MAPS | Methodology for Assessing Procurement Systems

WATER SECTOR ASSESSMENT OF ETHIOPIA PUBLIC PROCUREMENT SYSTEM

2024

Testing the MAPS Module on Sector Level Assessment (SLA)

MAPS APPROVED

MAPS | Methodology for Assessing Procurement Systems

The Federal Democratic Republic of Ethiopia
Sector Level Assessment (SLA)
of the
Public Procurement System

(**Road and Water Sectors**)

The Assessment Report is divided in three parts (plus one Appendix)

Road Sector (Separate Volume)- Part I

Water Sector (This Volume)- Part II

Appendix: contains common document like Concept Note, Results of Survey

(Separate Volume) – Part III

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Acronyms

CURRENCY EQUIVALENTS

(Selling Exchange rate effective June 01,2023 Commercial Bank of Ethiopia)

1 US$ = 55.4068[1] Birr

Fiscal year:
Ethiopian Fiscal Year (EFY): July 8 – July 7
Gregorian calendar: July 1 – June 30
In this document the term:
FY refers to the Gregorian fiscal year, unless described as EFY
year refers to the Gregorian calendar year, unless described as EC

Abbreviations and Acronyms

AfDB	African Development Bank
BoF	Bureau of Finance
CN	Concept Note
CPAR	Country Procurement System Assessment
CPF	Country Partnership Framework
CSO	Civil Society Organization
DFID	Department for International Development, UK
DPs	Development Partners
DPL	Draft Public Procurement Law
e-GP	Electronic Government procurement system
EC (number eg. 2016)	Ethiopian Calendar year 2016 (corresponding to 2022/2023fy)?
ERA	Ethiopian Roads Authority
EU	European Union
FDRE	The Federal Democratic Republic of Ethiopia
GDP	Gross Domestic Product
GoE	Government of Ethiopia
GNI	Gross National Income
IBEX	Integrated Budget and Expenditure
IDA	International Development Association
IFMIS	Integrated Financial Management Information System
MAPS	Methodology for Assessing Procurement Systems
MoWE	Ministry of Water and Energy
MoF	Ministry of Finance
MoH	Ministry of Health

[1] https://nbe.gov.et/commercial-banks-exchange-rate/

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PEFA	Public Expenditure and Financial Accountability
PFM	Public Financial Management
PPD	Public Procurement Directive
PPL	Public Procurement Law
PPPA	Public Procurement and Property Authority
SBD	Standard Bidding Documents
SLA	Sector Level Assessment
SOE	State-Owned Enterprise
TAG	Technical Advisory Group
UN	United Nations

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Acknowledgments

The Government of Ethiopia in collaboration with the World Bank and Development Partners (WB&DP) carried out a procurement system assessment using MAPS II from December 2019- June 2021. The Assessment Report got published in November 2022 with a MAPS "**APPROVED**" seal after due validation by GoE. ET-MAPS-volume-I.pdf (mapsinitiative.org)

Following the core MAPS assessment ("Core MAPS assessment"), the GoE with support from the WB prepared a procurement reform strategy document and action plan to implement the recommendations of the MAPS assessment.

One of the priority actions identified in the action plan was to assess in detail the procurement system and performance in the Road and Water sector using the relevant sector-level supplementary module.

The Ethiopia Public Procurement System Assessment for Road and Water Sectors using 2022/2023 MAPS Sector Level Assessment (SLA) guide was initiated at the request of the Government of the Ethiopia (GoE), through MoF and a Steering Committee was established by the Government in guiding the SLA in September 2022.

The Bank Assessment Team would like to acknowledge, with appreciation and thanks, the extensive cooperation and guidance from government counterparts, especially from Public Procurement and Property Authority, and the Steering Committee.

The Assessment Team is grateful for inputs from the private sector, civil society organizations, and all those who attended the Launch Workshop and the Stakeholders Validation Workshop. The Assessment Team is also grateful to all the procuring entities from federal and city government agencies in particular the Ethiopian Roads Administration (ERA), and the Addis Ababa City Road Authority (AACRA) selected as public bodies/entities representing Road sector and further Ministry of Water and Energy, Addis Ababa Water and Sewerage Authority, and Ministry of Irrigation and Lowland to represent Water Sector.

The Sector Level Assessment (SLA) was led by Demelash Demssie, Senior Procurement Specialist as Task Team Leader (TTL), (Senior Procurement Specialist) Anjani Kumar, Procurement Hub Coordinator as Co-TTL, The Assessment Team consisted of a team of experts that included Belita Manka, Senior Counsel, Legal Vice-Presidency of the World Bank, Devesh Chandra Mishra (Lead Consultant), and Hussein Sebrie Siraj, Daniel Agegnehu Teferi, Hagos Abdie Ahmed (all National Consultant), with overall coordination and support provided by Gizework Zewdie Mekuria (Program Assistant) from the World Bank. The Assessment Team received valuable input from the World Bank's Procurement Team in Addis Ababa: Binyam Bedelu and Mogesie Ayele

MAPS Secretariat provided timely guidance for this pilot SLA during the Assessment.

The Assessment Team received valuable input from peer-reviewers (i) Richard Olowo (Lead Procurement Specialist, EEAR1); (ii) Shanker Lal (Lead Procurement Specialist, ESARU); (iii) Quamrul Hasan (Lead Procurement Specialist, EECRU); and (iv) Antonio Rodriguez Serrano (Senior Water Supply and Sanitation Specialist, SAEW2).

Finally, the Assessment Team gratefully acknowledges valuable guidance from Elmas Arisoy, Practice Manager, EAERU, Doina Petrescu, Operations Manager, AECE3, and Ousmane Dione, Country Director AECE3

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Executive summary

Background

The Government of Ethiopia (GOE) in collaboration with the World Bank (WB) and other Development Partners carried out an assessment of the public procurement system using MAPS II, from December 2019 - June 2020 (Core MAPS Assessment). The Core Assessment Report got published[2] in November 2022 with a MAPS "APPROVED" seal after due validation by GoE.

Following the Core MAPS assessment, the GoE with support from the WB prepared a procurement reform strategy document and action plan to implement the recommendations.

One of the priority actions identified in the action plan was to assess in detail the adequacy and performance of the public procurement system in the Road and Water sectors using the relevant MAPS sector-level supplementary module[3]. Accordingly, the WB in collaboration with the GOE and other stakeholders caried out sector-level assessment (SLA) for these two sectors.

This report specifically deals with **Water Sector**, and a similar report for Road Sector has been prepared and cross-cutting issues are highlighted in both the reports.

Objective of the SLA and the Methodology

The MAPS SLA's overarching goal is to provide an understanding of the overall functioning and performance of public procurement as well as the general business climate in the sector. The Ministry of Water and Energy, Ministry of Irrigation and Lowland Development, and the Addis Ababa City Water and Sewerage Authority (AAWSA), have been selected as public bodies/entities representing Water sector.

In brief, SLA enables a country to: (i) determine its needs in terms of procurement activities related to the sector; and if the sectorial development strategies are clear and coherent with the horizontal development objectives and adequately reflected in public procurement system; and (ii) assess the procurement capacity of sector-related institutions and the capacities of the private sector to achieve value for money; this includes the determination of the level of procurement competition in the sector.

The SLA indicators concern the first three pillars of the Core MAPS methodology: namely, Pillar I - the existing legal and policy framework: Pillar II - the institutional framework and management capacities; and Pillar III - procurement operations and market practices, all applied to sectors. The SLA module comprises of 10 Indicators, 32 sub-indicators and 127 criteria for the above three pillars to be directly assessed,

For a country that has applied the Core MAPS tool to assess its public procurement system, which is the case for Ethiopia, the indicators and sub-indicators in Pillar IV - accountability, integrity, and transparency of the procurement system that are applicable in this module are transposed without changes from the Core MAPS assessment report after checking that the results of Core MAPS assessment regarding this pillar are valid and applicable to the SLA.

[2] Link here https://www.mapsinitiative.org/assessments/ET-MAPS-volume-I.pdf
[3] Link to version released for pilot testing Sector Level Assessment - MAPS (mapsinitiative.org)

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Assessment Process

This report was prepared by the assessment team which consists of national and international procurement experts, led by the World Bank under overall guidance of a steering committee established by GoE. A consultation workshop was held in October 2022 with participation of all key stakeholders. A private sector survey was conducted during February-March 2023. Based on desk review and multiple consultations with stakeholders from October 2022 to April 2023, results of assessment were presented to the key stakeholders in a validation workshop on May 25, 2023, and their feedback obtained.

Results of the Assessment

Key strength of the procurement system and performance

Legislation and Procurement Documents: The procurement legal and regulatory framework is adequately recorded and is organized hierarchically with precedence well established. The water sector both at federal and Addis Ababa City administration is governed by the key primary legislation on public procurement (Proclamation No. 649/2009 for Federal and Proclamation No. 17/2009 for supported by a comprehensive procurement Directive. For each procurement category, there are separate SBDs for international competitive bids (ICB) and national competitive bids (NCB).

Planning and budgeting: Procuring entities in the water sector prepare formal procurement plan after budget is approved and proclaimed. Though there is no legal provision that prohibits solicitation of bids without confirming availability of budget, procuring entities in the sector established a mechanism to ensure that bids are not solicited before budget is secured.

Procuring entities and staffing: The PPLs allow procuring entities to establish adequately staffed procurement unit in their respective agencies. Accordingly, except in the MoWE, the other sampled entities have established specialized procurement units that are relatively better staffed with qualified experts.

Sectoral strategies: The Ethiopia Water Resource Management policy is complemented by a ten-year Sectoral strategy document for the year 2013 to 2022 EC (2021 to 2030 GC). The strategy is also accompanied by related operational documents for medium and long term and capture the principal type of public procurement as well as technical requirements or characteristics.

Key specific areas for improvement

Key specific areas which need improvement and recommended actions along with their priorities are given below:

Inconsistency and contradiction in the procurement documents: There are inconsistencies and contradictions between circulars, instructions, or similar advisory documents and primary and secondary legislations. There are cases in which the lower-level documents alter and deviate from the higher-level legislations.

Unavailability of adequate model SBDs: The national SBDs are not consistent with the international practice related to price adjustment, dispute resolution mechanism and rate of progress & contract termination. The national SBD allows price adjustment for cost escalation after 12 months of contract implementation instead of the base date which is 28 days prior to bid submission. As a result, the bid

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prices are not free from price speculations. Arbitration is not allowed as dispute resolution mechanism. The provision allowing the engineer to measure rate of work progress and if necessary, recommend termination of contract, is not accommodated in the national SBD. In addition, the national SBDs do not have relevant SBDs applicable in water sector including DBO type of delivery.

Problem in developing Technical Standards: There are no national technical standards in the water sector that was prepared in consultation with stakeholders and respond to the needs of the sector. In most cases, technical norms and specifications are prepared by consultants without any verification mechanism for consistency and adequacy.

Limited use of technology: Implementation of E-procurement is started in sector entities at the Federal Government level covering procurement of Goods, Services and Works procured through NCB. However, implementation in the sector even at federal level is at infant stage and has not yet utilized in generating reports to measure and improve procurement performance.

Absence of specialized procurement training: There is no regular specialized training program to train staff acquire the skill and competence required to carry out procurement particularly complex procurements in the sector. The professionalization training program established by PPPA has not yet implemented the specialized level training.

Lack of Sustainable Public Procurement policy/strategy: Except for some elements of sustainability that are reflected in the PPL (A.25), there is no comprehensive sustainable public procurement strategy or policy in the country. As a result, sustainable public procurement is not being practiced covering economic, social and environmental factors in the procurement cycle, as applicable.

Lack of use of price adjustment provision to address price hike: Despite the rampant inflation in the market, price adjustment provision is not being practiced in all appropriate cases in the sector. In addition to the lack of expertise, Central Statistics Agency has not yet started issuing price indices for locally sourced construction materials regularly. The relevant price adjustment provision which restricts application of price adjustment after 12 months for contract implementation is also restrictive and not consistent with international good practice.

Limited capacity of the private sector and dominance of SOEs in the sector: The capacity of the private sector especially in drilling works and big irrigation projects is limited. Conversely, the SOEs are dominating the market and crowding out the private sector undermining competitiveness, innovation, sustainability and efficiency in the sector.

Systemic challenges limiting competition and successful completion of contracts: Procurement in the sector is impacted by systemic challenges associated with shortage of foreign currency, delay in opening Letter of Credit and effecting payment, inflation, security, right of way issues. These challenges affected level of competition and successful completion of contracts.

Use of PPP to leverage private sector financing has not yet commenced: Though PPP is one of the popular delivery modalities in water sector globally, there are no initiatives to execute water projects through PPP arrangement. Unlike other sectors like Energy, Health, Housing and even road which has identified projects for PPP arrangement, the water sector is lagging behind in benefiting from the PPP arrangement and leveraging private sector financing for fast growth in the sector. Similarly, PPP is not yet adopted in Addis Ababa City Administration and in other regional states.

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Recommendations:

Areas for improvement	Recommendations	
	Immediate priority	Subsequent priority
Inconsistency and contradiction in the procurement documents:	*(i) The MoF and PPPA to identify and address the inconsistencies, or misalignment that exists between the various documents in the legal framework.* *(ii) Consider combining all revisions into a single comprehensive document to ensure precision and clarity on the wording and application of amended provisions.*	
Unavailability of adequate model SBDs	*Revise the national SBDs to ensure consistency with the legal documents and international practice especially on price adjustment, dispute resolution mechanisms, and Rate of progress & Contract termination*	*Issue suitable SBDs covering different delivery modalities suitable for the sector*
Problem in developing Technical Standards:	*Issue national technical standards that address the needs of the sector*	*Design mechanism to enforce the applicability of the technical standards in procurement of the range of works, Goods and services in the sector*
Limited use of technology	*Start generating and utilizing procurement performance reports from the information system to continually improve procurement performance in the sector.*	*Implement e-GP in the sector both at federal and regional level*
Absence of specialized procurement training	*Prepare specialized training program for the sector in collaboration among the sector, PPPA and training institutes*	*Design a mechanism to ensure financial sustainability of the training program including through collection of fees from trainees.*
Lack of Sustainable Public Procurement policy/strategy	*Utilize the existing provisions in the PPL and SBDs to introduce SPP criteria in bidding documents, evaluation and contract documents*	*Develop SPP strategy and appropriate tools for implementation in the sector*
No practice in using price adjustment to address inflation	*CSA should start issuing price indices for construction materials regularly (ii) Provide adequate training to procurement and technical staff on how to apply price adjustment formula in the sector*	
Limited capacity of the private sector and dominance of SOEs in the sector:	*Study factors limiting the capacity and competitiveness of the private sector (related to finance, tax, technical capacity, market access etc.)*	*Implement recommendations, which are provided after the study.*
Systemic challenges limiting competition and	*Consider the systemic challenges during design, preparation of bidding documents, evaluation, and contract implementation.*	*Most of the issues are associated with the macro context of the country and requires solutions beyond the sector.*

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successful completion of contracts		
Use of PPP to leverage private sector financing is not yet considered	*Establish capacity within the MoWE to start the use of PPP as delivery mechanism of water sector projects.*	*(i) Identify potential projects and follow up implementation through PPP arrangement* *(ii) Adopt PPP arrangement including legal framework, structure and capacity in the sector at regional and city administration level, as appropriate and where feasible.*

Overview of compliance

The following table provides an overview of the findings of the assessment on the level of sub-indicators. Each sub-indicator is identified depending on the findings (full compliance / gaps identified / substantive gaps identified). This table also shows the red flags identified as per the guidance of 2023.

PILLAR I		Full compliance	Gaps identified	Substantive gaps identified	Red flags
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) – Coverage of the sector			X	
	1(b) – Rules on participation deriving from sustainability (social, economic and environmental) goals			X	X
	1(c) – Electronic Procurement (e-Procurement) in the sector		X		
	1(d) – Public procurement principles in specialized legislation governing public entities in the sector	X			
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures in the sector			X	
	2(b) – Model procurement documents for goods, works, and services for the sector			X	
	2(c) – Standard contract conditions used in the sector			X	
	2(d) – User's guide or manual for procuring entities in the sector			X	
3. The legal framework applicable to the sector reflects the country's horizontal	3(a) – Existence of sectorial policies and strategies that are clear and well-articulated to facilitate the determination of sector procurement needs		X		
	3(b) – Sustainable Public Procurement (SPP) in the sector			X	X

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PILLAR I		Full compliance	Gaps identified	Substantive gaps identified	Red flags
policy objectives and international, including regional and sub-regional obligations	3(c) Environmental and Socio-economic development aspirations		X		
	3(d) Obligations deriving from international, regional/sub-regional agreements applicable in the sector		X		

PILLAR II		Full compliance	Gaps identified	Substantive gaps identified	Red flags
4. The public procurement system is mainstreamed and well-integrated with the public financial management system.	4(a) – Procurement planning and the budget cycle in the sector			X	X
	4(b) – Financial procedures and the procurement cycle in the sector			X	
5. The sector has an institution in charge of technical normative functions	5(a) – Status and legal basis of the normative/regulatory function entrusted to the sector agencies			X	X
6 Definition, responsibilities, and formal powers of procuring entities in the sector.	6(a) – Procuring entities are clearly defined			X	
	6(b) – Centralised procurement body		X		
7. Publication of public procurement information in the sector supported by information technology	7(a) – Definition, responsibilities, and formal powers of procuring entities in the sector			X	
	7(b) – Use of e-Procurement in the sector			X	
	7(c) – Strategies to manage procurement data in the sector			X	
8. The sector public procurement system has a strong capacity to develop and improve	8(a) – Training, advice and assistance in the sector			X	
	8(b) – Monitoring performance to improve sector outputs and outcomes			X	

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PILLAR III		Full compliance	Gaps identified	Substantive gaps identified	Red flags
9. Public procurement practices achieve stated objectives in the sector.	9(a) – Planning in the sector			X	X
	9(b) – Selection and contracting in the sector			X	X
	9(c) – Contract management practice in the sector			X	X
	9 (d) Efficiency of application of tools that support achievement of socio-economic development aspirations relative to the sector		X		
	9(e) Protection of the environment in the sector			X	
10. The public procurement market is fully functional and competitive at the sector level	10(a) – Dialogue and partnerships between public and private sector			X	
	10(b) – Private sector's organisation and access to the public procurement market			X	X
	10(c) Functionality and the level of competition in works contracts awarded in the sector			X	X
	10(d) Functionality and the level of competition in goods contracts awarded in the sector			X	X
	10(e) Functionality and level of competition in the consulting services contracts awarded in the sector			X	X

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1. Introduction

Background

The Government of Ethiopia (GOE) decided in 2019 to assess and strengthen its public procurement system as part of the Growth and Transformation (GTP) agenda. The World Bank, in collaboration with other development partners, supported the government in conducting the assessment.

The key counterpart from GOE were represented by the Public Procurement and Property Administration Agency (PPPAA) served as the focal entity in coordinating and facilitating engagement with MoF to provide overall leadership and guidance.

The primary objective of the assessment was to determine the quality and effectiveness of public procurement systems in Ethiopia, identifying strengths and areas of improvement that would enable the government to undertake reforms to adopt and implement modern, efficient, inclusive procurement systems at federal and regional levels.

The assessment (of Core MAPS) was conducted from September 2019 to June 2020 using the MAPS methodology and covered the legal, regulatory, and policy framework; institutional framework and management capacity; public procurement operations and market practices; and accountability, integrity, and transparency of the public procurement system, assessed using 14 qualitative indicators (with 55 sub-indicators and 210 criteria) and 15 quantitative indicators to support qualitative findings, gaps/areas of improvement and recommendations

The assessment covered the public procurement at the federal level and in four regional states The assessment covered the public procurement system at the federal level and in four regional states: Addis Ababa City Administration; Afar; Oromia; and Southern Nations, Nationalities, and People's region (SNNPR), which were selected to represent geographical spread and different levels of spending. Lower regional administration levels (selected zones and woredas) were also assessed.

The Assessment Report (for the Core MAPS) was completed in June 2020 and after quality review by the World Bank management, peer reviewers, GoE and Assessment Technical Advisory Group (ATAG) constituted by the MAPS Secretariat was revised in June-July 2021 after addressing all the comments The Assessment Report got MAPS "Seal of Approval" in November 2022, published, and disseminated[4]

Following the core MAPS assessment, the GoE with support from the WB prepared a procurement reform strategy document and action plan to implement the recommendations of the MAPS assessment.

[4] https://www.mapsinitiative.org/assessments/ET-MAPS-volume-I.pdf

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One of the priority actions identified in the action plan of the Core MAPS was to establish and carry out regular assessment of risks associated with identified key sectors. It was decided in August 2022[5] to assess in detail the procurement system and performance in the Roads and Water Sectors using the relevant sector-level supplementary module which was released for pilot testing by the MAPS Secretariat.

Context of the Assessment

In the 2021/22 budget year, the aggregate budget allocated for the Road and Water infrastructure was about half of the total federal government budget without accounting for the other huge investments in infrastructure projects in state-owned enterprises operating in the telecom, energy, and transport sectors.

The 10 Years' strategic plan of the GoE identifies the construction sector, in which Road and Water Infrastructure under the transport development sector and water resource development sector respectively in the strategic plan are the key components, as one of the critical sectors for the achievement of the development objectives of the country.

Considering the huge government investment, the Road and water sectors are prone to fraud, corruption, and bid-rigging. The assessment will review those aspects of the procurement system that are exposed to corruption and review the adequacy and effectiveness of the mitigation measures in place (if any).

The Road and Water sectors were among the six sectors sampled during the Core MAPS assessment. The assessment identified that the sectors have not been equipped with suitable and proportional procurement working documents including Standard Bidding Documents, thresholds assigned by the MoF for use of different procurement methods have not been applicable particularly in the Road sector, different sector level guidance and circulars contravene provisions in the main procurement documents etc.

Recent disruptions due to internal and external factors including COVID 19, greatly affected procurement performance in infrastructure projects including in Road and Water sectors. As a result, various contracts in the sectors faced a risk of termination and in some cases led to litigations. For instance, to complete various contracts in Water supply projects amid of the current high inflation, the MoF and subsequently, the MoWE issued circulars instructing public bodies to consider price adjustment on contracts otherwise signed on fixed price terms for major construction items such as rebar, cement, pipes etc.

The construction industry in Ethiopia is characterized by similar procurement challenges associated with market failure, capacity limitation within the private sector and public bodies and integrity and corruption issues etc. Thus, it is expected that the recommendation and subsequent reform actions in the Roads and Water Sectors will have a much broader impact on improving procurement performance in the other sectors of the construction industry in Ethiopia.

This assessment report contains evidence-based findings and recommendations on the procurement system and performance in the Road and Water sectors to provide policymakers and practitioners with evidence that informs future reforms to improve the procurement systems and performance in the Roads

[5] Letter of request from GOE

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and Water sector so that it will be more efficient, transparent, and deliver the best value for money out of the huge investment in the sectors.

Focus and Scope of Assessment

This report has integrated the findings of the Core MAPS with sector specific issues as per SLA pilot methodology The Sector Level Assessment (SLA) covers all relevant indicators to enable the assessors to get the full picture of the procurement system and performance in the Road and water sectors in Ethiopia, its strengths, and gap.

The construction sector is an engine of economic growth in the country in which the Road and water sectors consume the largest share of the government budget. Thus, the assessment aims at understanding the public procurement system and performance in the Road and Water sectors using Sector Level Supplementary Module Assessment (SLA) and provide evidence-based recommendations for improvement.

The assessment was carried out using the SLA pilot module focusing on analysis of country context relevant to Road and Water Sectors, public procurement principles in specialized legislation in the sectors (if any) and their consistency with the main procurement legislation, structure and capacity of procuring entities, procurement performance from planning to contract implementation and the capacity and functioning of the private sector. In addition, the team has updated the findings of the core MAPS under pillar IV on relevant sub indicators and criteria.

MAPS Sector Level Assessment (SLA) Methodology

Based on guidance issued by MAPS secretariat in November 2022 and revised later in March 2023, the supplementary modules are extensions of the core MAPS framework. This means that they are structured around the same four pillars, namely (I) Legislative, Regulatory and Policy Framework, (II) Institutional Framework and Management Capacity, (III) Procurement Operations and Market Practices and (IV) Accountability, Integrity, and Transparency of the Public Procurement System. For each pillar, the supplementary modules offer new indicators and sub-indicators that provide an increased understanding of how the procurement system performs in relation to a particular topic.

As in the core methodology, all sub-indicators are assessed through objective criteria and substantiated by means of quantitative indicators calculated through surveys, data extracted from procurement portals, among other sources.

Because the supplementary module has followed the structure of the core MAPS, the User Guide and the related templates and guidance documents available at *www.mapsinitiative.org* has been used when conducting an assessment with the supplementary modules[6].

The assessment aims at understanding the public procurement system and performance in the Road and Water sectors using Sector Level Supplementary Module Assessment (SLA) and provide evidence-based recommendations for improvement. The assessment will be carried out using the SLA pilot module focusing on analysis of country context relevant to Road and Water Sectors, public procurement principles in specialized legislation in the sectors (if any) and their consistency with the main procurement legislation, structure and capacity of procuring entities, procurement performance from planning to contract

[6] https://www.mapsinitiative.org/methodology/supplementary-modules/

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implementation and the capacity and functioning of the private sector. In addition, the team has updated the findings of the core MAPS under pillar IV on relevant sub indicators and criteria.

Process of Assessment

The assessment has reviewed the Ethiopian Core MAPS report thoroughly as part of the preparatory desk work. In addition, the team has reviewed the procurement legislations, procurement reform strategy document and action plan and relevant procurement and other documents related to the sector. Then, the Assessment Team has carried out the assessment in accordance with the MAPS Module Sector Level Assessment, which is available for pilot implementation, as shared with the team by the MAPS Secretariat.

Accordingly, the assessment has been carried out against the 32 sub-indicators identified in the SLA module. Of these 32 sub-indicators, 24 are derived from the MAPS core methodology and they have been adapted to focus on the selected sector. The remaining 8 are new sub-indicators. These SLA indicators concern the first three pillars of the MAPS methodology: namely, Pillar I - the existing legal and policy framework: Pillar II - the institutional framework and management capacities; and Pillar III - procurement operations and market practices. This requires assessing 126 criteria to cover three pillars and 32 sub-indicators. The indicators and sub-indicators in Pillar IV - accountability, integrity, and transparency of the procurement system that are applicable in this module has been transposed without changes from the MAPS core methodology, but it has captured the specific sector level aspects of the procurement system that are related to accountability, integrity, and transparency of the public procurement system. The assessment has covered the procurement system in the Road and Water Sectors at the federal and Addis Ababa City Administration which are governed by the public procurement framework and were covered in the core MAPS assessment.

Agencies covered to Support Sector Level Findings

The assessment has covered the procurement system in the Road and water Sectors at the federal and Addis Ababa City Administration which are governed by the public procurement framework and were covered in the core MAPS assessment. Accordingly, the following public bodies was covered in the assessment:

Federal

- The Ethiopia Roads Administration (ERA)
- Ministry of Water and Energy (MoWE)
- Ministry of Irrigation and Lowland Development (MoILD)

Addis Ababa City Administration

- Addis Ababa City Roads Authority (AACRA)
- Addis Ababa Water and Sewerage Authority (AAWSA)

This assessment is not an audit of representative entities in Road and Water sectors, but an analysis to understand gaps and areas of improvement at sector level in the country.

Leadership and Assessment Team: The PPPA (Public Procurement and Property Authority) or the "Authority" established Assessment Steering Committee co-chaired by the African Development Bank and includes members from MoF, World Bank, Procuring Entities, and CSOs. The composition of the Steering Committee is in Appendix B. The PPPA is the focal agency in the implementation of MAPS Ethiopia SLA in the Road and water sectors. In addition to monitoring the assessment, the Assessment Steering Committee facilitated the

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assessment on the ground to ensure readiness, availability of procurement data, and collaboration from Public Bodies.

The Procurement Team of The World Bank in the Ethiopian country office with support and guidance from the Practice Manager led the implementation of MAPS Ethiopia SLA in the Road and water sectors. The Team was supported by experienced international and local consultants including international and country lawyers, procurement specialists, and communication specialist. The Team worked closely with the MAPS Secretariat for technical assistance and support and ATAG for quality assurance.

Team worked with the GOE's Counterpart Team and the Assessment Steering Committee. The Assessment Steering Committee shall be responsible for providing guidance and comment on the assessment and ensuring that all the necessary support is provided from the Government side.

The MAPS SLA module is prepared to cater to procurement performance in the procurement of Goods, Works, and Services and therefore the assessment shall review procurement in all the three categories. However, as the procurement of goods may not be substantial in the sector attempt will be made to review procurement performance in Goods Category related to the Road and Water sectors with a reasonable sample size. Considering their relative importance in the Road and Water Sectors, the assessment intended to focus on the procurement of Works contracts and selection of consultancy services related to feasibility studies and Design & supervision services.

The assessment team was required to follow the purposive sampling method to select Goods contracts associated with the procurement of Equipment and Machinery required in the Roads and Water Infrastructure construction. Based on availability of data, the assessment will cover at least 10 works contracts, 5 Consultancy contracts, and 3 Goods contracts that are recently completed in each of the 5 public bodies identified above. The team was required to include in the sample small value procurements carried out at local level particularly in the agencies selected from Addis Ababa City Administration.

Summary on key dates on the Assessment:

a. Request received from GoE and the Authority to conduct Sector Level Assessment: May 8,2021.
b. SLA Assessment Team constituted: July-August 2022
c. Steering Committee established by the Government in guiding the SLA: September 2022.
d. Initiating Workshop was held on with all stakeholders including Steering Committee: October 18, 2022
e. Consultations held with the private sector: October 19, 2022
f. Interviews, consultations from stakeholders during mission: October 10-20, 2022
g. Desk review and continued interaction with all Stakeholders to get input: Nov 2022- April 2023
h. Private Sector survey conducted: February 2023.
i. Preparation of Results of Findings: mid- May 2023
j. Validation Workshop with all Stakeholders: May 25, 2023

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2. Analysis of Country Context

2.1. Political, economic, and geostrategic situation of the country

Ethiopia is one of the world's fastest-growing economies (6.1 percent growth rate in 2021) and the second most populous country in Sub-Saharan Africa (118m population; 80 percent rural). Ethiopia is a country of 98 nationalities and peoples, with roughly 93 languages spoken. Ethiopia's Federal arrangement consists of eleven Regional States and two City Administrations including the newly established Sidama and Southwest Regional states.

In the past 15 years, Ethiopia achieved strong economic growth, driven by large-scale public infrastructure investment. According to official data, GDP growth averaged 10.4 percent in 2004-2018, making Ethiopia one of the world's fastest-growing economies. This has dramatically increased GNI per capita, from US$140 in 2004 to US$ 890 in 2021[7]. However, Ethiopia remains one of the poorest countries in the world but has achieved substantial progress in economic, social, and human development over the past three decades. Despite these gains, around 30 million people in Ethiopia lived on less than US$1.90 (2016) a day.

