no systematic ex-control; and

Gap analysis
see 12(a)(b)

Recommendations

see 12(a)(b)

Assessment criterion 12(a)(d):
independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The Court of Auditors, in its capacity as the SAI of the country, issues oversight reports that should normally follow the budgetary calendar (national budget / national account).

In addition to the mentioned *a priori* control (visto), for contracts of estimated value of 20.000.000 CVE or above, the Court of Auditors carries out audits on administrative procedures and administrative actions involving staff costs and contracts which are not to be remitted for prior inspection by law and to the execution of contracts already covered. This includes the public contracts.

The table below shows the total number of staff at the Cape Verdean Court of Auditors in 2022. Of the 56, 5 are judges and 30 are auditors, and the number of management and support roles is minimal considering the complexity and responsibility of the functions performed by this sovereign body.

Tabela 39. *Representatividade dos servidores, por natureza dos quadros e estrutura*

Unidade de medida: unidade e %

Grupo de Pessoal por carreira, função e estrutura	Plenário	GP	DG	Colaboradores DG				Total
				DAT	SJ	GPCQ	DAI	
Magistratura	5							5
Quadro Especial		3					0	3
Dirigentes e Coordenadores			1	6	1	1	0	9
Regime Especial dos Auditores				23	1	4	2	30
Oficial da Diligências					3			3
Secretário Judicial				1				1
Regime Geral							5	5
Total	**5**	**3**	**1**	**30**	**5**	**5**	**7**	**56**

Nota. Número de servidores do Tribunal, por natureza dos quadros e estrutura orgânica, a 31 de dezembro de 2022. Onde GP = Gabinete do Presidente, DG=Direção Geral, DAT = Direção dos Serviços de Apoio Técnico, SJ = Secretaria Judicial; GPCQ = Gabinete de Planeamento e Controlo de Qualidade; DAI = Direção dos Serviços de Apoio Instrumental.

Source: Court of Auditors

This total number of employees was 56 in 2020, 55 in 2020 and returned to 56 in 2022.
The need for a significant reinforcement of specialised staff seems obvious, especially in the area of public procurement, where the Court plays a decisive control role at three different points in the cycle: prior, concomitant and successive control.
The areas that have suffered the most from a lack of resources and are therefore showing lower production are concurrent and successive inspections.

Gap analysis

- The level of detail in the statistical information published by the Court of Auditors in its Activity Reports needs to better highlight the activities and results found in the three types of control – a priori, concomitant and ex post - undertaken in the field of public procurement (the data needs to be produced and processed in such a way as to allow the relevant breakdowns for public and stakeholder information)
- The incidence of concomitant control is very low. Only 1 (one) of the 7 (seven) planned audits was carried out in 2022.
- Concomitant and successive control in the field of the public procurement need to be significantly stepped up since there are risks that cannot be identified nor mitigated through the a priori control either because many contracts are not subject to prior approval due to their value (below the threshold for submission *a priori control* (visa)[27], or because some risks are only identified or identifiable and

[27] Currently set at 20 million Cape Verde Escudos (CVE).

materialise once the contracts are in the implementation phase or even terminated (e.g. illegal price revisions, extra work, etc.).

Recommendations

- Improve the function of collecting, processing and presenting information and data with a view to (i) emphasising the "public procurement" component in all its activities and competences (preventive, concomitant and successive supervision)
- The Court of Auditors must increase its human and technological resources allocated, and give particular attention to strengthen the production in the fields of the concomitant and successive control related to public contracts (public procurement).

Assessment criterion 12(a)(e):
review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)

Conclusion: No gap

Red flag: No

Qualitative analysis

The Court of Auditors carries out, on its own initiative or upon request of the Plenary of the National Assembly, audits and other legality control actions, including sound financial management and internal control system, which includes the whole public procurement system and public contracts.

The annual activity report of the Court of Auditors shall include the list of audited contracts acts and contracts and is presented to the President of the National Assembly, and a copy sent to the President of the Republic and the Prime Minister, by 31 March following the year to which the report relates. The Parliamentary Committee dealing with public finance hears the President of the Court of Auditors on the Annual Report.

Gap analysis

Recommendations

Assessment criterion 12(a)(f):
clear mechanisms to ensure that there is follow-up on the respective findings.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Each controlling institution sets out and undertakes its own mechanisms in view of making sure the recommendations issued in the framework of their oversight function are enacted by the controlled procuring entities.
The system lacks a knowledge sharing mechanism among the entities undertaking the oversight t of the public procurement system which would contribute for the production of a more aligned “jurisprudence” between all the institutions who have oversight and controlling powers and obligations.

Gap analysis

- The Court of Auditor's management information systems does not yet allow for systematically and reliably tracking the practical implementation of the recommendations made in audits and, as a result, publishing the results (or lack thereof) by auditee. According to the Court, a digital application is being developed to fill this gap.

Recommendations

- Monitor the implementation (or lack thereof) of audit recommendations by auditees on a permanent and comprehensive basis. The provision of an IT tool designed to guarantee the automation of this process is particularly important and urgent, as it could be a factor in mitigating the chronic shortage of human resources (an application is currently under development).

Sub-indicator 12(b)
Coordination of controls and audits of public procurement

Assessment criterion 12(b)(a):
There are written procedures that state requirements for internal controls, ideally in an internal control manual.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
There is no Manual on internal control procedures (to be applied by IGF and DGPCP)

Gap analysis
There is no Manual on internal control procedures (to be applied by IGF and DGPCP)

Recommendations

- It is recommended that a public procurement audit manual be produced in partnership between all the supervisory, control and regulatory bodies, with each volume dedicated to specific aspects of each body's area of competence. Part I – Internal control procedures; Part II – external control procedures. It should naturally cover the audit and control function throughout the public procurement lifecycle.

Assessment criterion 12(b)(b):
There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
Please refer to 12 (a) (b) and 12 (b) (a)

Gap analysis
Please refer to 12 (a) (b) and 12 (b) (a)

Recommendations
Please refer to 12 (a) (b) and 12 (b) (a)

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

Assessment criterion 12(b)(c):
There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In 2022, in compliance with Article 78(1)(c) of the LOFTC, four (4) audit reports were approved at the 2nd Section Conference, as shown in Table 6, covering various types of audits, namely financial and compliance audits and performance audits (only one of the four i.e. 25%). Audit reports accounted for 9% of the total number of reports approved during the year, thus showing the dominance of Internal Verification of Accounts (VIC) to the detriment of audits.

Tabela 6. *Processos de auditoria aprovados*

Unidade de medida: ano económico

Entidade	Período/Gerência	Tipo de Auditoria
Hospital Agostinho Neto	2017-2020	F&C
Hospital Regional Santiago Norte	2017-2020	F&C
Fundo – Recursos utilizados na luta contra a Covid -19	2020	Desempenho
Instituto Internacional da Língua Portuguesa	2017	F&C

Nota. Entidades objeto de auditoria no ano de 2022, com indicação do ano económico e tipologia de auditoria. Onde F&C = Financeira e de Conformidade.

The taxonomy used in the "Theme of recommendations" column in Table 10 of the 2022 Activity Report of the Court of Auditors, which is reproduced below, reflects the need to put more emphasis on issues related to public contracts, covering their entire life cycle.
In 2022, 223 recommendations were issued, 185 of them as part of the appraisal of the management accounts and 38 as part of auditing processes.
The report mentions the following among the global illegalities and irregularities that are the subject of recommendations:

- violation of the principles governing the incurring of expenditure (existence of a prior permissive law, entry in the budget and budgetary allocation);
- execution of acts and contracts that the law obliges the Court of Auditors to scrutinise a priori, and therefore without the corresponding prior approval (visa);
- Failure to comply with the rules for drawing up and implementing budgets laid down in Law 78/V/98 of 7 December, which approves the State Budget Framework Law.

Among the numerous recommendations issued in VIC cases, the following are of particular interest in the field of public procurement:

- Submit to the TCCV, under the terms of article 45(1)(a) of Law no. 24/IX/2018, of 2 February, all acts and contracts subject to prior approval, before their execution;
- Observe the pre-contractual requirements in direct award procedures (Article 41(1)(e) of Law 88/VIII/15 of 14 April - CCP);

Among the numerous recommendations issued in auditing processes, the following stand out as being of particular interest in the field of public procurement:

- Take the necessary steps to draw up, approve and publish its Annual Procurement Plan, under the terms of articles 16 and 61 of the Public Procurement Code (CCP);
- Conclude written contracts with suppliers under the terms of article 110 of the CCP;
- Drawing up, approving and publishing the Annual Procurement Plan, in strict compliance with articles 16 and 61 of the CCP;
- Adopt pre-contractual procedures for the purchase of (...) under the terms of the PPC, in compliance with the provisions of the State Budget Laws and Decrees;
- On each receipt of (...) demand a delivery note from the supplier indicating the exact quantity actually delivered

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):*
- number of specialised procurement audits carried out compared to total number of audits (in %).
- share of procurement performance audits carried out (in % of total number of procurement audits).
Source: Ministry of Finance/Supreme Audit Institution.

Gap analysis

- The number of audits carried out as part of concurrent and successive monitoring needs to be significantly increased;
- The "performance audit" is still rarely used - its use should also be significantly increased.
- The level of detail and autonomous treatment of matters specifically related to public procurement in audits could be improved;

Recommendations

- Investing in the allocation of the necessary resources and preparation for performance audits by the Court of Auditors and ARAP.
- Much more emphasis should be placed on the legality and financial regularity of public contracts in the context of the audits carried out. The statistical information contained in the Court of Auditors' Annual Activity Reports reflects this shortcoming in that few specific references and little details are given to the main problems detected and recommendations made specifically with regard to public contracts - covering their entire life cycle (from planning to termination).

Assessment criterion 12(b)(d):
Clear and reliable reporting lines to relevant oversight bodies exist.

Conclusion: No gap

Red flag: No

Qualitative analysis

State employees and agents have a duty to report infractions (non-compliance with the law or regulations) to the oversight bodies. The means by which this should be done are defined in the law - the reporting agent reports to the entity that has the competence to act according to the nature of the at or omission reported –

when strictly related to public procurement and public administration rules the reporting should be done to the oversight bodies (Court of Auditors and ARAP).

Gap analysis

Recommendations

Sub-indicator 12(c)
Enforcement and follow-up on findings and Recommendations

Assessment criterion 12(c)(a):
Recommendations are responded to and implemented within the time frames established in the law.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Given the gaps detected in the management information systems capable of supporting automatic and permanent monitoring of the implementation of recommendations by the audited entities, there is no statistical data to quantitatively assess this indicator.

Note: failure to comply with recommendations may result in financial penalties for the heads of the organisations concerned. Meanwhile, in relation to the Opinion on the General State Accounts, the Court of Auditors makes recommendations, but in this case, it does not exercise jurisdictional power (to pass judgement). In such a situation, there is instead a political judgment by the Parliament.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):*
- Share of internal and external audit Recommendations implemented within the time frames established in the law (in %).
Source: Ministry of Finance/Supreme Audit Institution.

Gap analysis
See above 12(a)(b)

Recommendations
See above 12(a)(b)

Assessment criterion 12(c)(b):
There are systems in place to follow up on the implementation/enforcement of the audit Recommendations.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

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The Court of Auditors can follow up on its recommendations and apply sanctions for non-compliance. A software application is being designed to allow for an effective and systematic monitoring of the implementation of recommendations.

Gap analysis

See above 12 (a) (f)

Recommendations

See above 12 (a) (f)

Sub-indicator 12(d)
Qualification and training to conduct procurement audits

Assessment criterion 12(d)(a):
There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Court of Auditors

The Court of Auditors' Activity Report for 2022 reveals a very worrying reality in the training field with regard to public procurement. Of the 13 training actions listed in the table below, only one (1) concerns Public Procurement and the Legal Framework for Administrative Contracts (7% of the total number of training actions). Also, of the total 218.5 hours of training mentioned, only 46 relate specifically to public procurement, i.e. around 20%.
Very little if we consider the importance of public procurement in public spending and the range of specific responsibilities of the country's Supreme Audit Institution, the Court of Auditors.

Tabela 42. *Ações de capacitação em 2022*

Unidade de medida: unidade e horas

Descrição	Modalidade	Período	N.º de Part.	Duração (Horas)	Entidade formadora
***Workshop* de sensibilização para os pontos focais de género e desenvolvimento**	Presencial	23 – 5 fevereiro	2	8	CREFIAF
***Webinar* sobre "As Instituições financeiras internacionais e intervenção do Banco Mundial e o seu papel no desenvolvimento dos países Lusófonos**	virtual	fevereiro	S/I	8	MFFE
Seminário sobre finanças públicas, enquadrada no currículo escolar do	Virtual	março	8	16	✓ ISCTEE ✓ PROPALOP TL -

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curso de Pós-graduação em Finanças Publicas					ISC ✓ TCP
***Atelier* sobre a Gestão Estratégica, a Avaliação e Instituição dos reportes da ISC**	Presencial	maio	2	8	✓ IDI ✓ CREFIAF
1º Encontro de Jovens Auditores da OISC/CPLP	Presencial	outubro	3	16	✓ OISC-CPLP/PROPALOP- TL-ISC
***Workshop*, sob o lema "O fator humano na sustentabilidade das relações interpessoais com inteligência emocional"**	Presencial	12 de julho	40	3	Dr. Nuno Melício
***Workshop* sobre a ferramenta PFM-RF**	Presencial	março	30	32	✓ GIZ ✓ AFROSAI ✓ PROPALOP-TL-ISC ✓ Carlos Maurício ✓ Nalte Boden
***Atelier* de « Validação do projeto do guia sobre o Julgamento de Contas dos Contabilistas Públicos**	Presencial	01 a 05 agosto	40	40	✓ CREFIAF ✓ GIZ
Formação sobre orçamento sensível ao género e analise comparativa 2017-2022	Presencial	abril	7	3h30	✓ PROPALOP-TL-ISC ✓ Graça Sanches ✓ Dámaris Rosabal Silva
Formação e Sensibilização dos pontos focais em matéria de Género e das mulheres nas direções das ISC	Presencial	08 -12 agosto	30	40	✓ CREFIAF ✓ GIZ
***Workshop* de Planeamento da Auditoria Coordenada de Áreas Protegidas**	Presencial	Agosto - setembro	2	40	✓ TCU ✓ PROPALOP- TL-ISC ✓ Drª Alice Fonseca ✓ Dr. Francisco Dias
***Workshop*: utilização correta dos Recursos da Rede Tecnológica Privativa do Estado**	Presencial		3	4	S/I
Formação em contratação pública e regime jurídico dos contratos administrativos	virtual	fevereiro	60	46 horas	✓ ISCJS

Nota. Número de capacitações ministradas aos servidores do Tribunal, no ano de 2022. Onde Part. = participantes; CREFIAF = Conselho Regional de Formação das Instituições Superiores de Controlo das Finanças Públicas da África Francófona e subsariana; MFFE = Ministério das Finanças e do Fomento Empresarial; ISCTEE = Instituto Universitário de Lisboa; PROPALOP-TL-ISC = Projeto das Instituições Superiores de Controlo dos Países Africanos de Língua Oficial Portuguesa e de Timor Leste; IDI = Iniciativa de Desenvolvimento da INTOSAI; TCP = Tribunal de Contas de Portugal; TCU = Tribunal de Contas da União e ISCJS = Instituto Superior de Ciências Jurídicas e Sociais.

Inspectorate-General Finance

The year 2022 was marked by the absence of in-house training activities organised by the IGF due to a lack of budget allocation for this purpose. As a way of mitigating this, the participation of IGF staff in activities organised by other entities was promoted:

Name of training	Training organization	Participants	Date	Workload	Observation
Sustainability and reporting of non-financial information	OPACC	5 inspectors	12/04 from 2pm to 5pm; and 13/04 from 4pm to 7pm	6h	Via Zoom. DGPOG funding

Capacity Building Workshop on Monitoring, Evaluation and Reporting	BAD	4 inspectors	21 a 23/06/2022		Via Zoom
Gender-sensitive Programmatic Budgeting and Asset Accounting	Working Group of the Ministries of Finance of the PALOP countries and East Timor	2 inspectors	29/06 a 01/07/2022	All day long	Via Zoom
Determining Materiality and Impact on the Auditor's Work	OPACC	5 inspectors	14/07/2022	3h	Via Zoom. DGPOG funding
Tax and Customs Inspection Regime	OPACC	5 inspectors	01 a 10/08/2022	24h	Via Zoom. DGPOG funding
Regulation of Collective Management of Copyright in Cape Verde	IGQPI Consultant	3 inspector	12 a 19/09/2022	18h	Via Zoom (IGQPI Invitation)
Supervision of Collective Management Entities	IGQPI Consultant	All inspectors	14/10/2022, from 10 a.m. to 1 p.m.	3h	Via Zoom (IGQPI Invitation)

Source: IGF Activity Report, 2022.

Five inspectors also took part in the Postgraduate Course in Public Finance promoted by Pro PALOP-TL ISC, under the cooperation agreement signed between the United Nations Development Programme (UNDP) in Cape Verde and the Higher Institute of Labour and Business Sciences of the University of Lisbon, ISCTE-IUL.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):*
- number of training courses conducted to train internal and external auditors in public procurement audits.
- share of auditors trained in public procurement (as % of total number of auditors).
Source for all: Ministry of Finance/Supreme Audit Institution.

Gap analysis

- The Court of Auditors' efforts to provide training in the specific field of public procurement are clearly insufficient, and this applies both to its magistrates - there is no evidence that magistrates attend training courses in public procurement law and practice - and to auditors and other technical experts working for the Court.
- The training activities carried out by the Court of Auditors - or in which Court staff took part - in 2022 reveal a lack of strategic commitment to the subject of "public procurement".
- The Court does not have the endogenous capacity to treat training as a strategic investment and to programme its development in a consistent and permanent manner
- The absence of in-house training and the total volume of training hours made available to IGF auditors is very far from satisfactory.

Recommendations

- Conduct a survey of the current situation (AsIs) regarding the level of specific knowledge of the Court's staff in the field of public procurement (legal, economic, management and technological aspects) and design a Specific Training Programme in Public Procurement. It can and should be designed to meet the identical needs of the IGF and ARAP and the resources needed to develop and implement it should be shared.
- The Court of Auditors, as well as the IGF and ARAP, should call on external specialised resources (highly competent and independent) to design the Plan mentioned in the previous paragraph.

Assessment criterion 12(d)(b):
The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Court of Auditors

All competitions for recruiting auditors (concours) require knowledge of public procurement. However there is no evidence that specialised knowledge in public procurement is assessed according to international standards and norms (for example, by reference to the syllabus of higher education courses taught by universities considered to be benchmarks).
Furthermore, there is no on-the-job programme for training and measuring knowledge and skills, so it is difficult to qualify the level of knowledge of the experts who prepare the Court's decisions.
The use of external experts is also not a practice adopted by the Court.
Despite this, the Court maintains that audit teams are mixed as far as the expertise fields of their members is concerned and the practice is that the auditors who are more knowledgeable about public contracts take on the task of reviewing them.

ARAP and IGF

The analysis above regarding the Court of Auditors applies shall apply mutatis mutandis to the auditing function and to the skills profile of the auditors and specialised procurement technicians at ARAP and the IGF.That's why the idea of producing a common body of knowledge, including a Public Procurement Audit Manual, which, without jeopardising the competence of each of the control bodies, allows the best available technical quality to be shared with everyone (where the legal components, usually exacerbated by the need for formal compliance, the economic and financial component and the technological and process component should not be missed).

Gap analysis

- There is no system in place to guarantee (i) verification of a very high level of specialisation in public procurement (by candidates with degrees in law, economics, management, engineering, architecture, IT, etc.) on entry (recruitment and admission phase) and (ii) a consistent and ongoing programme of continuous specialised training, nor (iii) tests to gauge the level of specific technical knowledge on

public procurement over time (with the exception of cases where there is an internal competition for career progression);

Recommendations

- As above 12 (b) (a). It is recommended that a public procurement audit manual be produced in partnership between all the supervisory, control and regulatory bodies, with each volume dedicated to specific aspects of each body's area of competence. Part I – Internal control procedures; Part II – external control procedures. It should naturally cover the audit and control function throughout the public procurement lifecycle.

From the body of knowledge that will feed into the drafting of the Manual, it is important to develop a (i) specific job description for the auditor (public procurement component), (ii) specific tests for the admission of new auditors and (iii) specific tests to gauge specialised knowledge in public procurement for those already in the field (which can also be used in part as part of the performance appraisal).

Assessment criterion 12(d)(c):
Auditors are selected in a fair and transparent way and are fully independent.

Conclusion: No gap

Red flag: No

Qualitative analysis

Auditors are recruited following a *concour* (open competition) comprising the necessary Terms of Reference for the function, candidates profile, qualifications, experience, etc..

Gap analysis

Recommendations

Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator 13(a)
Process for challenges and appeals

Assessment criterion 13(a)(a):
Decisions are rendered on the basis of available evidence submitted by the parties.

Conclusion: No gap

Red flag: No

Qualitative analysis

Among other principles set out in the Statute of the Conflict Resolution Commission (CRC), approved by Decree-Law no. 28/2021, of 5 April, is the duty to state reasons, according to which all administrative acts of the CRC must be substantiated, especially those that, in whole or in part, decide on appeals within its competence, namely (a) denying, extinguishing, restricting or affecting in any way the legally protected rights or interests of those involved in the ARAP, in particular candidates or competitors; or (b) pronouncing in a manner different from the practice customarily followed in the resolution of similar cases, or in the interpretation and application of the same principles or precepts.

More specifically, with regard to the requirement for proof, Article 28 (2) emphasises that the statement of reasons must be expressed in a succinct statement of the grounds of fact and law, in agreement with the previous grounds, opinions, information or proposals, which will, in this case, form an integral part of the respective act. The factual grounds referred to by the legislator include a descriptive list of the facts and the respective evidence.
The CRC's decisions - which are published on ARAP's website - show general compliance with this principle of reasoned decision-making, including in terms of the facts, the collection and evaluation of the evidence brought to the case by the appellants or requested and/or obtained by the CRC for the benefit of a proper decision of the case.
It should also be noted that Article 41 (1) (f) states that the initial application must contain a statement of the grounds, in fact and in law, that the applicant considers relevant, which naturally includes the possibility (necessity) of attaching evidence deemed necessary for the analysis and decision of the appeal. Same Article (2) allows the appellant to lodge the appeal with the documents and opinions they deem appropriate.

Gap analysis

Recommendations

Assessment criterion 13(a)(b):
The first review of the evidence is carried out by the entity specified in the law.

Conclusion: No gap

Red flag: No

Qualitative analysis

PPC, Article 181 (Regime) provides that both the administrative decisions made as part of contract formation procedures (181/1) and the bidding documents may be challenged (181/2). The law (PPC, Article 182) offers the aggrieved parties two challenge mechanisms: (i) lodge a claim to the contracting entity that performed the administrative act; or (ii) lodge an appeal to ARAP's CRC, which decisions may be judicially challenged. The administrative proceedings are **optional** insofar as they are not considered as a pre-requisite for initiating proceedings before the Court [PPC, Article 182 (3)].
It follows that the concept of "***first review of the evidence***" is not relevant in Cape Verdean public procurement law, because any of the three entities mentioned above may be requested to carry out the "*first review*" of the evidence brought to them by the appellant, according to the appellant's decision as to the choice of the way to oppose a decision of the procuring entity: (i) to complain to the contracting entity, author of the unfavourable act, (ii) to the CRC or (iii) directly to the Court.

In conclusion, the fact that there is no need to lodge sequential appeals is an additional guarantee of protection for the interests of private individuals who can choose the route that seems most effective to them.

Gap analysis

Recommendations

Assessment criterion 13(a)(c):
The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *

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Conclusion: No gap

Red flag: No

Qualitative analysis

The deliberations of the CRC can be considered enforceable to the extent that non-compliance with them constitutes a serious administrative offence punishable by a fine of 25,000$00 (twenty-five thousand escudos) to 65,000$00 (sixty-five thousand escudos) or 75,000$00 (seventy-five thousand escudos) to 150,000$00 (one hundred and fifty thousand escudos), depending on whether it is applied to a natural person or a legal person. [PPC, Article 189 (2) (c)].

Number of appeals lodged

v The table below shows the evolution in the number of appeals over the last five years (2018 - 2022):

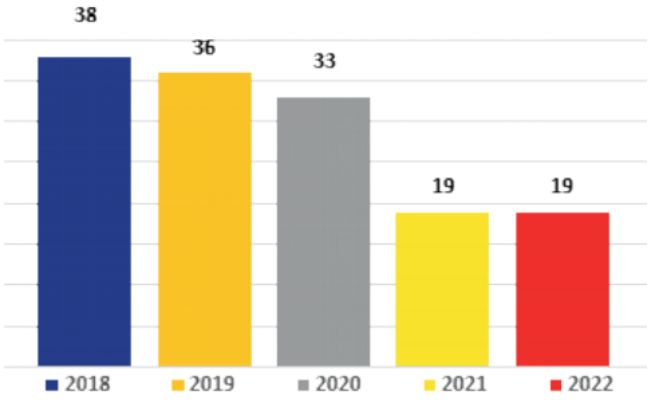

Gráfico 14: Evolução dos Recursos Interpostos a CRC

Source: ARAP/CRC

Subject of appeals filed in 2022

From the appeals lodged, it can be seen that the applicants made the following requests: review of the classification awarded and of the award decision access to the procedural documents and disqualification of a competitor, conditional admission of a competitor, detailed analysis of the tender documents and of the evaluation of the tender, annulment of the award decision, annulment of the jury's decision, nullity of the tender procedure, reweighting and review of the score awarded for the technical capacity sub-factor, restoration of legality and exclusion of the competitor/annulment of the tender procedure, restoration of legality in the actions of the jury, review of the award decision, revocation of the jury's award proposal in the evaluation report and revocation of the award decision

- The three main causes of appeal in 2022 are:
  - Jury's award proposal in the evaluation report (13 cases)
  - Challenge to the decisions of the procuring entity
  - Challenges to decisions taken by the jury during the opening of tenders (2 cases)

The procuring entities most targeted by appeals

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Out of the appeals filed in 2022, Infraestrutura de Cabo Verde/ Infrastrutures of Cabo Verde (ICV) continues to be the most appealed entity, with 4 appeals, the same as in 2021. Following ICV, we have the Ministry of Agriculture and Environment (MAA) with 3 appeals and the Ministry of Finance and Business Development Digital Economy also with 3, and the Municipality of São Filipe do Fogo (CMSF), Independent Health Regulatory Authority (ERIS), National Water and Sanitation Agency, and Cape Verde Post Office with 1 respectively.

Entidades Recorridas 2021	N° de Recurso	Entidades Recorridas 2022	N° de Recurso
ICV	4		
Ficase	3	INPS	1
BCV	2	CCV	1
ARAP	1	MAA	3
CMSF	1	CMSF	1
CMP	2	CMSC-Fogo	1
CCV	1	ERIS	1
CV HANDLING	1	ICV	4
MS	1	ECV	2
FNAPOR	1	ANAS	1
MFFE	1	MFFE	3
CMSCF	1	MIOTH	1
	Total	19	19

On the outcome of appeals

In 2021, the appeals were decided as follows:

- 4 were granted;
- 12 denied;
- 3 dismissed.

In 2022, the appeals were decided as follows:

- 2 were granted;
- 1 partially granted;
- 8 denied; and
- 7 dismissed.

The above statistics allow to conclude that, in these two years, the overwhelming majority of appeals were dismissed, thus upholding the decisions taken by the procuring entities.

Level of decisions enforcement

The decisions issued by the CRC, as the body that decides administrative appeals on public procurement matters, are binding and may give rise to the imposition of administrative offences in the event of non-compliance by the organisations concerned which, in the event of disagreement, these organisations may appeal to the courts, in accordance with article 54 of the CRC Statute in conjunction with Article 182(3) of the PPC.
In 2021-2022 CRC's decisions have been complied with, and ARAP has not received any complaints from economic operators that there has been non-compliance on the part of the procuring entities. In this respect, ARAP has not received any reports of non-compliance with the decisions issued by the CRC, which leads us to

believe that they are being complied with. Therefore, from a quantitative point of view, the percentage of enforced decisions within the legal framework in force is 100%.

Quantitative analysis

*// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):*
- number of appeals.
Source: Appeals body.

** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):*
number (and percentage) of enforced decisions.
Source: Appeals body.

The quantitative indicator is presented in the qualitative analysis above.

Gap analysis

Recommendations

Assessment criterion 13(a)(d):
The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Conclusion: No gap

Red flag: No

Qualitative analysis

According to Articles 184 to 186 PPC and Article 42 CRC Statute, the key deadlines of the proceedings are:

To lodge a complaint before the CRC (Article 42 CRC). The administrative appeal to the CRC is lodged:

- Within five (5) days of notification of the jury's deliberations taken and notified in public public opening of tenders; or
- Within ten (10) days of notification of the act to be challenged, in all other cases.

To summarise, the sequence of actions involved in the processing of appeals implies the following maximum interim deadlines:
Distribution of the case to the rapporteur in the order drawn (**1 day**);

- Preliminary rejection: once the case has been received, the rapporteur must, within (2 days), draw up a draft of the CRC's decision on whether to reject it. (**2 days**);
- Notification, once the case has been received and there is no preliminary rejection, (1 day).
- Hearing of the counter-interested parties (**5 days**);
- Deliberation, the CRC has a period of 10 days after the submission of the arguments of the procuring entity and all counter-interested parties (**10 days**)

The intermediate timeframes above add up to a maximum legal timeframe for the conclusion of appeals of **18 days**.

The average If, within ten days of the appeal being lodged, the CRC does not issue a decision, the appeal is deemed to have been tacitly granted (Article 51, CRC), provided that, following this granting, the act of the procedure is not one of the following:

- The award decision;
- The negotiation of the contract; or
- The conclusion of the contract.

Apart from these situations of tacit acceptance, the appeal is considered tacitly rejected if the CRC has not decided within ten days of submission.

Gap analysis

Recommendations

Sub-indicator 13(b)
Independence and capacity of the appeals body
The appeals body:

Assessment criterion 13(b)(a):
is not involved in any capacity in procurement transactions or in the process leading to contract award decisions

Conclusion: No gap

Red flag: No

Qualitative analysis

CRC Statute approved by Decree-Law 28/2021, Article 20 PPC (Duty to act ethically), the Legislative Decree 2/95 and the Code of Conduct of the National System of Public Procurement approved by Deliberation 7/2017 of the ARAP's Board of Directors, offer provisions and mechanisms designed to prevent conflict of interests and also to deal with it when arisen. In such a situation, the members of the CRC must declare themselves impeded in the process and move away from it.
By definition and according to the competences conferred on CRC members, they cannot participate in any decision or preparation of a decision leading to the practice of acts by the procuring entities or bidders or candidates that may subsequently be appealed to the CRC. In accordance with Article 8 (2) of the CRC Statute, the CRC enjoys full technical independence and autonomy in the exercise of its competencies. This is reinforced by the obligation to fulfil the duty of neutrality (Article 26 CRC Statute), according to which CRC members must carry out their duties with complete equidistance from the interests of the ARAP's stakeholders in the context of public procurement procedures, in particular the interests of bidders and candidates, without discriminating positively or negatively against any of them, with a view to strictly respecting the equality of applications.

Gap analysis

Recommendations

Assessment criterion 13(b)(b):
does not charge fees that inhibit access by concerned parties

Conclusion: No gap

Red flag: No

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Qualitative analysis

The fees payable for lodging appeals with the CRC are due in consideration of the provision of services for the reception, assessment and decision of administrative appeals lodged with the CRC, within the scope of public procurement procedures processed under the Public Procurement Code (CCP), namely by candidates or bidders and their values are set out in the Annex II of Decree-Law no. 28/2021 of 5 April (reproduced below).

The fees for lodging appeals with the CRC are low and are not considered to have the effect of preventing or restricting interested parties from exercising their rights of defence.