As per Ethiopia Risk and Resilience Assessment Report of May 2022 by the World Bank, the conflict in northern Ethiopia and violence in many parts of the country have resulted in an acute humanitarian crisis that poses multiple overlapping challenges to stability and security. In the year and a half since conflict erupted in the northern Ethiopian region of Tigray (and drew in the adjoining regions of Afar and Amhara), it has claimed thousands of lives and resulted in mass displacement and acute food insecurity. There has also been increased violence in other parts of the country, contributing to rising insecurity in different regions. Continuing hostilities have hindered sustained humanitarian support. This is exacerbated by climate shocks, effects of the COVID-19 pandemic, and a deteriorating economy, which negatively affected the broader macroeconomic environment.

According to the World Bank sources[8] there is a need for fostering inclusive growth and realizing peace dividends in Ethiopia. In spite of all accomplishments , the people of Ethiopia have been confronted with multiple challenges in the past few years that include:

- The health, social, and economic impacts of COVID-19 and associated containment measures;
- The devastating effects of the conflict in the North — specifically the human, infrastructure, health system, and educational losses; and
- Impacts of severe weather events, including drought in the south and east while there have been floods in the central highlands, as well as a historic 2020 locust infestation.

And further based on the same source of the World Bank, these challenges have placed a significant strain on the country's economy and have undermined the positive advancement in key developmental areas. The country has every chance to return to a strong development path and deliver a better tomorrow for its people. The November 2022 signing of the Cessation of Hostilities Agreement and consequent silencing of the guns, delivery of humanitarian assistance, and restoration of services in the North are critical and encouraging. It will be important to ensure that the peace is sustained, and that conflict-affected areas can heal, recover, and rebuild. It is also important that parts of the country which have also endured other

[7] World Bank WDI

[8] https://blogs.worldbank.org/nasikiliza/fostering-inclusive-growth-and-realizing-peace-dividends-ethiopia (World Bank, March 22, 2023)

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shocks are given the opportunity and resources to overcome their challenges and obtain greater prosperity.

In accordance with Country Partnership Framework (FY 18- FY22) document of the World Bank [9],the Joint Monitoring Program (JMP) of WHO and UNICEF reports that by 2015, a total of 27.7 million people have access to improved sanitation in Ethiopia. Further as per CPF document, to build resilience and inclusiveness, one of the requirements is "Increased access to improved water and sanitation". The CPF highlights that access to safe water in both rural and urban areas is critical for improved health and nutrition outcomes, better labor productivity and for benefiting women, who disproportionately bear the burden of fetching water. It is also noted that rapidly growing urban populations and increased pressure on water resources will impose new demands on service providers.

CPF was intended to support GoE's goal of providing 100 percent national potable water supply coverage by 2020. The target was to boost the percentage of people with access to improved water sources from 61 percent to 74 percent. Similarly, access to sanitation is very low even though reductions in open defecation have been noted (down from 92 percent in 1990 to 29 percent in 2015). According to the CPF, Addis Ababa is the only city in Ethiopia with a sewer system, and it only covers 10 percent of its residents and set target to increase access to improved sanitation to 40 percent from 28 percent.

2.2 Water Sector Strategy

The water sector is one of the five sectors identified by the GoE instrumental for poverty reduction attracting high level of government support and investment. According to the budget summary (2022/23FY), the budget allocated for the water sector increased by 5.1%, on average, over the preceding 4 fiscal years. In 2022/23 budget year, the share of budget allocated for the water and energy sector (at federal government level) was 4.39% of the total federal government budget (which is equivalent to USD 466 million). The growing investment in the water is supported by sector policies and strategies.

The Ethiopian Water Resources Management Policy[10] aspires to provide access to sufficient water of acceptable quality to all Ethiopian citizens. The policy recognizes that.

- In order to significantly contribute to development, water shall be recognized both as an economic and a social good.
- Water resources development shall be underpinned on rural-centered, decentralized management, Participatory approach as well as integrated framework.
- Management of water resources shall ensure social equity economic efficiently, systems reliability and sustainability norms.
- Promotion of the participation of all stakeholders, user communities; particularly women's participation in the relevant aspects of water resources management.
- Water is a natural endowment commonly owned by all the peoples of Ethiopia.

In addition, the 10 years irrigation development strategy issued by the MoWE in January 2019 outlines that due to limited capacity and commitment, the performance in irrigation development in Ethiopia had been much lower than the potential. The strategy identified the following 5 pillars (i) to increase agricultural production and productivity through irrigation development (ii) To create job opportunities

[9]https://documents.worldbank.org/en/publication/documents-reports/documentdetail/202771504883944180/ethiopia-country-partnership-framework-for-the-period-fy18-fy22

[10] https://faolex.fao.org/docs/pdf/eth158196.pdf

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through irrigation development (iii) To reduce government expenditure and enhance alternative source of financing (iv) Develop institutional and human capacity in the sector (v) Enhance inclusion of women and disadvantaged members of the society. Under each of these pillars the strategy identified the baseline and target performance. Some of the targets include building medium and large irrigation schemes to irrigate 710,000 hectares of land, creating jobs for 902,000 people compared to 82,000 people in the baseline, reducing time and cost overruns to 50% and 30% from 4000% and 350% respectively etc.

The strategy document identified key challenges facing the sector and the remedial actions taken by the government. Most of the challenges and remedial actions are directly or indirectly related to procurement which includes (i) Granting access to contractor's to import additional equipment and machineries (ii) Increasing the contraction daily number of shifts to expedite the work (iii) The sector implemented capacity enhancement program which led to increase in the implementation capacity in the sector (iv) Established governance structure that led to efficient and optimal decisions (v) Conducive condition are created to start manufacturing some equipment and machineries locally.

Evaluation of Sector Performance

Sector performance as a customary practice is evaluated by the standing committee in the parliament represented for the water sector. The head of the public bodies will present progress report accompanied by sometimes field visit by the committee where comprehensive feedback is provided to improve the sector`s performance. However, some of the water sector schemes/projects experience exaggerated delay due to capacity limitation in implementation which has impacted the sector`s performance to achieve the policy objective. Though there are attempts to achieve sector targets, in a nutshell there are long ways to go in order to build that capacity in project implementation including procurement where projects are executed as planned. In summary, development activities carried out so far in the water sector in totality or individually reveal a very low level of performance. The cause for this poor achievement and the dilemma for the failure of the country's water resources to significantly contribute to the overall socioeconomic development of the Ethiopian people's lies mainly in the absence of a well-defined coherent policy and the lack of the required huge investment (Ethiopian Water Resource Management Policy).

Beneficiaries and stakeholders in the Water Sector

As per *above mentioned "Ethiopian Water Resources Management Policy"* the water management policy has focused on three areas such as water supply and sanitation, irrigation, and hydropower. The development in these areas largely benefit the society/community where there will be access to safe and clean water, more agricultural production from irrigable farm and access to energy. Hence, the citizen is the main beneficiary of the development; however, there are also cases where the energy could be exported to the neighbouring countries such as Kenya and Djibouti who will be using the energy produced in Ethiopia as also other beneficiaries.

Various stakeholders exist in the sector including those who have influence on policy making, some are: Universities, NGOs, communities, cooperatives, farmers, individuals (scholars) and private sectors. The Federal responsible government body is the one who will prepare the policy and subsequent strategies while the stakeholders provide feedback to further enrich the policy.

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2.3 Business Environment and Investment Climate:

Recently, the GOE made significant improvement to improve the business environment and investment climate in Ethiopia. In February 2021, the Ministry of Trade and Regional Integration (MOTRI) launched an eTrade platform (etrade.gov.et) for business registration licensing to enable individuals to register their companies and acquire business licenses online. This has made licensing and registration of business easier and faster. The amended commercial registration and licensing law has eliminated the requirement to publicize business registrations in local newspapers, allows business registration without a physical address, and reduces some other paperwork burdens associated with business registration. Other improvements to enhance the efficiency and competitiveness of business include the reform in the telecom and finance sectors. As part of telecommunication reform strategy and privatization of the telecom sector, a private service provider acquired license and has resumed operation. The GoE has solicited bid to engage additional service provider in the telecom sector. Similarly, the recent reality in digitization of payment is another success story in improving efficiency and competitiveness businesses and the overall economy. According to Transparency International, Ethiopia has made significant improvement in corruption perception index (CPI). In 2018, the Ethiopian CPI improved by 5 scores and reached CPI score of 39 from the 2018 score of 34. However, the CPI score in 2022 regressed by one score point. In terms of ranking, Ethiopia has also shown improvement. In 2022, the country perceived as the 94th least corrupt out of 180 countries as compared to its rank of 114th in 2018.

To attract more foreign investment, the government passed a new investment law, acceded to the New York Convention on Arbitration, amended its 60-year-old commercial code, in addition to digitizing the commercial registration and business licensing processes.

While there are progresses, there are also challenges impacting business and investment in the economy. According to the World Bank Enterprise Surveys (2015), access to finance is the major challenge to businesses followed by electricity and trade regulation. Though some of these challenges are probably addressed through recent reforms, the challenge to access finance and foreign currency are still apparently prevalent. Some of recent challenges in the construction sector include shortage of basic construction materials (cement), chronic foreign exchange shortages making it difficult to import required goods and services from abroad and the recent conflict and security situation in the country impacting the mobility of labor and materials needed for construction works. According to the latest report issued by Children's Investment Foundation titled "ASSESSMENT AND ESTABLISHMENT OF COMPETITIVE MARKET COSTS OF WATER BOREHOLEDRILLING IN ETHIOPIA, KENYA, SOUTH SUDAN AND TANZANIA", March 2023, several drilling companies are leaving the sector in Ethiopia due to various challenges in the business environment particularly the rising cost of machines and construction materials, absence of basic accessories for drilling and foreign currency. The study recommended urgent intervention from the Government and relevant stakeholders.

2.4. History of public procurement reform

Public procurement reform in Ethiopia is managed under the overall guidance of the MoF at federal level and BoFs at regional level. However, the Public Procurement and Property Authority at the federal level and regional regulatory bodies play a key leadership role in procurement reform and monitoring. Procurement reforms are administered under the PFM umbrella. This has provided opportunity for end-to-end review of the system from planning to contract implementation including payments systems. Besides, the planned interface between e-GP and IFMIS is expected to allow full integration of the procurement system with public financial management system related to budget allocation, payment, and reporting.

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PFM strategy: The public procurement reform is designed and is under implementation as an integral part of the overall PFM reform both at federal and regional level. At the federal level, reforming Procurement and Property Administration function was one of the 9 goals identified in the PFM Reform Strategy Document (2018-22). The MoF prepared a new PFM strategy for a period covering 2023 – 2027. The new PFMs strategy identified public procurement reform as one of the nine goals of the PFM reform. The new PFM strategy document recognizes the procurement reform strategy document and action plan prepared based on the core MAPS recommendation.

Governance Structure: The PFM reform including procurement is led by the National PFM reform steering committee chaired by Finance minister MoF with other ministers (Revenue, planning, National Bank of Ethiopia) being members of the national steering committee. Under the national steering committee, there is Technical PFM reform steering committee in which PPPA is a member. The governance structure allows procurement reform to attract high level attention as part of the PFM reform.
The public procurement system in Ethiopia evolved from centralized to fully decentralized system in which each regional government city administration established their own procurement system including legal and regulatory framework. The federal PPPA govern procurement implementation at federal level in which public bodies (procuring entities) are mandated to establish procurement unit and carry out their own procurement. Similar arrangement is established at each regional state and City administration. After establishing basic structure and capacity, the procurement reform has now focused in introducing technology which is electronic procurement that is started and under implementation at federal level though still at infant stage.
Procurement proclamation: Though PPPA started the process to amend the procurement proclamation many years back, it is not yet finalized. Since the federal proclamation is normally serve as prototype, other regional states and city administration are not able to carry out revision to the PPL and modernize their procurement system.

Procurement Strategy: Following the Core MAPS assessment, PPPA in collaboration with the WB prepared action plan and procurement reform strategy document. The authority has also started implementing the priority recommendations identified in the action plan and strategy document. The SLA assessment is one of the priority actions implemented based on the action plan. In addition, at the time of the assessment, PPPA with support from the WB is implementing procurement system strengthening project that aims at enhancing the capacity of the regulatory bodies by establishing training program and providing training, supporting the newly established regional states to prepare procurement legal documents and conducting evidence based survey and preparing emergency procurement procedure, report om sustainable public procurement, streamlined procedure for procurement record management. In addition, PPPA is benefiting from the IPF component of PforR program (Enhancing shared prosperity for equitable services) and considered for financing of the key reform activities including e-GP in the governance project which is under preparation.

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Public Procurement Reform and its link to the Water Sector

Key Findings in the Core MAPS and its link to sector specific practices

The status of public procurement reform and key challenges are reflected in the assessment in Core MAPS which came up with areas that require improvement including the following:

Legal, regulatory and policy framework: (i) There are inconsistencies among key documents in the procurement legal framework (ii) The system lacks required level of transparency both in terms of legal provisions as well as practice; and (iii)The procurement of SOE's not covered in the procurement legal framework and not regulated; (iv) (iv) Sustainable procurement is not yet introduced in the procurement legal framework.

Institutional Framework and Management Capacity: (i) The functions and duties of the Procurement Regulatory Bodies are wide ranging, lacking proper segregation of duties and thus leading to actual or perceived conflicts of interest; (ii) e-GP is only under pilot implementation and no roadmap to implement to wider public bodies and subnational states; and (iii) Procurement function and positions are identified in the civil service structure. But job requirements are generically defined and not based on competencies. Besides, the training programs are not integrated and aligned with job requirements and are not considered for placement or promotion.

Public Procurement Operations and Market Practices: (i) Procurement records, including payment documents, are not complete and accessible. There is no security protocol to protect records; (ii) There is no mechanism and practice to carry out meaningful market assessment that informs selection of optimal procurement approach; (iii) the local market is limited and hampered by different systemic challenges including shortage of foreign currency and capacity; and (iv) procurement documents and procedures are not streamlined to meet sector-specific requirements.

The findings of the Core MAPS found several instances of sector specific characteristics, which without a deeper examination would not be able to provide practical solutions related to large infrastructure contracts.

Focus of Water Sector Reforms

The water resources management policy stipulates that focus will be given for policy review, reform and implementation capacity on sustainable basis. Some of the relevant points related to the procurement as also indicated in the policy are:

- Formulate and adopt national standards and criteria for the design, installation, construction, operation, maintenance, inspection, and other activities in all water resources management undertakings.
- Adopt the water sector as the responsible authority for issuance of the necessary professional certification, professional permits, and licences for consultancy, contracting, as well as manufacturing and importing related to water resources development.
- Ensure that different classes of national and /or foreign consultancy and construction services shall be based on adequate experience, qualifications, equipment, and facilities and this needs to be revised and certified every year or so as appropriate.

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- Develop pertinent guidelines and criteria for professional certification, consultancy and contracting services and promote that decisions on renewal of trade permits are made based on professional merits as well as competence criteria.
- Establish and develop as appropriate, suitable criteria for the *evaluation of consultancy and contracting services* in the water sector and create conducive atmosphere for awards for excellence, honesty, fairness and dedication in consultancy and construction.
- Ensure that all studies and development activities undertaken by External Support Agencies, Loans, Non-Governmental Organizations and Government incorporate self-financing plans and self-supporting budget for reliable operation and maintenance purposes.
- Develop regulations, standards, guidelines, and by-laws for manufacture and import of drilling rigs.
- Promote capacity for the development and operation of shallow wells that can be developed at a local level.
- Since advanced and indigenous technologies, water pumps, etc, drilling techniques, skilled manpower and energy are the necessary inputs for ground water development and utilization; to promote the initiation of training, research, and studies on the same.

The policy also has very few points on the procurement aspects, but the policy objective entails the utilization of the water resource which implies the procurement of contractors and firms to achieve the required objective. The future reform in the policy need to consider how the procurement can be addressed in the policy including creating capable institutional set up that can efficiently and effectively achieve the policy objective.

2.5 Political economy Analysis- Identification of stakeholders and involved institutions.

Ethiopia follows a decentralized government system in which both the federal and sub national states are mandated to issue legal documents that governs government functions in the respective constituencies. Accordingly, the federal and all sub national states have issued procurement proclamation and directives and supporting documents applicable in their respective areas. However, the MoF and PPPA are also mandated to ensure harmonization among the different procurement legal documents and practices. In addition, procurement reforms including at sector levels are led by the MoF and PPPA in close collaboration with the respective agencies at sub national level and ministries.

At federal level, the responsibility for procurement reform is enshrined in both the MoF and PPPA. The expenditure control program directorate in the MoF lead procurement reforms as part of the overall PFM reform agenda. On the other hand, PPPA is also mandated to carry out system strengthening activities, capacity building and advice the government on procurement policy matters. The demarcation between the EMCP Division in the MoF and PPPA on procurement reform is unclear. Besides, the capacity of PPPA and regional regulatory agencies is not strong and commensurate with their level of responsibility. As per the core MAPS, the staff in PPPA get lower salary scale compared to the staff in the procuring entities and MoF. As a result, PPPA has not been able to attract and retain qualified experts that can advise procuring entities and deliver regulatory functions. In addition to staffing, there are other institutional and structural challenges impending the capacity of PPPA to deliver its responsibilities. The assessment team noted that PPPA doesn't have adequate office space in one location and its staff are dispersed in 5 different buildings

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making management difficult and ineffective. Similarly, the procurement regulatory function in Addis Ababa City Administration is established under the Bureau of Finance without independent management and structure. In the absence of strong procurement regulatory function both at federal and regional levels, implementing procurement reforms at the required level could be a challenge.

PPPA has established semi-annual consultation forums with the regional states and private sector. The semi-annual consultation forum with the regional states has allowed to discuss on major procurement reform agendas and share experience between the federal PPPA and regional regulatory bodies and among the regional regulatory bodies. The forum has also supported to ensure harmonization among the various procurement systems in the country. The semi-annual forum with the private sector had been a very useful platform to understand concerns of the private sector on the procurement system and performance and relay expectations from the private sector. However, the assessment team noted that the forum with the private sector has not been conducted for the last successive years due to the low turnout and lack of interest from the private sector. It is advisable to revitalize the forums as a platform for sharing experiences and monitoring the ongoing and upcoming procurement reforms stemming from this assessment.

Key stakeholders of the procurement reform and the assessment in the sector:

(i) As the MoF to provides overall leadership and guidance for the procurement reform in the country, this assessment received that from them during the whole process of this exercise. The MoF is expected to continue providing guidance and support in the implementation of the recommendations in collaboration with the subnational and sector ministry and other stakeholders.

(ii) Similarly, at technical level, the Public Procurement and Property Authority (PPPA) served as the focal entity in coordinating and facilitating engagement from the Government side in the process of the assessment. It is expected that they will ensure that recommendations are translated into reform actions.

(iii) The procuring entities in the Water sectors are key stakeholders during the assessment and afterwards in implementing the recommendations stemming from the assessment. In particular, the MoWE and regional Water Bureaus are responsible in providing overall management, resource and monitoring to ensure implementation of the recommendations of the assessment in collaboration with the MoF, PPPA and other stakeholders. It is expected that the MoWE and regional water bureaus prepare an action plan by identifying priority activities, and including responsible bodies, time frame and resources.

(iv) Some development partners are engaged in the country in the procurement reform agenda. They were engaged in providing technical and financial assistance to the assessment. The assessment was partly financed from the Global Procurement Partnership Trust Fund managed by the WB. In addition, the WB has also provided financial and technical support and led the assessment in collaboration with MoF, PPPA and relevant ministries. As a Steering committee co-chair, the AfDB has been engaged in guiding the assessment, reviewing the assessment results, and providing feedback. The development partners are expected to continue with their technical and financial support during the implementation of the recommendations.

(v) Being one of the key stakeholders in the procurement reform work, the private sector was involved as a source of information particularly in Pillar III which focuses on the interface between the private sector and public procurement in the sector. In addition to engaging the private sector through the

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sectoral associations, the assessment team also directly approached a good number of members of these private sector bodies that are involved in Water sector at federal and Addis Ababa city administration through consultative workshop and surveys. The collaboration with the private sector will continue to be essential in the implementation of the recommendation.

(vi) Ethiopian Construction Authority plays a key role in registering and certifying contractors, consultants, and architects and thus they were engaged in the assessment process also.

(vii) Civil Society Organizations: There are not many CSOs that are actively working in public procurement in Ethiopia. But COST Ethiopia has been working to ensure transparency and accountability in the Ethiopian construction sector for more than a decade and their input was sought.

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3. Assessment

Section 3 on Assessment is adapted to cover SLA sub-indicators as per Supplementary Module as applicable to the sector (Pillar I, II, III to be summarized from Detailed Matrix). Pillar-IV is extracted from findings in Core MAPS on accountability, integrity and transparency issues.

3.1. Pillar I - Legal, Regulatory and Policy Framework

Pillar I of the MAPS core methodology assesses the existing legal, regulatory, and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement within the broader legal framework affecting public procurement which includes the legal aspects of the public procurement administrative framework; those which affect the relations between the public entity and the private party; the business environment, including competition; the obligations to the public in general; international and regional obligations, and national policy objectives, including socio-economic aspirations.

Pillar I under the SLA assesses (i) the structure of the legal framework; clarity and precedence of the different instruments; (ii) consistency in the legal framework when it comes to procurement; (iii) consistency and coherence in addressing horizontal policy objectives and possible constraints in the policy space (such as the constitution or binding international/regional agreements) that may limit the possibility of public procurement living up to its important strategic role and contributing to sustainability; and (iv) comparability of the rules with good international standards and whether they foster competition.

SLA-Indicator 1. The public procurement legal framework appliable to the sector achieves the agreed principles and complies with applicable obligations.

The objective of this SLA indicator is to assess the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and bidding documents applicable to the sector.

Synthesis of the indicator

The procurement procedures in the Water sector adhere to the same legal framework applicable to the Federal Government and the Addis Ababa City Administration. In this regard, the Federal Public Procurement Proclamation – for federal agencies, and the Addis Ababa Procurement Proclamation for Addis Ababa entities, constitute the primary procurement legislation that apply to Water sector.

Overall, the legal and regulatory framework is adequately documented, hierarchically organized, and precedence is established. However, the gaps identified by Core MAPS assessment in 2021, including incoherence and inconsistency between and amongst the lower-level documents and primary procurement legislation, remain. The legal procurement landscape remains dispersed and fragmented.

Both the Federal and Addis Ababa procurement laws cover goods, works, and services, including consulting services, for all public procurement which is defined as "*procurement by a public body using public funds*". The definition of "public body" includes *all entities using public funds* but it is ambiguous when it comes to state-owned/public enterprises and organizations, allowing for the prevalent view and current practice that these public enterprises are exempt from complying with procurement laws.

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At the federal level, a specialized PPP statute governs sector-specific PPPs, including concessions. There is no PPP legislation issued by Addis Ababa City Administration. It remains challenging to have a complete picture of the public procurement legal framework in Ethiopia due to the lack of a central repository containing comprehensive, up-to-date procurement documents and information.

The legal framework stipulates candidates and/or bidders must meet the eligibility and qualification requirements that need to be outlined in the bidding documents. However, the existing registration requirements, differing qualification criteria for domestic and foreign bidders do not offer complete fairness and do not necessarily contribute to efficiency, open competition, and the achievement of value for money.

The Authority has developed standard bidding documents for goods, works or services, including consulting services. However, they are not updated since issuance in 2011 and are not sufficient and adequate for all categories of Water sector procurement activities and project delivery methods.

There currently exists no Sustainable Public Procurement (SPP) strategy or policy in Ethiopia. The legal framework contains a few provisions for participation and evaluation of proposals based on sustainability considerations, but they are insufficient to promote sustainability and meet the country's development needs. The legal framework permits electronic procurement solutions, and the implementation of an e-government procurement system, is presently in the initial stages of roll out, after a period of piloting.

Findings

The Water sector procurement follows the legal procurement framework applicable for Federal government and Addis Ababa City Administration, depending on the entity carrying out procurement. At the Federal level, the Federal Government Procurement and Property Administration Proclamation No. 649/2009 ("PPL"), which came into force on 9 September 2009, is the primary legislation. This is supported by the Federal Public Procurement Directive, issued by the Ministry of Finance in June 2010 ("PPD") as subsequently amended. Secondary legislation also includes regulations by the Council of Ministers and directives/circulars issued by Ministry of Finance, the Public Procurement and Property Authority ("Authority") and other Federal ministries and/or public bodies. Regarding Addis Ababa City Administration level, the Government Procurement and Property Administration Proclamation No. 17/2009 which came into force on 9 November 2009, constitutes the primary legislation. It is supported by a comprehensive Procurement Directive No. 3/22, as subsequently amended.

The PPL and the PPD, circulars, advisory letters, and other documents issued by the Ministry of Finance and the Authority apply to all sectors, including the Water sector. In terms of scope of application, the legal framework covers goods, works and services, including consulting services for all procurement using public funds. Defense and security procurement is generally excluded from the coverage of the PPL as are the contracts between public bodies. The terms "goods", "works", "services" and "consultancy services" are defined in the PPL. The definition[11] of "works" in the Federal PPL appears to include examples focusing on roads and buildings and does not seem to provide examples of Water sector works that include water supply, wastewater treatment plant, dams, canals, supply and install of pipelines, etc. Water supply schemes, drilling and irrigation also comprise of electromechanical components which warrant a tailored

[11] PPL defines **works** to "mean all work associated with the construction, reconstruction, up grading, demolition, repair or renovation of a **building Water, or structure**, as well as services incidental to works, if the value of those services does not exceed that of the works themselves and includes build-own-operate, build- own-operate-transfer and build operate-transfer contracts." (This is a translated version and terms may carry slightly different meaning).

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procurement approach. Generally speaking, the procurement legal framework does not appear to recognize the highly specialized nature of some of the water contracts and does not include tailored documentation and procedures to that effect.

"Public funds" is quite broadly drafted to mean "*any monetary resource appropriated to a public body from the Federal Government treasury*", as well as aid grants and credit from foreign donors through the Federal government or internal revenue of the public body. PPL includes a definition of "Public Body" (procuring entity) as "*any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature".* Public enterprises, state owned enterprises and organizations in which the state has significant stake, are neither expressly included in or excluded from the definition of "public body" allowing for the prevalent view and practice that these entities are exempt from complying with public procurement legal framework, even though in some cases they receive budget allocations.

Water sector-related PPPs are governed by the Federal Proclamation 1076/2018 on Public Private Partnership ("PPP Proclamation") issued in 2018 which applies to all sectors with exception of oil, mines, minerals, rights of air space, and privatization or divestiture of public infrastructure or public enterprises which are explicitly excluded. A PPP Directive No. 55/2010/2018 ("PPP Directive") was issued to support the PPP Proclamation. The PPP Proclamation applies to PPP projects of public bodies and public enterprises from 22 February 2018. The definition of "Public Private Partnership" in the PPP Proclamation sets out the elements commonly used to define a PPP concession type arrangement: provision of a public services activity, benefit by way of compensation from the contracting authority (public body or state enterprise) or third-party sources or a combination, plus assumption of performance risk or use risk. The PPP Proclamation defines forms of PPPs and establishes a PPP Board with, amongst other things, powers of approval of PPP projects. It also establishes a PPP Directorate General within the Ministry of Finance whose role is to ensure that PPPs are carried out in accordance with the PPP Proclamation.

Federal PPL and secondary legislation (PPD, circulars, advisory letters) are published on the Authority's website which is free to access on-line portal. There is a dedicated tab on the Authority's homepage providing a link to "Legislation". There are also tabs providing links to Standard Bidding Documents and Manuals. There is a link on the home page to circulars, addressed to public bodies and issued by the Authority, though not all circulars can be found there. The primary and secondary legislation is available for downloading in PDF format (in Amharic). The directives by other Federal ministries or links to them are not included in the Authority's website. With respect to procurement documents at Addis Ababa level, there is no single place or portal/website where procurement documents are organized and available.

The Federal Government has issued Administrative Procedure Proclamation No 1183/2020, which requires that all laws, directives[12] (and amendments thereto) issued by Federal, Dire Dawa, and Addis Ababa administrative organs be registered at the Attorney General's Office before they become effective.

The legal framework necessitates that candidates/bidders meet the qualification requirements outlined in the bidding documents. Qualification criteria include having the legal capacity to enter into a contract, being on supplier lists, not being bankrupt, having a valid trading license, and paying taxes in accordance with Ethiopian tax rules. Debarment is one of the grounds for exclusion of bidders. The PPD includes additional grounds for disqualification (an example of inconsistency and incoherence between PPL and

[12] Currently, the PPL and amendments to PPD are published in the Attorney General's website and amendments to the PPDs have been renumbered as directives. Website access on May 26, 2023: http://laws.eag.gov.et/Upload/CassationDecisionsDocument/718b9b49-2c7f-432d-8928-55e85843c65c.pdf.

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PPD), such as the supply of goods originating in a nation with a trade prohibition, a UN trade embargo, where a bidder violates a provision of the PPL and PPD, where a bidder is debarred for breach of obligation under a previous contract, where bidder is proven to have offered an inducement or bribe, and where the bidder has committed an act of embezzlement, fraud or connivance.

Furthermore, the PPD establishes a different set of qualification criteria for domestic and foreign bidders requiring foreign bidders to meet higher annual turnover and general/specific experience. The approach is discriminatory to foreign bidders and violates the PPL's concept of fairness and non-discrimination. It also may affect the quality of the contractor increasing poor performance risks for the public body. The legal framework does not set any rules for state-owned/public enterprises to participate as bidders in public procurement, except for SBDs which include provisions imported from the World Bank's standard procurement documents.

Professional registration of Water works contractors and consultants is an eligibility/qualification requirement relevant to the Water sector. The registration is done by Ministry of Water and Energy[13] based on the Registration Directive which became effective on July 8, 2016. The Registration Directive includes information on the requirements for certification of contractors, consultants, and professionals at various grades and levels. It imposes limits on foreign bidders to register as grade-1 contractors only.

The rules on participation do not appear to be necessarily motivated by sustainability considerations, or aspirations based on future development objectives and needs. There is no national or sectorial Sustainable Public Procurement policy/strategy in place. However, some elements of sustainability exist in the legal framework like the concept of life-time approach, most economically advantageous tender as award criteria, use of rated or non-price criteria, price preference of 3% for small and micro-enterprises (SMEs) which could enable the practical application of sustainable procurement. However, it is not clear how consistently and systematically the existing elements are applied in practice.

The PPL allows for the Minister of Finance to issue a Directive to determine the extent to which communication by electronic means may be used in addition to or instead of writing. Pursuant to the PPL, the Ministry of Finance issued Directive no. 814/ 2021 which entered into force on 27 August 2021 (the e-GP Directive). The e-GP Directive stipulates that all communications like procurement plan, invitation to bid, sale of bidding document, bid clarification and amendments, pre bid meetings, bid opening, bid evaluation and notification of results, lodging complaints and response thereto, as well as communication during contract administration and other related activities shall be carried out using the electronic system.