The legislator established, in Article 58 of Decree-Law 28/2021, that fees may be updated under the terms of the general legal regime for fees and contributions in favour of public entities and that they must take into account the degree of complexity of the type of contract formation procedure, the estimated value of the contract and the estimated efforts and costs for taking the appeal decision.

Anexo II

(A que se refere o nº 1 do artigo 58º)

Tabela de Taxas de Recurso Administrativo Perante a CRC

Tipos de Procedimento	Tipos de Contratos	Valor a Contratar	Valor da Taxa Única de Recurso	Valor da Taxa Única de informação Confidencial
Concurso Público	Empreitada ou Concessão de Obras Públicas ou Serviço Público	Igual ou Superior a 10.000.000$00	15.000$00	5.000$00
	Locação ou Aquisição de Bens Móveis ou Prestação de Serviços	Igual ou Superior a 5.000.000$00	12.500$00	
Concurso Limitado Por Prévia Qualificação ou Concurso Restrito	Empreitada ou Concessão de Obras Públicas ou Serviço Público	Igual ou Superior a 3.500.000$00 e Inferior a 10.000.000$00	10.000$00	4.500$00
	Locação ou Aquisição de Bens Móveis ou Prestação de Serviços	Igual ou Superior a 2.000.000$00 e Inferior a 5.000.000$00	7.500$00	
Ajuste Direto ou Acordo Quadro	Empreitada ou Concessão de Obras Públicas ou Serviço Público	Inferior a 3.500.000$00	5.000$00	2.500$00
	Locação ou Aquisição de Bens Móveis ou Prestação de Serviços	Inferior a 2.000.000$00	2.500$00	

CUSTO TRIBUNAL CÍVEL PRIMEIRA INSTANCIA	CUSTO TRIBUNAL ADMINISTRATIVO 1ª INSTÂNCIA	CUSTO COMISSÃO DE RESOLUÇÃO DE CONFLITOS (ARAP)
200 000 CVE aprox (EUR 1800)	50 000 CVE aprox (EUR 450)	15.000 CVE 136 eur

Gap analysis

Recommendations.

Assessment criterion 13(b)(c):
follows procedures for submission and resolution of complaints that are clearly defined and publicly available

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

PPC Articles 182 (Types and nature of the challenge) and 183 (Filing claims and appeals), implemented by the CRC Statute (Decree-Law 28/2021) offer a very detailed set of provisions regarding the principles, the rights and duties of all actors participating in the review of public procurement decisions, as well as the necessary procedural rules (Chapter IV/Section II).

The CRC Statute (Decree-Law 28/2021) includes:

- Chapter I (General provisions and principles)
  - Section I (General provisions), which contains rules of an institutional nature, e.g. mission, composition of the CRC, competences of the body;
  - Section II (General principles) sets out and describes the essential content of the principles of legality, public interest, inquisitiveness, transparency, fairness and impartiality, suitability and effectiveness, continuity of procedures and responsibility in the decision-making process, collaboration with stakeholders in the national public procurement system, decision-making and publicity;
- Chapter II (Members' rights, duties, impediments, incompatibilities and liability);
- Chapter III (Organisation and operation)
- **Chapter IV (Administrative appeals)**
  - Section I (General provisions)
  - **Section II (Procedure)**
  - Section III (Fees)
- Chapter V (Final and transitional provisions)
- Annex I (Remuneration scale for CRC members)
- Annex II (Fees for administrative appeals before the CRC)

As mentioned above, the level of regulation regarding the administrative decisions taken by procuring entities in procurement procedures is considered adequate - insofar as the law solves the typical problems and

difficulties faced by those who apply it - but this is not accompanied with regard to challenging bidding documents, which represents a substantive gap, already identified in the Diagnostic.
As far as publicity is concerned, both the CRC's Statute (Decree-Law 28/2021) and its decisions are published on ARAP's website and are easily accessible to the general public. In the case of the Decree-Law mentioned it is also published in the Official Bulletin (as any other legal act).

As emphasised in other indicators, namely 1(a)(d), this information should also be accessible from the public procurement portal eCompras. Both the legislation relevant to lodging an appeal (especially Decree-Law 28/2021) and the CRC rulings (jurisprudence) should be published in the same way on ARAP's websites and on eCompras or, if it is deemed safer to avoid discrepancies, eCompras should point to ARAP's "Legislation and Regulations" page.

Gap analysis

PPC, Article 181(2) states that "bidding documents may also be challenged", but the following articles of the same statute do not specifically regulate this matter (specifically with regard to the time limits for lodging appeals and decisions, and the effects of such challenges), unlike the administrative decisions taken in the context of procedures for the formation of the contract.
In fact, with reference to the distinction between administrative acts and administrative regulations (in which bidding documents are included) in Decree-Law no. 15/97, of 10 November, it can be concluded that almost all of the rules in Articles 182 to 188 of the CCP relate to the former. The CRC Statute does not regulate this matter either.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

The following recommendations are made:

- Consideration should be given to introducing specific provisions in the CRC Statute on the terms and effects of challenging bidding documents. This should happen within the framework of a consolidated revision of the CRC Statute (Decree-Law 28/2021), which should also consider the expansion of the CRC's competence to resolve conflicts that arise in the contract execution phase if the establishment of the Administrative Courts is not foreseen in the short term. It should be noted that according to Article 45(1) of the RJCA, the administrative courts are competent to decide on questions of interpretation, validity or execution of administrative contracts, the Administrative Courts. However, in Cape Verde's judicial organisation, administrative courts have not yet been established. Accordingly, disputes arising from the execution of administrative contracts are decided by the Courts of General Jurisdiction.

- Recommendation for improvement on publishing information. In the absence of administrative courts and case law, as well as easily accessible publications for the study of Cape Verdean public procurement legal scholarship, publishing the CRC's decisions in the most relevant sources is particularly interesting. Both the legislation relevant to lodging an appeal (especially Decree-Law 28/2021) and the CRC rulings (jurisprudence) should be published in the same way on ARAP's websites and on eCompras or, if it is deemed safer to avoid discrepancies, eCompras should point to ARAP's "Legislation and Regulations" page. Knowing and studying these decisions will help all parties to interpret the law better, thus contributing to an increase in the quality of procuring entities' decisions and, eventually, to a reduction in conflict in public procurement.

Assessment criterion 13(b)(d):
exercises its legal authority to suspend procurement proceedings and impose remedies

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

According to PPC, Article 186 (Effects of claims and appeals), administrative claims and appeals suspend the effects of the following acts:

- contract negotiation;
- the award decision;
- contract execution.

The suspension is an automatic effect of accepting the claim or appeal by the entity in charge of ruling it.
In the body of the preliminary notice accepting the appeal, CRC shall notify the procuring entity (defendant) of the reasons for the suspension of the execution of the act i.e. negotiation of the contract, award decision or the conclusion of the contract, as the case may be.

With regard to challenging bidding documents PPC, Article 181(2) provides for this possibility but do not specifically regulate this matter (no specific rules on the time limits for lodging appeals and decisions, and the effects of such challenges). See above 13 (b) (c).

Gap analysis

See above 13 (b) (c)

Recommendations

See above 13 (b) (c)

Assessment criterion 13(b)(e):
issues decisions within the time frame specified in the law/regulations*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Based on the statistical information available, it can be safely concluded that the time it takes to decide appeals - usually used by those in favour of mechanisms for reviewing decisions by independent review bodies - is a recurring problem in Cape Verde. In fact, since 2015, when the current PPC came into force, the average duration of cases has been increasing. As admitted by the legislator in the preamble to Decree-Law 28/2021 (which amended the wording of the CRC Statute and, therefore, the aforementioned 2015 Decree-Law)

"(...) *from 2016 to 2019, the average delay in the CRC's decision-making process increased from 9.8 working days to 32 working days and, in 2020, this time has worsened, with some appeals pending with significant delays, in the order of six months*.". The legislator (in 2021) assumes that "the current model for the composition

and functioning of the CRC has therefore not allowed decisions to be taken in a timely manner, disrupting the processing and conclusion of tender procedures and, consequently, causing damage to those involved in the ARAP". Among the causes of the problem that the legislator has identified as likely to be remedied by the new legal act are the lack of legal consequences for non-compliance with deadlines by CRC members (now regulated in Article 31 of the CRC Statute) and efficient mechanisms for substitution and the enshrinement of tacit approval (now regulated in Article 51 of the CRC Statute).

According to PPC Article 188 (Deciding on claims and appeals) decisions are taken in accordance with the provisions of the law, which establishes all deadlines, from their filing, processing and decision.

The overall duration of the various stages of the appeal procedure prescribed by the law (18 days) is the sum of the following maximum time limits for one of the stages of the procedure:

- 24 hours after the appeal has been lodged and registered with the CRC, distribution to the rapporteur (Article 45 CRC);
- 48 hours to accept or reject the appeal (Article 46 CRC);
- candidates or tenderers who may be adversely affected by the lodging of the appeal to, if they so wish, plead their case on the grounds of fact and law of the appeal;
- 10 working days for the CRC to issue a decision/ruling.

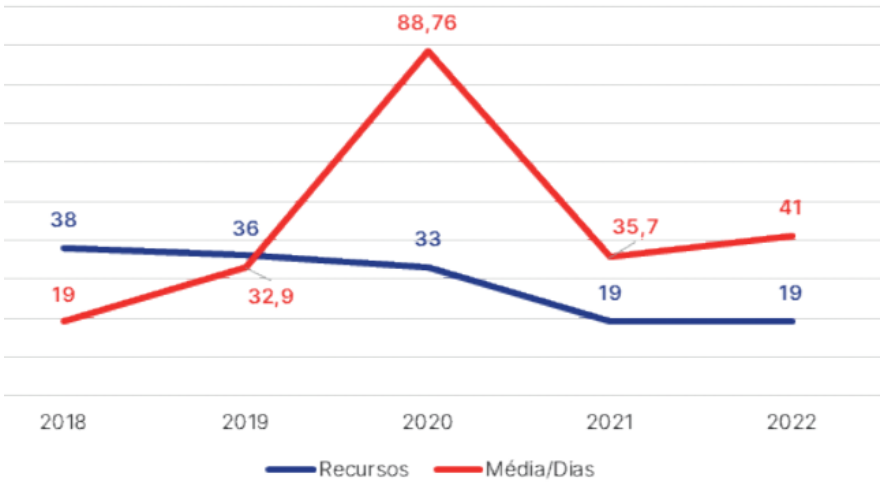
The CRC 2022 Report shows a situation that continues to deviate widely from the legal limits established for the duration of cases. In fact, the average length of appeal proceedings in 2021 (36 days) and 2022 (41 days) continue to exceed those legal limits. As said above [13(a)(d)] the average duration is around double the maximum duration set by law.

The issue is very relevant because, with the exception of cases of outright rejection (which is decided within the maximum legal time limit - 18 days), the pending appeal has the effect of suspending the effectiveness of a) the act of negotiating the contract; b) the decision to award the contract; and c) the act of concluding the contract, so the public procurement procedure cannot be concluded under these conditions and affects its total duration, from the date the decision to contract is taken until the contract is concluded.

Average duration of appeals (procedural pendency)

In its 2020 - 2021 Analytical Report, the CRC includes among its Final Recommendations the reference to "*Ensure greater efficiency in the processing of appeals, in order to decide within the timeframe stipulated in the CRC statute, in accordance with Regulatory Decree no. 012/2015 of 31 December. Speed up the processing of appeals to the CRC, so as not to paralyse the system and reduce the damage caused to ARAP stakeholders, ensuring compliance with the principle of the public interest*."
However, and the CRC does not mention the cause(s) of an average duration that is around double the maximum duration determined by law. this “recommendation” is too vague

After peaking in 2020 (89 days), the average pendency stabilised in 2021 (36 days) and 2022 (41 days).



Source: ARAP/CRC

Quantitative analysis

Quantitative indicator to substantiate assessment of sub-indicator 13(b) assessment criterion (e):
• appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).
Source: Appeals body.

Gap analysis

The intermediate timeframes above add up to a maximum legal timeframe for the conclusion of appeals of 18 days, so the average timeframes recorded in 2021 and 2022 were 36 days and 41 days respectively. The average duration is around double the maximum duration set by law.

Although this indicator refers to a relatively indeterminate concept of "unduly delays of the procurement process", the average duration of the appeals should be significantly reduced and comply with the maximum legal duration.

Recommendations

In order to significantly reduce the average duration of appeals before the CRC, it is recommended to reinforce of the human resources specialized in public procurement assigned to the CRC, constituting a technical body to support the CRC Members (who should continue to be responsible for deliberations).

Assessment criterion 13(b)(f):
issues decisions that are binding on all parties

Conclusion: No gap

Red flag: No

Qualitative analysis

CRC decisions are binding for all parties and become final in case an appeal to court is not lodged within 30 days from its notification to appellants. There have been no legal challenges to the CRC's decisions to date.

Gap analysis

Recommendations

Assessment criterion 13(b)(g):
is adequately resourced and staffed to fulfil its functions.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
The CRC is composed of three members (CRC Statute Article 5) and in case of impediment or absent they are replaced by ARAP Board members on a interim basis. It is necessary to provide the CRC with more resources - which are already shared in transversal functions with ARAP – in order to avoid further degradation of the average time length of complaints.

Gap analysis

Same as 13 (b) (e)

Recommendations

Same as 13 (b) (e)

Sub-indicator 13(c)
Decisions of the appeals body
Procedures governing the decision making process of the appeals body provide that decisions are:

Assessment criterion 13(c)(a):
based on information relevant to the case.

Conclusion: No gap

Red flag: No

Qualitative analysis

CRC Statute, Article 9 to 19 (General principles) enunciam principios dos quais decorre que as decisões têm que se basear, e apenas se podem basear em informação, ou mais especificamente, em prova trazida para o processo pelas Partes (principio da colaboração, CRC Artigo 17) ou requerida e obtida pela CRC (principio do inquisitório, CRC Art 12)

Sampled CRC decisions – all rulings issued between 2020 and 2023 - demonstrate that decisions are rendered on the basis of available evidence submitted by the parties and obtained by the CRC and taking due consideration of the allegations submitted by the parties.
From a technical legal point of view, the decisions are very well structured and include the following sections:

- Summary of the facts

- Defendant's plea (if any) or mention that, notified to do so, it did not submit any;
- Analysis and reasoning
- Decision

Following this structure when making decisions involves (i) the need to gather and analyse sufficient evidence, (ii) the need to receive and analyse objections the defendants may submit in the exercise of their right to defence, which results from the enshrinement of the principles of fairness and impartiality (CRC, Article 14) and cooperation (CRC, Article 17) and (iii) lasty but not least to the need to give proper reasons for decisions.