The Authority has completed the pilot phase and started the roll-out of the system in 74 federal agencies, with Road Sector public bodies among the entities picked for use of e-GP in this next phase of roll out. For example, ERA has been exempted from the application of the e-GP system for contracts above the NCB threshold since FIDIC conditions of contract, which are most commonly used for works contracts, are not part of the SBDs included in the Authority's database. In other words,

Any document shall be deemed accurate and legally binding as long as it is submitted in accordance with the electronic system. It is an end-to-end system applicable to all stages of procurement cycle, procurement planning, advertisement, bid submission, evaluation, award, bid complaints, and contract management. The e-GP system provides unrestricted and full access to the system, taking into consideration privacy, security of data and authentication. The e-GP system allows only the use of standard bidding documents that are available in the database. Public bodies may require an

[13] The authority to register and issue certificate of competence has now been transferred to Ethiopian Construction through the Proclamation No. 524/2022 of 16 November 2022.

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exemption/authorization from the Authority to not use the e-GP system. But it is not clear what kind of circumstances would justify the exemption. The Authority has completed the pilot phase and started the roll-out of the system in 74 federal agencies, with Water Sector public bodies among the entities picked for use of e-GP in this next phase of roll out.

As mentioned above, the Water sector procurement, including PPPs, is governed by the Federal and Addis Ababa legal procurement frameworks depending on the public body, and it is not subject to dedicated and specialized legislation.

Gaps

Minor Gaps

Conditions for public-to-public contracting arrangements are not clearly specified in the legal framework.

Current laws and implementing regulations are not all publicly available and easily accessible to the public on a single, central, and accessible repository maintained by the Authority for federal legislation. Comprehensive up to date procurement related information is not available at the Authority's website. Some of the circulars cannot be found on the website. There are no links to other legislation issued by the Federal ministries and/or other public bodies that have impact on procurement. As a result, stakeholders cannot acquire a complete view of Ethiopian public procurement rules by simply visiting the Authority's website.

There is no central portal or website that is used for publication of the procurement documents in Addis Ababa City Administration. The key procurement documents including the proclamation are not electronically accessible. Legislation has been published in the City Gazette, but there is no website for which provides access to procurement legislation.

E-GP Directive applies only to public bodies that were designated as pilot entities. As the e-GP system has been rolled out and pilot is completed, the e-GP Directive may require an amendment to provide for application to all public bodies as determined by for example, the Ministry of Finance and/or the Authority.

Substantive Gaps

Inconsistency and misalignment exist between and among lower-level documents and primary legislation. There are several examples of legislative discrepancy at various levels. For example, the PPL and PPD provide for different disqualification grounds, judicial review of complaints, and timeframes for Complaints Review Body decisions; lower-level documents such as circulars, advisory letters, or directives by Federal ministries are inconsistent with the PPL and/or the PPD, for example, circulars amending the PPD in respect of price adjustment provisions and NCB thresholds, registration directive by Federal ministries that introduce restrictions on foreign bidders for grade 1 only, inconsistencies between PPD and standard conditions of contract. There is no consistent mechanism within the Federal government to review and comment on circulars, letters, and advisory documents dealing with public procurement issues or having a direct impact on public procurement procedures issued by the various ministries and public bodies to ensure compliance with the existing legal framework.

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The scope of PPL in terms of covered entities (e.g., SOEs/public enterprises) is not clear. The PPL's definition of "Public Body" is ambiguous and circular. It refers to "*any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature*" and it does not specify which entities are public bodies and hence included in the scope of the PPL. The PPL does not expressly include or exclude public or state-owned enterprises including those in which the government has a strong interest or influence, allowing for the general perception and practice that state-owned/public enterprises are exempt from the application of the legal framework. Although activities for these entities are generally not financed by public funds, they may receive budget allocations on occasion. In practice, most SOEs/public enterprises undertake procurement using their own manuals modeled primarily after the PPL and the Federal Standard Bidding Documents (SBDs) without oversight by the procurement regulatory authorities.

Participation rules do not provide full fairness to all bidders, and barriers to participation exist. The general view among contractors is that the Registration Directive's requirements are onerous and add little value. Contractors are compelled to comply with the regulations, but this has apparently led to practices in which professionals lend their professional certifications while falsely claiming to be employees of the contractor. Every year, contractors hunt for specialists who can rent them a professional certificate and sign as if they are an employee of the contractor. Furthermore, the PPD provides for different and considerably higher, qualification criteria for foreign bidders which is unfair. Conversely, the lowered qualification criteria for domestic bidders may compromise the quality of contractors increasing the performance risks. It is identified as "Red flag" because of the contractor's registration certificate which is one of the documents required for determining the qualification of the contractor, is managed by the ministry of urban and infrastructure and guided by factors outside of procurement.

The legal framework does not set rules for state-owned/public enterprises to participate as bidders in public procurement. As a result, SOEs compete with the private sector in ways that undermines fair competition and a level playing field. A lack of guidelines for SOE participation creates a conflict of interest because SOEs may on occasion be hired/contracted by public entities that have supervisory authority over SOEs or with which SOEs share supervision and ownership.

There is no specific SPP policy/strategy in the sector: The few environmental, social, and economic factors that are permitted, originate from the legal procurement framework. There are no established targets for contract awards to SMEs or other contracting groupings. There is little information on the consistency of compliance with or application of sustainability considerations. Currently, standard conditions of contract incorporate only a few labor and employment aspects. It is raised as "Red Flag" because the SPP strategy should be aligned with the overall sustainable development policy of the country which is dependent on the proactive involvement and action from other relevant ministries and stakeholders.

There are no rules for the exclusion of bidders for specified offenses. There are no provisions in the PPL that directly address exclusion from participation in a public procurement process because a firm or individual has violated or breached environmental, social, criminal, or corrupt activities. Such provisions do not exist in any other legislation either. Similarly, there are no provisions in the PPL for excluding bidders based on a final judgment conviction for: participation in a criminal organization; terrorist

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offences or offences linked to terrorist activities or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor, and all forms of trafficking in human beings, or the equivalent of those offences.

Recommendations

To address Minor Gaps

Consider developing guidance about the circumstances and implementation arrangements for the public-to-public-contracting. It may be advisable to consider more detailed provisions in PPL or PPD to offer clarity on this exemption from the scope of the PPL.

The Authority should adapt its website into a single, free-to-access repository for all procurement legislative documents and information, including linkages to other legislation affecting procurement. All procurement directives and circulars, including those issued by other Federal ministries/public bodies on registration, etc., should be posted on the Authority's website. The repository must always be up to date. Ideally, the repository should also be easily searchable in all formats using a variety of search criteria, allowing all users to quickly locate advisory and other materials of interest to them.

For Addis Ababa, it is important to provide a readily accessible website for procurement documents. Consider publishing the procurement documents on a centralized portal (at least on federal Authority's website as a short-term solution).

To address Substantive Gaps

Adopt an action plan to identify and remedy discrepancies, incoherence, and misalignment across the various legal framework texts. Some of the actions include conducting a comprehensive review of all existing directives, circulars, or advisory documents issued by the Ministry of Finance, Authority, and other Federal ministries/public bodies with an impact on procurement (e.g., the Ministry of Urban and Infrastructure, the Ethiopian Construction Authority); and considering additional Authority functions to screen all circulars, letters, and similar advisory documents from all sources. This should be combined with an obligation on issuing Federal ministries/institutions to submit such documents to the Authority for review. Furthermore, any new directives, circulars, or other advisory documents should provide direct references to the provisions of the PPL, PPD that they intend to clarify, supplement, or replace, while avoiding the use of lower-level documents to amend the higher legislation.

PPL should clarify the categories of public bodies covered and include in the scope SOEs/public enterprises with significant governmental interest and influence. In addition, for transparency and certainty, the Authority should compile a list of designated public entities, state companies, and other organizations subject to PPL and post it on the Authority's website.

Determine and eliminate requirements that create unequal and unfair conditions for bidders, and/or barriers to participation. There is a need to ensure that all levels of legislation are consistent with the PPL's requirement that public procurement adhere to the principle of non-discrimination and to eliminate provisions that differentiate qualification criteria based on the bidder's nationality. Qualification should not be denied for reasons unrelated to the bidder's or candidate's ability and resources to successfully complete the contract. The qualification requirements should be defined as skills, experience, and

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resources necessary to perform the contract. Qualification standards should be the same for all bidders, regardless of nationality. The authorized entity [14] in charge of registration should assess current registration practices with the goal of streamlining and adjusting requirements to ensure efficiency and quality. These registration requirements should not include criteria that are better assessed during a specific procurement process.

Amend the legal framework to include clear provisions on state-owned enterprises' participation as bidders in public procurement, to create a level playing field, and to ensure that the selection/bidding and contract implementation processes are free of conflicts of interest. It is identified as "Red Flag" because the survival of the SOEs in the water sector established at federal and in every regional state is dependent on the public procurement market and creating a level playing field will be challenged by actors outside of procurement including the political apparatus.

Develop an SPP policy/strategy that is in line with the country's Transformation and Growth Agenda: Use existing enabling provisions in the legal framework to implement specific SPP elements. The Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle.

Include grounds for bidder disqualification for violations or breaches of environmental, social, criminal, or corrupt activities. Additionally, the legal framework should extend the ability to refer for debarment to stakeholders and parties other than public bodies (e.g., audit institutions). Also include explicit provisions to exclude bidders with convictions for criminal offenses such as participation in criminal organizations, terrorist activities, money laundering, child labor, and human trafficking.

Summary of substantive gaps and recommendations of Indicator 1

Substantive gap	Risk classification and red flags	Recommendations
1(a) Coverage of the sector		
Inconsistency and misalignment between documents of legal framework	High risk,	Adopt an action plan to identify and address the inconsistencies, incoherence or misalignment that exists between the various documents in the legal framework.
Coverage by PPL of procurement by state-owned/public enterprises	Medium Risk	The PPL should define the covered categories of public bodies and include in the scope the state-owned/public enterprises with significant interest and influence by the state.
1(b) Rules on Participation		

[14] Proclamation No. 524/2022 on Ethiopian Construction Authority (ECA) assigns the role of registration and issuance of competence certificate to contractors and consultants to ECA (A.5(12)).

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Fairness of rules on participation	High Risk, Red Flag	Ensure consistency of all levels of legislation with the principle of non-discrimination by identifying and removing any provisions/requirements that differentiate the qualification criteria based on the bidder's nationality. Streamline and simplify the registration directives on competency certificates.
State-owned/public enterprises as bidders	High, Red Flag	Add provisions to legal framework on conditions for participation of state-owned enterprises as bidders.
There is no specific SPP policy/strategy in the sector	High Risk, Red Flag	-Develop an SPP policy/strategy that is in line with the country's Transformation and Growth Agenda. -Use existing enabling provisions in the legal framework to implement specific SPP elements. -The Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle.
Grounds for exclusion – convictions for specified offenses	Medium Risk	Add provisions to procurement legal framework explicitly referring to exclusion of bidders for violation or breach of environmental, social laws, criminal or corrupt activities and conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all

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		forms of trafficking in human beings, or the equivalent of those offences.

SLA Indicator 2. Implementing regulations and tools support the legal framework at the sector level.

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

Synthesis of the indicator

The majority of the requirements in this indicator are unmet. The gaps and recommendations are detailed below. To support the PPL as the primary legislation, the Federal Government and the Addis Ababa City Administration have created implementing regulations in the form of a Public Procurement Directive (PPD). The PPD is concise and comprehensive, and it is available on the Authority's website. The Authority is responsible for the upkeep of secondary legislation. The Ministry of Finance and Authority have issued circulars that change or replace portions of the PPD without referring to the impacted parts/provisions. Similarly, other Federal Ministries/entities may issue procurement-related directives/circulars which often introduce inconsistency with the procurement legal framework. The Water sector procurement is subject to the sae implementing rules/regulations issued by Federal Government and Addis Ababa.

The Authority has prepared a wide range of SBDs (issued in 2011) that include the minimum required provisions that will be included in contracts for the various types of procurement of goods, works, services, and consulting services in Water sector. The PPD mandates public bodies to use the SBDs, but they must also ensure that the bidding documents include the contents of the PPD. There are instances of inconsistencies between the provisions of the PPD and the SBDs, notably in terms of contract conditions creating confusion and lack of clear understanding by practitioners. Standard contract conditions are mandatory for use in the Water sector; however, they are not appropriate for all types of sector procurement which may include civil works and electromechanical equipment. There is a need to update the SBDs and broaden the menu of existing contract conditions to allow for a wider range of project delivery methods and payment terms.

Findings

The PPD was issued in 2010 and has since been amended several times. The amendments are done either through standalone amendments or through circulars which often do not specify whether they are clarifying, amending, replacing, or supplementing to the PPD provisions. These amendments have not been reflected in the PPD document leaving it unchanged since its issuance. The PPD offers extensive rules that address PPL's implementation issues. There are no separate implementing rules and regulations for the Water sector. Hence, the PPD is required for all procurement in the Water sector. Circulars are another type of legislative instrument that are frequently issued by the Ministry of Finance or/and the Authority

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to clarify specific articles of the PPD or standard bidding documents but that at time have reportedly introduced more ambiguity and discrepancy than clarity. In general, the Ministry of Finance issues procurement-related circulars. Because it is unclear if these circulars are clarifying, updating or replacing the PPD, their place in the rules hierarchy is ambiguous. For example, the Authority, Ministry of Finance, Ministry of Education, and Ministry of Urban and Infrastructure have published four (4) circulars on price adjustment, which in some cases constitute de-facto amendments to the PPD rules on price adjustment. It is not clear whether circulars issued by other ministries are meant to apply to the public procurement system in general or to the issuing public body specifically.

For example, amendment no. 2 of the PPD issued by the Ministry of Finance on December 15, 2016, setting forth different qualification criteria for domestic and foreign bidders, applies to those contractors registered under the Ministry of Urban and Infrastructure, which did not include the Water works contractors who were registered by the then Ministry of Water, Irrigation and Electricity at the time of amendment. Furthermore, the content of amendment refers to specific experience in roads, building and bridges but no water works. It is therefore unclear how and to what extent the amendment no. 2 is applied in Water sector.

There is also a general perception that there is not always careful assessment of the needs of the Water sector when issuing new circulars or advisory letters. For example, the 4 March 2021 (GC) price adjustment circular focuses on construction materials such as re-bar, cement, and finishing material that are relevant for construction works in water sector, but it does not contain items relevant to water supply projects, such as electromechanical, pipes, and fittings, which constitute a significant portion of such contracts and that may be equally affected by market price fluctuations.

The PPD is comprehensive and is easily accessible in a single location. However, it does not reflect changes made by circulars, amendments, or other advisory documents. Furthermore, as noted in Indicator 1, the PPD appears to elaborate on the PPL provisions on occasion to an extent possibly not envisaged by the PPL provisions.

In 2011, the Authority issued SBDs for goods, works and services. They are available on the Authority's website. The SBDs, containing standard contract conditions, are required for use by Federal public bodies, which includes federal public bodies in the Water sector. SBDs are model documents for goods, works, or services, including consulting services. In each case, there are different SBDs for international competitive bidding (ICB) and national competitive bidding (NCB). There are also ICB and NCB SBDs for framework agreement procurement as well as procurement of information systems, textbooks, and health sector goods. Addis Ababa has not adopted its own SBDs, but instead uses the Federal SBDs as per internal instruction by the City Administration.

The PPL specifies the minimum content of the bidding documents. The PPD requires public bodies to use the Authority's SBDs. The PPD contains extensive information on content of the SBDs requiring they include instructions to bidders with information on the bidding procedure, including evaluation and award, a statement of requirements, general and special conditions of contract, and bidding/contract forms, including the bid submission sheet. The bidding instructions and general contract requirements should

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not be modified, with the bid data sheet and special conditions of contract reflecting the characteristics of the bidding/contract in question. In some cases, the standard contract conditions are incompatible with the PPL and/or PPD.

Though the responsibility for maintaining and updating the SBDs, is clearly assigned to the Authority, the documents have not been updated since they were initially released in 2011. NCB and ICB documents include the same standard contract conditions with exception of foreign currency provisions in case of ICB. Moreover, the existing standard conditions do not reflect the international good practices in general and for water sector procurement more specifically.

In the Water sector, public bodies typically use SBDs on a Design-Bid-Build (DBB) and admeasurement contract basis which is appropriate for traditional civil works contracts with design provided by the employer. Water contracts and projects, on the other hand, include a wide range of works, goods, and services related to water supply, sewage systems, wastewater treatment facilities, and irrigation projects which combine design, installation, operation and include works, electromechanical equipment, operation services, etc., for which the DBB approach and/or admeasurement contracts are not always adequate.

Gaps

Minor Gaps

The PPD is not updated regularly. The PPL clearly assigns the responsibility for updating the secondary legislation to the Authority. However, to date the PPD is updated only with respect to select provisions upon request of procuring entities leaving the PPD pretty much intact. In other words, there is no updated and consolidated PPD document, which reduces clarity and may hinder practical understanding for stakeholders of the procurement legal framework as a whole.

SBDs are not kept up to date. The most recent SBDs were issued in 2011 which is past a decade, and there is no practice of regular updating. In lieu of regular revision/update, the Authority issues circulars for temporary resolution to the challenges the procuring entities face. Issuing circulars to address procuring entities' ad hoc requests or revises SBDs is not sustainable and creates layers of legislation which are not properly captured in one single location.

Substantive Gaps

Inconsistencies between PPL and PPD and other lower-level documents. The PPD supplements the PPL and it is a single, comprehensive document, but it addresses a few things differently from the PPL (e.g., such as disqualification grounds, judicial review of complaints, and timetables for Complaints Review Body decisions). As identified earlier, in many cases, the lower-level documents like circulars alter or result in de-facto amendment of the higher legislation like PPD.

No practice of regularly updating the model procurement documents: Instead, there is practice of issuing circulars to address evolving challenges creating layers of legislation not adequately recorded in a single file.

Existing Standard Bidding Documents, including standard conditions of contract are not suitable for all types of projects delivery methods and contracts in the Water sector. The existing SBDs suite is not

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suitable for all Water-related procurement, which includes works, goods, or services related to water supply, sewerage systems, wastewater treatment facilities, and irrigation projects. The SBDs are based on Design-Bid-Build approach which is limited in its application for some water-sector contracts which comprise civil works and electromechanical equipment. The SBD include lowest evaluated price as contract award criteria, and they do not include basic evaluation criteria like life cycle costing (LCC), sustainability, value engineering, and other criteria that are crucial to ensuring value-for-money in contracting models like Design-Build (DB) or Design-Build-Operate (DBO). In a DBO project/contract, a private contractor can be engaged to design, build and operate the facility on a single responsibility basis. The public sector finances the new facility and owns the resulting assets. By procuring the design, build and operation as a single contract, the employer can reduce interface risks and improve the incentives for innovation, cost efficiency, and performance delivery. These documents do not currently exist in Ethiopia leading the public bodies to frequently modify the existing standard contract conditions, often without permission by the Authority.

Standard contract conditions are not necessarily compatible with the legal framework. There are several instances of inconsistency between the contractual terms in the standard conditions of contract with the PPL and/or PPD. Examples of provisions with inconsistencies include price adjustment, timelines for payments to contractors, use of and payment in foreign currency to local bidders for inputs originating from outside the country, methods for collecting retention money as well as conditions for replacing retention money with an unconditional bank guarantee.

Existing provisions of standard conditions are not fully in line with international good practices. Examples of such provisions include those. As previously stated, the existing contract conditions are insufficient for all Water sector procurement, and public bodies must revise the documents to account for electromechanical equipment and/or plant, which necessitates changes in payment terms, roles and responsibilities, risk transfer, and so on. These impromptu changes may result in various approaches depending on the public body, making it difficult for the private sector to bid. There are several international models for contracts appropriate for water and wastewater projects like FIDIC Gold and Silver Books, World Bank's[15] Design, Build and Operation (DBO) of Water and Wastewater Treatment Plants that can be used as models for developing DBO or other types of contracts.

The Federal-level Manual does not elaborate on the procurement procedures in the Water sector. The Manual is extremely general and does not contain guidance on specialized features of Water-sector procurement. For example, the procedure for examining and evaluating bids for works contracts in the water sector is not elaborated, particularly how the evaluation can include both the civil works and electromechanical components (such as procurement in a water supply project, well drilling, and so on). The manual that was issued in 2011 has not been updated.

Recommendations

To address Minor gaps

Consider preparing an updated and consolidated version of PPD to include all amendments, including those via amendments, circulars or other advisory documents, so that a single comprehensive document

[15] Guidance note on Design, Build and Operation (DBO) of Water and Wastewater Treatment Plants https://pubdocs.worldbank.org/en/635061568045837563/Guidance-Note-water-and-wastewatertreatment.docx

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is available to ensure precision and clarity on the wording and application of amended provisions and thus facilitate practical understanding of stakeholders.

Update the existing SBDs/contract conditions based on feedback from public bodies, entities, and private sector. Consider putting in place a framework for soliciting and receiving continued feedback from all stakeholders across all sectors, which will feed into regular revisions to SBDs.

To address Substantive gaps

Identify and resolve the inconsistencies that exist between the PPL and PPD and prepare a consolidated PPD document to be updated regularly, as part of the comprehensive review proposed under indicator 1(a), inconsistencies between PPD and PPL must be identified and resolved. Similarly, any discrepancy between the lower-level documents and PPD/PPL should also be addressed.

Develop customized documents for the Water sector that may be used for a variety of project delivery methods in water sector like EPC, DBO, MCA[16] with relevant payment conditions like cost plus, lump sum target cost etc.) using best international practices. Prepare new or customized Request for Proposals (RFPs) suitable for design and supervision consulting services both for time based and lump sum contracts.

Identify and eliminate the discrepancies that exist with SBDs and the PPD or higher-level legislation. This can be done as part of the comprehensive review proposed under indicator 1.

Undertake a study or comprehensive review of the current practices, issues and challenges with the existing contract conditions to determine whether they are fit for purpose, fulfil the needs of the Water sector, and what innovations and international models can be adopted for ICB contracts in order to attract qualified bidders, ensure quality of works and achieve value for money.

Consider developing dedicated new guidelines or expanding the scope of the Manual, to address Road-sector specialized procurement nature.

Summary of substantive gaps and recommendations of Indicator 2

Substantive gap	Risk classification and red flags	Recommendations
2(a) Implementing Regulations		
Inconsistencies between the PPL and PPD, and lack of a consolidated PPD document	High risk	As part of the overall review proposed under indicator 1(a), determine and resolve the inconsistencies between PPD and PPL and prepare a consolidated PPD document.
Amendments and circulars with effect of amending the PPD are not incorporated into the PPD document leaving it intact as was issued in 2010.	Medium	Consider combining all PPD revisions through amendments, circular or other letters into a single comprehensive document.

[16] Management Contracting Approach (MCA)

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		Any future PPD amendments should be referred to as such and not be made through circulars.
2(b)&2(c) Model Procurement Documents and Standard Contract Conditions for Goods, Works, Services for the sector		
No practice of regularly updating the model procurement documents. Instead, there is practice of issuing circulars to address evolving challenges creating layers of legislation not adequately recorded in a single document.	Medium	Update the SBDs by establishing a mechanism for requesting ongoing feedback from public bodies, the private sector, and other stakeholders, particularly those in highly specialized sectors such as the road sector, which should subsequently be considered and reflected in SBD revisions
Existing SBDs/contract conditions are not suitable for all sector procurement	Medium risk	Develop customized documents for the Road sector that may be used for a wide range of project delivery methods and payment terms.
Conditions of contracts are not, in some cases, consistent with the legal framework.	High risk	Identify and eliminate the discrepancies that exist with PPD or other higher-level legislation.
Existing provisions of standard conditions of contract are not aligned with internationally accepted practices.	High risk	Undertake a review of the current practices, issues, and challenges with the existing contract conditions to determine whether they are fit for purpose, fulfil the needs of the Water sector, and what innovations and international models can be adopted for ICB contracts in order to attract qualified bidders, ensure quality of works, and achieve value for money.
2(d) User's guide or manual for procuring entities in the sector		
The Federal-level Manual does not elaborate on the procurement procedures in the Water sector. and the manual is not updated since its issuance in 2011.	Low risk	Consider developing dedicated new guidelines or expanding the scope of the Manual, to address Water-sector specialized procurement nature

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		and update the manual regularly.

SLA-Indicator 3. The legal and policy frameworks applicable to the sector reflects the country's horizontal policy objectives and international including regional and sub-regional obligations.

The objectives of this indicator are to assess the existence of clear and well-articulated sectorial development strategies and an in depth analysis as to whether (i) horizontal policy objectives, normally involving goals aimed at increased sustainability; support for certain groups of society; improving the lives and well-being of citizens through economic redistribution; and protection of the environment, are consistently and coherently reflected in the legal and regulatory framework applicable to the sector; and (ii) possible constraints, if any, in the policy space, such as the binding international/regional/sub-regional agreements which may limit the possibility of public procurement living up to its important strategic role and contributing to sustainability.

Synthesis and Findings of the indicator

The ten- year development plan from 2021 to 2030 that was prepared by the Ministry of Planning and Development, articulates the economic development aspirations of the country including setting socio-economic development targets. At road sector level, the GoE has launched a strategy called the Road Sector Development Program. The Ministry of Water and Energy has issued "Ethiopian Water Resources Management Policy", with main goal to "enhance and promote all national efforts towards the efficient, equitable and optimum utilization of the available Water Resources of Ethiopia for significant socioeconomic development on sustainable basis." The plan deep dive in the following sector development demands, such as design and construction of various water supply projects, sanitation, irrigation, and energy (hydropower, solar, wind and solid waste). It also envisaged procurement activities related to design and construction of water supply schemes, irrigation schemes, hydropower plants etc. It also addresses the capacity building aspect in the sector including retaining skilled manpower and developing the local capacity in consultancy and construction.

Most of the criteria under this Indicator are not met. The Ministry of Water and Energy has adopted the Ethiopian Water Resources Management Policy to promote the efficient, equitable and optimum utilization of the available water resources for socioeconomic development. The policy consists of sub-polices on water supply and sanitation, irrigation and hydropower, and a ten-year strategic and development plan. It addresses critical issues such as drilling of wells and provides strategic interventions to tackle these challenges. It also includes a ten-year roadmap for water development. Procurement is not explicitly mentioned in the Policy, but it may be implied when it indicates that the use of the water resource is done in an efficient manner.

Furthermore, the ten-year development plan that spans the years 2021 to 2033 suggests a homegrown economic reform (HGER) to boost socioeconomic development and resilience capacity from 50% to 90%. The plan's gender and social inclusion part aims to empower different segments of society and enable

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them to benefit from economic development. The plan also includes several primary aims for achieving the water resource development plan, the transportation sector development plan, and Water development. National policies such as fiscal policy, monetary policy, and social protection policy are woven throughout the plan to serve the broader national policy goals.

There is currently no sustainable public procurement policy/strategy in place to implement sustainable public procurement (SPP) in support of broader national policy objectives and thus no implementation plan or systems and tools to operationalize, facilitate and monitor the application of SPP. However, the legal framework includes a few provisions in the legal framework that could gradually advance the sustainability considerations until and when a SPP policy is adopted. They are the concept of life-cycle costing, most economically advantageous tender as award criteria, use of rated or non-price criteria, price preference of 3% for SMEs where such enterprises compete with local suppliers in national competitive bidding. Currently, standard conditions of contract incorporate only a few labor and employment aspects which are not sufficient to implement sustainable public procurement.

Gaps

Minor Gaps

Use of PPP to leverage private sector financing has not yet commenced: Though PPP is one of the popular delivery modalities in water sector, there are no initiatives to finance water projects through PPP arrangement. Unlike other sectors like Energy, Health, Housing and even road which has identified projects for PPP arrangement, the water sector is lagging in benefiting from the PPP arrangement. Besides, PPP is not yet adopted in Addis Ababa City Administration and in other regional states.

The sector strategy does not contain information on applicable procurement types and technical requirements and characteristic**.**

Substantive Gap

There is no SPP Strategy/Policy in place. During the assessment period, the GoE in collaboration with the WB is undertaking study to identify possible options for introducing SPP which will lead to preparation of SPP strategy document. It is raised as “Red Flag” because the SPP strategy should be aligned with the overall sustainable development policy of the country which is dependent on the proactive involvement and action from other relevant ministries and stakeholders.

The legal provisions address life cycle costing and environmentally friendly procurement only at a high level. There is no guidance how to operationalize these provisions at the procurement activity level and do not address the issue of well-balanced application of sustainability criteria to ensure value for money.

Recommendations

To address Minor Gaps

Establish capacity within the MoWE to start the use of PPP as delivery mechanism of water sector projects. Identify potential projects and follow up implementation through PPP arrangement. Adopt PPP arrangement including legal framework, structure, and capacity in the sector at regional and city

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administration level, as appropriate and where feasible. Include the technical requirements and characteristics for principal types of public procurement**.**

Substantive Gap

To address Substantial Gaps

Develop the SPP Strategy/Policy as well as a supporting plan to implement SPP (economic, environmental (including climate considerations) and social (including gender equality and responsiveness) in support of broader national policy objectives and reflecting national priorities. The government should investigate the practices and arrangements of other countries as part of the study and preparation phase.

Use existing enabling provisions in the legal framework to implement **SPP,** like preference for SMEs, promotion of environmentally friendly goods through the development of environmentally/climate friendly specifications, use of life cycle costing in bid evaluation, use of rated criteria related to SPP aspects, introduction of contractual terms that elaborate on environmental and social aspects, employment and labor standards, health and safety, gender-based violence obligations, subcontracting arrangements. In this respect, **the Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle**.

Summary of substantive gaps and recommendations of Indicator 3

Substantive gap	Risk classification and red flags	Recommendations
3(a) Procurement strategies as part of sectorial policies and strategies		
3(b) Sustainable Public Procurement in the sector		
Lack of Sustainable Public Procurement policy/strategy and SPP implementation plan to operationalize, facilitate and monitor the application of SPP.	High risk, Red Flag	Develop the SPP Strategy/Policy as well as a supporting plan to implement SPP (economic, environmental (including climate considerations) and social (including gender equality and responsiveness) in support of broader national policy objectives and reflecting national priorities. Use existing enabling provisions in the legal framework to implement specific SPP elements.