Gap analysis

Recommendations

Assessment criterion 13(c)(b):
balanced and unbiased in consideration of the relevant information.*

Conclusion: No gap

Red flag: No

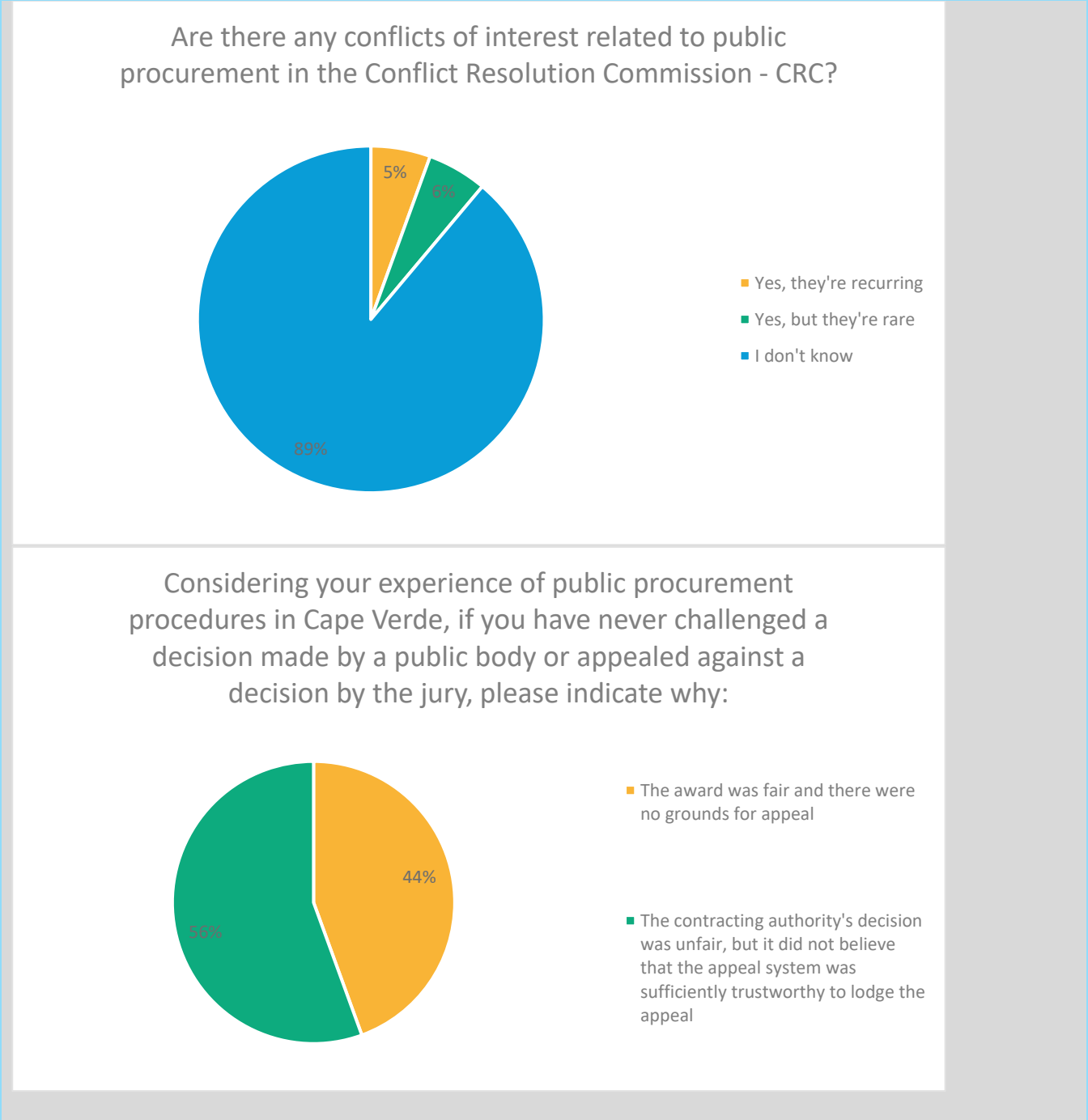
Qualitative analysis

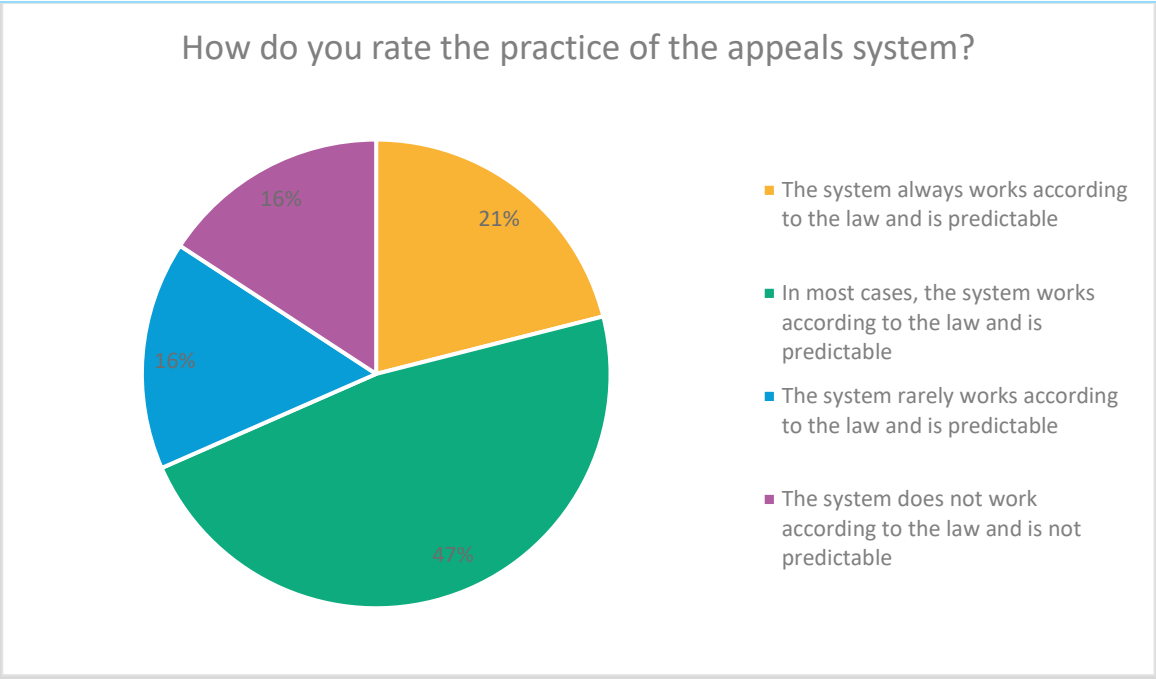
See above 13 (c) (a)

Quantitative analysis

Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):
- share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey.
- share of suppliers that perceive appeals decisions as consistent (in % of responses).
Source: Survey.

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





Gap analysis

Recommendations

Assessment criterion 13(c)(c):
result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*

Conclusion: No gap

Red flag: No

Qualitative analysis

As explained in 13 (a) (c), the CRC uses the powers conferred on it by its statute to resolve conflicts, It should be emphasised that, to date, the rate of acceptance of its decisions, expressed by the absence of any judicial appeal, is 100%.

Quantitative analysis: see 13 (a) (c)

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).*
Source: Appeals body.

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Gap analysis
Recommendations
Assessment criterion 13(c)(d): decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*
Conclusion: No gap
Red flag: No
Qualitative analysis CRC, Article 19 (Principle of publicity) states that the decisions of the CRC must be published on ARAP's website, without prejudice to other forms of publicity provided for in the applicable legislation or determined by ARAP's Board of Directors. In the same vain, CRC Article 53 provides that resolutions and reports and reports of the CRC relating to administrative appeals shall be published on the ARAP website, and may also be determined other means of communication. Although the law does not stipulate a specific deadline for publication, it normally takes place on the date the final decisions are notified to the parties. In fact, all resolutions are published - 100 per cent. This includes the very good practice of publishing a summary of each case, with essential information about the parties, the subject-matter of the appeal and the decision itself, the key facts and the legal assessment, and the full decision document.
Quantitative analysis *// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):* *- share of appeals decisions posted on a central online platform within timelines specified in the law (in %).* *Source: Centralised online portal.** The quantitative indicator is presented in the qualitative analysis above.
Gap analysis
Recommendations Recommendation for improvement: see 13 (b) (c)

Indicator 14. The country has ethics and anticorruption measures in place

Sub-indicator 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 criterion 14(a)(a):

definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The criminal and administrative offence rules in Cape Verde's legal system applicable to prohibited practices in the field of public procurement ensure a sanctioning framework that is considered adequate, always guaranteeing compliance with the principles of criminal law, namely the principle of legality, innocence (*in dubio pro reu*) and the right to defence, proportionality in the application of penalties, etc.

Despite the notorious efforts of the Superior Council of the Judiciary (CSMJ) to improve judicial statistics, the data available on judicial activity, particularly in the criminal justice system, does not provide us with any information on convictions and acquittals in relation to fraud, corruption and other criminal offences and their relationship with public procurement. Chapter 4 of the Report on the Situation of Justice 2022/2023 only offers us aggregate statistics on the number of cases - entered, processed, concluded, by year - but no breakdown by "type of crime" or connection with "public procurement".
Regarding legally binding international anti-corruption agreements, the United Nations Convention against Corruption (UNCAC), to which Cabo Verde is signatory (2003) and has ratified (2008) [28], provides a framework for shaping national public procurement legislation. The UNCAC calls for the establishment of appropriate systems of public procurement based on the fundamental principles of transparency, competition, professionalism and objective criteria in decision-making.

Article 9 (1) states that 'Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.'

As this evaluation shows, and even though it needs to be improved in some respects, Cape Verde's national public procurement system generally fulfils the requirements imposed by the UNCAC, both in terms of the legal framework - based on a PPC that regulates the contract formation phase and an RJCA that regulates its execution – a balanced institutional model and a functioning appeals system. From the point of view of enforcement, the system is adequate in that it provides, depending on the seriousness of the offences, for the application of mere administrative sanctions through to criminal sanctions.

[28] https://www.unodc.org/unodc/en/corruption/ratification-status.html

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PPC, Article 2, provides definitions of "corruption", "fraud", collusion" and "coercion" as prohibited practices subject to criminal prosecution.

- "Corruption" means offering, delivering, receiving or soliciting, directly or indirectly, to procuring entities, to entities responsible for conducting procurement procedures, to the jury or to any entities involved, anything of value with the intention of improperly influencing the action of a third party; [Article 2 (m), PPC];
- "Fraud" means falsifying or omitting facts, which intentionally or recklessly misleads or attempts to mislead a party, with the aim of obtaining a financial or other benefit, or with the intention of avoiding fulfilment of an obligation [Article 2 (q), PPC];
- "Collusion" means entering into collusion with other competitors in order to adversely influence a procurement process, in particular by agreeing prices or otherwise distorting healthy competition [Article 2 (j), PPC];
- "coercion" means directly or indirectly harming, damaging or threatening persons or property in order to improperly influence their participation in a public procurement procedure [Article 2 (j), PPC].

PPC, Articles 189 to 193 and the relevant provisions of the Penal Code provide a clear sanctions regime applicable to all participants in public procurement activities.

The following stand out as offences potentially committed by tenderers and candidates (Article 189 PPC)

- According to Article 189 PPC, the following constitute **very serious administrative offences**: (i) the participation of a candidate or tenderer despite the impediments mentioned in Article 70, PPC, either at the time of submitting the application or tender or at the time of concluding the contract, (ii) the submission of false qualification documents and (iii) the making of false declarations during the contract formation phase (during the procedure).
- It is a **serious administrative offence** (i) to fail to provide a guarantee of the proper performance of the contract in the time and under the terms laid down in the PPC, (ii) in case the candidate or tenderer is a group, if members do not join before the contract is concluded in the legal form laid down in the tender programme.
- It is a **simple administrative offence** (i) to breach the provisions of Article 69 (2), according to which candidate or tendering group members may not submit a candidature or tender in the same procedure nor be part of another candidate or tendering group. (ii) to fail to appear on the day, at the time and place fixed for the contract award.

The following stand out as offences potentially committed by representatives of procuring entities (Article 193 PPC)

- The following are **severe administrative offences:** (i) The adoption of direct award procedures in clear and notorious violation of the rules of this Code, (ii) The adoption of discriminatory and distortive rules in the procurement documents to benefit or harm a particular economic operator or category of economic operators; (iii) failure to comply with the decision of the Dispute Resolution Committee, without prejudice to recourse to the courts, (iv) failure to require, where legally required, proof of specific professional qualifications or authorisations or membership of certain professional organisations (v) failure to require the successful tenderer to provide a security to guarantee the maintenance of the tender and the proper performance of the contract, where such a security is legally due.
- It is a **serious administrative offence** to (i) breach the duty of confidentiality laid down in PPC Article 21, (ii) make false declarations.

- It is a **simple administrative offence** to fail to appear on the day, at the time and place set for the contract award.

The administrative offences described above are subject to fines proportional to the seriousness of the offence and are set in accordance with the minimum and maximum amounts laid down in PPC Articles 189 and 193.

PPC, Article 194, which deals with sanctions for unethical behaviour, is critical. This rule explicitly prescribes that those involved in the National Public Procurement System, namely those who are interested in or responsible for conducting the procedure, the jury, public administration officials, and economic operators, may not commit acts of corruption, fraud, collusion, coercion and obstruction, under penalty of exclusion of the tender, or expiry of the award.

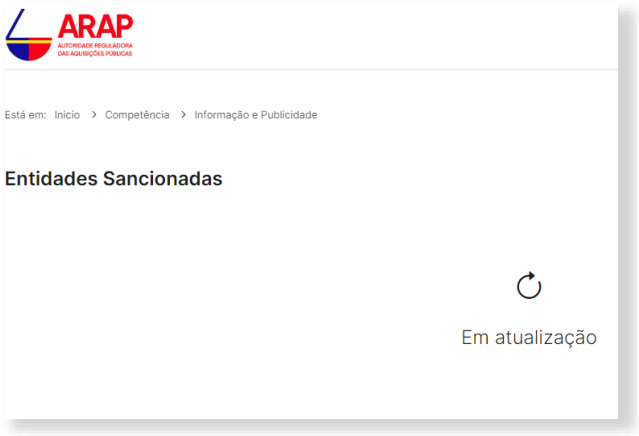
The practice of these acts thus falls under different levels of responsibility depending on the seriousness of the offence:

- It may give rise to the imposition of **fines**, which, in the case of tenderers, candidates or contractors, may be cumulated with the **accessory sanction of prohibition to participate** in procurement procedures (Article 190 PPC); and
- It may give rise to **criminal proceedings**.

Gap analysis

- The solution adopted in Article 190 (1) of the PPC allows the sanction of deprivation of the right to participate in public procurement to be applied without defining a maximum duration for this sanction, which does not seem to be fair. A maximum duration for the sanction should be introduced.

- Despite the provisions of Article 191 of the PPC, according to which the definitive decisions imposing the accessory sanction provided for in the previous article shall be publicised on the public procurement portal and on the ARAP website, the information is not available. The same happens on the public procurement portal eCompras.



- Article 190 (3) provides that the **accessory sanction** referred to in the previous paragraph must be fixed according to the seriousness of the offence and the fault of the perpetrator, **as determined by regulation of the authority competent to apply it.** Such regulations are not enacted.

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

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system

Recommendations

- Revise Article 190 (1) PPC to introduce a maximum limit for the duration of the ancillary sanction of a ban on participation in public procurement
- Promote the publication of information of a sanctioning nature - synchronously - on ARAP and eCompras websites. When there is no publishable content, information should be given to the effect that "at the moment there is no information to be published" instead of showing the page "under update".
- Producing the regulations referred to in Article 190 (3) of the PPC.

Assessment criterion 14(a)(b):
definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.

Conclusion: No gap

Red flag: No

Qualitative analysis

In addition to the sanctions described in 14(a)(a), it should be borne in mind that the activities carried out in the field of public procurement are, both on the side of the economic operators (bidders, candidates, contractors) and on the side of the procuring entities (public officials and their managers at both administrative and political levels), subject to the application of the Criminal Code when the offence is criminal in nature.

The most relevant offences in the context of activities related to public procurement that constitute a crime and the limits of the penalties (measure of responsibility) to be applied by the criminal courts are briefly described below:

The practices referred to in the selected definitions provided by PPC Article 2 – corruption, fraud, and coercion - have direct expression in the Criminal Code (approved by Law 117/IX/2021 de 12/05/2021 as amended by Law 18/X/2023):

Corruption.

The offence of passive corruption (Article 363, Criminal Code). The article provides that:

"1. An official who, directly or through an intermediary, requests or accepts, for himself or for a third party, money or any other gift, or the promise thereof, in order to perform or refrain from performing an act contrary to the duties of his office, shall be punished with imprisonment from 2 to 8 years, if his intention is realised, and imprisonment from 6 months to 3 years or a fine of 80 to 200 days, otherwise.
2. If the acts described in the previous paragraph are carried out in return for a lawful act or omission, the official shall be punished with imprisonment from 6 months to 3 years or a fine of 80 to 200 days.

3. An official of a public international organisation who, directly or through an intermediary, requests or accepts, for himself or for a third party, money or any other gift, or the promise thereof, in order to perform or refrain from performing an act in the exercise of his duties, shall incur the same penalty.
4. The penalties provided for in the preceding paragraphs shall be increased by half their minimum and maximum limits if the acts are carried out by a judicial magistrate or public prosecutor."

The offence of active corruption (Article 364, Criminal Code). The article provides that:

"1. Anyone who, directly or through an intermediary, offers or promises money or any other gift to an official or to a third party with their knowledge, for the purpose indicated in paragraph 1 of the preceding article, shall be punished with imprisonment from 6 months to 4 years.

2. The same penalty shall apply to anyone who, directly or through an intermediary, offers or promises money or any other gift to a foreign public official or an official of a public international organisation, to perform or refrain from performing an act in the exercise of their duties, with a view to obtaining or retaining business or another undue advantage.
3. If the purpose is as indicated in paragraph 2 of the previous article, the penalty shall be imprisonment of up to 6 months or a fine of up to 80 days "

Fraud. The Criminal Code provides for various types of fraud, including the following offences:

Offence of Infidelity (Article 220, Criminal Code) which states that: "Whoever, having been entrusted by law or legal act with the task of disposing of the property interests of others or administering or supervising them, intentionally and in serious breach of his duties causes significant property damage to those interests, shall be punished with imprisonment from 6 months to 3 years or with a fine of 100 to 300 days, if a more serious penalty is not imposed by virtue of another legal provision. "
If the interests relate to the public sector of the economy, the penalty will be increased by one third at its minimum and maximum limits.

Offence of manipulating a public auction or tender (Article 226, Criminal Code), which states that: "1. Whoever, with the intention of obtaining a pecuniary advantage for himself or for a third party, prevents, adulterates or prejudices the results of a judicial sale or auction or of another public sale or auction authorised or imposed by law, as well as of a tender governed by public law, by obtaining, by means of a gift, promise, by means of a gift, a promise, a threat of significant harm, an understanding or any other deception or fraudulent means, that someone does not bid or compete, or in any way jeopardises the freedom of the respective acts, shall be punished with imprisonment of up to 3 years or with a fine of 80 to 200 days, if a more serious penalty does not apply by virtue of another legal provision. The same penalty shall apply to anyone who, with the intention referred to in the previous paragraph, accepts a gift, promise or any benefit or advantage of property."

Concussion. Article 368 of the Criminal Code defines the crime of concussion as follows:

" 1. An official who, abusing his position, or by inducing error or taking advantage of the victim's error, demands or causes to be paid or delivered unduly a contribution, fee, emolument, duty, fine or penalty, shall be punished with imprisonment of up to 3 years or with a fine of 80 to 200 days.
2. If the act is carried out for the benefit of the perpetrator, the penalty shall be imprisonment for 1 to 5 years.

3. If the offence is committed by means of violence, threat of violence or serious harm, the penalty shall be increased by one third in its minimum and maximum limits, if a more serious penalty does not apply by virtue of another legal provision."

Coercion. The crime of coercion (Article 137 of the Criminal Code) is committed by: "Whoever, by means of violence, threat of serious harm or disclosure of a fact that is offensive to honour or consideration, forces another person to perform an action or omission, or to endure an activity, shall be punished with imprisonment from 6 months to 3 years, if a more serious penalty does not apply by virtue of another legal provision.".
The penalty is imprisonment for 2 to 5 years if the coercion is carried out with the threat of a criminal offence or by an official who seriously abuses their functions and authority, or if the victim attempts suicide or commits suicide.

The Code of Conduct [29] (adopted by Decision 7/2017 of the Executive Board of ARAP) enshrines the principles and values of professional ethics to be observed by all persons who, in the performance of their duties, intervene in the National System of Public Procurement. The Code has the merit of addressing procuring entities (designated as "public actors") and candidates, tenderers and contractors (designated as "private actors"), recognising that both "sides of the market" i.e. demand and supply, are critical to the pursuit of the aims of public procurement. And that doesn't leave out ARAP itself, whose staff are also obliged to comply with the Code.
The Code of Conduct is part of an international policy to combat corrupt practices and seeks to adhere to the "Guide to Good Practices for Preventing and Combating Corruption in Public Administration" of the Strategic Internal Control Bodies of the Community of Portuguese-Speaking Countries (OECI-CPLP).
Regarding the so-called Public Actors, the Code reproduces some of the principles already set out in other legislation, namely Article 9 (Principle of Legality and the Pursuit of the Interest), Article 10 (Principle of Equality and Non-Discrimination), Article 11 (Principle of Good Administration and Efficiency), Article 12 (Principle of Confidentiality), Article 13 (Prevention of Corruptive Pathologies).
As far as private actors are concerned, the Code sets out principles in Article 14 (Integrity and Fair Competition), Article 15 (Environmental and Social Responsibility), Article 17 (Prohibition of Collusion) and Article 18 (Coercive Practices).
Although all these rules lack the binding force of laws, the relatively innovative nature (within the framework of the national public procurement system) of Article 15 is worth emphasising. According to this provision, the Private Actors in the National Public Procurement System must be guided in their actions by the principles of social and environmental responsibility and sustainability, adding that in the provision of goods and services, economic operators must strive to comply with the assumptions of Socially Responsible Public Procurement, and must, in particular, comply with workers' rights, such as those affirmed in the Fundamental Conventions of the ILO, and the Rights of the Child, as well as other national legislation on labour matters, including the right to a minimum wage, health and social security.
The Code of Conduct and its observance does not, of course, affect the need to respect the relevant legislation, in particular the regulatory framework which governs public procurement and the conduct of public officials, in particular the Disciplinary Statute of Administrative Officers and the one that provides for the different modalities of civil, financial, disciplinary and criminal responsibility.
Finally, Decree-Law 2/95 establishes the legal regime of the public administration a fortiori applicable to public procurers. This act comprises provisions dealing with impediments, suspicions, conflicts of interest, incompatible private functions, either of public senior managers or other civil servants.

[29] The Code of Conduct is not a legal act, but a set of guidelines and indications issued by the regulatory body, ARAP..

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

Gap analysis
Recommendations
Assessment criterion 14(a)(c): definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis Law 139/IV/95 (Public Control of Wealth of Political Office Holders) applies, in addition to politicians, to (i) presidents of public institutes, (ii) executive directors, and directors general of public services, (iii) public managers, and (iv) members of the board of directors of public or mixed capital companies appointed by a public body. Article 3 lays down the obligation to submit a declaration of interests, assets and income in the following terms: – Up to 30 days after taking up the post, at the beginning of the term of office; – By 30 January each year, an update with reference to 31 December of the previous year; – Up to 30 days after leaving office, an update with reference to the date of leaving office. It should be emphasised that 60 days after the deadlines mentioned above, any citizen can request, in writing, to see the declarations of interests, assets and income [Article 5 (1)], and their disclsoing is authorised under well-defined rules (Article 8). The declaration of interests, assets and income must include, concerning the holder of political office and equivalent, and the respective spouse or recognised partner: – A description of the assets, namely real estate, quotas, shares or other holdings in the capital of civil or commercial companies, bonds, public debt securities, current or term bank accounts, rights over boats, aircraft or motor vehicles, financial investments and credit rights worth more than 500,000$00; – A description of the respective liabilities, namely with the State and other public entities, private individuals, credit institutions or others of a similar nature; – Indication of gross taxable income for income tax, as well as other income even if exempt from such taxation; – Indication of contracts with public entities, whatever their nature and their respective subject matter and values; – Indication of the accumulation of public functions or public and private functions and respective authorisations when required by law; – An indication of the professional associations or other public or private associations of which he is or has been a member in the previous two years; – Indication of any corporate or statutory positions held in the previous two years. – The declarations are delivered to and archived by the Supreme Court of Justice. Law 14/Viii/2012 of 11 July (as amended by Law 103/VIII/2016 of 6 January), which approves the **Legal Framework for Independent Regulatory Entities**, applicable to ARAP, establishes in its Article 47 the system of incompatibilities and impediments:

- No person may be appointed to the Board of Directors who is or has been a member of the Government or a member of the management bodies of the regulated entities in the last two years, or is or has been an employee or permanent collaborator of these entities in management positions in the same period;
- During their term of office, members of the Board of Directors may not hold any other public office or professional activity except part-time teaching positions in higher education;
- After the end of their term of office, members of the governing and management bodies of the regulatory authorities shall be barred for a period of one year from carrying out any duties or providing any services to the regulated authorities.

The **ARAP Code of Conduct** (adopted by the ASRAP's Board of Directors' Decision 7/2017) and the **Disciplinary Statute of Administrative Officers** comprise this kind of provision applicable to top managers of public entities and holders of political functions, as well as all civil servants.

Auditors of the Court of Auditors are bound by the Code of Ethics of the Court of Auditors approved by Court of Auditors Resolution 04/TC/2015 of 16 April. According to such Code, auditors must declare the (in)existence of a conflict of interest regarding the audits in which they intervene and the entities audited.

Gap analysis

Article 30 of Decree-Law 28/2021 of 5 April (CRC Statutes) provides that the same impediments and incompatibilities set out in the general legal regime for independent regulators in the economic and financial sectors (Article 47 (3) of Law 14/Viii/2012 of 11 July) and in ARAP's Statutes (Article 26) apply to CRC members and to members of ARAP's Board of Directors. CRC members may only carry out part-time teaching duties in higher education during their term of office. [Article 47 (3) of Law 14/Viii/2012 of 11 July]

At the same time, the members of the CRC are admitted to office, after recruitment and selection by public tender, under **a civil contract for the provision of services**. ARAP's Board of Directors may, at any time, terminate the contract for the provision of services of any member of the CRC, for just cause **or convenience of service**, **paying in the latter case, compensation corresponding to the respective remuneration falling due, up to a maximum of three months**.

It is not clear why this service contract should be governed by civil law and not by the PPC and RJCA, since the appointment of individuals to carry out functions such as those included in the CRC's mission is perfectly compatible with (i) the option of appointing civil servants, such as magistrates and public prosecutors, or, in this case, with (ii) the option of entering into a public service contract. This aspect needs to be explored further, especially in view of the provisions of Article 4 (2) (a) PPC, according to which the PPC does not apply to contracts for the acquisition of arbitration and conciliation services.
Our understanding is that this exclusion should be abandoned, although mitigated with the possibility of resorting to direct award for the choice of providers for material reasons (if deemed necessary by the procuring entity).
Since the CRC Statute already provides for a public tender to be held for the selection of CRC Members, the only relevant matter is the subjection of the contracts that regulate their activity to public procurement law.
The grounds for terminating the contract " for convenience of service" " combined with the provision for payment of the sums received until the end of the mandate - therefore excluding the assumption of fault or just cause - do not constitute the best conditions for binding members with regard to the guarantee of independence, which Article 8 (2) merely mentions in general terms, by saying that "in the exercise of its competences, the CRC shall enjoy full technical independence and autonomy".

Although it is consensual that we are not, as we could not be under the Constitution, before a court or even a quasi-judicial body, it must be admitted that, even as a body within ARAP (which is also bound by the duty of independence), the CRC should be as independent as possible, and such independence should include but not be restricted to the so-called technical autonomy component.

  - Restrict the unilateral discretionary right of ARAP's Board of Directors to terminate contracts with CRC Members;
- Revoke PPC Article 4 (2) (a) terminating the exclusion of service contracts for arbitration and conciliation services from the application of the PPC.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

It recommended to :

- Gauging the advantages of opting for a different type of binding relationship, less precarious than the one offered by service contracts governed by Civil Law;
- Amending the CRC Statutes to:
  - Submit the services contracts to the application of the PPC and RJCA regime (public services acquisition contracts instead of civil services contracts);
  - Restrict the unilateral discretionary right of ARAP's Board of Directors to terminate contracts with CRC Members;
- Revoke PPC Article 4 (2) (a) terminating the exclusion of service contracts for arbitration and conciliation services from the application of the PPC.

Sub-indicator 14(b)
Provisions on prohibited practices in procurement documents

Assessment criterion 14(b)(a):
The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPC provides for the definition of several prohibited practices e.g. corruption, fraud, collusion, coercion, (PPC, Article 2) and sets out the "Penalties for unethical conduct of procurement (PPC, Article 194 which is by nature a provision of criminal law). Although there are no specific provisions nor instructions compelling procuring entities to include explicit references to prohibited practices in the procurement documents (from bidding to contracting), Article 71 PPC prescribes that parties interested in participating in the public procurement procedures shall submit along with their application or bid, a statement (self-declaration) according to the template in the **Annex IV to PPC** to the effect that they are not in any of the situations set out in Article 70 PPC (Impediments to candidates and bidders), which includes references to crimes or offenses relating to their professional conduct, crime of participation in a criminal organization, corruption, fraud or money laundering.
Last but not least, the legal value of this self-declaration is well expressed in its paragraph 3, which reads: "*The declarant is fully aware that making false declarations entails, as the case may be, the exclusion of the candidature or the tender or the expiry of the award, as well as constituting a very serious administrative*

offence, which may result in the application of the ancillary sanction of deprivation of the right to participate, as a candidate, as a competitor or as a tenderer, as a member of a bidding or competing group, in any procedure adopted for the award of public contracts, without prejudice to reporting the matter to the competent authority for criminal prosecution."
So, in conclusion, the PPC guarantees that participants expressly state in writing that are no impediments to participate in the specific public procurement procedure related to their conduct.

Gap analysis

Recommendations

Assessment criterion 14(b)(b):
Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.

Conclusion: No gap

Red flag: No

Qualitative analysis

Pre-award stage (bidding documents)

There are references to prohibited practices in the above-mentioned statement/self-declaration foreseen in Article 71 PPC (referring to the Annex IV PPC), about the inexistence of impediments to the participation in the procurement procedure.

Post-award and implementation phase (contract)

The mentioned self-declaration covers also the post-award and implementation phase because the legislator has provided in Article 71 (2) PPC that the successful tenderer must also submit, within ten days of notification of the award decision, a new declaration in accordance with the model in Annex IV and documents proving that he is not in the situations indicated in Article 70 (1) PPC (f). This point f) is precisely the one that declares as barred a candidate or competitor who "*has been convicted, or, in the case of legal persons, the members of the management or administrative bodies in office have been convicted, by a final judgement, of the crime of participating in the activities of a criminal organisation, corruption, fraud or money laundering, or, if the procedure is aimed at concluding a works contract or a public works concession contract, for committing offences which, under the terms of the legal regime for access to and permanence in the construction activity, prevent access to that activity*. "
Therefore, from a material point of view, the production of the updated self-declaration after the award of the contract and as a requirement for the contract signing has an equivalent effect to the mere mention or reproduction of rules in the body of the contract.

Gap analysis

Recommendations

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

Sub-indicator 14(c)
Effective sanctions and enforcement systems

Assessment criterion 14(c)(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.

Conclusion: No gap

Red flag: No

Qualitative analysis

Duty to report offences (Criminal Code and Criminal Procedure Code)
Under the terms of article 60 of the Criminal Procedure Code, (Republished by Law no. 71/2021 of 08/07/2021 with the wording given by Law 12/X/2022), "the report to the Public Prosecutor's Office is mandatory, (...)". Any person may report to the Public Prosecutor's Office any offence they are aware of, provided that the procedure does not depend on a complaint or participation or that the prosecution does not depend on private accusation.
Any report made to any organisation other than the one competent to prosecute shall be immediately forwarded to the latter. The report may be made verbally, in writing or by any other means of communication, and shall contain, whenever possible, a brief statement of the facts and circumstances in which they occurred and which may be of interest to the criminal proceedings, the identification and other relevant details of the perpetrators of the crime, the identity of the offended parties and the names, residence and any other relevant details of any witnesses or other evidence.

Whistleblowing in public administration
In general, in the exercise of the Civil Service, officials and agents are subject not only to the duty to take disciplinary action, under the terms of the law, in relation to offences committed by their subordinates, but also to report to higher authorities those that require the intervention of other authorities (Article 14(x) of Law 20/X/2023 on the Legal Framework for Public Employment).

Duty to report prohibited practices (administrative offences and crimes) in the PPC
Article 19 PPC (Principle of liability) provides that procuring entities and their officials shall be held civilly, financially and disciplinarily responsible for and disciplinary action for acts which contravene the provisions of the PPC. Such acts must be communicated to ARAP without prejudice to the other communications required by law (including reporting offences to the Public Prosecutor's Office for prosecution).