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		The Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle.
The legal provisions require a well-balanced application of sustainability criteria to ensure value for money	Medium	-Develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle and how to balance them with value for money principles. Countries around the world have devised a variety of techniques to incorporating sustainability into public procurement

Suggestions for improvement (Minor Gaps)
Sub-indicator 1(a)(b)
Consider developing guidance about the circumstances and implementation arrangements for the public-to-public-contracting. One possibility is requiring public arrangements to be subject to the PPL, save in specified circumstances. Examples of such excluded circumstances could include genuine co-operation between public bodies to deliver public services/tasks at cost; direct award of contracts between public bodies; or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market.
Sub-indicator 1(a)(d)
Addis Ababa to consider adopting a PPP legislation in line with priorities set by the City Administration.
Sub-indicator 1(a)(e)
The Authority should consider revamping its website to become the single free to access repository for all procurement legal documents and information, improve coverage and functionality of the PPA website and its up-to-date contents' maintenance. Regarding Addis Ababa, it is important to provide a readily accessible website for procurement documents. Consider publishing the procurement documents on a centralized portal (at least on federal Authority's website as a short-term solution).
Sub-indicator 1(j)(a)

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Since the piloting phase was completed, the e-GP Directive may require an amendment to expand its application to all entities that the Government has determined should use the electronic system.
Sub-indicator 2(a)(c)
Consider combining all revisions into a single comprehensive document to ensure precision and clarity on the wording and application of amended provisions and thus, facilitate practical understanding of stakeholders. Develop a framework for soliciting and receiving continual feedback from all stakeholders across all sectors, which will feed into PPD revisions.
Sub-indicator 2(b)(c)
The Authority should update the SBDs by establishing a mechanism for requesting ongoing feedback from public bodies, the private sector, and other stakeholders, particularly those in highly specialized sectors such as the water sector, which should subsequently be considered and reflected in SBD revisions.
Sub indicator 3 (a) (a)
Enhance the content if the sectoral plan to include the technical requirements and characteristics for principal types of public procurement

3.2. Pillar II - Institutional Framework and Management Capacity

Pillar II within the context of the Sector Level Assessment (SLA), examines the institutional framework and management capacity of the sector. It looks at how the procurement system as defined by the legal and regulatory framework is operating in practice through the institutions and management systems that are part of the overall public sector governance in the country.

The purpose of Pillar II is to evaluate how the key institutions are set up to discharge their obligations. It assesses whether: 1) the system is adequately linked with the country's public finance management system; 2) institutions in charge of necessary functions are in place and operating without gaps and overlaps; (3) the system is adequately equipped to collect, manage and evaluate the polices and operations; and (4) the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

SLA-Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system at the sector level.

The purpose of this indicator is to focus on the degree of integration of the procurement system within the public financial management system for the sector.

Synthesis of the indicator

Related to degree of integration of the procurement system within the public financial management for the sector, the assessment shows situations of minor gaps to substantive gaps.

MoF issued a five year Macroeconomic and Fiscal Framework (MEFF) from 2022/23 to 2026/27 dated March 2022 that provides an estimate on the budget for the period of five years for major areas of expenditure such as capital and recurrent, among others. Though detailed procurement plan is not prepared to inform budget preparation, the MEFF enables consideration of future and existing

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commitment associated with new and ongoing programs in each of the public bodies. Thus, at the national level, the MEFF provides opportunity to consider a multiyear budget requirement for new and ongoing programs.

The legal framework [17]stipulates the public bodies to prepare an annual procurement plan that is also in harmony with the work program. But the practice in the sector is to prepare a formal procurement plan after getting an approved budget.

Federal financial administration proclamation does stipulate the public bodies to refrain from signing a contract if there is no earmarked and available budget. The same provision is also stipulated in proclamation for Addis Ababa which indicate set a requirement to abstain from contract signing before funds are available. Such stipulations open a room for the public bodies to initiate procurement in the sector including solicitation, also to award a contract without ensuring the availability of funds.

IFIMIS do not provide details on payment status of specific contracts and there are situations of delays in processing of invoice based on sampled contracts.

Findings

The legal framework requires annual or multi-annual procurement plans (as part of Implementation plan) to be prepared for facilitating the budget planning and formulation process and to contribute to multi-year planning, In addition, the **Project Administration and Management Proclamation** require public bodies to prepare project Implementation Plan including physical and financial implementation plan. The viability of the plan is evaluated and prioritized for budgeting.

The entities in the sector prepare annual procurement plan, but there is no practice of preparing multi-annual procurement plan. The customary practice in the sector is to prepare formal procurement plan after getting the approved budget, which is proclaimed through Federal Negarit Gazette in case of Federal and Addis Negartit in case of Addis Ababa which shows the budget planning is used as a basis to prepare the procurement plan. However, while preparing the procurement plan the entities prepare a cost estimate of the envisaged procurement activities.

The current practice in the sector from the assessment showed that, annual Procurement plan is prepared after the annual budget is approved, the procurement department will prepare the annual procurement plan, once they get a confirmation from the budget department that the annual budget is approved and earmarked for the envisaged activities. Hence, the finance department of the PEs in the sector does not allow the procurement department to publish procurement notices unless the availability of the budget is confirmed.

Though the Legal Framework provides a mechanism for reporting budget execution upon completion of major contracts, the procuring entities in the sector have not yet started implementing as per the legal requirement.

IFMIS (Integrated Financial Management Information System), allows procuring entities to plan, follow and report on budget execution. However, the budget utilization report through IFMIS is on program level and not on contract basis. The procedure to be followed by procuring entities that utilize budget of the

[17] PPL A.22 for Federal and PPL A.14 for Addis Ababa

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Federal Government, which is not known by potential bidders, in requesting the specific fund from MoF is laid in the Federal Government Payment Procedure and City's disbursement directive which provides detailed descriptions including required documentary evidence in processing payment.

Payment procedure is clearly indicated in bidding documents which is also made part of the contract. In addition, the overall procedure and timing of payment is also stipulated in the public procurement directive which is publicly available.

The Federal as well as the Addis Ababa City Administration public procurement directives require Public Bodies to effect payment within 14 working days of receipt of the payment certificate which should be verified by the consulting engineer within seven days of receipt. However contrary to stipulations in the directive, the SBDs allow payment within 30 days in consultancy and 90 days in works contracts from receipt of payment certificate or invoice.

Minor Gaps

Enforcement of legal requirement on budget formulation on annual and multi-annual procurement Plan: Annual or multi-annual procurement plans are not prepared to facilitate the budget planning and formulation process. , Currently the legal requirement to submit feasibility study is included in the project Administration and management proclamation number 12120/2020, though it is not yet practiced. Hence the gap in this regard is mainly lack of enforcing the legal requirement.

Lack of feedback mechanism on budget execution: The project administration and management proclamation number 12120/2020 stipulate a feedback mechanism reporting on budget execution but is not enforced in the sector. IFMIS is not generating information on budget execution on a contract basis rather generates information for the aggregate budget.

Authority for variation order: There is a concern on duplication of authority in approving variation order above 30% of contract amount (PPA and planning commission)

Risk of Solicitation of tenders/proposals without certification on availability of funds / foreign currency: In practice, the public bodies in the sector confirm availability of budget prior to authorizing solicitation of tender. However, due to absence of provision that prevent solicitation of tender without certification of the availability of funds, there is risk of solicitation of tender without certification of the availability of foreign currency portion of the contract amount.

Substantive gap:

Delays in payment to suppliers, contractors, and consultant: Payment is usually delayed due to the delay by MOF in releasing the fund, which caused non-compliance to the payment provision stipulated in the public procurement directive and in the conditions of the contract. To address the inconsistency, the MOF has issued CIRCULAR on 25/1/2014 E.C, for effecting payment for works contract within a maximum of 45 days from the date requested by the contractor which deviates from the timeline provided in the PPD and SBDs and not available publicly. out of 96 reviewed invoices in 3 PEs, on average, 49% were paid on time. The proportion of timely paid invoices in the three PEs is 57%, 20% and 11%. Payment delays up to 660 % were recorded in sampled invoices which in days was 197 days.

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Shortage of foreign currency to cover cost for importation of equipment and materials: Public bodies in the sector face serious challenge in importing the required materials and equipment timely due to shortage of foreign currency even if budget is available in local currency. . It is raised as "Red Flag" because the availability of budget and foreign currency is dependent on the overall performance of the economy and its fiscal management which is beyond procurement system.

Contradiction between the PPD, SBDs and MoF's circular on timeline to effect payment: The procedure followed by procuring entities in getting budget funds from Ministry of Finance is not clearly known by potential bidder. Due to the inconsistency between the SBDs resulting to contract agreement and MOF's circular on the timeline to effect payment and general delay in payment led to additional cost of paying interest for the delayed payment and in some cases, to contract termination.

Recommendations

To address minor gaps:

Integrating budgeting and procurement plan: More explicit provisions that demand the integration of budgeting with procurement plan should be considered. The Ministry of Planning and Development to ensure inclusion of formal procurement plan as part of project implementation plans, submitted by project implementing bodies, in relation to projects prioritized and selected for budgeting; so that the procurement plan will be used as an input in the process of planning and budget formulation. Enforcing and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting with the Procurement plan.

*Lack of feedback mechanism on budget execution***:** Enforce the law for timely provision of feedback mechanism reporting on budget execution and enter major contracts in IFMIS and generate a report on budget execution of these contracts to be used as a feedback mechanism reporting for budget execution.

Risk of initiating procurement without budget confirmation: Set a clear provision in the public procurement proclamation as well as financial administration proclamation, that, certification of availability of funds to be a condition for solicitation of tenders/proposals in the sector

Contract amendment and variation order: Streamline the approval procedure for variation order by avoiding duplication and lengthy process.

Summary of substantive gaps and recommendations of Indicator

Substantive gap	Risk classification and red flags	Recommendations
4(a) Procurement Planning and budget Cycle in the sector		
Shortage of foreign currency to cover cost for importation of equipment and materials	High Risk, Red Flag	Improve economic development and resolve shortage of foreign currency in the economy
4(b) Financial procedures and procurement cycle in the sector		

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• The procedure followed by procuring entities in getting budget funds from Ministry of Finance is not clearly known by potential bidder	Medium Risk	Streamline and publicize payment procedure to be known by potential bidders and the public

SLA-Indicator 5. The sector has an institution in charge of technical normative function.

This assessment covers the development function and or validation of technical standards applicable to the sector. The purpose of this indicator is the assessment of the existence, independence, and effectiveness of the normative functions, in the sector, which may be entrusted to different procuring entities, and the degree of coordination between these responsible organizations. As a general consideration, the normative functions in the sector, should be clearly assigned without gaps and overlaps.

Synthesis of the indicator

Related to status and the legal basis of technical normative functions there are situations of minor gaps to substantive gaps at sub-indicator level. Ethiopian water resources management proclamation No. 197/2000 require the establishment of quality standards for surveys, design and specification of waterworks as well as standards for the construction of waterworks, necessary for the development of water resources; it shall also supervise compliance of water works with the established standards. The supervisory body being Ministry of Water and Energy.

There is a proclamation on duties and powers of executive organs stipulates the Ministry of Water and Energy inter alia, have the following responsibility: prepare national potable water and sanitation study and design, construction and institutional management standards and manuals and disseminate the same and follow up their implementation. However, the same proclamation doesn't specify the normative function for developing technical standards related to irrigation projects. There is no uniform provision in terms of specifying the normative functions at all levels in the sector. Water sector has no national technical standards as compared to other sectors like Building and Roads. The absence of national standard may have the possibility of presenting the technical norms differently from what is required which may affect the competition and transparency of the procurement process.

Moreover, In the legal framework [18] the function of the Authority is stated, inter alia: to set a standard for major items of public bodies representing important fixed assets and follow-up adherence to such standards.

Findings

The Institute of Ethiopian standards issued various technical standards for the sector such as for pipes, pumps, irrigation equipment's, well casing, wastewater treatment facilities. The institute provides most

[18] Federal PPL A. 15(18) and Addis Ababa PPL A. 12(18)

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of the technical standards related to items used in water supply and irrigation but is not comprehensive in terms of technical specification related to civil component of the waterworks construction.

The water sector has no national technical norms as compared to other sectors such as Bat CODA19 for building and hence is not possible to check whether the norms/standards respond to the needs of the country. Absence of such standards will influence the quality of water infrastructures including sustainability.

For electro-mechanical parts of a water supply scheme, in some public bodies, the specification used for the purpose of bidding is not updated and aligned with the latest technology in the market impacting competition and value for money in the procurement in the sector.

Gaps

Substantive Gaps

Technical Standards: The normative function for validation of technical standards in the sector is not stipulated in the legal framework. The Federal Proclamation No.1263/2021 did not stipulate the normative function for development of technical standards related to irrigation.

Lack of technical standards tailored to the needs of the sector and the country: : There are no national technical standards in the water sector that was prepared in consultation with stakeholders and respond to the needs of the sector. In most cases, technical norms and specifications are prepared by consultants without any verification mechanism for consistency and adequacy. It is raised as "Red Flag" because the primary responsibility for preparing technical standards rests with public bodies outside of the procurement system and cannot be easily addressed.

Use of standards that are not customized to the needs of the sector affect competition: relying on technical specifications prepared by outside firms or consultants without national norms is likely to skew to certain standards with risk of limiting competition. It is "Red Flag" because it cannot be resolved within the procurement system and until national standard is prepared.

The findings related to technical standards in the water sector are identified as "Red Flags" because of the significance of the gap that cannot be addressed within a short period of time and primarily require the involvement of other actors in the sector including regulatory bodies.

Recommendations

Summary of substantive gaps and recommendations of Indicator 5

Substantive gap	Risk classification and red flags	Recommendations
5(a) – Status and legal basis for the normative functions entrusted to the sector agencies		

[19] Codes and standards issued by Ethiopian Building and Transport Construction Design Authority focusing on technical specification and method of measurement for Buildings. However, this code was replaced with the construction norms.

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Technical norms to meet the needs of the country: Lack of technical standards tailored to the needs of the sector and situation in the country	High Risk, **Red Flag**	Customize the international standards for the sector context and country in general. Capacitate Ethiopian Construction Authority to follow and address all the sector`s technical requirement and issue a comprehensive national technical standard applicable for a range of works, services and goods for the sector. Include in the legal framework the normative function
Use of standards that are not customized to the needs of the sector affect competition	High Risk, Red Flag	
Until national standard is prepared, ensure that standards and specification included in bidding documents are reviewed and verified for consistency and adequacy.:	Low Risk	Review, comment and validate those standards prepared by firms/SOEs rather than using it as a first-hand source for the sector. Prepare a fit for purpose national standard that can foster competitiveness and transparency in the sector

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

This indicator assesses: i) whether the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; ii) whether there are provisions for delegating authorities to procurement staff and other government officials to exercise responsibilities in the procurement process, and iii) whether a centralised procuring entity exists.

Synthesis of the indicator

Related to procurement responsibilities and accountabilities and delegation of authorities to procurement staff and other government officials responsible for the procurement process, it is seen that the situation is mostly of no gap or minor gap except one constraint on attracting high calibre procurement professionals due to Civil Service Decision on procurement position and grading.

Findings

The procuring entities in the sector is defined for Federal: “as any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature” and for City Administration “any public body, which is partly or wholly financed by the City Government budget, higher education institutions and public institutions of like nature”.

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The legal framework clearly defines responsibilities and competencies of procuring entities and of procurement department in a public body is to execute public procurement in a perfectly ethical and skillful manner.

At Federal level, procuring entities are required as per PPL; (i) to establish a designated, procurement function with the necessary management structure, capacity, and capability; (ii heads of public bodies is required to establish an adequately staffed unit for procurement and property administration; and (iii) there is defined duties and responsibilities of a Procurement Endorsing Committee (PEC), all these requirements with similar provisions for City Administration as well. However, the MoWE in particular has not established an adequately staffed procurement unit commensurate with the volume and complexity of the procurement in the ministry except for projects financed by the donors.

Related to specialized procurement unit, 2 procuring entities (PEs) out of 3 established specialized engineering unit. , One of the PE which is the biggest (MoWE) has a unit but is not established with adequate staff to manage a range of works contract in the sector.

In relation to decision making authority, based on provisions of PPL, it provides the authority to approve procurement decision to the Procurement Endorsing Committee (PEC)above specified threshold to the head of the public body for small value procurement without approval of PEC. Similar provisions exist for City Administration

PPL stipulates accountability for decisions made and measures taken about public procurement and property administration. PPL states “Procurement and property administration staff or heads of procurement and property administration units and members of the Procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the Minister.”

The country/sector has considered the benefits of establishing a centralized procurement function in charge of consolidated procurement, framework agreements, or specialized procurement for the sector. PPL provides that a central body shall be established, by Regulation of the Council of Ministers, to be in charge of large value procurements having national significance, and of procurement of supplies for which a demand is shown by more than one public body. Similar provisions exit for City Administration.

The centralized procurement body is established by council of minister’s regulation no 184/2010. The established body is referred as Public Procurement and Property Disposal Service (PPDS). Similar provisions exist for City Administration.

As stated in the CORE MAPS, The Centralized procurement body (PPDS)has adequate organizational structure commensurate with its responsibilities with similar situation in City Administration

Gaps

Minor gaps

Accountability for the Heads of public bodies is defined in the laws/Regulations establishing these public bodies. Accountability provision is limited to few actors and doesn’t include all actors that are directly or indirectly involved in procurement.

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Centralized procurement body: Though there is adequate structure with in the PPDS which is the centralized procurement body, there were procurement positions that were not filled as per the approved staff plan in the procurement directorate.

Substantive gaps

MoWE has not established specialized procurement function: The MoWE has not yet established engineering procurement department and instead procurement in the sector is managed by procurement staff temporarily hired for the project period mainly under World Bank financed project.

There is a concern by public bodies that the procurement structure including the procurement positions and grading approved by the commission is not commensurate with the size, value, complexity, and nature of procurement contracts managed by the public bodies. As a result, public bodies in the sector face serious challenge in attracting and retaining qualified procurement experts.

Recommendations

To address minor gaps

Accountability: Consider expanding accountability provisions to include all actors that are directly or indirectly involved in procurement decisions

Insufficient resources for Central Procurement Body (PPDS): To review staffing to properly discharge the responsibility in a timely manner and consider mix of staff positions who are qualified in the central body to address sector specific issues.

Centralized procurement function Consider establishing centralized procurement function in the sector to manage procurement of common user goods and services in the sector. This could be achieved through delegation of capable procuring entities in the sector.

Summary of substantive gaps and recommendations of Indicator 6

Substantive gap	Risk classification and red flags	Recommendations
6 (a) Definition, responsibilities and formal powers of procuring entities in the sector		
MoWE has not established specialized procurement function. Inability to attract and retain qualified procurement experts which is essential to build procurement capacity in the sector Is	Medium Risk	Consider including provision that require Procuring entities to establish a specialized procurement function with the necessary management structure, capacity, and capability. Involve procurement regulatory bodies such as Authority and Addis Ababa BoF in deciding the management structure, manpower, experience, qualification, and job grade of the procurement positions for the public bodies in the sector (as for procurement process the public body is responsible and

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		accountable and not the Civil Service Commission).

SLA- Indicator 7. Public procurement is embedded in an effective information system for the sector.

The objective of this indicator is to assess the actual use of e-procurement systems, namely the extent to which the sector has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.

Even though such a system may be embedded at the country level, there may be weaknesses at the specific sector level that would affect sector market performance. This SLA indicator captures the availability, accessibility, integration, and reliability of public procurement information systems in the sector. It also examines the extent to which the system works in practice by determining the share of public procurement information published and by measuring the uptake of e-Procurement and the availability of statistical information in the sector. The system can be a stand-alone one for the sector or be part of the national procurement information system.

Synthesis of the indicator

Most of gaps emanate from the fact that e- GP has not progressed to generate complete information on procurement, there is a need to expedite roll-out of e-GP system and therefore there is lack of availability, accessibility, integration, and reliability of public procurement information system in the sector.

PPPA has prepared an e-GP rollout strategy document. The strategy envisages a two-phase approach to roll out the system nationally where the first phase targets all federal institutions, and the second phase targets regional administrations. Change management, training, support, and maintenance activities are ongoing.

Most of the sub-indicators as assessed for the sector are not fully met fall under the conclusion of substantive gap, due to lack of availability, accessibility, integration, and reliability of public procurement information system in the sector. However, the assessment recognized the good progress shown in introducing and implementing the e-GP system which responds to most of the gaps when it is fully rolled out with utilization of all the e-GP features.

Findings

Procurement Information in the sector is not easily available and accessible in media of wide circulation. Some information such as procurement plan, notice for invitation to bid and contract award of sector entities under Federal Government are published through the e-GP platform. However, the e-GP system is not fully functional and at the early stage of implementation to provide procurement information on contract implementation such as payment, variation, contract amendments, trend analysis etc. Moreover, sector entities under Regional Government didn't yet develop their and implemented e-GP.

The e-GP website is a portal that is used by sector entities under Federal Government. So far 143 procuring

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entities have uploaded their procurement plan for the year FY 22/23(2015 E.C) and procurement plan of the previous year FY 21/22 (2014 E.C), information on procurement opportunities (Invitation to Bid) is also uploaded in a timely manner. The information is easily accessible to all interested parties at no cost. However, the e-GP system is at early stage of implementation, and compilation and dissemination of information on implementation of projects not yet started.

Besides, Authority has developed web- based information system to be used by entities under the Federal Government. The system provides information on procurement opportunities (invitation to bid) and it also provides some information related to implementation stage of construction projects procured by the budget of the Federal Government only. However, many procuring entities do not upload their project information in a complete and timely manner. As a result, the information in Authority portal is incomplete and obsolete.

There is no information system under Addis Ababa City Administration that provide up to date information to interested parties and to sector entities. The e-GP system is implemented only for Federal government, and it is not yet rolled out to Regional Governments and City Administrations.

Some of the public bodies in the sector do have their own website, but even that is not used to populate information relevant to the sector procurement.

Related to the existence of a functional centralized online portal, the e-GP system developed by Authority is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost. The e-GP system has published procurement plans of sector entities under Federal Government but the sector`s procurement plan is not fully uploaded and only few contracts related to common user items were uploaded, and it also provides information on invitation to bid and list of awarded contracts. However, the system is not yet providing information on contract implementation and procurement statistics as the system is at an early stage of implementation.

There is a requirement for Ministry of Planning and Development Commission as per proclamation on project database establishment for organizing, compiling and disseminating project related information in collaboration with the Ministry of Finance. But no database is developed to provide information to sector entities.

Based on quantitative assessment none on the Procuring Entities reviewed, publish procurement plan on their website or PPA's website.

At the time of the sector level assessment,15 bid announcements that belong to two Pes (2 for one and 13 for another) were posted in PPA's website. The status of the old bid announcement was not updated and all bid announcements including those advertised years back show that they were under "Evaluation" stage. Few (only 3) are indicated as "Awarded" This shows that even for IFB, PPA's website is not complete and up to date. Link is given of the page for bid announcement in PPA's website[20]

The snapshot from e-GP Portal[21] as accessed on May 17, 2023, shows the following:

[20] http://www.ppa.gov.et/index.php

[21] Electronic Government Procurement (ppa.gov.et)

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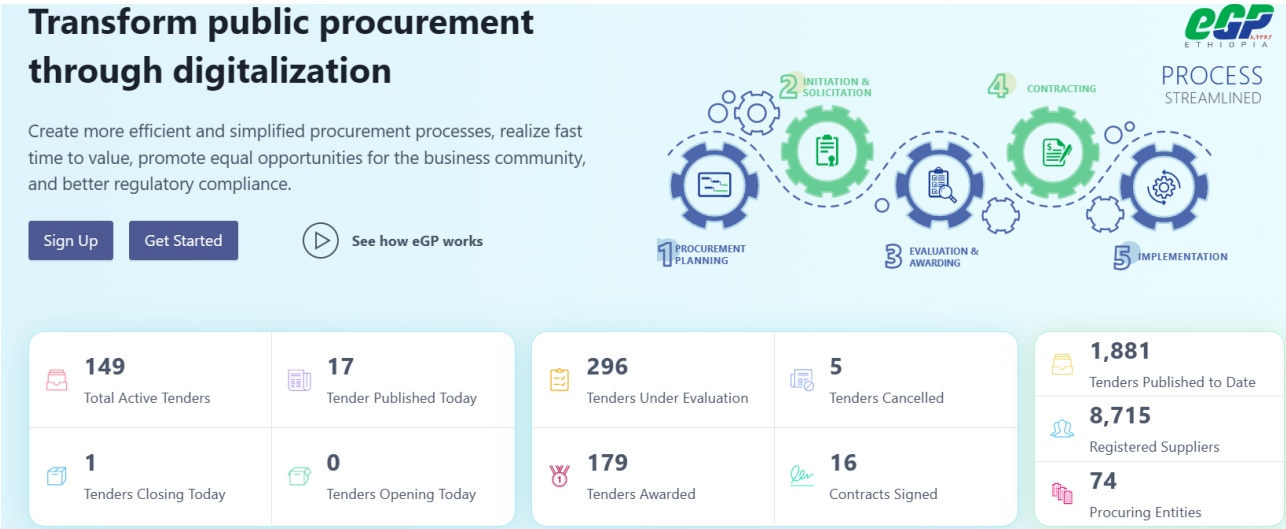

In none of the Pes visited or PPA, there is a practice of publishing complete key procurement information along the procurement cycle such as contract award, contract implementation information, appeals decisions. No annual procurement statistics are published.

The information system (e-GP) of Authority provides for publication of Information related to procurement, such as: Advertisements or notices of procurement opportunities, contract awards including procurement method and amendments, information on contract implementation. However, the information system didn't include payments and appeals decisions.

Very few goods procurement plan of sector entities under Federal government is published in the e-GP website of Authority 22. Though sector entities are not fully utilizing the e-GP system, the e-GP website includes the following information that include for example active tenders, tenders under evaluation, tender opening, tenders awarded, contract signed, registered supplier, procuring entities.

The website Electronic Government Procurement (ppa.gov.et) provides some information at an aggregated level but is not complete and sufficient as the system is at the early stage of implementation.

The e-GP portal contains the following information that are accessible only for bidders registered to participate in the specific bid: Full set of procurement documents, Tender opening minutes, evaluation reports, Full contract documents including technical specification and implementation details.

In relation to management of the e-GP system, in the case of information uploaded on e-GP, as well as Authority`s and sector entities' website, the responsibility for the management and operation of the information is assigned to the respective IT-unit of the entities. Moreover, Ministry of science and Technology is responsible for maintaining cyber security on the e-GP system.

Implementation of E-procurement is started in sector entities at the Federal level. E-procurement system is not yet rolled out and implemented in sector entities of regional governments and city administrations.

2 of the 3 Pes assessed are introducing e-procurement system as pilot. So far, the two entities have published 7 contracts using e-GP. They are among the entities selected for e-GP piloting. So far it is only

[22] https://egp.ppa.gov.et/egp/home)

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these 7 contracts which are under process using e-GP. Authority has a plan to widely use the E-procurement in the sector at all levels of the government.

Planning, developing, and managing the e-procurement system is the role of the Authority in case of Federal and BoF? In case of Addis Ababa. Authority has developed e-GP which at the time of the assessment is at early stage of implementation.

Suppliers in the sector, at Federal Government, participate in a public procurement market increasingly dominated by digital technology due to the introduction of e-GP where at the time of the sector level assessment 8,376 suppliers were registered.

Related to e-GP Road Map, as stated earlier, while e-Procurement has been started in sector entities of Federal Government, but the regional states and city administrations didn't yet introduce the system. The Addis Ababa City Administration has communicated with Authority for adopting the e-GP system implemented in the Federal Government. There is a plan in Addis Ababa City to embark the readiness assessment following the introduction of the e-GP at Federal level. Addis Ababa City BoF has invited the Consultant that developed the Federal e-procurement system to submit technical proposal to assess readiness and develop e-procurement system for the city.

The e-GP system is designed to manage data for the entire procurement system and the system has features that allow analysis of trends and levels of participation.

On a newsletter posted on the PPA`s web page home it is reported that out of the 746 billion ETB government budget for the fiscal year 2022/23, 560 billion ETB is for procurement. Which in percent is 75%.

At the time of assessment, the e-GP did not start generating data as it is at the early stage of implementation, moreover there is also no audit conducted in relation to evidencing the reliability of the data from the system. Hence, reliability of the system is not yet verified by audit.

Gaps

Minor gaps.

Lack of capacity of sector official to plan, develop and manage e-Procurement at regional level: Sector officials in regional governments and city administrations are not capacitated to practice and implement the E-procurement system. The e-GP system is not rolled out to sector entities under Regional Governments and City Administrations

E-GP system doesn't provide complete information on contract award and amendments: The contract award information published on the e-GP system is incomplete. Besides, there is no published information on contract amendments, information on contract implementation including payments, appeals decisions.

Sector entities under regional government are in the process of adopting e-Procurement roadmap based on an e-Procurement readiness assessment.

Substantive gaps

Absence or insufficiency of procurement information: Absence of Information on procurement, in the sector, that is easily accessible in media of wide circulation. Insufficiency of procurement information published on the e-GP system.

No possibility of utilization of information system in the sector: e-GP did not start to generate procurement information at the time of assessment and hence information on procurement in the sector has not been easily accessible and utilized. The e-GP system is not yet rolled out to sector entities in the Regional Governments and City Administrations

Open contracting and use of open data format: Though the e-GP provides for publication of information as specified, there is no publication of comprehensive information, in support of open contracting and use of open data format is not applicable. A comprehensive information on each phase of the procurement process for previous contracts completed before the introduction of e-GP cannot be available in the system making it difficult to access procurement information of those contracts implemented before introduction of e-GP. Though the e-GP provides for publication of information listed under criteria 7 (a)(d), there is no publication of comprehensive information, in support of open contracting, through open data format.

Lack of information on procurement statistics and contract implementation: The e-GP system is not yet providing information on contract implementation and procurement statistics as it is at early stage of implementation. Information provided on PPA's website is incomplete and obsolete.

Lack of information on contract award and amendments: The contract award information published on the e-GP system is incomplete. There is no published information on contract amendments, information on contract implementation including payments, appeals decisions.

E- Procurement not used widely at Federal or Regional Level: The E- procurement is not rolled out to regional governments and city administrations. E-GP system at Federal level do not support the General Conditions of contract used by sector entities, in relation to procurement of works through ICB, such as FIDIC Conditions of contract for Design-Build contracts, World bank harmonized General Conditions of Contract, etc. As a result, the E-procurement of works through ICB is not widely practiced in sector entities of Federal government.

Lack of capacity of procurement staff to use e-Procurement: Procurement staff in the sector entities under regional governments and city administrations do not have the skill to use e-Procurement systems reliably and efficiently.

Lack of capacity of MSMEs to participate in public procurement market: Micro, small and medium-sized enterprises didn't have the participation in the e-procurement system, as procuring entities in the sector are not using e-procurement system in relation to bids that suite for participation of micro, small and medium-sized enterprises. Supplies for regional governments and city administrations do not have the opportunity to participate in a public procurement market dominated by digital technology, as e-GP system is not rolled out to sector entities of regional governments and city administrations.

Reliability of Internet connection: There is a gap in reliable internet connection and full-fledged IT facility.

System not in operation for collecting data for goods, works and services: The system didn't yet start generation of report on analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements, as it is at early stage of implementation. No report on total volume of contracts awarded through competitive and other methods is found for the sector.

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Recommendations

To address minor gaps

Lack of capacity of sector official to plan, develop and manage e-Procurement at regional level: Rollout implementation of the e-GP system in to sector entities under Regional Governments and City Administrations. Provide training, on practicing and implementing the E-procurement system, for officials of sector entities under Regional Governments and City Administrations.

Ensure completeness of the information provide through the e-GP system: Consider to improving the template of contract award on the e-GP system and publish a complete information on contract award.

Expedite the ongoing preparation of roadmap based on readiness assessment and rollout e-GP to regional governments.

Summary of substantive gaps and recommendations of Indicator 7

Substantive gap	Risk classification and red flags	Recommendations
7(a) – Publication of public procurement information in the sector is supported by information technology		
Absence or insufficiency of procurement information and inadequate coverage of e-GP	Medium Risk	Expedite rollout of the e-GP system for providing sufficient information on procurement, in the sector. Expedite rollout of the e-GP system for implementing in the regional governments
Open contracting and use of open data format	Low Risk	Consider the publishing of comprehensive procurement information, in support of open contracting, on the centralized online portal, in each phase of the procurement process including the full set of procurement documents, evaluation reports, full contract documents including technical specification and implementation details.
No possibility of utilization of information system in the sector:	Medium Risk	

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Substantive gap	Risk classification and red flags	Recommendations
Lack of information on procurement statistics and contract implementation. The full rollout of e-GP system and its effective use will help address both of the above two gaps, hopefully in the near future	Medium Risk	Expedite the rollout of e-GP system to all Federal agencies and to regional governments. Enhance the functionality of PPA website to capture latest procurement information. Ministry of Planning and development to establish National Database required by Proclamation Number 1210/2020.
Lack of information on contract award and amendments:	Medium Risk	Consider improving the template of contract award on the e-GP system and publish a complete information on contract award. Expedite implementation of the e-GP system to provide complete information across the cycle of procurement, including information on contract implementation, trend analysis etc.
7(b) Use of e-Procurement in the sector		
E- Procurement not used widely at Federal or Regional Level:	Low Risk	Configure the EGP system in a way to allow the public body for attaching standard conditions of contract, other than the one issued by Authority, so that the E-procurement of works will be practiced widely in sector entities of Federal government. Expedite rollout of the e-GP system so that it will be implemented widely and progressively in sector entities of regional governments and city administrations.

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Substantive gap	Risk classification and red flags	Recommendations
Lack of capacity of procurement staff to use e-Procurement	Medium Risk	Rollout implementation of the e-GP system into sector entities under Regional Governments and City Administrations Provide training for Procurement staff in the sector entities of Regional Governments and City Administrations, so that they will have the skill to use e-Procurement systems reliably and efficiently.. Improve reliability of internet connection
Lack of capacity of MSMEs to participate in public procurement market	Medium Risk	Encourage procuring entities to use e-procurement system in relation to bids that suite for participation of micro, small and medium-sized enterprises. Provide adequate training that enable micro, small and medium-sized enterprises to participate. Expand the e-GP System to rollout to sector entities of regional governments and city administrations.
7 I Strategies to manage procurement data in the sector		
System not in operation for collecting data for goods, works and services for trends and data analytics	Medium Risk	Expedite implementation of procurement through e-GP and benefit from the full feature of the EGP system, including generation of data for the entire procurement process and analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.

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

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

Synthesis of the indicator

SLA guidance requires measuring the extent to which sector provides services to build competencies in the sector through consistent application of knowledge and desired practices at individual and organizational level in an enabling environment.

The areas for building competencies for the procurement in the water sector is very specific that requires deeper knowledge on the engineering aspect of the project.

However, as per core MAPS findings, competency framework is generic. The Civil Service Commission has a standard for each grade for procurement defined in terms of years of experience and educational background and job descriptions are not skill based. Therefore, in response to requests from government agencies the commission assigns grades based on its own standards, so any person can be promoted from any function into procurement. Permanent professionalization training conducted by Authority is not yet recognized by the civil service commission and it is not contributing for appointment of staffs in different procurement position, requiring specialized skills.

The permanent professionalization training is not recognized in the procurement career structure.

Findings

As stated in the CORE MAPS, Authority had established a procurement training program that certifies trainees at three levels: Essential, Basic, and Advanced. The program also covers the **Specialized level** which is not yet supported with training modules. The professionalization training is dependent on the resources from donor-supported projects and the sustainability of the program is not guaranteed.

The permanent professionalization training is not yet recognized by the civil service commission and not considered for appointment or promotion of staffs in different procurement position. The training which has been started in September 2016, discontinued due to COVID-19 and has not resumed due to lack of budget. In 6 rounds, 1,176 professionals have been trained in procurement and property administration, out of which 397 has been trained in Basic level Procurement & Property, 255 in Essential level procurement, 153 in Essential level Property, 226 Advance level in procurement and 124 Advanced Level in Property. Contents of the permanent professionalization training program had been updated in each round of the training based on the feedback of trainees collected in each round. Authority has evaluated effectiveness of the permanent training program, through consultant, and has identified that the training materials are inadequate and needs updating.

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There are no permanent procurement training programs in the City Administration. There is only ad hoc need based trainings provided for Procurement staffs, bid committee and technical committee members. The training is conducted by Bureau of Finance, and it covers topics on basic procurement rules and concepts covering the procurement proclamation, directives, and SBDs.

Authority provides advisory service and resolve questions from procuring entities. Authority has also been providing advisory service to suppliers whenever requested, however it has now stopped its previous practice of responding queries from suppliers after being aware that function of Authority A is limited to providing advice for the Federal Government and providing technical assistance to the regional governments and city administration.

In some cases, according to severity of the problem, Authority provide advice for the private sector, especially when the issue is brought to Authority through associations. But Authority is not serving as a dedicated help desk to resolve questions raised by suppliers. Sector entities suggest for Authority to include engineering units in its structure so that effective advisory service will be provided for sector specific issues.

Addis Ababa City Administration's BoF provide advisory/support service to sector entities under the city administration. However, sector entities have indicated that the advisory service is inadequate and lacks technical depth to help them resolve real time issues. The BoF also provides advisory service to the Suppliers when requested.

Authority, as part of its function, used to provide two short term trainings per year with the aim of building capacity of procuring entities, suppliers, and SMEs. The training for each group of key actors is prepared separately. However, as stated in the CORE MAPS, there was no strategy in place to improve the capacity of the private sector as key players in public procurement, despite the challenges PEs face due to the limited capacity of the private sector, particularly the small-scale suppliers and contractors.

The capacity building activities of Authority were not integrated with strategy, as preparation of capacity development strategy was completed very recently. Currently, Authority has developed capacity building strategy, at the end of 2014 E.C (AUGUST 2022 G.C), through finance provided by African Development Bank (ADB).

The specific areas of competency for procurement in water sector is associated with sub projects/activities related to: drilling, pipe installation, reservoir construction, water treatment plant construction, sewerage system, waste water treatment plants, dams, irrigation head works, irrigation canals, pumps, generators etc. as well as various feasibility, design and supervision consulting services that highly demands a caliber professional to properly plan the activities, manage the procurement process and follow up the implementation.

Gaps

Minor gaps

Sustainability of the procurement professionalization Training Program is at risk due to shortage of budget. The professionalization training program is supported by funding from projects supported by the World Bank**.** In the absence of this funding, the sustainability of the program is at risk.

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Specialized level procurement training not yet started: Despite the inclusion of the specialized training level in the procurement professionalization training program competency framework prepared in 2015, FPPA has not started providing training on the specialized level which is relevant for procurement in the road sector. Besides, the professionalization training is not yet recognized by the civil service commission and not considered in the appointment and promotion of staffs.

Limited advisory service to respond to questions raised by suppliers/contractors. Though there is a practice of providing limited advisory service to the private sector, it is not supported by legal provision. As a result, the advisory work to the private sector is limited. There is also lack of competence in FPPPA to respond to technical questions related to engineering procurement.

Periodic adjustment of training programs is not carried such as developing training manuals/modules though feedbacks are collected, but feedback from previous trainings are not used.

Lack of implementation of Capacity Development Strategy: The capacity development strategy of Authority is developed in August 2022, and it is not yet implemented.

Quality of KPI at Federal Level and lack of progress on integrating KPI system with e- GP at regional level in the sector: The e-GP Portal is established at Federal government level, and it is integrated with the KPI system to collect real time data from Procuring Entities that implement the e-GP system. However, the system has not yet started generating report on performance measurement as it is at an early stage of implementation.

The excel based KPI system, tha" was'developed by Authority, is not rolled out successfully. It is not a comprehensive tool in measuring performance in qualitative and quantitative terms. It is important to enhance the KPI system and integrate it with the procurement system to allow real-time data collection, analysis and reporting both on qualitative and quantitative terms.

Quality of information to support strategic policy making through integration with e-GP: The integration of KPI system with the e-GP portal is an important milestone as the e-GP system will provide reliable KPI data that will be used to support strategic policy making on procurement in the sector. The e-GP website is at early stage of implementation, and it doesn't start generation of information that will be used to support strategic policy making on procurement in the sector.

No Strategic plan at regional levll in the sector e-GP system at regional level: As explained above, there is no e-GP or other electronic system for collection and analysis of procurement data:

Help Desk function to resolve questions by procuring entities, suppliers: The PPL do not have provision stipulating need to provide advice and technical assistance to suppliers as part of the Agency's (Authority) function. Thus, there is no dedicated help desk to resolve questions raised by suppliers. Authority has no engineering units that can provide advisory service on sector specific issues.

Substantive gaps

There is no on the job training program and experience sharing platform to capacitate new procurement and technical experts joining the water sector and enhance the capacity of existing staff. The procurement performance monitoring system using excel based KPI system is not rolled out successfully and not integrated with the e-GP system. Besides, the KPI system focuses only on quantitate aspect and

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measurement through qualitative aspects is missing. Hence, comprehensive performance measurement system is not consistently applied and used to support strategic policy making on procurement in the sector.

Recommendations

To address minor gaps:

Ensure sustainability of the professionalization training: In addition to allocating budget, the professionalization training should generate resources in the form of fee collection, advisory work etc to sustain the program.

Initiate the specialized training level: Prepare training module and initiate the specialized level training based on road sector needs.

Improve advisory support in FPPA: To provide adequate service to the private sector and also in all aspects of procurement including engineering procurement**.**

Carryout a periodic adjustment of training programs to suit to the sector need, based on regular feedback. Improve the structure and mandate of Authority and BoF so that effective advisory service will be provided on sector specific issues.

Delay in **implementing the Capacity Development Strategy:** Expedite implementation of Authority's capacity development strategy and consider integration of the strategy with other measures aimed at developing the capacities of key actors involved in public procurement, in the sector.

Quality of KPI at Federal Level and lack of progress on integrating KPI system with e- GP at regional level in the sector: Expedite implementation of procurement through e-GP and benefit from the full feature of the e-GP system, including generation of report on performance measurement. Roll out implementation of the e-GP system to regional governments and city administrations and ensure integration of KPI with the e-GP System.

Quality of information to support strategic policy making through integration with e-GP: Expediting implementation of the e-GP system and starting generation of report is, therefore, a priority issue to benefit the maximum from the system; including the use of relevant information for supporting strategic policy making.

Strategic Plan in sector at regional level: Roll out the e-GP system to City Administration and Regions and start strategic planning to improve the system performance like introduction of e-PMIS (Procurement Management information System), as done at Federal level.

Introduce provision requiring Authority to provide advice to the bidding community and other stakeholders.

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Summary of substantive gaps and recommendations of Indicator 8

Substantive gap	Risk classification and red flags	Recommendations
8 (a) Training Advice and Assistance in the sector		
There is no on the job training program and experience sharing platform to capacitate new procurement and technical experts joining the sector and no arrangement to regularly enhance the capacity of existing staff	Medium Risk	Establish a mechanism in which newly hired staff get adequate orientation and on the job training including experience sharing platform to enhance the capacity of the existing staff.
Lack of help desk and practice to support suppliers/contractors	Low Risk	Introduce provision that enable FPPPAA to provide Advisory service and serve as help desk function to resolve questions from suppliers. FPPPAA to provision of advice to all stakeholders, including the private sector. • Introduce engineering units in the structure of FPPPAA so that effective advisory service will be provided for sector specific issues
8 (b) Monitoring performance to improve sector outputs and outcomes		
Absence of comprehensive procurement performance measurement system and application for procurement strategic policy making on procurement in the sector	Medium	Expedite implementation of the e-GP system and start generation of information that will be used to support strategic policy making on procurement in the sector.

3.3. Pillar –II - Public Procurement Operations and Market Practices

The objective of this Pillar is to examine the functioning and performance of the public procurement system in the sector as it relates to the way procuring entities in the sector plan, award and execute contracts This Pillar looks at the operational efficiency, transparency, and effectiveness of the procurement system at the level of the implementing agency in the sector, responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice.

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SLA-Indicator 9. Public procurement practices achieve stated objectives.

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

Synthesis of the indicator

The PEs in the sector do not carry out market research for purpose of identifying the suitable procurement method which is normally guided by the threshold specified in the PPD. In addition, there is widespread use of State-Owned Enterprises in water sector both for feasibility study and construction work. Particularly, drilling of wells and boreholes is dominated by the SOEs operating at federal and regional level.

Further there is a standard practice of use of conformance -based specification in water supply and irrigation project through admeasurement/BOQ type of contract rather than performance/output-based specification with features of Design-Build or other innovative way of contracting.

Regrading socio-economic objectives, there is limited or no application of the available provisions that allow elements of sustainable procurement. The life cycle costing which is allowed in the PPL and PPD is not practiced. Due to limited cases of international bidders approaching the market in te water sector, the use of price preference margin for locally registered contractors and consultants and locally manufactured goods is limited. Sector procuring entities do not use sustainable requirements as a qualification criterion and the method of selection in all its bids is least evaluated method. However, procuring entities in the sector require bidders to comply with environment, social as well as health and safety standards during implementation of the contract.

Based on private sector survey 56% of 41 respondents found suitable incentives to SMEs to compete in a level playing field and 44% responded “No”

The quantitative assessment has shown that there is significant delay in procurement and award process. The. The data in te sampled contracts show that 90 up to 377 days are required to carry out procurement using NCB procedure. The level of competition is also not encouraging. On average, 2.5 responsive bids are obtained for procurement of Goods using NCB procedure. the procurement

Similarly, contract implementation is exposed to huge time overrun sometimes without going through proper review of the causes and undertaking time extension. However, it is recognizable that the performance of the sector has been affected by the recent crisis including COVID 19 and disruptions due to local and global conflict.

Findings

Public procurement strategy guideline is not available to guide the public bodies in the sector how to conduct market research including need analysis. As a result, procurement methods are not selected based on market realities. Instead, the procurement threshold guides the selection of procurement methods.

One of the principles stipulated in the public procurement proclamation is to ensure value for money,

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without any mention of sustainability criteria. Public procurement directive of both the Federal and City Administration level stipulates the procurement practice to be environmentally friendly and that do not harm the safety of the public. The evaluation and qualification criteria in the bidding document tends to focus on legal, technical, financial and professional aspects.

The Federal PPL stipulates the condition and procedure for two-stage bidding. Moreover, about pre-qualification the provision stipulates the procedures followed to ensure qualified and eligible participants are included in the competitive process. However, the procuring entities follow the common procedure-single stage bidding even for complex procurements. There is neither use of pre-qualification nor two-stage bidding for the case of City Administration. According to the Federal PPD, use of two-stage bidding is indicated as "other international procurement procedure" and hence applies to only international bidding and such provision may restrict the PEs not to apply two-stage for national procurement bids.

There is a notion that the procurement scope did not require the additional input from the market for better development of schedule of requirement. However, the procuring entities do plan and execute complex projects such as water supply and mega irrigation projects that seek the market input through the use of performance specification23 and multi-stage bidding to benefit from the market in providing a comprehensive technical specification, thereby, ensuring qualified bidders in the process.

The current SBD (works) dated November 2011 is mostly applicable for works contract planned based on a Design-Bid-Build project delivery method and cannot be used comprehensively for other types of project delivery methods such as: Engineering Procurement Construction (EPC)/Turnkey, Build Own Transfer (BOT), Build, Own, Operate and Transfer (BOOT), Management Contracting Approach (MCA).

Water supply projects do comprise electromechanical equipment, pipes, and fitting, among others, and the current SBD (works) did not have such provisions for proper management of the supply and installation of the items. Hence, the procuring entities in the sector are forced to insert additional provisions, other than, standardized ones.

There is no standardized procurement document that can be used for contracts that focus on outputs such as performance- based contracts.

Moreover, the SBD (works) dated November 2011 has either a unit price/admeasurement or lump sum approach for payment. And did not consider other payment approaches such as cost plus, target cost where some could have implication to reduce claims related to price adjustment for items as observed in unit price/admeasurement contracts that is currently and commonly used in the sector.

For bidders with interest in EPC, BOT and BOOT, the current SBD in use in the sector did not attract and affects the broad participation of potential competitors especially for mega projects related to irrigation as well as some in water supply.

Moreover, the current SBD is not suited for use while planning and executing small value works contract.

As per the public procurement proclamation, the default procurement method is open bidding, and procuring entities may use other methods in accordance with the conditions stipulated in the proclamation.

[23] Proclamation No. 649/2009 Article A 29 on Technical Specification at point 3requires it " to be in terms of performance rather than design or descriptive characteristics" as far as possible

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The choice of the procurement method is usually based on the threshold set in the directive, and in most of the cases the threshold dictates the procurement method.

Beyond the threshold, depending on the construction site location and attributed to security and remoteness and related issues, where it is presumed that private contractors may not be interested to participate, in which case the work will be directly given to SOEs that has a good track record of accomplishment.

Absence of sufficient local contractors in the sector for the execution of contracts related to drilling of wells(which is also reported on a study conducted on "Establishment of Water Borehole Cost Drivers and Competitive Market Prices24" on page-6, table 2.1 shows active drilling companies in the range of 30 to 40 in number out of the 393 recorded in the government licensing authority),construction of medium and large dams gives rise to contracts being directly awarded to SOEs.(also covered in Indicator -10)

Whenever, there is the need to go for other procurement methods, justifications are documented in a public body if required as per the legal framework. For example, in using restricted tendering, the documentation is kept indicating the tender is advertised twice nationally but failed to attract bidders.

Though procurement proclamation 25allows two types of evaluation approaches: (i) the bid that is found to be responsive to the technical requirements and with the lowest evaluated price;(ii) bid offering better economic advantage ascertained on the basis of factors affecting the economic value of the bid which have been specified in the bidding documents, which factors shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable, the latter technique (including any rated criteria as underlined) is rarely used.

In many facilities in the Water sector, with electromechanical equipment, selection criteria need to consider life cycle costing in economic evaluation of bid (electricity, chemical, Operation & Maintenance) in addition to initial cost to get best value for money or "offering better economic advantage" as per procurement proclamation.

The core MAPS has recommended use of Life Cycle Costing criterion, including use of price and non-price attributes, also using quality criteria and weighting.

Related to use of sustainability consideration in contract the SBD (works) issued by Authority comprised clause (GCC 34.4) on environment where the contractor is expected to consider the latest technologies to preserve the environment while in construction. The clause is read as follows: The Contractor shall ensure that Works conform to applicable environmental and quality standards, that no chemical or other product/equipment is used in such a way as to cause negative impact on the environment in general and occupational health hazards and shall employ the most recent technology, safe and effective equipment, machinery, materials, and methods, as necessary.

[24] Study conducted by Beles Engineering P.L.C on Ethiopia, South Sudan, Kenya and Tanzania contracted by Children's Investment Fund Foundation (CIFF) dated March 2023

[25] A.43(8) of the Federal PPL and A.35(8) of Addis Ababa City Administration PPL

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Gaps

Minor gaps

Clarity on bid opening procedure: Extension of bid closing, if any, in the reviewed contracts are not found and properly documented in the sector. Procurement notices in some cases in the sector did not exactly indicate the date and time of bid closing and opening, in lieu, left for the prospective bidders to arrive through counting the floating period against the date of invitation.

Confidentiality in bid evaluation and award process: The procurement system doesn't provide tools to ensure and support maintaining confidentiality which might include requiring evaluators to sign a declaration to uphold confidentiality.

Announcement of contract award: The proclamation[26] demands to announce to the public the award of the works contract for those with a value of more than ETB 10M and above 2METB for consultancy services on the PPA`s website but such practice is rare and often awards not announced through the website. Moreover, the website[27] is outdated and has not captured the recent awards concluded by the public bodies in the sector. And it was found that the same list as indicated in the core MAPS was observed during the time of sector level assessment from the Authority`s website that indicates lack of regular updating.

Due to poor record keeping it was found that the letter written to unsuccessful bidders was not found showing an indication of non-compliance with the provisions of the legal framework to announce the outcome of the evaluation for all participated bidders.

Sustainability considerations in contract clauses: Other than the environment, the social aspect is not included in the contract clause and neither the economical aspect including life cycle costing. (The new Federal proclamation endorsed by the council of ministers requires public bodies to consider sustainable procurement as stipulated under PPL A.28).

Incentive on exceeding defined performance levels: Due to absence of bonus clause, contractors/firms are not incentivized for performance exceeding the agreed level. Moreover, beyond issuing warning letter to rectify defects in the works, the consultant/Client has no other means to force the contractor to keep the quality of the construction, where absence of penalty clause in this case would disadvantage the Client/Consultant not to rightly exercise its role in the contract administration in the sector.

Enforcement of quality control measures and inspection: The sampled contracts lack specific requirements to substantiate the measures on quality control and inspection. The team has not come across contracts that required test certificates like laboratory test, inspection certificates etc to substantiate the quality control measures taken by contractors/suppliers. **Direct Involvement of external stakeholders**: The opportunity of involving relevant external stakeholders in procurement is not utilized

[26] A.6(6) of the Federal PPD

[27] http://www.ppa.gov.et/index.php?option=com_ppa&view=procurement&layout=ProjectDisclosure&Itemid=89

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in the sector due to absence of such provisions in the legal framework, since involvement in the public procurement is also attributed to accountability and responsibility.

Efficiency in application of attaining socio-economic objectives: Efficiency of the margin of preference is found to be less effective in attaining socio-economic development objectives. The winning chance of SME in national bid is less when competing with local construction companies. Moreover, international bids seldom planned and lesser chance of applying the margin of preference for local construction companies.

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Delays in selection process of contract and limited competition: Based on quantitative analysis, and on the basis of … contracts in Water sector, the average time to procure per procurement method was as under:

Average time to procure by procurement method:

Method	Av. time	Range
ICB Works	243	182-297
NCB Works	167	90 - 377
NCB Goods	122	49-186
NCB Consultancy	145	77 - 329

On responsiveness of bids, on an average, 5 responsive bids were obtained in procurements conducted using NCB procedures, and 3 using ICB procedures for Works. For Goods on average 6 submissions are obtained and 2.5 on average are responsive on NCB procedures. For Consulting Services on average 3.5 proposal submissions are obtained and 2.5 found responsive on average.

The above data shows there were delays in contract award beyond original planned timeframe.

Confidentiality in evaluation and award process: The PPLs (both federal and City Administration) requires personnel involved in procurement and property administration to maintain confidentiality throughout the procurement process. Unlike the practice in the Road practice, there is no practice in the Water sector in requiring evaluators to sign code of ethics and confidentiality as a tool of upholding confidentiality throughout the bidding process.

Fiduciary Risks associated with the execution of measures for protection of the environment: The team didn't come across fiduciary risks associated with the execution of measures for protection of the environment. However, the assessment team also noted that the sector has no tools/guidance and practice in identifying fiduciary risks associated with the execution of measures for protection of the environment.

Substantive gaps

Lack of needs analysis and market research to guide procurement strategy: In case of water supply/irrigation projects, those projects with feasibility study and detail design will be considered at the planning stage. Thus, instead of actual need, the availability of the feasibility report and detail design determines the inclusion of the project in the Annual Procurement Plan (APP).. Market research and analysis is one of the gaps in the sector where before planning there is no market survey/study to understand the extent of the participation of the market. There is a tendency to rely on State-owned

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Enterprises through Direct contracting especially in drilling works where the private sector is not responsive and competitive. This is “Red Flag” because attracting the private sector to invest and remain competitive in the water sector is not in the realm of procurement and difficult to achieve in the foreseeable future.

Lack of clear definition and contextualization on requirements and desired outcome: The requirements and desired outcomes are not properly controlled and monitored in the procurement process and contract implementation that is manifested through design revision, variation, or contract amendment. Factors such shortage as in supply of materials due to supply chain disruptions as well as inflation in the market could affect the desired outcome and requirement of a contract.

Based on study in the region, while preparing Bill of Quantity for drilling borehole there is a tendency among procuring entities to “copy and paste” the standard BoQ, where there is no contextualization to the local hydrogeological conditions and water demand. This practice has effect on achieving the desired outcome of contracts.

No practice of using sustainability criteria in procurement process in the sector: The environmental, social and economic aspects are not considered as an evaluation criterion and neither used in the course of evaluation, though one of the principles stipulated in public procurement proclamation is to ensure value for money[28].The criterion is more on the technical and financial aspect. The public bodies it is a new concept for the sector and yet to be practiced.

Lack of practice in use of multi-stage procurement for complex contract: Though two-stage bidding and pre-qualification are included in the Federal PPL and PPD, the procuring entities in the sector are not using even for complex projects/contracts that comprise Dam construction, in case of irrigation and deep well construction in case of water supply.

Lack of standard bidding document for two-stage bidding -including the invitation to bid as well as evaluation formats has discouraged the procuring entities in the sector to focus on using commonly used arrangements such as a single-stage one envelope or two envelope procedures. The capacity of the procuring entities in the sector to manage multi-stage procedure is limited including when and how to apply/use.

Inadequate capacity of local contractors and heavy reliance on SOEs: There is heavy reliance on SOEs established at federal and regional level which are awarded contracts without competition. It appears that the private sector lacks adequate incentive and capacity including market access to invest, compete and survive in the sector. It is identified as “Red Flag” because the survival of the SOEs established at federal and in every regional state in the water sector, is dependent on the public procurement market and creating a level playing field will be challenged by actors outside of procurement including the political apparatus. Similarly, enhancing the capacity of the private sector to be competitive in the market is dependent on many factors including the investment climate, incentives and availability of finance which are beyond the procurement system.

[28] The World Bank defines VfM as the effective, efficient, and economic use of resources, which requires the evaluation of relevant costs and benefits along with an assessment of risks, non-price attributes, and/or Life Cycle Cost as appropriate. Price alone may not necessarily represent VfM.

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Lack of use of appropriate technique in evaluation to obtain best value for money: Although, the proclamation allows use of bid offering better economic advantage ascertained on the basis of factors affecting the economic value, use of relative weight and quality, this technique is rarely used, and the focus is always on the lowest evaluated cost. Core MAPS recommended use of life cycle costing in evaluation for better outcomes and use of quality and other criteria, which could lead to best value for money.

A related issue is "Abnormally Low Bids" has led bidders to get contracts that did not account the best value for money. Nearly 89% of the 38 respondents in private sector said that bidders get contracts having no capacity to execute contracts with high quality and cost-effective manner. 11% responded "No" There is absence of any provision or guidance to reject bids that are abnormally low, and no justification is available if award will lead to successful performance/execution of the contract within time and cost with requisite quality.

Delay in payment of invoice: Though Invoices are examined, and payments are processed by the Engineer as stipulated in the contract, procuring entities under Federal Government usually delays effecting of the payment certified by the Engineer due to shortage of budget. The delay is significant for the foreign portion of the payment due to serious shortage/unavailability of foreign currency.

Delays in implementation of contract: Based on sample of contracts in water sector, delays up to 1095 days in consultancy and 1302 in works have been identified in sampled Works contracts. The average delay in Works is 39.13% in samples contracts. The delays noted In consultancy and goods are in the range 13-122 % in Consultancy and 33-48% in Goods

Timely completion of works contract become a challenge in the sector where there is a delay in completion due to, inter alia, the following: the capacity of the local contractors, high inflation, design change, incomplete design, poor procurement planning (while estimating the contract duration which is not based on critical path method to determine the reasonable contract duration of the envisaged contracts), right of way issues etc.

Other causes for delays included (i) Challenge to timely secure Letter of Credit (LC) from Commercial Bank of Ethiopia for imported items such as electromechanical parts, pipes and fittings; (ii) Lack of structured and capable contract management unit in the sector and if it exist has capacity limitation to manage works of having complex components and scope; and (iii) Lack of use of clear and updated master schedule and work schedule for the envisaged works contract in the sector and not followed strictly in implementation. Delay in contract implementation and payment of invoices are identified as "red flag" because they are impacted by shortage of foreign currency that can only be resolved by improving the overall performance of the economy and fiscal management which is outside of the control of the procurement system.

Contract amendments: On average there is a 8.29% contract amendment (0.5%-22%) on one of the PEs. On the other PE there were only two sampled Contract with contract amendment data. The Amendment in the two contract was 58% and 277%. The time taken for revision and approval for contract amendment is long, especially, for sewer line construction which has to go through various tiers of approval in the sector. Contractors delay in claiming for an amendment which will also contribute to the delay in the

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process due to the back and forth between the parties in the sector. Amendments are not published, in lieu, are documented in a file box.

Procurement statistics: Absence of procurement statistics for completed contracts and thus is not possible to draw lessons so as to improve the procurement practice in the sector. Given the sector finances high value and complex works contracts, there is no system in place to measure procurement practice as well as a procurement statistic is not available to understand the extent of the procurement performance.

Absence of public scrutiny: There is lack of opportunities for direct involvement of relevant stakeholders. There are no Civil societies working on the procurement and hence, public scrutiny of public contracts is weak.

Lack of complete and accurate report: Record keeping has been a challenge where there is no adequate procurement and contract records and is difficult to retrieve. There is also no responsible body for record keeping and according to Ethiopian law, both financial and procurement records should be kept for at least ten years, however the current practice shows even during the construction period of schemes, there is no sufficiently available documentation that shows the history of both the procurement and contract management. The accuracy of the records in some cases is also an issue.

Recommendations

To address minor gaps:

Clarity on bid opening procedure: Provide comprehensive information on the bid submission procedure including fixed date and time for bid closing and opening. The current practice of informing the number of bid floating days from date of issuance, requires each bidder to calculate and arrive at the closing/opening date leads to a risk of misinterpretation and complaint..

Announcement of contract award: Timely announce contract award as prescribed by procurement law for all participating bidders, the outcome of the evaluation considering all the pertinent information as indicated in the procurement law for the sector. Ensure the practice of contract award in the sector through publishing in a media of wide circulation in addition to issuing an award letter.

Sustainability considerations in contract clauses: Incorporate in SBD (works) and RFP (Consulting services) and other SBD as relevant, sustainability consideration in the General Condition of Contract or where appropriate.

Incentive on exceeding defined performance levels: Evaluate through research and dialogue with private sector the impact of introduction of penalty clause on contract performance.

Confidentiality in evaluation and award process: Ensure that personnel that involve in the procurement process including evaluators and decision makers sign declaration to uphold the code of ethics and confidentiality requirements before involving in the procurement and decision-making process and provide coaching and training, as appropriate.

Enforcement of quality control measures and inspection: All quality control measures including laboratory tests shall be well documented and used during supervision. Timely follow rectification of defects and settle the retention money for final acceptance of works contract in the sector.

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Timely payment of invoice: Adopt a consistent approach for examining invoices in case of water supply projects for both the civil work and pipes, fittings and electromechanical parts which are construed as part of the civil work. Hence, the recommended payment modality adopted for examining invoices for civil works shall be followed.

Direct Involvement of external stakeholders: Consider the use relevant external stakeholders in the public procurement in the sector, if, found important with proper legal support through proper revision of the PPD.