In the Code of Conduct, 2017 (issued by ARAP)

Article 13 (3) and (4), on the prevention of "corruptive pathologies", establishes the duty to denounce and the sanction for the violation of this duty (omission), which can be of a disciplinary or criminal nature, depending on the case. In the event of any of the behaviours which may constitute a criminal and/or disciplinary offence, ARAP and the competent disciplinary authority, as appropriate, must be informed, providing all evidence and reporting all facts of which they are aware that indicate a suspicion of fraud, corruption, obstruction, coercion or any other harmful illegal activity.

Gap analysis

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

Recommendations

Assessment criterion 14(c)(b):
There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is a general lack of judicial statistical data showing a distribution of cases by type of offence and their connection with acts or omissions committed, in whole or in part, in the field of public procurement. This makes it impossible to formulate an idea of how many cases originated from the allegation of a fraud or corruption offence, what the outcome was in terms of convictions and acquittals, what the average duration of the cases was, etc. It should be emphasised that the lack of this basic statistical information prevents the assessment and analysis of trends and makes it impossible to quantitatively evaluate the prevention and combat policies in place.

Gap analysis

There is a general lack of judicial statistical data showing a distribution of cases by type of offence and their connection with acts or omissions committed, in whole or in part, in the field of public procurement.

Recommendations

It is recommended:

- To enhance the production, treatment and access to judicial statistical data;
- To enable and make the access to case law easy for legal professionals, public procurers and public at large including :
  - Setup a database and provide free and wide access to court decisions which should be searchable by subject matter, connections with public procurement related acts or omissions, year, defendant(s), ruling (outcome), appeals, average duration, etc.
  - Provide access to full editable texts of court judgements available (key for law enforcement practioners, lawyers and in-house legal advisors of procuring entities, academia, etc)
- That ARAP promotes, in partnership with the Superior Council of the Judiciary, the Bar Association and the Academia, the thematic treatment of court rulings (criminal and civil) that are most closely related to public procurement, making the results of this work available to the general public and the national legal community.

Assessment criterion 14(c)(c):
There is a system for suspension/debarment that ensures due process and is consistently applied.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

<u>The legal framework</u>

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

Suspension and debarment are dealt with in the PPC in **Article 190**, which states that, "*Simultaneously with the fine imposed for an administrative offence, the offender may be imposed an accessory sanction of deprivation of the right to participate, as a candidate, as a competitor or as a member of a candidate or competitor group, in any procedure adopted for the formation of public contracts, when the seriousness of the offence and the fault of the agent so justify.*".

As this is a sanctioning rule, Article 190 (3) implies a principle typical of criminal law and states that "the accessory sanction referred to in the previous paragraph shall be fixed according to the seriousness of the offence and the fault of the agent, as determined by regulation of the authority competent to apply it.".

With regard to the guarantees of defence and due process, several legal provisions should be highlighted as applicable when ARAP intends to exercise the sanctioning power provided for in Article 190 PPC:

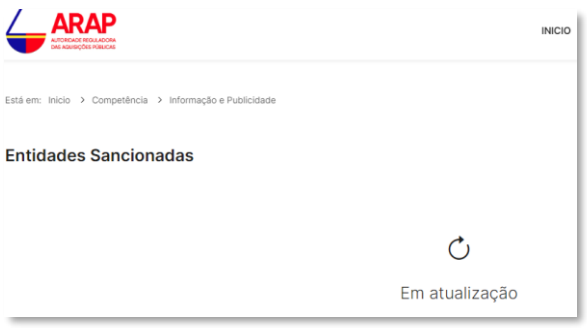
- Article 17 (1) (b) of the ARAP Statute - as amended by Decree-Law 28/2021 of 5 April - gives ARAP the power to "proceed with the initiation and investigation of administrative offence proceedings, as well as the imposition of fines and ancillary sanctions for administrative offences committed by ARAP participants, namely those responsible for conducting procedures, public administration officials and economic operators, in accordance with the provisions of the CCP, the general legal regime for administrative offences and other applicable legislation;

- considering that the accessory sanctions provided for in Article 190 of the PPC inherently affect the rights of individuals and companies the duty to substantiate decisions (Article 142 CPA 2023) applies. Insofar as such decisions are administrative acts that totally or partially deny, extinguish, restrict or in any way affect legally protected rights or interests, or impose or aggravate duties, obligations or sanctions, must state the reasons on which they are based.

- Article 11 CPA 2023 (Principle of collaboration with private entities) provides that public administration bodies must ensure the participation of private entities – both natural and legal persons - in the formation of decisions that affect them (…) and guarantee them the right to a prior hearing.

In practice

As expressly admitted in its Annual Regulation Report 2022, ARAP only began to implement sanctioning powers in 2021 with the creation of an Administrative Offences Office, which began to set up procedures to make them effective.
In practice, two years on, there have been no practical results from this measure. The ARAP website continues, as with the List of Ineligible Entities, to display the message that it is "being updated", which is not accurate as there is no content to update:



Gap analysis

The powers provided for in Article 190 PPC are not being used. Alongside the practical application of Article 72 PPC (List of ineligible entities), it is necessary for ARAP to start exercising its sanctioning powers (Articles 189 and 190 PPC), for which it is only necessary to provide specialised staff in adequate numbers and qualifications. From a strict legal point of view the system already offers some guarantees of due process (PPC, CPA 2023, Framework Law on Administrative Offences), but it could be useful, for easier application, to introduce specific procedural rules in the area of declaring or verifying ineligibility, as well as in the area of sanctions.
It is also needed to add a maximum duration limit to the sanction of debarment from participating in public procurement procedures as recommended above in 14 (a) (a).

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system

Recommendations

- Consider the need to introduce specific procedural rules in the PPC to regulate the exercise of rights of defence - means of defence and evidence, time limits, etc - both in the area of the procedure for declaring the existence of an impediment to participation (Articles 70 to 72 PPC) and in the area of sanctions (Articles 189 and 190 PPC), if it is considered that the mere combined application of the rules of the PPC, the CPA 2023 and the Framework Law on Administrative Offences (Decree-Law 9/95) does not offer sufficient protection;
- Add a maximum duration limit to the sanction of debarment (Article 190 PPC) from participating in public procurement procedures as recommended above in 14 (a) (a).

Assessment criterion 14(c)(d):
There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*

Conclusion: Substantive gap

Red flag: Yes

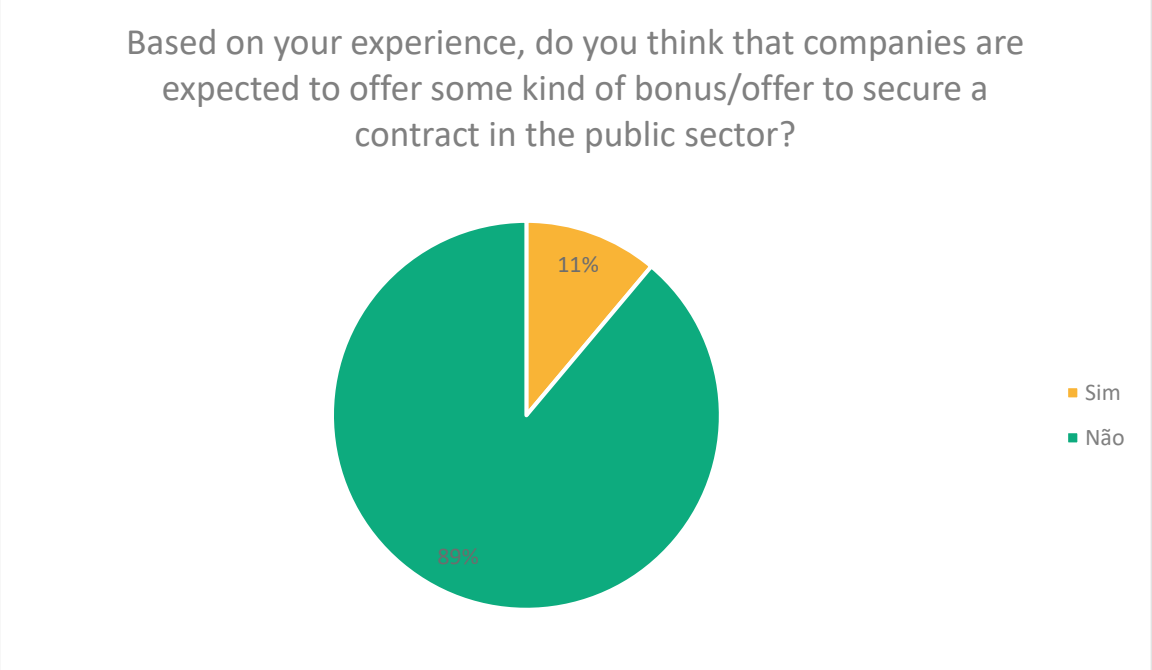
Qualitative analysis

Same as 14 (c) (b) above

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):*
- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).
Source: Normative/regulatory function/anti-corruption body.
- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.
Source: Normative/regulatory function/anti-corruption body.
- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).

Source: Survey.



Gap analysis

Same as 14 (c) (b) above

Recommendations

Same as 14 (c) (b) above

Sub-indicator 14(d)
Anti-corruption framework and integrity training

Assessment criterion 14(d)(a):
The country has in place a comprehensive anti-corruption framework to prevent, detect and 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.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

According to Transparency International's Corruption Perception Index published by Transparency International[30], Cape Verde obtained a score of **60/100**[31] in 2022, which places it among the top performers in the region but also reveals that there is still much room for improvement.

[30] https://www.transparency.org/en/

[31] The Corruption Perceptions Index (CPI) is the most widely used global corruption ranking in the world. It measures how corrupt each country's public sector is perceived to be, according to experts and businesspeople. A country's score is the perceived level of public sector corruption on a scale of 0-100, where 0 means highly corrupt and 100 means very clean. A country's rank is its

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

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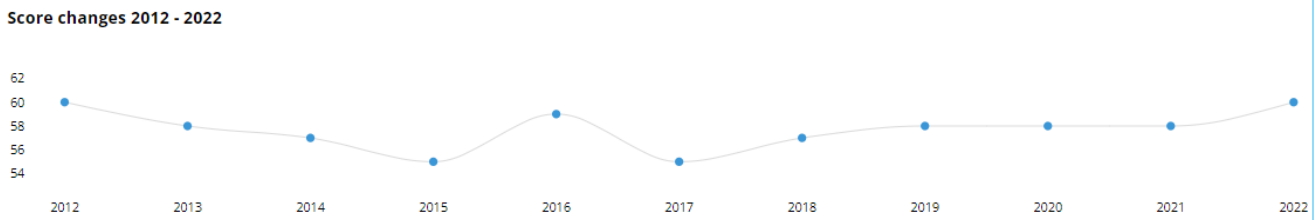
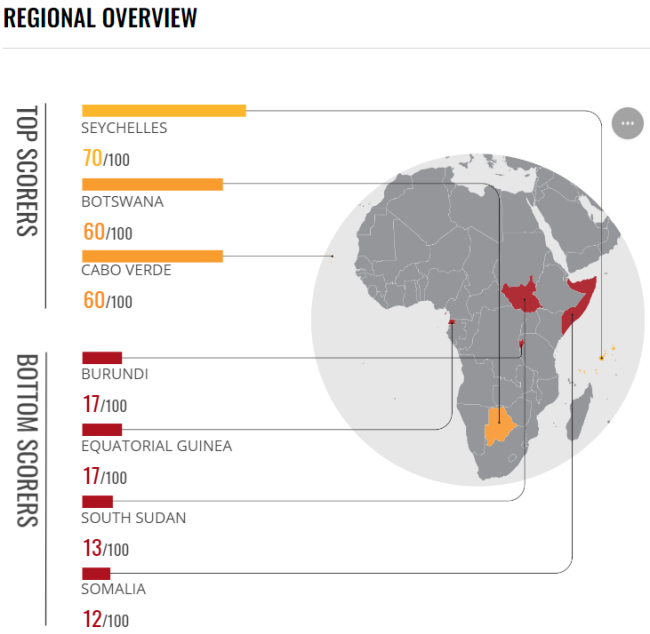
Score	Country	Rank
60 ↑	Cabo Verde	35

The rank is therefore not as important as the score in terms of indicating the level of corruption in that country.

The evolution of Cabo Verde score in this Index is shown below:





The legal and institutional framework for fighting corruption and money laundering

position relative to the other countries in the index. Ranks can change merely if the number of countries included in the index changes.

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Law 77/IX/2020 of 23 March follows on from the efforts that Cape Verde has been making over the years, reflected, for example, in the approval of laws with direct implications for the fight against corruption, such as the amendment made to the Penal Code in 2015, and more closely the new Court of Auditors Law and the new Basic Law on the State Budget, with a particular focus on strengthening transparency and extending financial responsibility to all parties, the extension of financial responsibility to all agents, whether public or private, who are public money, valuables or assets.

It should be noted that, through Resolution No. 75/IX/2018, of 2 March, Cape Verde approved the Open Government Partnership (OGP)[32] declaration for accession, under which the country, as a member of the Alliance, commits to the principles enshrined in the United Nations Convention against Corruption and accepts responsibility for strengthening its commitment to promoting transparency and the fight against corruption

It is also in line with international trends that give importance to the preventive dimension in the fight against corruption, namely what is established in Article 6 of the **United Nations Convention against Corruption** (UNCAC), approved for ratification by Cape Verde through Resolution 31/VII/2007 of 22 March. Article 6 of the UNCAC states that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; (b) Increasing and disseminating knowledge about the prevention of corruption. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

Law No. 77/IX/2020 of March 23 – the Corruption Prevention Council (CPC)

Law No. 77/IX/2020 of March 23 established the Corruption Prevention Council (CPC), an independent administrative body that has the exclusive mission of detecting and preventing corruption risks, collecting and processing information in order to identify the areas most vulnerable to the penetration of the phenomenon and monitoring and evaluating the effectiveness of existing legal instruments, as well as the administrative measures adopted by the Public Administration and the Public Business Sector, as well as local authorities, in terms of combating corruption.

The CPC's powers and competences include:

- Collect and organise information on the prevention of active or passive corruption, economic and financial crime, money laundering, influence peddling, misappropriation of public assets, infidelity, embezzlement, illicit participation in business, defrauding of public property interests, abuse of power or breach of secrecy, as well as acquisitions of real estate or securities as a result of illicitly obtaining or using privileged information in the exercise of functions in the Public Administration and the State-Owned Enterprises;
- Monitor the application of the legal instruments and administrative measures adopted by the Public Administration and the State-Owned Enterprises to prevent and combat the facts referred to in the previous paragraph and to assess their effectiveness;
- Give an opinion, whenever requested by the National Assembly or the Government, on the drafting or approval of internal or international legal instruments to prevent or repress the facts referred to above.

[32] https://www.opengovpartnership.org/members/cabo-verde/

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The CPC is made up of the following entities:

- President of the Court of Auditors, who chairs it;
- Director General of the Court of Auditors, who is the Secretary General;
- Inspector General of Finance;
- Inspector General for Construction and Real Estate;
- Director of the Municipal Inspection Unit;
- President of the Public Procurement Regulation Authority;
- A magistrate from the Public Prosecutor's Office, appointed by the Attorney General of the Republic, with a four-year, renewable term of office.

https://www.youtube.com/watch?v=tqnZurErYxA

The CPC draws up a draft annual budget, which is presented and approved in the same way as the Court of Auditors' draft budget [Article 6(2) of Law 70/IX/2020 of 23 March].
The following table illustrates the CPC's budget and financial implementation for the period in question:

Quadro 1: Orçamento CPC 2022

(em CVE)

Rubrica Económica	Orçamento		Execução		
	Valor	Peso	Valor	Taxa de Execução	Peso
Pessoal do Quadro	672 000	20%	579 341	86%	47%
Subsídios Permanentes	75 000	2%	61 667	82%	5%
Despesas de Representação	200 000	6%	54 740	27%	4%
Gratificações Eventuais	225 000	7%	211 770	94%	17%
Formação	500 000	15%	104 805	21%	8%
Outros Suplementos e Abonos	36 000	1%	0	0%	0%
Contribuições para a Segurança Social	106 200	3%	0	0%	0%
Transportes	100 000	3%	0	0%	0%
Publicidade e Propaganda	300 000	9%	0	0%	0%
Deslocações e Estadas	400 000	12%	135 880	34%	11%
Assistência Técnica - Residentes	700 000	21%	87 250	12%	7%
Total	**3 314 200**	**100%**	**1 235 453**	**37%**	**100%**

Fonte: Mapa de execução orçamental do E-Gov

The execution rate was 37%, due to the short period of time in which the activities were carried out (September - December 2022). The CPC works at the Court of Auditors premises, from which it has received administrative support, operational resources and facilities.

Quadro 2: Recursos Humanos do Conselho

Pessoal do CPC	Previsto	Em falta	Recrutado
Conselheiros	9	1	8
Pessoal recrutado por mobilidade	6	5	1
Total	**15**	**6**	**9**

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

It should be noted that the CPC operates on a day-to-day basis with just one seconded Expert and the administrative support of the Court of Auditors.

After a period of slower development, the **CPC has recently gained momentum**, which is seen as positive. The following aspects of its activity stand out:

- 21 December 2022, at the initiative of the CPC's General Secretariat, the staff of the CPC's Technical and Administrative Support service were published (Order no. 58/2022, of 21 December, published in Official Gazette no. 122, Series II) and the amount of attendance fees for CPC members was set (Order no. 59/2022, of 21 December, published in Official Gazette no. 122, Series II).
- Approval of CPC Recommendation no. 1/2022, of 22 December, on the Ethics Committee provided for in Resolution 6/2015, of 11 February;
- Approval of CPC Recommendation no. 2/2023, of 17 February, on the **Prevention of Corruption Risks in Public Procurement**;
- Delivery of the 1st Activity Report (September - December 2022) to the National Assembly together with the 2022 Activity Report of the Court of Auditors;

The key messages of CPC Recommendation no. 2/2023 of 17 February on the Prevention of Corruption Risks in Public Procurement

The Recommendation is addressed to all entities that conclude contracts governed by the CCP and RJCA (respectively Law no. 88/VIII/2015, of 14 April and Decree-Law no. 50/2015, of 23 September), in the following terms:

- Strengthen action in the **identification, prevention and management of risks of corruption and related offences in public procurement**, in terms of its formation and execution, and, in particular, give reasons for the decision to contract, the choice of procedure, the estimate of the value of the contract and the choice of contractor;
- Adopt specific planning instruments in the field of public procurement (e.g. **annual procurement plans**);
- Encouraging the **availability of suitably trained staff to draw up and apply the relevant procedural documents**, in particular the invitation to tender, the tender programme and the specifications;
- Ensure the functioning of **mechanisms to control possible conflicts of interest**[33] in public procurement, namely those provided for in the CCP and the Administrative Procedure Laws;
- **Favour the use of competitive procedures over direct award**;
- In the case of direct award [34], adopt internal **control procedures to ensure compliance with the limits on invitations to the same entities**;
- Ensure transparency in public procurement procedures, namely compliance with the obligation to publicise them on the **public procurement portal**[35];
- Reinforce transparency in public procurement by signing an **integrity pact**[36] between the procuring entity, the contractor and independent monitors from civil society (see Code of Conduct for Stakeholders in the National Public Procurement System);

[33] Articles 12, 20, 189 e 193 of PPC.

[34] Article 30 of PPC.

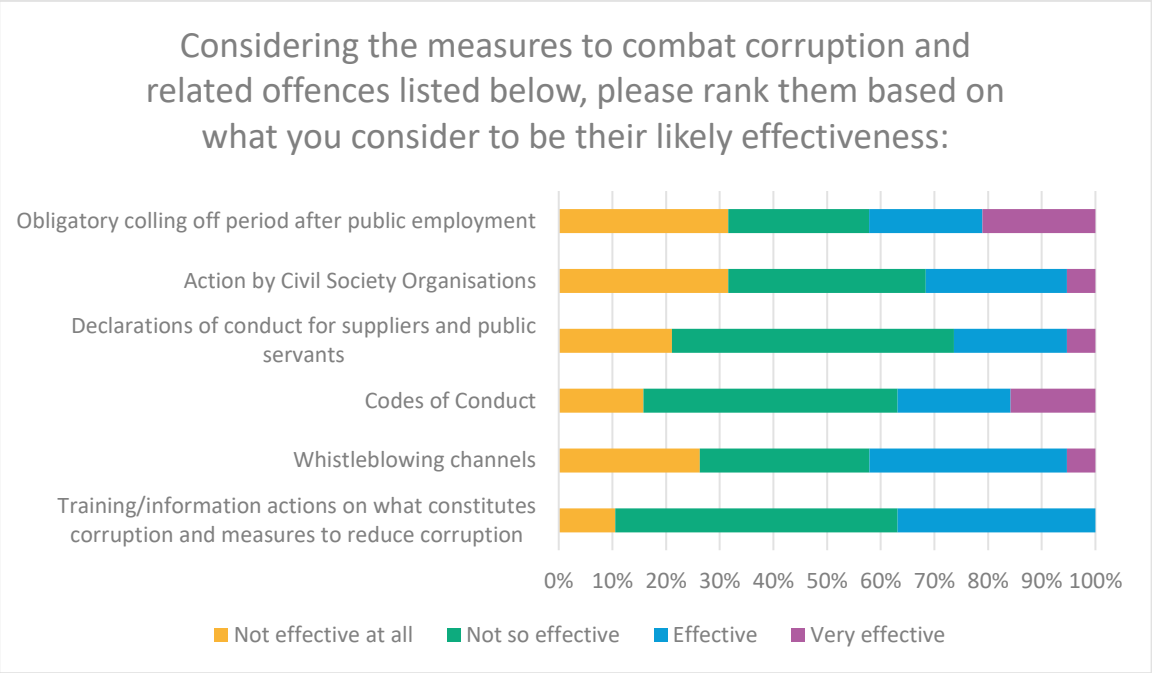
[35] Articles 11, 23, 24, 25, 52, 61 e 64 of PPC.

[36] Article 4 (3) of Deliberation n.1/2017, of 30 May, published in the Official Gazette, II series, of 6 June (ARAP's Code of Conduct)

- Ensure that there is a contract manager who has the technical expertise to monitor the implementation of contracts on an ongoing basis and to ensure that other obligations arising from the law are fully met.

Quantitative analysis

**Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):*
- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).
Source: Survey.



Gap analysis

- Effective start of activity very late (two years after approval of the law that created the CPC);
- Allocation of insufficient resources to fully fulfil the CPC's mission. There is still no National Strategy and Plan for Preventing and Combating Corruption.
- This Strategy should be accompanied, where it exists, by an Investment Plan covering the same time period (ideally 5 years).

Recommendations

It is recommended:

- CPC to adopt a National Corruption Prevention Strategy and Plan comprising but not limited to the following key topics:
  - Background & Justification
  - Mission, Vision, and Values
  - Situational Analysis
  - Key Objectives and Goals
  - Key Action Areas & Initiatives

- Monitoring & Evaluation Framework
- Partnerships and Collaborations
- Implementation Roadmap

– CPC to prepare, in conjunction with this National Corruption Prevention Strategy and Plan, an Investment and Operational Budget for the Anti-Corruption Body (5 years).

Assessment criterion 14(d)(b):
As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The only tailormade initiatives known were the issuance of CPC Recommendation no. 2/2023 of 17 February on the Prevention of Corruption Risks in Public Procurement and the ARAP Code of Conduct, 2017 . [see 14(d)(a)].
Both are insufficient to effectively and safely cover the entire life cycle of public procurement and, although their application has no negative effect, they do not interpret a vision or a strategy for the prevention of corruption in the field of public procurement.
Furthermore, as these are two voluntary instruments with no formal legal force, their adoption by the players in the national public procurement system depends strictly on their will, and there is no sanction for non-adherence.

Gap analysis

– CPC Recommendation no. 2/2023 of 17 February on the Prevention of Corruption Risks in Public Procurement and the ARAP Code of Conduct, 2017 are insufficient to effectively cover the entire life cycle of public procurement and, although their application has no negative effect, they do not interpret a vision or a strategy for the prevention of corruption in the field of public procurement.

Recommendations

– ARAP should promote and incentivise procuring entities and economic operators to conclude integrity pacts (which may contribute to bring the prevention of corruption and the treatment of associated risks onto the agenda of relations between actors on the demand and supply side);

– Specific mechanisms for identifying and mitigating corruption risks should be provided for in the framework of a National Corruption Prevention Strategy and Plan [see above 14(d)(c)], in particular when addressing matters relating to the conduct of risk assessments, promoting transparency and disclosure, establishing ethical codes of conduct, providing whistleblower protection, enabling independent oversight and auditing, ensuring competitive bidding processes, offering procurement integrity training, implementing technology solutions, enforcing sanctions for corrupt practices, encouraging public participation.

Assessment criterion 14(d)(c):
As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.

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Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is a general lack of judicial statistical information analyzed (i) by type of crime and (ii) with information on the relationship between the commission of the crime, in whole or in part, and public procurement and the execution of contracts.

Gap analysis

Same as 14 (c) (b)

Recommendations

Same as 14 (c) (b)

Assessment criterion 14(d)(d):
Special measures are in place for the detection and prevention of corruption associated with procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The only tailormade initiative known was the issuance of CPC Recommendation no. 2/2023 of 17 February on the Prevention of Corruption Risks in Public Procurement. [see 14(d)(a)].

Gap analysis

Existing detection and prevention measures are far from the minimum needed.

Recommendations

- The first (urgent) recommendation is to accelerate the generalisation of e-GP in the country drastically and continue the process until it covers the entire life cycle of public contracts (including the execution phase).

- The second recommendation is to create a "Coalition against Corruption in Public Procurement" led by CPC - including, among others, the TC, ARAP, BCV, AdC, PGR, IGF, CSM, OA, etc. – able to significantly modernise some of the critical and risky areas of public procurement such as:
  - Blockchain-based Contract Management
  - AI-Powered Analysis for Bidding Patterns
  - Predictive Analytics for Risk Profiling
  - Whistleblower Platforms with AI Analysis
  - Automated Audit and Compliance Checkers
  - Data Visualization and Public Dashboards
  - Interlinking Financial Systems.

Assessment criterion 14(d)(e):
Special integrity training programmes are offered and the procurement workforce regularly participates in this training.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is no Multi-Annual Training Plan for the National Public Procurement System. Specific training in the field of integrity, ethics, the risks of corruption and other prohibited practices should be part of the Overall Plan and aligned with the other "modules".

Gap analysis

- There is a lack of a National Public Procurement System Strategy (Government/Ministry of Finance) and, among other areas, a Capacity Building Strategy.
- There are no multi-annual Capacity Building Plans
- The majority of training activities for the various players - starting with ARAP - are procedural in nature and restricted to the contract formation phase. In general, the system is focused on the pre-contractual phase and on legal and procedural aspects. There is also a lack of strategic thinking and planning in the area of capacity building.

Recommendations

It recommended to give priority to the insertion of the integrity related risks theme/topics in the future multi-annual Capacity Building Plans.

Sub-indicator 14(e)
Stakeholder support to strengthen integrity in procurement

Assessment criterion 14(e)(a):
There are strong and credible civil society organisations that exercise social audit and control.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The Assessment Team identified at least three credible CSOs and interacted through meetings and the collection of written inputs with two of them.
Qualifying a civil society organization (CSO) as strong and credible involves assessing various aspects of its structure, activities, and impact. Regarding the aspects that can be assessed within the scope of the MAPS assessment, i.e. activities and impact, the dominant finding is that the CSOs have little capacity for relevant monitoring of the system.

Gap analysis

- CSOs lack capacity, both from the point of view of technical preparation and the human and financial resources necessary to make CSOs' action in relation to the public procurement system visible and influential [37].
- lack of training programs or resources to enhance the capacity of CSOs in understanding public procurement processes, standards, and monitoring techniques

Recommendations

- promote the training of CSOs in the field of public procurement

Assessment criterion 14(e)(b):
There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

An enabling environment for civil society organizations (CSOs) involves creating favorable conditions that empower these groups to operate effectively and engage with the government in a meaningful way. This includes ensuring legal protections for their rights, promoting transparency and access to information, providing diverse funding sources, facilitating collaboration, and establishing mechanisms for consultation and feedback. When evaluating Cabo Verde's public procurement system, it's important to assess how well it supports these key elements of an enabling environment for CSOs, as this can have a significant impact on the system's overall effectiveness and integrity.

The perception formed during the evaluation is that the country's constitutional framework as well as ordinary legislation offer sufficient protection for CSO rights in general, but lack to address the specific monitoring mechanisms or activities that can be "delegated" to CSOs.

With the exception of situations in which CSOs take the initiative to act - usually through the media - participation occurs mainly during public consultation processes on legislative changes.

Gap analysis

- open data sharing is not used as a tool to make the access to information easy-for-all
- no examples of public consultations on the content of draft bidding documents have been found, despite the fact that such opportunity for engaging with CSOs is explicitly allowed by the PPC [Article 41 (3)]
- lack of legal provisions specifically describing the scope and the modalities for the CSOs monitoring of public procurement (and fair policies in place for CSOs to be compensated or reimbursed for such monitoring activities)
- lack of funding sources or grants specifically for CSOs engaged in public procurement

Recommendations

[37] Influence is referred to at the level of policy-making and never, of course, at the level of conducting the procedures for awarding contracts or managing their execution.

- generalising e-GP could dramatically facilitate the access to information and data which analysis will enable a scrutiny fact-based and meaningful the civil society;
- ARAP promotes the compliance with the Recommendation CPC 02/2023 before the procuring entities and economic operators, in particular its proposal for signing integrity pacts between the procuring entities, the contractors and independent monitors from civil society. See above Indicator 14(d)(a).
- procuring entities are stimulated by the regulator and auditors to submit draft bidding documents related to the most complex and/or costly procurements to public consultation [making use of Article 41 (3) of PPC].
- ARAP makes the best possible use of the functioning of its Advisory Board as a privileged channel for structured and permanent engagement with and feedback from CSOs.

Assessment criterion 14(e)(c):
There is evidence that civil society contributes to shape and improve integrity of public procurement.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Public procurement is not on the agenda of the majority of CSOs in Cape Verde, but there are organisations willing to participate in the public procurement system, either by sharing their positions in policy-making or in the role of system's watchdog, for which they (i) claim not to have sufficient knowledge and expertise in the field of public procurement and (ii) feel they are not welcomed by the public players in the system.

Although in an empirical way, which should be statistically studied, the media has shown great interest in the topics of public procurement, the state budget and the quality of public services.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):*
- number of domestic civil society organisations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement.
Source: Survey/interviews.