Enhance efficiency in selection and Award process: Review the procurement process to enhance efficiency that ensure completion of the selection and award process within the initially defined bid validity period. Need to introduce monitoring through electronic Procurement Monitoring means as part of the e- Procurement process.

Efficiency in application of attaining socio-economic objectives: Devise an additional tool in the sector which can boost the participation of local companies including SME to largely contribute to the socio-economic development objective. The Home-Grown Economy [29]introduced by the GoE could be a useful platform to further discover other similar tools for the sector which aims to achieve socio-economic development objectives.

Prepare guidance and start identifying and mitigating fiduciary risks associated with protection of the environment. Level of efforts in sector in protection of environment: Devise a holistic approach in the sector to protect the environment, given, it is a cross cutting agenda. Where the sector is concerned, it is advisable to properly address the environment along the entire procurement cycle including operation and maintenance stage.

Summary of substantive gaps and recommendations of Indicator 9

Substantive gap	Risk classification and red flags	Recommendations
9(a) Planning in the sector		
There is no practice of undertaking survey/study to understand the market and design optimal procurement approach.	Medium Risk	Develop a guideline/tool to carry out market assessment and for designing optimal procurement approach before soliciting bids. Provide training to procurement and technical staff
Lack of application of sustainability and “Best Economic Advantage” criteria in bidding document:	Medium Risk	Introduce procurement provision that require public bodies to set sustainability requirements as qualification criteria.

[29] Ten -year plan prepared by the Ministry of planning and development -2021-2030 basis on home grown economic reform (HGER)

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Substantive gap	Risk classification and red flags	Recommendations
		Develop qualification criteria that used to evaluate bidders' capability on complying for sustainability requirement. Encourage use of non-price attributes, social and environmental consideration, use of life -cycle costing, rated criteria as per current international practices
9(b) Selection and contracting in the sector		
Limited use of Multi-stage procurement approach in the sector:	Low Risk	As appropriate, practice use of multi-stage procurement approach to ensure that only qualified contractors are included in the procurement process
Lack of use of internationally recognized conditions of contract conditions	Medium Risk	The General and Special Conditions of Contract issued by Authority should be revised by adapting an internationally recognized conditions of contract, such as FIDIC Red Book, FIDIC for Design & Build, FIDIC Harmonized by World Bank that it will comply with requirements stipulated in the public procurement proclamation and attract qualified local and international contractor to bid for large and complex contracts
Inadequate capacity of local contractors and heavy reliance on SOEs.	High Risk, Red Flag	Study and address factors limiting the capacity and competitiveness of the private sector (related to finance, tax, technical capacity, market access etc.)
9 (c) Contract management practice in the sector		
Significant delays in contract implementation	High Risk, Red Flag	Address systemic challengers associated with availability of foreign currency. The Contract

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Substantive gap	Risk classification and red flags	Recommendations
		administration process under procuring entities and under the consulting firms should be strengthened in a way to ensure timely completion of contracts. Ensure that the e-GP contract management module accommodates workflow and permission / authorization trails, and all information transactions in any part of the procurement process including contract management, contract planning, and interactions between stakeholders.
Delays in payment of invoices	High Risk, Red Flag	Resolve shortage of foreign currency in the economy. In the meantime, foreign currency requirement of ongoing projects should be released on priority basis to avert delays, disputes contract failure. Ministry of Finance to resolve the issue of shortage of funds devise robust mechanism of effecting payments (both local and foreign portion) within the contractually agreed period or not to solicit bid and award contract if funds are not available.
Accuracy and accessibility of records: Records are not kept in a single file and are not easily accessible.	Medium	Devise mechanism that enables procuring entities to keep procurement records in a single file and with easy accessibility.
Lack of procurement statistics and system to measure and improve performance	Medium Risk	Authority is recommended to expedite implementation of the e-GP system and get the benefit from full feature of the EGP system.

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Substantive gap	Risk classification and red flags	Recommendations
		Roll out of the e-GP system to sector entities under regional governments and city administrations should be facilitated
There is lack of opportunities for direct involvement of relevant stakeholders. There are no Civil societies working on the procurement and hence, public scrutiny in public contracts is weak.	Medium Risk	Enforce provisions related to publication and access to project information. Raise awareness of the public and strengthen civil societies on accessing and utilizing project information. • Create conducive environment participation of external stakeholders, such as civil societies, in the procurement process of procuring entities that include in planning phase; bid/proposal opening; evaluation and contract award and contract implementation

SLA-Indicator 10. The public procurement market is fully functional and competitive at sector level.

This objective of this indicator is to assess the level of competition in the procurement of goods, works, and services including consulting services, in the sector. The indicator assesses the sector market's response to the sectorial procurement needs in the country. The market's response is influenced by the general economic climate, policies to support the private sector, the business environment, financial institutions, the trust in the public procurement system, and the kind of goods and services being procured.

Synthesis of the indicator

The public procurement market is not fully functional and not competitive at sector level due to absence of any meaningful dialogue and partnership with the private sector, while formulating changes to the procurement system. The market is characterized by absence of any efforts to build capacity of local contractors, absence of sufficient and qualified drilling contractors for water supply project, lack of capacity to execute contract for dams and related structure. Most of the projects are through SOEs such as Ethiopian Construction Works Corporation, as private sector has no design or execution capacity of medium and large irrigation involving dam and spillway structures.

Based on private sector survey and feedback in the consultation workshop there is a perception that "Few get many jobs. Many stands without jobs", which means that the current policies and practices in the country has led to an oligopolistic market (Q.50). Nearly 74% of the 42 respondents said "yes" and 26%

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responded “No” to this situation.

The situation is exacerbated by security situation in the country, in some cases, is a constraint where the private sector avoids taking a risk.

Inflation30 is also considered as one of the factors that inhibit participation in procurement opportunities. The market price is considered highly volatile, at times in a scale impossible to predict and take a calculated risk. There are no proper clauses of price adjustment included in the contracts to entertain such inflation where most of the contracts have shorter than 18 months contract duration, and a provision that in longer duration contract the payment of any price adjustment, starts after 12 months of contract signing.

Based on feedback from Ethiopian Association of Contractors, during the bidding process, some clients request the bidders to present the machineries physically, which could affect and inhibit the participation of the market, a practice that could compromise the integrity and transparency of the process and could be prone to corruption.

Findings

As per Federal public procurement directive issued by Authority, and whenever there are changes to procurement legal framework or procedure, in most of the cases the private sector is not part of the dialogue which is also confirmed during a workshop held in Addis Ababa with the private sectors on October 10, 2022.

The assessment team also learnt from Ethiopian Contractors Association (ECA) that, though Authority invited them for dialogue, there comments/feedbacks are not considered as an input while changing some of the legal framework issued through circular.

Procuring entity is claiming absence of sufficient and qualified drilling contractors for water supply project and on the contrary, there is no program or plan to reinforce their capacity and encourage private companies to join the drilling industry.

The assessment team requested the private sector in the survey about their participation in any capacity-building trainings organized by entities involved in the Water sector (Q.39). Nearly 38% of the 47 respondents said “yes”, 58% responded “No” and 4% responded “not sure”.

The assessment team requested the private sector in the survey about: What is your perception of the appropriateness of conditions in the public procurement market (Q.41). Nearly 36% of the 42 respondents said “Favourable” and 64% responded “Unfavourable”.

Related to qualified contractors, For Addis Ababa Water Supply and Sewerage Authority, it is found that 3 to 9 bidders qualify in water supply and sewerage contracts out of offers submitted in the range of 8 to 15. The number of interested bidders and responsive bidders is dependent on the many factors including the location of the site, its vicinity to the centre and security issues.

For irrigation projects (dams, spillway etc) and Water supply project (drilling of wells), there is a problem to get qualified national contractors with the required turnover, equipment and personnel in a sufficient number that commensurate with the size and value of the contract. Thus, there is a tendency to directly

[30] IMF statistics for increase in Consumer Price Index in Ethiopia is 31.4% in 2023, as referred earlier

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award to SOEs.

In irrigation projects, it is observed that, though the volume of work is large enough to attract international market, there is a practice to fragment the work to the level it can be within the national open bid threshold. This is to avoid the risk of dealing with Foreign Currency, given the shortage and less likelihood of the procuring entity to secure foreign currency for payment to international contractors.

Price adjustment is not practiced in the water sector. Though CSA is mandated to issue price indices, the agency has not yet started issuing rice indices for construction inputs. In Addis Ababa, the construction Bureau issue reference prices where much of the item is relevant to construction of buildings.

Related to identification systemic obstacles for access by national private sector for construction works, it was not possible to find such studies carried out to identify systemic obstacles limiting access of national private sector to construction. The involvement of the SOEs in some of the mega projects where private sector is believed to have less capacity limits to access the national private contractors. During the discussion with Ethiopian Contractors` Association, the assessment understood that collateral requirement has increased from insurance companies where most of the contractors could not afford to meet the requirement, which, affect the private sector participation and level of competition.

Related to functionality and level of competition for works, goods and consultancy contracts, From the reviewed sampled contracts, number of bids received in Goods procurement is relatively low.

Gaps

Minor gaps

Lack of openness and effective engagement with the private sector: The assessment team was informed that there is dialogue with the private sector in the Water sector. However, the team was not able to substantiate the claim with evidence that substantiate views of the private sector were considered while formulating changes to procurement procedures and practices in the sector. As per the private sector survey, only 43% of the respondents responded positively regarding questions on openness and engagement with the private sector.

Substantive Gaps

No program to build capacity of contractors in the sector: Despite the challenge of getting sufficient drilling contractors, there is no program to build the capacity of the private sector in the water sector. It is advisable to establish a capacity building program to address the technical and commercial limitations of contractors to submit competitive and responsive bids.

Lack of competitiveness of private sector and SMEs: : The are a number of private sectors in the water sector working as contractors, suppliers and consultants with various grades as issued through the Ethiopian Construction Authority. However, their participation and competition have not been satisfactory and most of them lack adequate internal capacity (both financially and technically) especially in drilling works. As a result, there is a reliance on SOEs especially in drilling works. It was also noted that the participation of foreign bidders is almost nil. Out of the total 40 contracts sampled under this assessment, only 1 contract was awarded to a foreign bidder. There is a perception within the private sector that few are dominating the market. As per the survey, 74% of the respondents agreed that few players get most of the contacts and many are without contracts This is “Red Flag” because enhancing the

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capacity of contractors is associated with many factors that are beyond procurement including financing, investment climate, education, other incentives including tax exemption etc.

There are systemic constraints to access the market: Major systemic constraints inhibiting private sector access to sector procurement market are related to shortage of foreign currency, delay in opening Letter of Credit, delay in processing payment, right of way issue, Security, inflation and its impact on the qualification of contractors, the provision that prohibit payment in foreign currency to local contractors for goods and services imported from abroad. As a result, there is lack of effective competition in the sector including reliance on SOEs. It is "Red Flag" because it is associated with systemic challenges that cannot be addressed through procurement system.

SPP objectives not converted as bid evaluation criteria also to facilitate equal treatment: As indicated in sub-indicator 9(b), the performance evaluation criteria for local and international contractors are and discriminatory. Besides, SPP objectives are not yet identified and hence, not converted into evaluation and award criteria.

Price adjustment is not practiced in the water sector: CSA has not started issuing price indices for construction inputs regularly. As a result, the PEs in the sector and beyond do not have reliable price indices to carry out price adjustment. Besides, there are which is mandated to issue price indices is not issuing indices to support price adjustment for locally limited capacity and experience and hesitation to consider price adjustment provisions even under hyperinflationary situation. This has affected the competitiveness and the capacity of the private sector in delivering contracts successfully. It is "Red Flag" because CSA which is mandated to issue price indices for locally sourced materials is governed outside of the procurement system. Despite huge inflation in the market, CSA has not started issuing price indices and is unlikely to happen soon.

Recommendations

To address minor gaps

Enhance dialogue with the private sector: The dialogue with private sector should be conducted in an organized manner and their views considered in formulating changes in the procurement practice in the sector.

Horizontal SPP Objectives: Justify the use of Horizontal SPP in the sector including converting into feasible evaluation criteria that is in line with the sector context.

Summary of substantive gaps and recommendations of Indicator 10

Substantive gap	Risk classification and red flags	Recommendations
10(a) Dialogue and partnership between public and private sector		
Lack of focus on building sector specific capacity for new entrants:	High Risk,	Establish capacity building program for the private sector. The training provided for the private sector, by Authority, is recommended to be tailor made in a way to help new

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Substantive gap	Risk classification and red flags	Recommendations
		entries into the public procurement marketplace.
10(b) Private sector's organization and access to the public procurement market		
Major systemic constraints inhibiting private sector access to sector procurement market related to shortage of foreign currency, delay in opening Letter of Credit, delay in processing payment, right of way issue, Security, inflation, and its impact on the qualification of contractors, the provision that prohibit payment in foreign currency to local contractors for goods and services imported from abroad:	High Risk, **Red Flag**	Address systemic challenges through proper intervention in the market. Consider the systemic challenges during design, preparation of bidding documents, evaluation, and contract implementation. Ministry of Finance to discuss with relevant stakeholders and devise mechanisms that alleviate systemic problems related to difficulties in getting foreign currency: Delays in opening Letter of Credit, getting payments after being certified by the Engineer. Procuring entities to clear right of way problems prior to commencement of work, introduce mechanism to consider fully the impact of inflation while setting qualification criteria in newly advertised tenders, allow payment of foreign currency to local contractors for Goods and services imported from abroad for purpose of the contract.
The private sectors lack adequate internal capacity (both financially and technically) especially in drilling works. As a result, there is apperception within the private sector that few are dominating the market. As per the survey, 74% of the respondents agreed that few players get most of the contacts and many are without contracts.	High Risk, Red Flag	Establish capacity building program to the private sector in collaboration with the respective associations. Address systemic issues impacting the capacity of the private sector and which is inhibiting participation.
SPP objectives not converted as bid evaluation criteria also to facilitate equal treatment	High Risk, Red Flag	Convert SPP objectives in to bid evaluation criteria that facilitate equity in the treatment of bidders

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Substantive gap	Risk classification and red flags	Recommendations
		and that ensure predictability and transparency in the bidding process. The performance evaluation criteria for local and international contractors should be the same and it is not discriminatory.
Price adjustment is not practiced in the water sector	Medium	The Ethiopian Statistical Service should start publishing official reference price for construction inputs in the water sector that will be used for price adjustment for locally sourced inputs and as reference during evaluation of bids. Provide adequate training to procurement and technical experts on price adjustment provisions and formula.
10 (c), 10 (d), 10 € Functionality and the level of competition in works contract awarded in the sector (also goods and consultancy)		
Major Systemic obstacle limiting access of international private contractors for works, goods and consultancy	High Risk: Red Flag	Foreign currency requirement of ongoing projects shall be quantified, and the MOF shall negotiate with the contractor on the schedule of releasing the foreign portion. Hold dialogue between the private sector and the concerned government bodies for resolving systemic problems.

3.4. Pillar IV - Accountability, Integrity, and Transparency of the Public Procurement System (based on Core MAPS 2021)31

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

[31] ET-MAPS-volume-I.pdf (mapsinitiative.org)

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and governance environment to ensure they are defined and structured to contribute to integrity and transparency.

Based on the results of Core MAPS, a summary has been provided in this section with sector specific findings as available during Sector Level Assessment related to the four Indicators

This section covers limited areas where "Red Flags" were identified in the Core MAPS and considered relevant for improving the practices in the sector related accountability, integrity, and transparency.

Rest of the findings as in Core MAPS remain valid but requires follow-up to improve performance at sector level.

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

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

Summary of substantive gaps and recommendations of Indicator 11 (Based on Core MAPS 2021). These recommendations are considered applicable at Sector Level. The complete Core MAPS Report (Ethiopia) can be accessed at https://www.mapsinitiative.org/assessments/ET-MAPS-volume-I.pdf

Overview of gaps, with risks and recommendations:

Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
Sub-indicator 11(a)—Enabling environment for public consultation and monitoring		
✓ The government has only recently adopted a new proclamation that requires that public bodies consult with stakeholders and the public before directives are issued. Therefore, how this requirement operates in practice is not yet known.	Low	The regulatory bodies should ensure that a transparent consultative process is followed when any public body formulates changes to the public procurement system.
Sub-indicator 11(b)—Adequate and timely access to information by the public		
The legal requirement does not provide for publication of key information for effective participation in the procurement process by the public.	High	Add a provision to require that key procurement information be published in an easily accessible manner. Improve the functionality of Authority's website.
Sub-indicator 11(c)—Direct engagement of civil society		
Although it does not prohibit participation of CSOs in the procurement process, the legal framework does not explicitly state	Medium	Encourage and support participation of civil society organizations and their watchdog

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that it is allowed. The new Organizations of Civil Societies Proclamation 1113/2019 is designed to create an enabling environment to enhance the role of civil society organizations in the development. Its effect is yet to be seen.		function, as well as citizen participation in procurement.

Indicator 12. The country has effective control and audit systems.

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

Based on Core MAPS (2021)- only Red Flag Substantive Gaps are covered here, which are applicable at sector level.

Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
Sub-indicator 12(a)—Legal framework, organization, and procedures of the control system		
✓ The regulatory bodies are given the functions of auditing and monitoring. Although auditing would normally feed into a monitoring function, the latter encompasses a much broader need for system measurement and analysis. The PPPAA's audit manual requires that INTOSAI auditing standards be followed for procurement audits that public bodies perform. It also says that the Authority A may consider forwarding their audit reports to the OFAG or ORAG, which are independent bodies that audit all public bodies every year using the INTOSAI auditing standards. Their regularity audit includes procurement. In addition to duplication of functions, this creates uncertainty in the precedence of the audit reports and follow-up actions by the public bodies.	Medium	Provide a clear division of responsibilities between the regulatory bodies, OFAG, and ORAG to avoid duplication and ensure efficiency and complementarity in the conduct of audit functions. In the long term, the regulatory bodies may prioritize the monitoring function, which will also require new approaches, greater capacity, and possibly tailored software to allow for data to be collected and analyzed and system reports to be produced. This type of procurement review should be differentiated from the audits that OFAG and ORAG conduct and should be coordinated with OFAG or ORAG for consistency.
✓ There is no requirement to submit a procurement audit report to a higher organ within the government that has supervisory authority over all the procuring entities at the federal level. As	Medium	Ensure that the public bodies enforce actions and address audit findings

Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
a result, there is no clarity of its impact in enhancing accountability within the procurement system.		
Sub-indicator 12(c)— Enforcement and follow-up on findings and recommendations		
✓ Audit recommendations are not implemented in a timely manner.	Medium	Ensure that the public bodies enforce actions and address audit findings
Sub-indicator 12(d)—Qualification and training to conduct procurement audits		
✓ Procurement experience and knowledge are not requirements in selecting auditors. Even auditors in procurement regulatory bodies who are fully engaged in auditing procurement contracts and processes are not required to have procurement knowledge. Most auditors join the regulatory bodies directly from university, with no work experience in procurement.	Medium	Revise the job specification to require procurement knowledge and introduce a competitive scheme to attract qualified, experienced staff.

Indicator 13. Procurement appeals mechanisms are effective and efficient.

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

There are no red flags identified in Core MAPS 2021 under Indicator 13, however one substantive gap listed below, which requires follow-up, as **Procurement complaints**: are not resolved within the time-frame (15 days) stipulated within the legal framework (for example, in three-year period out of 390 appeals with Complaint Review Board only 6 appeals were resolved within the time frame, which arises due to inadequate resource and staffing as per finding in Core MAPS 2021

Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
Sub indicator 13(b)—Independence and capacity of the appeals body		
The CRB is not adequately resourced and staffed. Except for the secretariat service that the agency provides, which is considered to be a conflicting role on the side of the agency, the CRB has no dedicated resources or staff to meet its responsibilities. Coupled with the perception that the CRB is not independent, the capacity limitation has	Medium	Reestablish the CRB with a structure that avoids conflicts of interest and with adequate resources to meet its responsibilities in a timely manner.

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Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
damaged its credibility in addressing complaints of the private sector.		

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

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

Only Red Flag items with "Substantive Gaps" are covered here as extracted from Core MAPS for further follow-up at sector level.

Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
Sub-indicator 14(a)—Legal definition of prohibited practices; conflicts of interest; and associated responsibilities, accountabilities, and penalties		
✓ There appears to be no alignment between the public procurement legal framework, anticorruption law, and criminal law, which define fraud and corruption in different ways and set corresponding criminal and civil punishments inconsistently.	High	Ensure consistency of public procurement legislation and other laws.
Sub-indicator 14(c)—Effective sanctions and enforcement systems		
✓ The reporting structure on fraud, corruption, and other illegal practices has not been clearly established or communicated to all parties, including staff in procuring entities. The language in the directive, the proclamation, and other documents, including the SBDs, must be consistent and comprehensive to avoid misconception or misinterpretation.	High	Ensure clarity and consistency within the public procurement legal framework and with other laws. Establish a clear reporting structure on malpractice and ensure clarity and consistency within the public procurement legal framework and with other laws. Provide training and guidance to staff on how to report cases of corruption and other malpractice anonymously.
✓ There is no evidence that the laws on fraud, corruption, and other prohibited practices are being enforced.	High	Ensure availability of and access to evidence that the laws on fraud, corruption, and other prohibited practices are being enforced.
Sub-indicator 14(d)—Anticorruption framework and integrity training✓		
✓ Although Ethiopia has a comprehensive anticorruption framework to prevent, detect, and penalize corruption in government that involves the agencies with the appropriate level of responsibility and capacity to fulfill its responsibilities, the legal framework lacks transparency.	Medium	Review factors that help prevent corruption and improve them in the legal framework and in practice. Improve reporting to allow to ensure availability of data on specific categories of offenses.

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Substantive Gap / ✓ (Red Flag)	Risk	Recommendation
✓ Statistics on corruption-related legal proceedings and convictions related to procurement are not compiled, and reports are not published regularly.	High	Ensure that statistics on corruption-related legal proceedings and other information are compiled and published and that information related to procurement is accessible.
✓No special measures are in place to detect or prevent corruption associated with procurement.	Medium	Develop an integrated anticorruption strategy and use modern technologies to detect corruption, some of which can be embedded in the e-government procurement system.
Sub-indicator 14(e)—Stakeholder support to strengthen integrity in procurement		
✓ There is no evidence that suppliers and business associations in general have internal compliance measures to support integrity and ethical behavior in public procurement.	Medium	The Authority should work with business associations to ensure that private firms adopt internal compliance measures to support integrity and ethical behavior in public procurement.
Sub-indicator 14(g)—Codes of conduct and ethics and financial disclosure rule		
✓ There is no regular training program related to the code of ethics, and the commissions at the federal and regional level mention budget and technical as constraints in providing regular trainings.	Low	Provide regular training on the code of ethics as part of the public financial management training program or in a standalone program

Note: Authority, Public Procurement and Property Administration Agency; SBD, standard bidding document.

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4. Consolidated Recommendations, emerging cross-cutting issues between Road and Water Sector and key actions

The consolidated recommendations are given at the end of each SLA Indicators and covered in Executive Summary as indicator wise summary. These recommendations are based on the results of assessment for each of the Road and Water Sectors. However, there are cross -cutting issues and similarities between the two sectors and certain common key actions are needed to address such substantive gaps as summarized below:

Key Actions (applies to both Road and Water Sector)

- **Adopt an action plan to identify** and address the inconsistencies, or misalignment that exists between the various documents in the legal framework.
- **Ensure consistency of all levels of legislation** with the principle of non-discrimination by identifying and removing any requirements that create barriers for bidder's participation or differentiate the qualification criteria based on the bidder's nationality.
- **To add provisions to legal framework on conditions for participation of state-owned enterprises** as bidders to create a level playing field.
- **To undertake a study to review the issues and challenges with the current contract conditions** to understand if they are fit for purpose.
- Add provisions to legal framework on conditions for participation of state-owned enterprises as bidders.
- **Develop the SPP Strategy/Policy** as well as a supporting plan to implement SPP.
- **Customize the international standards for the water sector context and country in general.** Capacitate Ethiopian Construction Authority to follow and address all the sector`s technical requirement and issue a comprehensive national technical standard applicable for a range of works, services and goods for the sector. Include in the legal framework the normative function
- **To devise mechanism for early release of budget funds** including allocation of foreign currency portion amount and price adjustment payment
- **Customize the international standards and prepare a fit for purpose national standard** for the sector context and country in general.
- **Establish a specialized procurement function** with the necessary mandate, management structure, capacity, and capability**.**
- **Expedite the rollout of e-GP system** to all Federal agencies and to regional governments. **Ensure that the e-GP contract management module accommodates workflow** and permission / authorization trails, and all information transactions in any part of the procurement process including contract management, contract planning, and interactions between stakeholders.
- **Support the professionalization training by sustainable budget and recognition of training:** To resolve resource issue. Prepare training module and initiate the specialized level training based on sector needs. The permanent professionalization training should be upgraded and recognized by the

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civil service commission. Ensure financial sustainability of the program through collection of fees from trainees and by providing related services.

- **Enforce the use of the KPI for all entities in the sectors and use of e-GP system information** to be used as an input for policy making. Expedite implementation of the e-GP system and start generation of information that will be used to support strategic policy making on procurement in the sector.

- **Prepare SPP strategy and practice the sustainability element included in the existing legal provision: Consider preparing SPP strategy and in the meantime, e**ncourage use of non-price attributes, social and environmental consideration, use of life cycle costing also use of and "Best Economic Advantage" criteria in bidding document:

- **Use Price Adjustment Provisions as per international norms:** Due to inflationary situation in the country provide for price adjustment in contracts where completion period is less than 18 months and use internationally accepted formula. Ensure that the appropriate agency (Central Statistics Agency) issues price indices regularly for construction inputs sourced from the local market.

- **Carry out regular amendment of public procurement directive, in relation to threshold limit of** NCB contracts, to accommodate changes due to inflation**,**

- **Reassess Role of SOE as a market participant to deliver Value-for-Money (in Particular large contracts for Water Sector by Direct Procurement)**: Need to conduct detailed market analysis and not solely on the basis that private sector has no capacity- find ways to build capacity of private sector

- **Discuss with relevant stakeholders and devise mechanisms that alleviate systemic problems related to: (i)** Difficulty in getting foreign currency; (II) Delay to open Letter of Credit (III)Delay in getting payments after being certified by the Engineer; (IV)Procuring entities are also recommended to clear right of way problems prior to commencement of the construction work. (v) inflation and the associated impact on qualification of bidders and completion of contracts (VI) Security

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5. Suggested Priorities for Strategic Planning Process

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

However, setting the sequencing to implement the recommended improvement activities to address substantive gaps would be left to the discretion of the GoE. It is expected that the findings of this assessment would offer the opportunity for the GoE and participating development partners to explore possible ways and means to support the recommended actions plan.

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

Key Recommendations	Timeline	Priority	Responsibility
Legislative, Regulatory, and Policy Framework			
The MoF and Authority to identify and address the inconsistencies, or misalignment that exists between the various documents in the legal framework.	ST	1	MoF/BoF/ Authority
Consider combining all revisions into a single comprehensive document to ensure precision and clarity on the wording and application of amended provisions.	ST	1	MoF/BoF Authority
Revise the national SBDs to ensure consistency with the legal documents and international practice especially on price adjustment, dispute resolution mechanisms, and Rate of progress & Contract termination.	ST	2	MoF/BoF Authority, PEs in the sector
Issue suitable SBDs covering different delivery modalities suitable for the sector	MT	1	
Institutional Framework and Management Capacity			
Issue national technical standards that address the needs of the sector	MT	1	Mandated agencv

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Key Recommendations	Timeline	Priority	Responsibility
Design mechanism to enforce the applicability of the technical standards in procurement for the range of works, Goods and services relevant in the sector.	MT	2	PEs in the sector
Start generating and utilizing procurement performance reports from the information system to continually improve procurement performance in the sector.	MT	2	Authority, PEs in the sector
Establish specialized procurement function and structure	ST	1	Authority, PEs in the sector
Implement e-GP in the sector both at federal and regional level	ST - MT	1	MoF/Authority/PEs and regional BoFs
Prepare specialized training program for the sector in collaboration among the sector, Authority, and training institutes	MT	1	Authority, PEs in the sector
Design a mechanism to ensure financial sustainability of the training program including through collection of fees from trainees	LT	1	MoF/ Authority,
Public Procurement Operations and Market Practices			
Utilize the existing provisions in the PPL and SBDs to introduce SPP criteria in bidding documents, evaluation, and contract documents.	ST	1	PEs in the sector
Develop SPP strategy and appropriate tools for implementation in the sector	MT-LT	1	MoF/ Authority
CSA should start issuing price indices for construction materials regularly	ST	2	CSA/Authority
Provide adequate training to procurement and technical staff on how to apply price adjustment formula in the sector.	ST	1	Authority/PEs in the sector
Consider the systemic challenges during design, preparation of bidding documents, evaluation, and contract implementation.	ST	1	PEs in the sector

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Key Recommendations	Timeline	Priority	Responsibility
Establish capacity within the MoWE to start the use of PPP as delivery mechanism of water sector projects	ST	2	MoWE
Identify potential projects and follow up implementation through PPP arrangement	MT	1	MoWE
Adopt PPP arrangement including legal framework, structure, and capacity in the sector at regional and city administration level, as appropriate and where feasible.	LT	1	BoFs
Accountability, Integrity, and Transparency of Public Procurement System			
To follow-up substantial gaps which are identified as Red Flag in Core MAPS 2021 at sector level	LT	2	Refer Core MAPS

As next practical step, MAPS Steering Committee (MASC) to advise as 'Sector Procurement Reform Group' to be co-hosted by the Authority as secretariat with support from key sector public bodies/procuring entities to implement the reform agenda including recommendations from the Core MAPS (2021) which are relevant at sector level to improve its performance.

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6. Validation

Chapter 1 of the Report provides a chronology on all consultations and validation until May 25, 2023, when a stakeholder validation workshop was organized. Before the stakeholder validation workshop, several consultations were held with the Stakeholders and the Assessment Steering Committee. The Assessment Team presented the findings to key stakeholders on May 25, 2023, and their feedback obtained and incorporated into the draft assessment report and sent for peer -review and to the Authority /GoE

The validation workshop has broadly validated the results of assessment, substantive gaps and recommendations to address remaining challenges for the improvement of the quality and performance of public procurement system at sector level. The report has also benefited from peer -review process from….All the details on consultations are covered in **Appendix in Volume PART III** of the Assessment Report.