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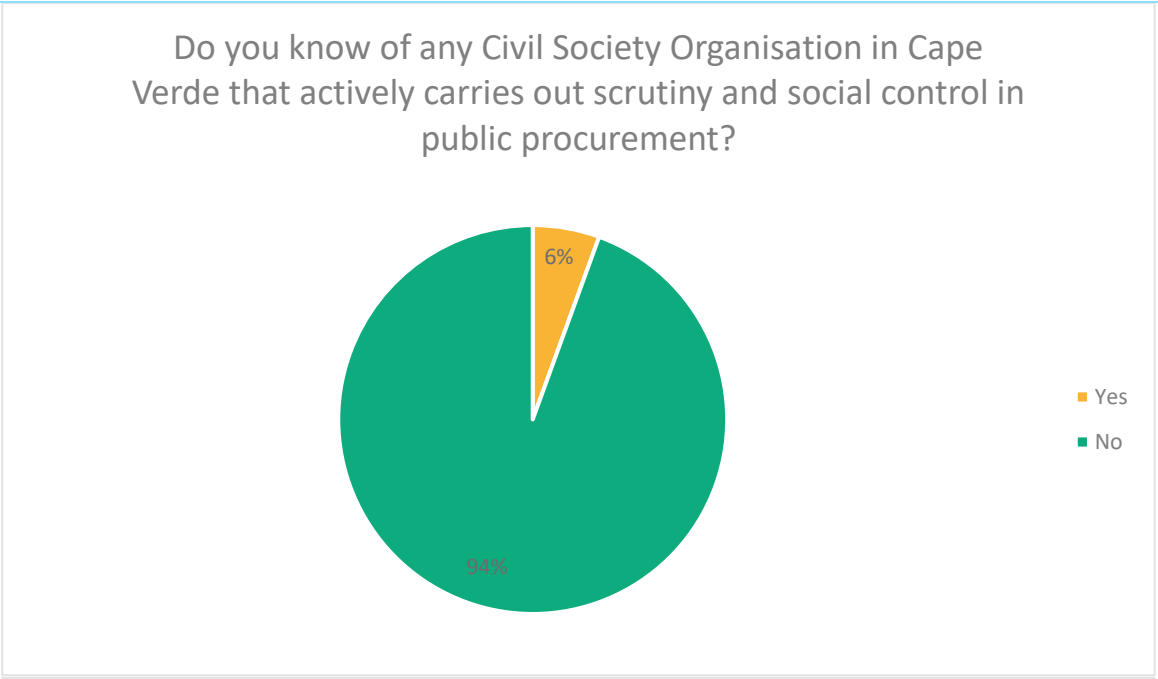

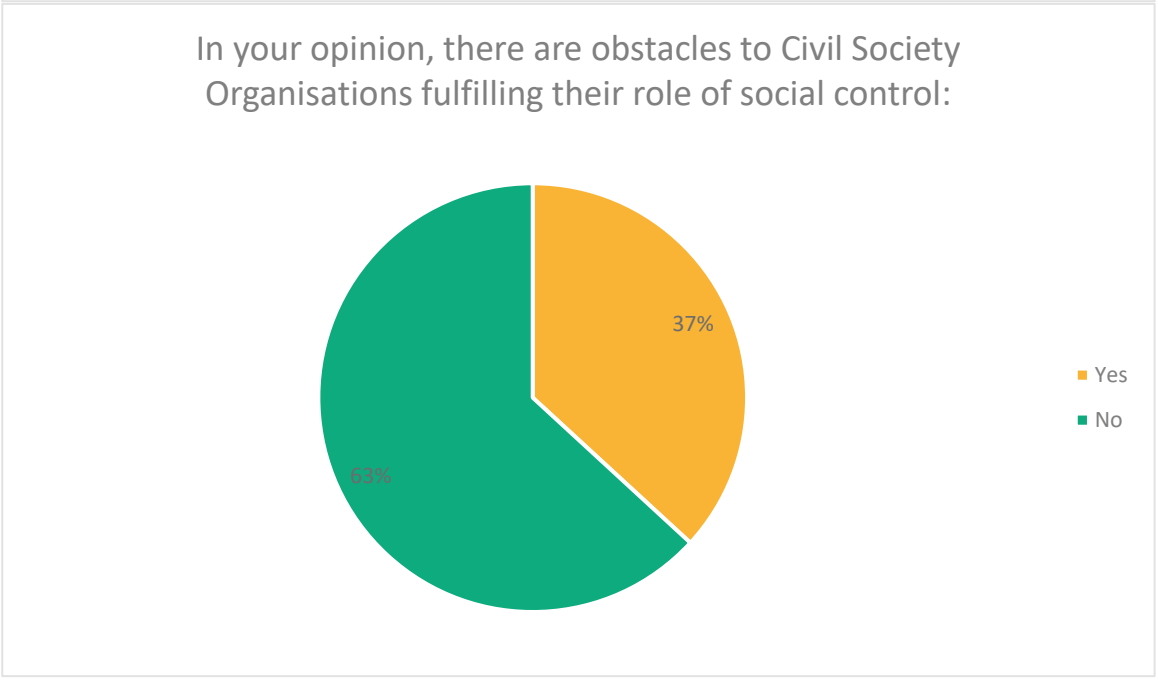

Gap analysis

- CSOs in Cabo Verde are not yet capacitated to shape and improve integrity in public procurement (with the exception of their initiatives in cooperation or through media, which are effective and can still be improved:

Recommendations

- promote the training of CSOs in the field of public procurement (including on integrity related themes)
- establish a more permanent relationship with CSOs and not just concentrate dialogue on the public consultation phases linked to legislative review processes.

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Assessment criterion 14(e)(d): Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Internal compliance measures are not captured by the suppliers registry.
Quantitative analysis ** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d):* *- number of suppliers that have internal compliance measures in place (in %).* *Source: Supplier database.*
Gap analysis Internal compliance measures are not captured by the suppliers registry.
Recommendations It is recommended to add the appropriate forms/surveys to the suppliers registry process (mandatory fields to be filled out before the registration can be completed) to find out about any internal compliance measures/units suppliers may have adopted/established.
Sub-indicator 14(f) **Secure mechanism for reporting prohibited practices or unethical behaviour**
Assessment criterion 14(f)(a): There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis The Public Prosecutor's Office (PGR) has set up a reporting channel with the option of anonymity, which is accessible through its online portal [38]. Also the Court of Auditors makes a reporting channel available on its website[39] but, in this case, it requests the email address of the whistleblower which makes it impossible or less feasible to maintain anonymity. In both cases, we are dealing with measures that need urgent improvement, starting with the legal provisions on the matter, as will be seen in the following indicator 14(f)(b): the first, from the PGR, because it does not

[38] https://www.ministeriopublico.cv/index.php/denunciasmpublico
[39] https://www.tribunalcontas.cv/denuncia

fulfil the obligation to identify the whistle-blower in the Code of Criminal Procedure, and the second because it does not guarantee anonymity, which is considered necessary for the protection of whistleblowers.

Gap analysis

- there is no formal legal explicit protection conferred on whistle-blowers or complainants. On the contrary, the Code of Criminal Procedure provides for the mandatory identification of the whistle-blowers or complainants.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- please see 14(f)(b)

Assessment criterion 14(f)(b):
There are legal provisions to protect whistle-blowers, and these are considered effective.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The procedures to report alleged cases of fraud, corruption and other prohibited practices (which have criminal relevance) are regulated in the Code of Criminal Procedure. According to Article 60 of the Code of Criminal Procedure the report to the Public Prosecutor's Office is mandatory (...) and must be made to

- the police authorities, regarding offences of which they become aware;
- any other authorities or officials of the Public Administration, as defined in Article 362, regarding offences of which they become aware in the course of their duties and because of them.

Any person may report to the Public Prosecutor's Office any alleged offence of which they are aware.

There are **no rules in the Criminal Procedure Code regarding the protection of whistleblowers**. According to Article 60 (5) and (6) of the Code of Criminal Procedure, the complaint may be made verbally, in writing or by any other means of communication, and shall contain, whenever possible, a brief statement of the facts and circumstances in which they occurred and which may be of interest to the criminal proceedings, the identification and other relevant details of the perpetrators of the crime, the identity of the offended parties and the names, residence and any other relevant details of the witnesses that exist or relating to other means of proof. In cases where the report is made verbally, it must be drawn up in writing and signed by the person receiving it and the complainant, duly Identified (...).

Criminal police bodies and public prosecutors are not obliged to keep whistleblowers or complainants identity confidential for their own protection not to safeguard the effectiveness of criminal investigations. On the contrary, the Code of Criminal Procedure makes it mandatory for authorities receiving complaints to identify the whistleblower or complainant.

On the other hand, in practice, the Public Prosecutor's Office has set up a reporting channel with the option of anonymity, which is accessible through its online portal, but whose legality in the light of the provisions of the Code of Criminal Procedure raises many doubts.

What to do about a report that has reached the Public Prosecutor's Office (PGR) from an anonymous source can therefore cause doubts that can be resolved by introducing minor improvements to the text of the Code of Criminal Procedure regarding anonymous reporting of offences and, in the same Code or in a separate law[40], the system for protecting whistleblowers.

Gap analysis

- There are no rules in the Criminal Procedure Code or any other stand alone legal act regarding the protection of whistleblowers.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- revise the specific procedure of crime reporting of the Code of Criminal Procedure to explicitly admit and regulate anonymous reporting of crimes;
- introduce rules - in the Code of Criminal Procedure or in a special law to this effect - designed to promote and guarantee, as far as possible, the protection of whistleblowers.

Assessment criterion 14(f)(c):
There is a functioning system that serves to follow up on disclosures.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis
No such a system exists.

Gap analysis
No such a system exists.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

- A system based on a database of complaints and cases dealt with should be set up and, as regards offences committed in connection with public procurement activities, or other prohibited practices not of a criminal nature, it should be led by the Attorney General's Office with the support, in conceptual design, of the Corruption Prevention Council / Court of Auditors and ARAP.

[40] Such as the Law no. 81/VI/2005 of 12 September that regulates the application of measures for the protection of witnesses in criminal proceedings when their life, physical or mental integrity, freedom or property of considerably high value is endangered because of their contribution to proving the facts that are the subject of the proceedings. These measures can include witnesses' family members and other people close to them.

- Given the nature of the information and data (of a criminal nature or relevance) to be processed in this system, it must be established by means of an appropriate legal text.

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

Assessment criterion 14(g)(a):
There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*

Conclusion: No gap

Red flag: No

Qualitative analysis

The following provisions of **Resolution no. 6/2015** of 11 February, which approved the **Code of Ethics and Conduct for the Public Administration**, are worth highlighting, as they apply to public procurement players on the demand side (procuring entities) and the regulatory side (ARAP and CRC):
In carrying out their duties, civil servants make rational use of available resources based on the following principles:

- Rationalisation and efficient use of public administration resources and assets;
- Prohibition of obtaining personal benefits, rewards or remuneration or in favour of others as a result of providing the service, and must therefore report all cases that constitute a violation of the law;
- Duty to report situations of conflict of interest that may prevent compliance with the rules of conduct to their hierarchical superior.
- offering or acceptance of bribes and misappropriation of funds, theft, swindling and material or moral corruption are considered to be actions that, by their nature, offend the ethical principles and values of the Public Administration.

This Code also provides a definition of conflict of interest i.e. situations in which personal interests are in opposition to the public interests (of everyone) and the interests of the body or organisation to which the official is assigned.

Article 12 PPC stipulates that members and employees of the procuring entities, of the entities responsible for conducting the procedure, of the jury or of any entities intervening in the procedure, shall comply with the **provisions of the general law on the impediment and suspicion of public office holders and civil servants**, as a way of guaranteeing impartiality.

ARAP's Code of Conduct 2017

Although without the binding force of law, but still of interest and usefulness, the ARAP 2017 Code of Conduct states in its Article 8 that public agents [41] must treat all economic operators who have dealings with them impartially and take appropriate measures to prevent, identify and effectively resolve conflicts of interest that arise in procurement procedures, in order to preserve administrative impartiality and avoid any distortion of competition.
According to this Code, the concept of conflict of interest encompasses, as a minimum, any situation in which a public official who intervenes in the National Public Procurement System, namely who participates in

[41] In Cape Verdean law, "public agents" includes civil servants with public ties and all those who, regardless of the type of tie, represent the state or the public administration and decide or prepare decisions on its behalf.

conducting the procurement procedure or who may intervene in it or determine its outcome, has a direct or indirect financial, economic or other personal interest that could jeopardise their impartiality and independence.
Public agents in the National Public Procurement System must, through conflict of interest declarations, mention in writing any personal interest resulting from special links with any candidate or competitor or potential candidate or competitor involved in the procurement procedures, in which case they must excuse themselves from participating in the procedure.
Private actors – bidders and candidates - must, through conflict of interest declarations (see Declaration in Annex IV of the PPC) , mention in writing, when submitting the proposal, any personal interest resulting from special links with any actor from the public side.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):*
- share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).
Source: Normative/regulatory function.

Gap analysis

Recommendations

Assessment criterion 14(g)(b):
The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*

Conclusion: No gap

Red flag: No

Qualitative analysis
See above (14 (g) (b)

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):*
- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).
Source: Normative/regulatory function.

Gap analysis

Recommendations

Assessment criterion 14(g)(c):
The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.

Conclusion: No gap

Red flag: No

Qualitative analysis

Failure to comply with the Public Administration Code of Ethics (2015) and the ARAP Code of Conduct (2017) does not in itself trigger administrative or criminal sanctions.
In the many cases where these types of codes merely reproduce (sometimes badly) the applicable legal provisions, the latter (and only the latter) do not cease to apply. When they innovate and the acts or omissions described have no correspondence in the law, the sanction is appropriate to its nature - an ethical sanction.

Gap analysis

Recommendations

Assessment criterion 14(g)(d):
Regular training programmes are offered to ensure sustained awareness and implementation of measures.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
See 5 (b) (i)

Gap analysis
See 5 (b) (i)

Recommendations
See 5 (b) (i)

Assessment criterion 14(g)(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.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Declarations on conflicts of interest foreseen in the PPC (Articles 70, 71 and Annex IV)

Article 70 PPC , on the subject of impediments to candidates and competitors, states that:

- Natural or legal persons may not take part in the procedure, nor may any representatives or employees of such legal persons who have participated, or will participate, directly or indirectly, and by any means, in the preparation of the procedure, may not take part in the procedure.
- Natural or legal persons, as well as any representative or employee of that legal person, who have participated, or will participate, directly or indirectly, in a contract covered by the consultancy services which are the subject of the procedure, are also barred from taking part in procedures for the procurement of consultancy services.

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PPC relies on the self-declaration of the tenderer or candidate and successful tenderer (awardee) to ensure that these eligibility requirements are met (no conflict of interest). Article 71 of the PPC requires that the Declaration set out in Annex IV of the PPC be submitted together with the application or tender and, in the case of the successful tenderer, that it be submitted within 10 days of notification of the award decision.
In this declaration, the tenderer, candidate or successful tenderer, as the case may be, declares on honour that its representative (i) has not participated, or will not participate, directly or indirectly, and by any means whatsoever, in the preparation of the procedure, nor is its representative or employee in such a situation [Article 71 (1) (g) and (ii) has not participated, or will not participate, directly or indirectly, in a contract which is covered by the consultancy services which are the subject of the procedure, nor is its representative or employee in such a situation.

An appropriate enforcement regime has been established insofar as, when it is proven that, at any time during a given procedure, a competitor or candidate was prevented from taking part, a report must be made to the Public Prosecutor's Office for the purposes of initiating criminal proceedings, if applicable.
criminal proceedings, if appropriate, without prejudice to the application of the administrative offence regime provided for in this Code. In such a case, the procuring entity may also decide to declare the award of the contract null and void or to terminate the contract, depending on the specific situation [Article 71 (3) (4)].

It is very important to mention that Article 12 of the PPC stipulates that members and employees of the procuring entities, of the entities responsible for conducting the procedure, of the jury or of any entities intervening in the procedure***, the provisions of the general law on the impediment and suspicion of public office holders and civil servants***, as a way of guaranteeing impartiality.

Declarations of assets, income and interests

Finally, although on a different level of binding force from the law, but still with the greatest interest and usefulness, the **ARAP Code of Conduct 2017** states in its Article 8 that Public Actors shall treat all economic operators with whom they have relations impartially and shall take appropriate measures to prevent, identify and effectively resolve conflicts of interest that arise in procurement procedures, in order to preserve administrative impartiality and avoid any distortion of competition.
According to this Code, the concept of conflict of interest encompasses, as a minimum, any situation in which a Public Stakeholder (or someone acting on their behalf) who intervenes in the National Public Procurement System, namely who participates in conducting the procurement procedure or who may intervene in it or determine its outcome, has a direct or indirect financial, economic or other personal interest that could jeopardise their impartiality and independence.
Public actors (mainly procuring entity representatives and juri members) in the National Public Procurement System must, through ***conflict of interest declarations***, mention in writing any personal interest resulting from special links with any candidate or competitor or potential candidate or competitor involved in the procurement procedures, in which case they must excuse themselves from participating in the procedure.
Private actors – bidders and candidates - must, through conflict of interest declarations (see Declaration in Annex IV of the PPC) , mention in writing, when submitting the proposal, any personal interest resulting from special links with any actor from the public side.

Information on beneficial ownership

Information on beneficial ownership is not provided by contractors.

Gap analysis

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

Information on beneficial ownership is not provided by contractors.

A Red Flag is assigned because addressing this gap requires a legislative initiative before the Council of Ministers and the National Assembly and cannot be immediately mitigated through actions in the public procurement system.

Recommendations

Provisions regarding beneficial ownership should be included in the public procurement legal framework.