Following table provides the summary:

#	Description	Planned/ Actual date
1	MAPS Assessment Team Mission to Addis Ababa to discuss with key stakeholders	October 10-20, 2023
2	Initiating Workshop with all stakeholders (in person in Addis Ababa)	October 18, 2022
3	Consultations with the private sector	Oct 19, 2022
4	Multiple consultations with sector procurement entity and other stakeholders by the members of the Assessment Team	Nov 2022 to May 2023
5	Stakeholder Validation Workshop in Addis Aba Ababa on the results of assessment with vitual participation by some team members	May 25, 2023
6	Draft Assessment Report sent to peer-reviewers and to the Authority and Stakeholders	June 05, 2023
7	Comments from Peer-reviewers and the Authority/GoE	June 13, 2023
8	Decision Review Meeting of the World Bank Management	June 15, 2023
8	Revised draft Assessment Report (All Volumes) completed	
9	Validation from the Authority/ GoE of the revised draft report	
12	Final Revised Draft MAPS Report to MAPS Secretariate/ Assessment's Technical Advisory Group(ATAG)	
13	Review competed by ATAG/MAPS Secretariat	
14	Certification by MAPS Secretariat	
15	Dissemination/ Publication of Final MAPS Report	

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MAPS | Methodology for Assessing Procurement Systems

Indicator Matrix – Water Sector Level Assessment

JUNE 6, 2023

MATRIX REPORT

(FROM INDICATORS 1-10)

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Indicator Matrix - Sector Level Assessment (SLA) - Water Sector

Explanations for the Matrix:

- Procuring entity (PE) = public body (PB)
- Core MAPS report/assessment – MAPS Assessment Report for Ethiopia (Federal, Addis Ababa City and Regional level) completed in 2021. Published report is here.
- In accordance with the " Guidance: Gap identification, risk assessment and red flags" (January 2023, link here), the following terms carry the following meaning:
    a. Minor gap: Only minor gaps are identified for the criterion.
    b. No gaps: No gaps are identified for the criterion.
    c. Substantive gap: At least one substantive gap is identified for the criterion.
    d. "Red flags" are assigned to **substantive gaps** that will probably obstruct efforts to improve the public procurement system, either by making these efforts less likely to happen or by preventing them from achieving their intended result. A red flag is always related to a substantive gap that ranks high on the impact dimension and usually also high in the likelihood dimension (or cannot be mitigated if it materializes).
- According to the MAPS SLA Module (see here), the SLA's overarching goal is to provide an understanding of the overall functioning and performance of public procurement as well as the general business climate in the Road sector. Ministry of Water and Energy, Ministry of Irrigation and Lowland Development, and Addis Ababa Water and Sewerage Authority, have been selected as Road sector representatives for purposes of SLA. Any mention of these entities and/or their practices in this SLA does not imply an assessment of the entities.
- Moreover, the SLA is based on the Ethiopia Core MAPS report/assessment, which was completed in 2021 for both the federal and Addis Ababa levels. In some cases, the gaps and recommendations may have been already addressed. In others, the gaps and recommendations have remained either unsolved or relevant for the Road sector SLA; hence a different rating may be found.
- To avoid repetitions and/or inconsistencies, the SLA makes general reference to the gaps and/or recommendations for the respective criteria under Core MAPS, highlighting only those of relevance to the sector and adding the new gaps and recommendations resulting from the SLA.
- The SLA team has used, to the extent possible, the names of the Federal Ministries and other entities/public bodies in accordance with the Proclamation No. 1263/2021 of 25 January 2022.
- The years belonging to the legislation are generally expressed in Gregorian Calendar mode (G.C.) unless otherwise marked as Ethiopian Calendar (E.C.).

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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) Coverage of the sector The legal and regulatory body of norms applicable to the sector 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: **Substantive gap**
Red flag: **No**
Qualitative analysis **Water Sector Framework** The procurement procedures in the Water sector adhere to the same legal framework applicable to the Federal government and the Addis Ababa City Administration. In this regard, the Federal Public Procurement Proclamation – for federal agencies, and the Addis Ababa Procurement Proclamation for Addis Ababa City Administration for Addis Ababa level entities, constitute the primary procurement legislation that apply to Water sector. A more detailed overview of the legal framework for each level of government is as follows: **Federal Level**: Ethiopia's legal and regulatory framework is adequately recorded and is organized hierarchically with precedence well established. The Constitution[1] (1995) is the country's supreme law. Any law including state law, customary practice, or decision of an organ of state or a public official which contravenes the Constitution shall have no effect (Constitution A.9(1)). The legislation consists of the primary legislation, Proclamations, and secondary legislation, which includes Regulations issued by the Council of Ministers of the Federal government, and Directives issued by the Federal Ministries. At federal level, all international agreements ratified by Ethiopia are an integral part of the law of the land (1995 Constitution A.9(4)). Their precedence with respect to procurement is recognized by PPL A.6 which confirms that to the extent that the PPL conflicts with an obligation of the Federal Government under or arising out of an international agreement with one or more states or with international organizations, the provisions of that agreement shall prevail. The key primary legislation on federal public procurement is currently the Ethiopian Government Procurement and Property Administration Proclamation No. 649/2009 ("PPL") which came into force on 9 September 2009[2]. This is supported by a comprehensive procurement Directive, the Federal Public Procurement Directive, issued by the Ministry of Finance in June 2010 ("PPD")[3]. The PPD has been amended with respect to specific provisions through four (4) amendments issued in (1) July 2014; (2) January 2016, (3) December 2016, (4) July 2019 and through several circulars issued on 04/03/2021, 12/07/2021, 05/10/2021, 21/04/2022 & 06/06/2022 G.C. Some of the circulars are issued for clarifying how the provisions in the PPD should be implemented while others have effects of amending stipulations in specific articles of the PPD. For example, the circular issued on 05/10/2021 has updated the maximum threshold for NCB which has the effect of amending A.17.2 of the PPD, though the circular didn't cite the specific article of the directive. The same circular has also defined a 45-day limit for making payment under works contract, from the date the contractor has submitted payment request for the Engineer which has an effect of amending A.28.5(d) and (e) of the PPD, which the circular does not specifically cite. Despite all these amendments, the original PPD document remains the same as issued in 2010. Circulars are legislative instruments that are frequently issued by Ministry of Finance or/and the Public Procurement and Property Authority[4] ("Authority"). Their purpose is to provide clarifications on specific articles of the PPD or the standard bidding documents that are reported by public bodies and/or private sector parties as being ambiguous. For example, a letter providing that certain procurement can be done through restricted bidding if they are manufactured by more than one manufacturer in Ethiopia, and through direct procurement if the above-mentioned items are manufactured by one supplier only. Examples include circulars by Ministry of Finance on 25/06/2013 and 05/11/2013 E.C, in relation to price adjustment provision in works contracts; another example is the circular issued by the Authority on 13/08/2014 E.C, to correct an error in the price adjustment formula that is included in Clause 62.12 of the General Conditions of Contract for Works. In general, the Ministry of Finance issues circulars[5]. But in practice, other Ministries and other public bodies (e.g. National Bank of Ethiopia, Pharmaceutical Fund and Supply Agency, Ministry of Urban and Infrastructure; Ethiopian National Bank issued a Foreign Exchange Directive limiting the period for opening a Letter of Credit (L/C) to 5 months) also issue Circulars, letters or similar advisory documents concerning public procurement issues or having a direct impact on public procurement system in general or for the issuing public body itself. In this respect, the position of circulars in the hierarchy of laws is not clear. They can modify a directive or standard bidding documents depending on the specific purpose they are issued for, though such purpose is not always clearly stated in the circular itself. The PPL, PPD, circulars, advisory letters, etc. issued by Ministry of Finance and the Authority are applicable to all sectors including the Water sector. A new procurement proclamation is in advanced stage of preparation. It is endorsed by the Council of Ministers, Parliament deliberations are conducted and forwarded it to the standing committee. **Addis Ababa**: Addis Ababa is constituted by way of Charter and the City Government is a component part of the Federal Government. The City Government has the power to make laws specifically conferred on it by this Charter as well as executive powers and functions over matters that have not specifically been included in the details of the powers and functions of the executive organs of the Federal Government. The City Charter does not refer to the negotiation and conclusion of international agreements. This falls within the jurisdiction of the Federal Government under the Federal Constitution (A.9(1)). The key primary legislation on public procurement in Addis Ababa is currently: Proclamation No. 17/2009 The Addis Ababa City Government Procurement and Property Administration Proclamation which came into force on 9 November 2009. This is supported by a comprehensive Procurement Directive: the Addis Ababa City Administration Procurement Directive No. 3/22 and subsequently amended on 14 February 2016 and through the circular dated 21/07/2014 E.C (30/03/2022 G.C). There is also a procurement manual. Precedence is clearly established. However, these documents are not organized and available in one single place or portal/website. The Bureau is given the task of publishing Standard Bidding Documents (SBDs) and other forms and supporting documents as well as any e-GP strategy. No SBDs have been issued yet and reliance is placed on the Federal SBDs as per the letter from Finance Bureau to Addis Ababa City Administration, Roads Authority on of 22 February 2017 instructing the use of Federal SBDs.

[1] http://www.ethiopar.net/constitution

[2] Available in English from AUTHORITY Website: http://www.Authority.gov.et/index.php?option=com_joomdoc&view=documents&path=legislation%5Cproclamations&Itemid=157

[3] Available in English from AUTHORITY Website: http://www.ppa.gov.et/index.php?option=com_joomdoc&view=documents&path=Proc_Directives&Itemid=263

[4] Formerly known under Core MAPS report as Federal Public Procurement and Property Administration Agency. The name was changed through the Proclamation No. 1263/2021.

[5] Proclamation No. 1263/2021 A Proclamation to provide for the definition of the powers and duties of the executive orangs [sic.] [organs] of the Federal Democratic Republic of Ethiopia. https://www.lawethiopia.com/images/federal_proclamation/proclamations_by_number/Definition%20of%20Powers%20and%20Duties%20of%20the%20Executive%20Organs%20Proclamation.pdf
This provides (1) for the Ministry of Finance to establish the procurement and property management system of the Federal Government and supervise the implementation of the same (A.26(d)).

There is also federal legislation of particular importance to the procurement in the water sector, namely: the Registration Directive for Water works construction Contractors, Consultants and Professionals effective from 8 July 2016 issued by the Ministry of Water and Energy. The Registration Directive inter alia provides information on requirements to be fulfilled for certification of contractors, consultants and professionals for various grades and levels; it uses the cost of construction, experience and qualification of experts as well as the types, capacity and quantity as a basis to categorize the grade of contractors and project amount for consultants. The Registration Directive has listed a number of different professionals that are required to be permanently employed for each grade and category of contractors. It also restricts the registration of foreign bidders only to grade 1; however, such restrictions will not apply for foreign applicants who want to get a license for a consulting firm.
Until recently, the Registration of Water Works Contractors and Consultants was carried out by the Ministry of Water and Energy. Such mandate was transferred to the Ethiopian Construction Authority, who oversees the Registration Directive No.648/2021 that is applicable for road contractors(RC), Building Contractors(BC), General Contractors(GC) and Specialized Contractors. The Ethiopian Construction Authority is working towards consolidating all sectors into a single registration directive.

Quantitative analysis
Not applicable.

Gap analysis.
The gaps identified in the Core MAPS report for Federal and Addis Ababa completed in 2021 under sub-indicator 1(a)(a) remain valid.
The main issue continues to be inconsistency between circulars, directives, or similar advisory documents and primary legislation. In many cases, the lower-level documents alter the higher legislation. For example, the circular issued by Ministry of Finance on 4 March 2021 G.C. allowing contract price adjustment (due to high inflation) even for contracts that did not include a price adjustment clause goes against the provisions of the PPD (A.16.14.3) which states that price adjustment are allowed in respect of works contracts after 12 months from the effective date of such contracts, where it is confirmed that in respect of works contract, the performance of the contract requires more than 18 months. In other cases, the circulars deviate from the PPL. For example, a letter providing that certain procurement can be done through restricted bidding if they are manufactured by more than one manufacturer in Ethiopia, and through direct procurement if the above-mentioned items are manufactured by one supplier only. In some cases, the circulars de facto amend the PPD provisions, making their position in the legal hierarchy unclear. They have the de-facto authority (not authorized by any law) to modify a directive or standard bidding documents based on the specific purpose for which they are issued, though this purpose is not always clearly stated in the circular itself.

The Federal Government issued Administrative Procedure Proclamation No 1183/2020, which requires (A.16) that all directives (and amendments) issued by federal, Dire Dawa, and Addis Ababa administrative organs be registered at the Attorney General's Office before they become effective. The Office has begun to make registered instructions available online. Currently, the PPL and amendments to PPD (which have been numbered as directives) are published[6] in the Attorney General's website. They are in Amharic language only.

Another Federal legislation with potential impact on procurement is the Construction Joint Venture Directive no. 879/2022 issued by the Ministry of Urban and Infrastructure. However, its implementation has been currently[7] halted/suspended due to internal inconsistencies, contradictions with PPL, civil code and that it did not follow the procedure set out in the Administrative Procedure proclamation. This is an example of how different federal ministries issue directives or legal acts that impact procurement without any coordination or consultation with the Authority.

Amendment No. 2 of the PPD dated December 15, 2016, setting forth different qualification criteria for domestic and foreign bidders, applies to those contractors registered under the Ministry of Urban and Infrastructure, which did not include the Water works contractors who were registered by the then Ministry of Water, Irrigation and Electricity at the time of amendment. Furthermore, the content of amendment refers to road, building and bridges. It is therefore unclear if and how the differing qualification criteria under Amendment no. 2 is relevant to and applied in the Water sector contracts. Furthermore, circulars on specific topics may warrant careful considerations of all sectors. For example, the 4 March 2021 (GC) price adjustment circular focuses on building materials such as re-bar, cement, and finishing material which are relevant for construction works in water sector, but it does not contain items that are relevant to water supply projects, such as electromechanical, pipes, and fittings, which constitute a significant portion of such contracts and may be equally affected by market price fluctuations.

Recommendation
The recommendations made in the Core MAPS report under sub-indicator 1(a)(a) for both the Federal and Addis Ababa in 2021 remain valid.

- Conduct a thorough review of all existing directives, circulars, or other advisory documents issued by the Ministry of Finance, Authority, as well as documents issued by other Ministries/public bodies with an impact on procurement. Identify and fix any differences with the primary legislation PPL and PPD.
- Consider adding an Authority function to check all circulars, letters, and similar advisory papers from all sources to verify consistency and alignment with primary legislation. This should be accompanied with a requirement for issuing bodies to submit such documents to the Authority for review.
- The new circulars, or other advisory papers should include explicit references to the PPL and PPD provisions, as is the case, that are being clarified, amended, interpreted, or replaced keeping in mind that circulars should not be used to change higher level laws.

Assessment criterion 1(a)(b):
It covers goods, works and services, including consulting services for all sector procurement using public funds
Conclusion: **Minor gap**

Red flag: No

Qualitative analysis
Water Sector: The applicable legal procurement framework in the Water sector consists of the same legal framework enacted by the Federal Government and Addis Ababa City Administration. The legal framework in both cases covers goods, works, services and consulting services without restriction on scope, type, size and value. Such legal framework provides the following:

Federal: The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. Defense and security procurement is generally excluded from the coverage of the PPL (PPL A.3(3)(a)), as are contracts between public bodies (PPL A.3(3)(b)). PPL A.2 Definitions defines "**procurement"** as "obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means". The terms "**goods", "works", "services" and "consultancy services"** are defined. **"Public procurement"** is defined as "procurement by a public body using public fund". **"Public fund"** is quite broadly drafted to mean "any monetary resource appropriated to a public body from the Federal Government treasury", as well as aid grants and credit from foreign donors through the Federal government or internal revenue of the public body.

One of the exceptions from the scope of PPL (A.3.3(b)) covers contracts between public bodies for the provision of goods, works, consultancy or other services at cost. It is not clear whether SOEs and public enterprises hired by public bodies fall under this exception given the ambiguity on whether public body definition includes these entities. Furthermore, the legal framework does not specify under what circumstances the contracting between public bodies can happen leaving the door open for misuse and practices which can affect market competition.

[6] Web access to Attorney General's office was checked on May 26, 2023 and PPL and amendments to PPD were found here. Access to the website is not always possible and reliable.
[7] Discussions of SLA Team members with Ethiopian Construction Agency on May 17, 2023.

Addis Ababa: The Core MAPS report (2021) for Addis Ababa revealed similar findings as for the Federal level. The legal and regulatory framework covers the procurement of goods, works and services including consulting services, for procurement using public funds. PPL A.2 (on Definitions): defines "procurement" as "obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means". The terms "goods", "works", "services" and "consultancy services" are defined. "**Public fund"** is quite broadly drafted to mean any monetary resource appropriated to a public body from the City Government treasury, or aid, grants and credits put at the disposal of public bodies by foreign donors through the Government or the internal revenue of the public body. It is not clear whether the second use of the word Government refers to the Federal or City Government. Given the wording of PPL A.6.1, it is more likely to refer to the City Government. PPL A.3(1) states that the PPL applies to "all Addis Ababa City Government procurement and property administration." Public enterprises, state owned enterprises (owned by the City) and other enterprises or organizations in which the City has a significant interest or influence are not expressly included or excluded from coverage of the PPL, though from the definition of "public body", any public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that regional public enterprises are also excluded from the scope of the PPL.

Gap analysis

Conditions for public-to-public contracting arrangements are not specified anywhere in legal framework.

Also, the definition of "works" in the Federal PPL is not broad enough to include examples[8] of water sector related procurement such as water supply, irrigation projects and the like. Definition in the PPL (A.2(3))) goes as follows: *" mean all work associated with the construction, reconstruction, up grading, demolition, repair or renovation of a* ***building road, or structure****, as well as services incidental to works, if the value of those services does not exceed that of the works themselves and includes build-own-operate, build- own-operate-transfer and build operate-transfer contracts*." It could be a matter of translation, and that certain terms maybe read as being related to roads and building structures, but it would be helpful to also include examples of Water sector infrastructure in the works definition.

Recommendation

Consider developing guidance about the circumstances and implementation arrangements for the public-to-public-contracting. It may be advisable to consider more detailed provisions. One possibility is requiring public arrangements to be subject to the PPL, save in specified circumstances. Examples of such excluded circumstances could include genuine co-operation between public bodies to deliver public services/tasks at cost; direct award of contracts between public bodies; or assignment of tasks/functions where the direct award or assignment of tasks/functions and participating bodies are designated by specific laws. Similarly, it may be appropriate to consider clear provisions dealing with the situation where an entity is wholly owned by a public body, carries out public tasks and is not active on the market.

It could be a matter of translation, and that certain terms maybe read as being related to roads and building structures, but it would be helpful to include examples of Water sector infrastructure in the "works" definition.

Assessment criterion 1(a)(c):

It is applicable to all public bodies and sub-national governments and entities, in the sector, that use public funds

Conclusion: **Substantive gap**

Red flag: **No**

Qualitative analysis

Water sector: all federal entities in the Water sector apply Federal legal procurement framework.

Federal: The PPL (A.2) includes a definition of **"Public Body**" (procuring entity) as "*any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature*". Public enterprises, state owned enterprises[9] and other enterprises or organizations in which the government has a significant interest or influence are not expressly included or excluded from coverage of the PPL, though, from the definition of "Public Body", the public enterprises using public funds should be subject to the PPL. However, the prevailing view in the Government is that public enterprises are excluded from the scope of the PPL[10] as they are not funded by public funds. The Core MAPS report (2021) identified that although state owned/public enterprises are generally not financed from the public funds, they may occasionally receive budget allocations.

Each state-owned entity or public enterprise has its own procurement manual, although the manuals appear to incorporate some principles of the PPL.

Addis Ababa: All Addis Ababa City Administration entities in the Water sector apply Federal legal procurement framework. Public body (procuring entity) is defined by PPL A.2 as "any public body, which is partly or wholly financed by the City Government budget, higher education institutions and public institutions of like nature." Public enterprises, state owned enterprises (owned by the City) and other enterprises or organizations in which the City has a significant interest or influence are not expressly included or excluded from coverage of the PPL, though from the definition of "public body", any public enterprises using public funds should be subject to the PPL. However, the general perception and feedback from stakeholders in Ethiopia is that public enterprises are excluded from the scope of the PPL.

Gap analysis

The gaps identified in the Core MAPS report under sub-indicator 1(a)(b) for both Federal and Addis Ababa in 2021 continue to be valid.

There is a general lack of clarity, as well as significant doubt, surrounding the scope of the PPL in terms of which bodies are expected to be covered by it. The definition of "Public Body" does not clarify the specific entities subject to the PPL. Public enterprises, state owned enterprises (SOEs), other organizations in which the government has a substantial interest or influence are not expressly included or excluded from coverage of the PPL.

Recommendation

The recommendations in the Core MAPS Core report under sub-indicator 1(a)(b) for both the Federal and Addis Ababa completed in 2021 remain valid. The PPL should define the types of public bodies covered. In addition, for transparency and certainty, the Authority should compile a list of designated public entities, state companies, and other bodies subject to PPL and post it on the Authority's website. Furthermore, within the scope of the PPL, the definition of public body should specifically include SOEs/public enterprises with significant influence and interest by the state.

Assessment criterion 1(a)(d):

Sector related PPPs, including concessions, are regulated

Conclusion: **No gap**

Red flag: **No**

Qualitative analysis

Water sector

Water sector PPPs will follow the Federal PPP legislation for procurement by federal public bodies. In this respect:

[8] Water Sector procurement activities are vast and complex, and encompass inter alia, procurement of works (water supply, wastewater treatment plant, dams, canals, pipeline etc), consulting services (feasibility study and design of water supply, wastewater treatment, sewerage system, irrigation and supervision of same projects etc), and goods (vacuum trucks, tractors, pumps, dump trucks etc). Water supply schemes, drilling and irrigation are comprised of electromechanical components which warrant a tailored procurement approach.

[9] State owned enterprises are administered under the Public Enterprise Proclamation No. 25/1991.

[10] The explanation for this seems to be that public enterprises are established with authorized capital provided by Government but with managerial autonomy and the expectation that they will operate on market principles. See: Public Procurement Regulation in Africa, Eds. Quinot & Arrowsmith, Cambridge University Press 2013, Country Study on Ethiopia, Tecle Hagos Bahta and further explanation by the same author at paragraph II.2, Framework Procurement Contracts in the Ethiopian Public Procurement Law, PPLR 2016 No.2 pp35-50.

Federal: PPL A.2(25) defines "Public Private Partnerships". PPL A.34 provides that the Minister may issue a Directive prescribing the rules governing the formation of PPP and modes for implementation of PPP. A (new) Proclamation 1076/2018 on Public Private Partnership ("PPP Proclamation") was issued in 2018[11]. A PPP Directive No. 55/2010/2018 ("PPP Directive") was issued and entered into force on July 19, 2018[12]. The PPP Proclamation applies (A.67) to PPP projects of public bodies and public enterprises from 22 February 2018. It applies to PPP, which is a defined term. The PPP definition is not the same as in the PPL, and the specific term "Concession" is not used. However, the definition of "Public Private Partnership" in the PPP Proclamation A.2 (12) sets out the elements commonly used to define a PPP concession type arrangement: provision of a public services activity, benefit by way of compensation from the contracting entity (public body or state enterprise) or third-party sources or a combination, plus assumption of performance risk or use risk. The following activities are expressly excluded from coverage by the PPP Proclamation: oil, mines, minerals, rights of air space; and privatization or divestiture of public infrastructure or public enterprises.

The PPP Proclamation defines forms of PPPs and establishes a PPP Board with, amongst other things, powers of approval of PPP projects. It also establishes the roles and responsibilities of (i) PPP Directorate General within the Ministry of Finance who has an oversight and technical support role and is required to develop manuals on the implementation of PPPs (PPP Directive A.8). The PPP Proclamation sets out the duties and responsibilities of contracting authorities (see also PPP Directive A.9) as well as the approvals and procurement processes to be followed (also covered in the PPP Directive). In principle, the Federal PPP Proclamation would apply to PPPs in the Water sector. But no PPPs have been organized and awarded in the Water sector as of the date of the assessment.

Addis Ababa: The PPL under Chapter 3-article 26 states the Bureau may issue rules and modes of implementation with regard to PPP. But no such legislation has been enacted. Though AA has not adopted dedicated PPP legislation, PPPs are covered in the general legal framework for procurement.

Gap analysis

Recommendation

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

Conclusion: **Minor gap**

Red flag: **No**

Qualitative analysis

Federal: Public procurement Proclamation, Directive and Regulations are published on the website of the Authority. The Authority's website is free to access on-line portal. There is a dedicated tab on the Authority homepage providing a link to "Legislation". There are also tabs providing links to Standard Bidding Documents and Manuals. There is a link to e-GP system. There is a link on the home page to Circulars, addressed to public bodies and issued by the Authority. These are not all published on the Authority website. The primary and secondary legislation is available for download in PDF searchable format (in Amharic). The website is active, but not fully updated. There are no links to other directives issued by other Federal ministries that have impact on procurement.

Addis Ababa: There is no central portal or website that is used for publication of the procurement documents. The key procurement documents including the proclamations are not electronically accessible. Legislation has been published in the City Gazette, but the assessment team has not been able to identify a website for the Bureau which provides access to procurement legislation.

Gap analysis

The gaps identified in the Core MAPS report under sub-indicator 1(a)(d) for both the Federal and Addis Ababa completed in 2021 are still valid.
The Authority's website does not provide comprehensive, up-to-date information. To ensure transparency, clarity, and legal certainty, all documents forming the legal and advisory framework for public procurement must be published on a single, central, and easily accessible repository. This is also significant given the practice of Ministries and other public bodies issuing directives, circulars, or other documents that have an impact on procurement. It is difficult for stakeholders to have a complete picture of Ethiopian public procurement.

Regarding Addis Ababa, there is no central portal or website that is used for publication of the procurement documents. The key procurement documents including the proclamations are not electronically accessible. Legislation has been published in the City Gazette, but the Bureau does not have a website that allows access to procurement legislation.

Recommendation

The recommendations identified in the Core MAPS report under sub-indicator 1(a)(d) for both the Federal and Addis Ababa completed in 2021 remain valid. These recommendations would benefit the road sector if implemented at the federal and municipal levels. The Authority should consider revamping its website to become the single free-access repository for all procurement legal documents and information, as well as improving the coverage and functionality of the PPA website and maintaining its up-to-date contents.

It is critical to provide a readily accessible website for procurement documents in Addis Ababa. Consider publishing the procurement documents on a centralized portal (at the very least, on the federal Authority's website as a short-term solution).

Sub-indicator 1(b)
Rules on participation deriving from sustainability (social, economic and environmental) goals
The legal framework applicable to the sector meets the following conditions:

Assessment criterion 1(b)(a):
Establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions. In this context, the term "supplier" encompasses all service providers including contractors, consulting firms, etc.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Federal: The legal framework requires candidates to satisfy the eligibility and qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL A.28. The principles of non-discrimination, transparency and fairness are underlying requirements. PPL A.5(2) refers to the principle of "non-discrimination among candidates on grounds of nationality or any other criteria not having to do with their qualification, except in case of preference specifically provided for [in the PPL]". In the English language version of the PPL both "candidate" and "bidders" are defined terms. A candidate is a "natural or juridical person invited to take part in public procurement or seeking to be so invited". A "bidder" is a "natural or juridical person submitting a bid". The use of these defined terms within the PPL is not always complete or correct. PPL A.2(9) includes a definition of "**supplier**". It is "*a natural or juridical person under contract with a public body to supply goods, works or services."* The term **does not** include "consultants" to cover firms and individuals providing consulting services.

Eligibility criteria

PPL A.28 "Qualification of Candidates" sets out a mix of bidder qualifications and eligibility criteria. Eligibility requirements for bidders include legal capacity to enter a contract, registration in suppliers' lists, are not under bankruptcy, have valid trade license and have paid taxes according to Ethiopian tax laws. Grounds

[11] https://www.mofed.gov.et/media/filer_public/58/bf/58bfbdf4-662f-4f55-b12e-dcf3a6cd5ef6/proclamation-no-1076-2018-public-private-partnership-proclamation.pdf
[12] https://www.mofed.gov.et/media/filer_public/cd/22/cd22a081-6bde-4d98-b612-c6006eed73ec/ppp_directive_2010_english.pdf

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for exclusion from eligibility include debarment. PPD A.16.21 Disqualification of bidders lists additional grounds for disqualification of bidders (though it does not refer to "candidates" but only "bidders"). The list covers: where the supply is of goods originating in a country in respect of which the Federal Government of Ethiopia has imposed a trade ban, countries under UN trade embargo, where the bidder violates a provision of the PPL and PPD, where a bidder is debarred for breach of obligation under a previous contract, where bidder is proven to have offered an inducement or bribe, and where the bidder has committed an act of embezzlement, fraud or connivance.

One of the requirements for participation of bidders in public procurement is registration in the Suppliers List (PPD A.33).The PPD further lists the conditions the bidder should meet to be included in the Suppliers List (A.33.2). One of the documents required to be submitted is the certificate of professional competency from the appropriate body, if a consultant, and a contractors' certificate indicating the level of such contractor/consultant, issued by the Ethiopian Construction Authority (ECA), a subordinate entity of the Ministry of Urban and Infrastructure. Registration of Water Contractors, Consultants and Professionals is based on the Directive on Registration of Water Works Contractors, Consultants and professionals that came into force as of July 8, 2016 ("Registration Directive").

Qualification Requirements

PPL A.24 refers to the principle of non-discrimination, providing that candidates shall not be discriminated against "on the basis of nationality, race or any other criterion not having to do with their qualifications". This is subject to price preference provisions in PPL A.25. PPL A.28 provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.28 "and such other criteria, as the public body considers appropriate under the circumstances". The criteria listed in PPL A.28(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation and personnel. However, as noted earlier, the PPD provides a completely different list for the disqualification of bidders.

Amendment No.2 of the PPD of December 15, 2016, sets forth different qualification criteria for domestic and foreign bidders as follows. The same are not reflected in the SBDs issued by Authority. But the public bodies prepare section 3 of the bidding document based on the criteria defined in the amendment no. 2 of the PPD.

That said, the requirements under Amendment No. 2 apply to those contractors registered under the Ministry of Urban and Infrastructure (Directive 648/2021), which does not apply to Water works contractors who were registered by the then Ministry of Water, Irrigation and Electricity at the time of amendment. Furthermore, the content of amendment refers to experience in road, buildings and bridges but no water works. It is therefore unclear if and how the differing qualification criteria under Amendment no. 2 is relevant or applies to Water sector procurement.

No	CRITERIA	REQUIREMENT	
		LOCAL CONTRACTOR	FOREIGN CONTRACTOR
1	General Experience (Years)	**Bidders** shall have a minimum of **2 years experience** under construction contract in the role of contractor, Joint Venture partner or subcontractor.	**Bidders** shall have a minimum of **5 years experience** under construction contract in the role of contractor, Joint Venture partner or subcontractor.
2	Specific Experience (Years)	Bidders, shall successfully and substantially completed at least **one similar project within the last 10 years** with a value of at least 70% of the estimated Value of the intended contract or; If a bidder do not have experience with the above required value, he shall have experience on two projects each with a value of at least 50% of the required value (in cases where the . the estimated Value of the intended contract is below 1 Billion Birr) or , Experience on three projects each with a value of at least 1/3rd of the required value (in cases where the . the estimated Value of the intended contract is 1 Billion Birr and above)	Foreign bidders shall successfully and substantially complete at least **two similar projects within the last 10 years** each with a value of at least the estimated Value of the intended contract.
	Note: For contracts under which the Bidder participated as a sub-contractor or a joint venture member, only the Bidder's share, by value, will be considered as specific experience.		
3	Annual Turnover	The annual turnover for **domestic contractors** shall be the **peak annual construction turnover** from the last 5 years, calculated as total certified payments, after adjusting for inflation of Birr, received for contracts in progress or completed. The amount of peak annual construction turnover shall be equal to or more than:- AT(Peak) =Engineer's Estimate* F / Contract period in yrs F = 0.8	The annual turnover for **foreign contractors** shall be the **average annual construction turnover** of the last 5 years, calculated as total certified payments received for contracts in progress or completed. The amount of average annual construction turnover shall be equal to or more than:- AT(Average)=Engineer's Estimate* F / Contract period in yrs F = 2

Addis Ababa: Overall, the currently existing procedures and requirement do not offer full fairness with respect to the participation of bidders. The obligations on foreign bidders in terms of qualification requirements is not expressly provided for. PPL A.20 provides that public bodies may use additional qualification criteria "as they consider appropriate under the circumstances." The general principles in PPL A.5 should apply to the setting of additional qualification criteria. PPL A.20 does, however, provide a potentially wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate, or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism. The grounds for eligibility and disqualification of the bidders in the PPL and PPD are very different, creating confusion as to which list applies and or all requirements should be cumulatively met. However, the Annex 7 of the Directive which stipulates how to determine the qualification requirement for works contracts, gives two separate requirements one for the foreign firms and another for the locals on Annual Construction Turnover and Experience requirements.

Under General Experience Requirement

Local Firms: have two years' experience as a contractor, joint venture or sub-contractor

Foreign Firms: five years' experience as a contractor, joint venture or sub-contractor

Under Specific Experience Requirement

Local Firms: one similar project over the last ten years, or two/three projects each with a minimum size of half/third of the project tendered as a contractor, joint venture or sub-contractor**.**

Foreign Firms: two similar projects over the last ten years as a contractor, joint venture or sub-contractor

Under Annual Construction Turnover Requirement

Foreign Firms: required to have twice the amount required for local firms. In addition for foreign firms, that amount of annual turnover is calculated as an average annual turnover over the last five years, while for domestic bidders it is the highest annual turnover in one of last five years.

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Gap analysis
The gaps that were identified in the Core MAPS report under sub-indicator 1(d)(a) both for Federal and Addis Ababa completed in 2021 remain valid.

The requirements imposed by the Directives on Registration of Water Works Contractors and Consultants on assigning grade and qualifying based on the cost of construction, machinery and personnel are burdensome and onerous. They adopt a different approach in qualification requirements between contractors and consultants, domestic and foreign bidders. It is particularly restrictive for the foreign bidders wishing to get a license as a Water Works Contractors who can only be registered and graded for grade 1.

PPL A.28 provides that public bodies may use additional qualification criteria "as they consider appropriate under the circumstances" which in practice has been applied to require qualification criteria that are too onerous and discriminatory, and most importantly are not directly related with the scope of subject matter of procurement[13]. PPL A.28 provides a wide margin of discretion to public bodies and, if not carefully monitored, it raises the possibility of inappropriate, disproportionate, or discriminatory qualification criteria, which cannot be challenged anyway through the complaints review mechanism. The general principles in PPL A.5 should apply to the setting of additional qualification criteria. In addition, the grounds for eligibility and disqualification of the bidders in the PPL and PPD are different, creating confusion as to which list applies and or if all requirements should be cumulatively met.

There are no provisions in the PPL referring specifically to exclusion from participation in a public procurement process on the grounds that a firm or individuals have been the subject of a conviction by final judgment for: participation in a criminal organization; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labor; and all forms of trafficking in human beings, or the equivalent of those offences.

As noted, the extent of applicability of amendment no. 2 of the PPD to water sector is unclear given that the content is related to contractors registered under the Ministry of Urban and Infrastructure, which does not include the Water works contractors who were registered by the then Ministry of Water, Irrigation and Electricity at the time of amendment.

Recommendation
The recommendations identified in the Core MAPS report under indicator 1(d)(a) for both Federal and Addis Ababa in 2021 remain valid. In particular, there is a need to ensure that all levels of legislation are consistent with the PPL's requirement that public procurement adhere to the principle of non-discrimination and to eliminate provisions that differentiate qualification criteria based on the bidder's nationality. Qualification should not be denied for reasons unrelated to the bidder's or candidate's ability and resources to successfully complete the contract. The qualification requirements should be defined as skills, experience, and resources necessary to perform the contract. Qualification standards should be the same for all bidders, regardless of nationality. The legal framework should allow for exclusion for participation in a criminal organization; terrorist offenses or offenses related to terrorist activities, or inciting, aiding, abetting, or attempting to commit such an offense; money laundering or terrorist financing; child labor; and all forms of human trafficking, or the equivalent of those offenses.

The authorized entity[14] in charge of registration should assess current registration practices with the goal of streamlining and adjusting requirements to ensure efficiency and objectivity and remove any barriers to entry for bidders.

If the intention is to apply amendment no. 2 to all sectors, delink the qualification requirements from the type of registration of contractors which may unintentionally create an impression that it applies exclusively to a certain sector.

Assessment criterion 1(b)(b):
Ensures that there are no barriers to participation in the public procurement market

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis
Federal: PPL A.28.1(f) – qualification - requires candidates to demonstrate that they have renewed trade licenses and fulfilled their obligations to pay taxes according to Ethiopian tax laws. PPD A.16.4 confirms these requirements and requires domestic bidders to present tax and registration certificates. It provides at 16.4.2(b)that foreign bidders may submit registration certificates or trade license issued by the country of establishment. PPD 16.4.2(b) clarifies that in the case of foreign bidders they must submit business organization registration certificate or trade license issued by the country of establishment. For more details, please see assessment under criterion 1(b)(a). **Suppliers list**: Bidders must also be registered on the suppliers list (A.28.1(d)).

Addis Ababa: The legal framework requires candidates to satisfy qualification requirements set out in the bidding documents. A non-exhaustive list of qualification criteria is set out in the PPL. The principles of non-discrimination, transparency and fairness are underlying requirements. Same main elements as in the case of federal legal framework set out under sub-indicator 1(b)(a). The obligations on foreign bidders in terms of qualification requirements is not expressly provided for. Chapter 3 Article 16 of the PPL states that candidates shall not be discriminated on the basis of nationality, race or other criterion which has nothing to do with their qualification. However, the Annex 7 of the Directive which stipulates how to determine the qualification requirement for works contracts, gives two separate requirements one for the foreign firms and another for the locals on Annual Construction Turnover and Experience requirements

Water sector: One of the requirements for participation of bidders in public procurement is registration in the Suppliers List (PPL A28.1(d) and PPD A.33).The PPD further lists the conditions the bidder should meet to be included in the Suppliers List (A.33.2). One of the documents required to be submitted is the certificate of professional competency from the appropriate body, if a consultant, and a contractors' certificate indicating the level of such contractor/consultant based on Registration Directive. The Registration Directive introduces requirements about bidders' registration and grading/classification. A.5.4 of the Directive restricts the foreign firms to register only as a grade-1 for water works contractor. A similar restriction does not apply for foreign applicants wishing to get license as a consulting firm.

Gap Analysis
Please see the gaps explained under the sub-indicator 1(b)(a) above. The registration directive restricts foreign bidder's registration to grade 1.

Recommendation
Please see recommendations under sub-indicator 1(b)(a) above.

Assessment criterion 1(b)(c):
Where environmental, social and economic policies apply in the sector, ensure that these policies are clearly defined in the legal and regulatory framework and are motivated by the environmental, social and economic aspirations of the country

[13] For example, discussions with CCAE revealed they have encountered procurement process for construction of a building where bidders were required to provide evidence that they own ambulance and have employed a full-time medical doctor. Similarly, they have encountered a procurement process where bidders are required to provide evidence that they have a 'fire brigade'. Such criteria discriminate most bidders and lead to rejection of many bids. Requiring such criteria will lead to limiting the pool of qualified bidders or give rise to practices which force bidders to associate with Fire Protection Companies for the sake of passing the criteria. Such practices are against the provisions of the PPL Article 5.

[14] Under proclamation 1097/2018 (A.22(1)(u)) the Ministry of Urban and Infrastructure (formerly the Ministry of Urban and Construction) was mandated to register and issue certificate of competence to contractors/consultants. However, the Proclamation No. 1263/2021 which repeals the proclamation 1097/2018 does not include such function any longer for the Ministry of Urban and Infrastructure. Proclamation No. 524/2022 on Ethiopian Construction Authority assigns the role of registration and issuance of competence certificate to contractors and consultants, to ECA (A.5(12)).

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Federal: There is no procurement sustainability policy/strategy in place to support broader national policy objectives. However, some elements of sustainability are reflected in the PPL (A.25) by providing opportunities for small and micro enterprises (SMEs) by preferential schemes. The legal provisions address "life-time approach" (life-cycle cost) (A.65). PPD A.9(1)(f) requires a public body, when identifying its procurement needs, to take into account that "the procurement need is environmentally friendly". PPL A.25 provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods (at least 35% from Ethiopia), services, or companies. PPD A.16.20 goes into further detail. It provides the various margin of preference applied for different categories[15] of procurement. Additional price preference for small and micro enterprises is 3% where such enterprises compete with local suppliers in national competitive bidding. This additional price preference does not apply to international competitive bidding where local contractors are awarded a price preference of 7.5%. Small and micro enterprises may submit a letter of guarantee in lieu of bid security, performance security or advance payment guarantee. The small and micro enterprises shall be entitled to obtain bidding documents free of charge.

PPD A.16.20 also sets out details on conditions which must be satisfied, such as on the calculation of the 35% of value added in Ethiopia, and how local companies engaged in construction or consultancy services qualify for preference. The following conditions must be satisfied for local companies engaged in Construction or Consultancy Services to qualify for preference:

a) The company has to be incorporated in Ethiopia.

b) more than fifty per cent of the company's capital stock has to be held by Ethiopian natural or juridical persons.

c) more than fifty per cent of members of the board of the company have to be Ethiopian nationals.

d) At least fifty per cent of the key staff of the company must be Ethiopian Nationals.

Addis Ababa: There is no evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. There is, however, in place an incentive scheme for the benefit of SMEs. The legal provisions address life cycle cost and environmentally friendly procurement only at a high level. There is also an incentive to use locally manufactured goods/ local contractors etc. According to PPL A.17.4, locally manufactured goods are those that have 35% value addition in Ethiopia.
PPD A.15.2 provides preferences to goods manufactured locally, local contractors, Consultants and SMEs as follows: procurement of drugs and medical equipment 25% price preference; other procurement of goods 15%; 7.5% for domestic contractors and consultants. In addition, 3% is added to the preference in respect to SMEs.

Water sector: the same sustainability measures included in the Federal and Addis Ababa legal frameworks, apply to procurement in Water sector.

Gap analysis

Though there is no specific SPP policy/strategy, the few environmental, social and economic factors that are permitted, originate from the legal procurement framework. There are no established targets for contract awards to SMEs or other contracting groupings. There is little information on the consistency of compliance with or application of sustainability considerations.
Currently, standard conditions of contract incorporate only a few labor and employment aspects.

Recommendation

- Develop an SPP policy/strategy that is in line with the country's Transformation and Growth Agenda.
- Use existing enabling provisions in the legal framework to implement specific SPP elements. Preference for SMEs, for example, preferential treatment, promotion of environmentally friendly goods through the development of environmentally/climate friendly specifications, use of life cycle costing in bid evaluation, use of rated criteria related to SPP aspects, introduction of contractual terms that elaborate on environmental and social aspects, employment and labor standards, health and safety, gender-based violence obligations, subcontracting arrangements.
- The Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle. Countries around the world have devised a variety of techniques to incorporating sustainability into public procurement. A study of existing practices around the world would be beneficial to the Authority. The Bank team can assist you with this.

Assessment criterion 1(b)(d):
Details the eligibility requirements and provides for exclusions for breach of environmental, social laws, criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Federal: PPL A.28 sets out a mix of bidder qualifications and eligibility criteria. Eligibility requirements for bidders include legal capacity to enter a contract, registration in suppliers' lists, are not under bankruptcy, have valid trade license and have paid taxes according to Ethiopian tax laws. One of the ineligibility grounds is debarment (PPL A.28(1)(e)). PPD A.16.21 lists additional grounds for disqualification of bidders. The list covers: where the supply is of goods originating in a country in respect of which the Federal Government of Ethiopia has imposed a trade ban, countries under UN trade embargo, where the bidder violates provision of the PPL and PPD, where a bidder is debarred for breach of obligation under a previous contract, where bidder is proven to have offered an inducement or bribe, and where the bidder has committed an act of embezzlement, fraud or connivance.
PPL A.30 provides that public bodies may reject bids, proposals or quotations where there is proof of concerted practices, collusion [connivance] and the bidding is not sufficiently competitive as a result.

PPL A.76 Review by the Authority establishes a process which may lead to a decision by the Authority to suspend (administratively debar) a supplier from participation in public procurement for a definite or indefinite period (debarment). The process is triggered when the Authority receives a notification from a public body of alleged misconduct by bidders or suppliers. The circumstances of misconduct include violation of the procurement law, refusal to sign a contract, fraud, falsifying documents, collusion [connivance], corruption and damage due to failure in contract delivery. The Authority must send a written notice of the complaint to the supplier and it may require the person concerned to appear in person and give evidence or to seek professional assistance. The Authority is required to review and make a decision within 15 working days of receipt of such complaint. The complaint may result in debarment, but also a written warning. PPD A.50 sets out a right of appeal against a debarment decision to the competent court.

[15] 25% for drugs, pharmaceutical products; medical equipment (provided for in the Directive, and not in the PPL); 15% for other products; 7.5% for construction and for consultancy services.

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PPD Part A.48 sets out in more detail the grounds for debarment, which includes bidder's refusal to sign a contract, bidder has committed fraud or falsified documents, has committed an act of connivance or corruption, or public body has sustained damage on account of failure by a supplier to perform his/its obligation under a contract. PPD also sets out process for review by the Authority. PPD details the penalties, including periods of debarment which range from 6 months to 2 years (A.48.5.1), depending on the nature and gravity of the default/offence committed. There is the potential in some cases, including fraud, corruption, collusion [connivance), for permanent debarment. Notice of debarment is posted on the Authority website.

Addis Ababa: PPL provides that, in order to participate in public procurement, candidates must meet criteria listed in PPL A.20 "and such other criteria, as the public body considers appropriate under the circumstances." The criteria listed in PPL A.28(1) require candidates to have relevant professional and technical qualifications and competence, financial resources, equipment and other facilities, capability, experience, reputation and personnel. Candidates must have legal capacity to tender the contract, have a bank account and not be insolvent or bankrupt or in analogous situations. They must not be subject to a suspension from participation in public procurement and must have the relevant trade license and have paid taxes according to Ethiopian tax laws. They must have a bank account. However, the PDA.15.21 provides a list for disqualification of the bidders, which is not contained in the PPL and includes the following grounds: when the bidder supplies goods, works or services originating from a country with which Ethiopia has a trade embargo; bidder provides goods, works or services originating from a country that is in the UN Security Council list of sanctions; bidder commits an act violating the provisions of the PPL and PPD; bidder suspended (debarred) due to previous contractual default; bidder has offered bribe to an official or procurement staff to influence the public body's decision; bidder has engaged in fraudulent activities or colluded with other bidders.

Water sector: follows the legal frameworks at Federal and Addis Ababa level.

Gap analysis

The gaps identified in the Core MAPS report under sub-indicator 1(d)(c) for both Federal and Addis Ababa in 2021 are still relevant.

There are no provisions in the PPL that directly allude to disqualification from participating in a public procurement process because a corporation or persons have violated environmental, social, or criminal or corrupt acts. Such provisions do not exist in other statutes.

Power to refer debarment to Authority: According to the PPL, the trigger for an investigation leading to probable suspension/debarment is limited to when a public body notifies the Authority. Other stakeholders do not have the power to recommend. While public bodies are generally in the best position to uncover any misconduct, the right to referral in the PPL should be expanded to include additional stakeholders such as auditors, regulatory bodies, the private sector, and civil society.

Recommendation

Include provisions in the PPL that specifically relate to disqualification from participation in a public procurement process because a firm or individual has violated environmental, social, or criminal or corrupt activities. Include provisions in the PPL that specifically relate to disqualification from participation in a public procurement process because a corporation or persons have violated environmental, social, or criminal or corrupt activities. Extend the ability to refer for debarment to stakeholders and parties other than governmental bodies.

Assessment criterion 1(b)(e):
Establishes rules for the participation of state-owned enterprises that promote fair competition

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Federal: The legal framework does not establish rules for participation of state-owned enterprises (SOEs) in public procurement. Various federal and regional SOEs exist in the road sector but their participation in the same procurement process as the private sector is not regulated in the legal framework. Neither the PPL nor the PPD provide for conditions for participation of SOEs. The Standard Procurement Documents (SPDs) for works stipulate the eligibility requirements of SOEs/public enterprises under ITB 4.4 "Government-owned enterprises shall be eligible if they can establish that they are legally and financially autonomous and operate under commercial law and that they are not a dependent Authority of the Public Body." RFP for consultants includes a similar provision.

Addis Ababa: The legal framework does not establish rules for participation of state-owned enterprises in public procurement.

Water sector: Survey from private sector entities in Water sector reveals that often high value and complex contracts in the water sector are awarded to SOEs. Several large irrigation projects and multiple dams have been awarded to Federal and regional SOEs. Reportedly, there are often cases where the Head of Regional Water Bureaus and other officials who are the procuring entities for water sector contracts are also members or Heads of the board of the participating or awarded SOEs, which creates a conflict of interest.

Gap analysis

The legal framework does not establish rules for participation of SOEs in public procurement. Due to this, the SOEs compete with the private sector in a way that affects equal competition with private sector. Also, lack of criteria for SOE participation gives rise to unlevel playing field with private sector and creates conflict of interest when the SOE is related to the public body.

Recommendation

The recommendations identified in the Core MAPS report both for Federal and Addis Ababa carried out in 2021 remain valid.

- Amend the PPL and PPD to establish clear provisions on rules for participation of state-owned enterprises in public procurement to create a level playing field and ensure that the process of selection/bidding and contract implementation is free of any conflict of interest.

Assessment criterion 1(b)(f):
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

Federal: The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multistage procedures are permitted for specified types of contracts and circumstances for use are defined.

In general, bidders are required to submit qualification information with their bids. Bidders must also be registered on the suppliers list A.28(1)(d).

The Standard Bidding Documents (SBDs) published by the Authority include Instructions to Bidders setting out requirements concerning eligibility and section/s with a form/forms for completion by bidders and the provision of specified information which is used for the purposes of assessing suitability/qualification.

For more complex procurements, Prequalification proceedings may be used, with an initial evaluation stage focused on evaluation of a bidder's suitability to ability to perform a specific contract (PPD A.20). In this case, only prequalified bidders are invited to submit a tender. PPD A.20(2) provides that prequalification proceedings may be used for procurement of high value or complex works, turnkey contract for works, acquisition of machinery or information technology; supply and installation of goods or equipment of considerable importance and where the cost of drawing up bidding documents is so high that only pre-qualified bidders should participate in the bid.

Addis Ababa: The legal framework details procedures used to determine eligibility and ability to perform a specific contract. The assessment as to eligibility and ability may be combined with the procurement documents as part of the specific procurement or, in specified cases, be initiated as a separate exercise that is conducted before full offers are requested. Multi-stage procedures are permitted for specified types of contracts and circumstances for use are

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defined. In general, bidders are required to submit qualification information with their bids. The Federal Standard Bidding Documents (SBDs), which are used by the City, provide a section for bidders to demonstrate their qualification against the requirement specified in the bidding document. For more complex procurements, Prequalification proceedings may be used, with an initial evaluation stage focused on evaluation of a bidder's suitability and ability to perform a specific contract (PPD A.19). In this case, only prequalified bidders are invited to submit a tender. PPD A.19(2) provides that prequalification proceedings may be used for procurement of high value or complex works, turnkey contract for works, acquisition of machinery or information technology; supply and installation of goods or equipment of considerable importance and where the cost of drawing up bidding documents is so high that only pre-qualified bidders should participate in the bid.

Gap analysis

Recommendation

Sub-indicator 1(c)
Electronic Procurement (e-Procurement) in the sector
The legal framework applicable to the sector meets the following conditions:

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

Conclusion: Minor gap

Red flag: No

Qualitative analysis
Federal: PPL A.26(1) allows for the Minister to issue a Directive to determine the extent to which communication by electronic means may be used in addition to or instead of writing. PPL A.31 confirms that the Ministry may authorize the use of electronic means as a method of procurement. In order to implement this, the PPL provides for the Authority [Agency] to conduct a study and submit proposals, ensure that public bodies, suppliers and supervising entities have capacity to implement, to authorize the implementation of an electronic system in all or certain procurements.

Pursuant to the PPL, the **Ministry of Finance issued** Directive no. 814/ 2021 which entered into force on 27 August 2021 on "Federal Electronic Government Procurement and Sale of Disposable Property" (e-GP Directive). The e-GP Directive (A.5) applies to public procurement and sale of disposable property of public bodies selected for the pilot implementation of the electronic system. It requires that bidders are registered annually in the system. Also, the e-GP stipulates that all communications pertaining to public procurement like Procurement Plan, Invitation to bid, sale of bidding document, bid clarification and amendments, pre bid meetings, bid opening ceremonies, bid evaluation and notification of results, lodging complaints and response thereto, as well as communication during Contract Administrations and other related activities shall be carried out using the electronic system (A.6.2). Any document shall be deemed accurate and legally binding as long as it is submitted in accordance with the electronic system (A.6.3). The e-GP Directive lays out the roles and responsibilities of involved public bodies and assigns the Authority as the overall owner and administrator of the electronic system.
It is an end-to-end system applicable to all stages of procurement cycle, procurement planning, advertisement, bid submission, evaluation, award, bid complaints, and contract management. The pilot phase of the e-GP is completed, and the Authority has started the roll-out of the system in 74 federal agencies. Water sector public bodies (MoEW and MoIL) are amongst the entities picked for use of e-GP in this next phase of roll out though there is limitation in capacity and technical capabilities to operate the system.

Addis Ababa: PPL A.23 allows the Bureau to authorize the use of electronic means as a method of procurement. In order to implement this, the PPL provides for the Bureau to conduct a study and submit proposals; ensure that public bodies, suppliers and supervising entities have capacity to implement, and authorize the implementation of an electronic system in all or certain procurements. PPD A23.9 provides that public bodies may employ electronic exchange of information while processing procurement by means of the RFQ method (as defined in the PPL), subject to satisfying the specified conditions.
Bidders who are not capable of submitting a quotation through the electronic system are provided with an alternative mechanism to submit quotations. Thus far the City Bureau has started communication and discussion with the Federal Agency on e-procurement.

Gap analysis
The e-GP Directive applies to public bodies which were designated as pilots by the Ministry of Finance. Now that the e-GP system has started to be rolled out more widely to many public bodies, the Directive may require some revisions to reflect the new status of rolling out the e-GP system. Ideally, the primary legislation should specify that when ready, the system shall be mandatory for use by all public bodies.

The e-GP Directive does not specify the conditions when the public bodies are exempt from the use of e-GP system. E-GP Directive (A.33) states that in the event of problems with e-GP system, the public bodies may require an exemption/authorization from the Agency. But it is not clear what kind of problems would justify the exemption.

Recommendation
The e-GP Directive may require amendment to expand its application to all entities that the Government has determined should use the electronic system, beyond those selected for the pilot phase.
Future amendments of PPL/PPD (and the new draft proclamation on procurement) could include provisions to recognize the existence of the new e-GP system and require that its use is mandatory for all public bodies and when the system permits and as authorized by the Authority.

Assessment criterion 1(c)(b):
The legal framework ensures the use of tools and standards, in the sector, 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 newly rolled out e-GP system provides unrestricted and full access to the system, taking into consideration privacy, security of data and authentication. The e-GP Directives provides that a fee (fixed by MoF) may be charged for using the system. Also, the bidding document shall be made available to bidders through the electronic system against payment of the prescribed fee effected using the electronic system or free of charge as necessary.
In relation to the use of standards, the e-GP Directive (A.24.1(A)) stipulates that "for the purpose of preparing Bidding Document for electronic procurement and sale of disposable property, Public Bodies shall use the Standard Bid documents and templates available in the database of the electronic system." The e-GP system does not allow the use of standard bidding documents that are not available in the database. The e-GP system has incorporated the forms and templates prepared by the Agency (procurement notices, Procurement Plan, bid security, letter of award, contract award notice).

Gap analysis

Recommendation

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

Conclusion: No gap

Red flag: No

Qualitative analysis
Federal: The e-GP Directive does not specifically include a requirement about informing bidders which parts of the processe**s** will be managed electronically, but it requires that when e-GP system is used, the system provides applies to all stages of procurement cycle. According to the e-GP Directive, the electronic system is designed to be used for all procurement methods under the PPL. It is an end-to-end process and is applicable to all stages of procurement cycle, like: procurement planning, advertisement, bid submission, evaluation, award, bid complaints, and contract management; procurement methods which may be conducted using e-procurement system; requirement for a full and unrestricted access, roles and responsibilities of each party in the procurement process; maintaining records when conducting procurement electronically.

Addis Ababa: PPD A.23.9 provides that public bodies may, by permission of the Agency, employ electronic means to send RFQs and receive quotations subject to satisfaction of specified conditions.

Gap analysis

Recommendation

Sub-indicator 1(d)
Public procurement principles in specialised legislation governing public entities in the sector
The legal and regulatory body of norms covering the sector complies with the following conditions:

Assessment criterion 1(d)(a):
Public procurement principles and/or the legal framework apply across specialised legislation governing the procurement by entities operating in the sector as appropriate

Conclusion: No gap

Red flag: No

Qualitative analysis
Federal: The Federal legal framework applies to entities in all sectors under the Federal government. The regional governments have their own procurement legislation that is applicable to entities under the respective regional governments, including entities in the water sector.

Addis Ababa: There is no specialized procurement legislation that governs procurement by entities operating in specific sectors, and the legal framework applies to procurement carried out by all public bodies.

Gap analysis

Recommendation

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

Conclusion: No gap

Red flag: No

Qualitative analysis
Federal: Proclamation 1076/2018 on Public Private Partnership applies to PPP projects of all public bodies and public enterprises with effect from 22 February 2018 (PPP Proclamation A.67). Oil, mines, minerals, rights of air space and privatization or divestiture of public infrastructure or public enterprises are expressly excluded from coverage by the PPP Proclamation. The PPP Proclamation defines forms of PPPs and establishes a PPP Board with, amongst other things, powers of approval of PPP projects. It also establishes a PPP Directorate General within the Ministry of Finance whose role is to ensure that PPPs are carried out in accordance with the PPP Proclamation. PPP Procedure: The PPP Proclamation generally requires a competitive procurement procedure for the award of a PPP using an open bidding process with pre-qualification (A.19). Other procurement processes are permitted, including competitive dialogue. Direct Negotiation is permitted, where specified conditions are met (A.39-A.40). There are provisions covering unsolicited proposals (A.41-A.43). Contract opportunities arising from unsolicited proposals must be awarded using a competitive procurement procedure unless the conditions for direct negotiation are met. The PPP Proclamation goes on to cover the content and implementation of PPPs. A.64 PPP Proclamation provides that the complaints and review mechanisms provided for in the PPL are applicable to PPPs and allows for the possibility of Directives to be issued to adapt the relevant articles for application to PPPs.

Addis Ababa: Though AA has not adopted dedicated PPP legislation, PPPs are covered in the general legal framework for procurement..

Gap analysis
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Recommendation

Assessment criterion 1(d)(c):
Responsibilities for developing policies and supporting the implementation of PPPs in the sector including concessions are clearly assigned

Conclusion: No gap

Red flag: No

Qualitative analysis
ederal: The PPP Proclamation defines forms of PPPs and establishes a PPP Board with, amongst other things, powers of approval of PPP projects. It also establishes a PPP Directorate General within the Ministry of Finance (A.10) whose role is to ensure that PPPs are carried out in accordance with the PPP Proclamation. For example, the PPP Directive requires the PPP Directorate to provide technical support to the contracting authorities (PPP Proclamation A.12(2)) and requires it to develop manuals on the implementation of guidance (PPP Directive A.8). The PPP Proclamation sets out the duties and responsibilities of contracting authorities (see also PPP Directive A.9) as well as the approvals and procurement processes to be followed (also covered in the PPP Directive).

Addis Ababa: No PPP legislation exists at the level of City.

Gap analysis
Recommendation

Indicator 2. Implementing regulations and tools support the legal framework at the sector level

Sub-indicator 2(a) **Implementing Regulations to define processes and procedures in the sector**
Assessment criterion 2(a)(a): There are regulations applicable to the sector that supplement and detail the provision of the procurement law, and do not contradict the law
Conclusion: **Substantive gap**
Red flag: **No**
Qualitative analysis **Federal**: The Federal legal framework applies to Federal agencies in all sectors, including the Water sector. There are no water sector-specific regulations in addition to the Federal legal procurement framework. 'Regulation' is a legislative document issued by Council of Ministers for implementation of the PPL. The only such procurement-related instrument issued is Regulation No 184/2010, which establishes the Central Body (Public Procurement and Property Disposal Service) for Large Value Procurement as required by A.60.1 of the PPL. The PPL is supplemented and further elaborated by a comprehensive directive (PPD) issued by the Ministry of Finance in June 2010, as amended (on specific provisions in (1) July 2014 (registered as public procurement directive amendment number 256/2013), (2) issued in January 2016 (registered as public procurement directive amendment number 258/2013), (3) issued in December 2016 (registered as public procurement directive amendment number 260/2013), (4) issued in July 2019 (registered as public procurement directive amendment number 264/2013) and through circulars issued on 04/03/2021, 12/07/2021, 05/10/2021, 21/04/2022 & 06/06/2022 G.C.). PPD is available to download from the Authority's website[16] but the amendments and circulars are not all found in the website. There are no specific implementing regulations dedicated to Water sector. The PPD is generally clear, however, there is not always full alignment between the PPL and the PPD (see indicator 1(a)(a)). Similarly, other Federal ministries/public bodies have issued directives/circulars with impact on procurement. **Circulars** are legislative instruments that are frequently issued by Ministry of Finance or/and the Authority, for providing clarifications on specific articles of the PPD or the standard bidding documents that are reported by public bodies and/or private sector parties as being ambiguous. In general, the Ministry of Finance issues circulars on public procurement[17]. But in practice, other Ministries and other public bodies also issue circulars, letters or similar advisory documents concerning public procurement issues or having a direct impact on public procurement system in general or for the issuing public body itself. In this respect, the position of circulars in the hierarchy of laws is not clear. They can modify a directive or standard bidding documents depending on the specific purpose they are issued for, though such purpose is not always clearly stated in the circular itself. This practice of de-facto amending a higher-level rule like the PPD, makes the place of circulars in the hierarchy of laws unclear. Circulars issued to regulate specific topics may warrant careful consideration of all sectors. For example, the 4 March 2021 (GC) price adjustment circular focuses on building materials such as re-bar, cement, and finishing material which applies to construction works under Water sector. However, it does not contain items that are relevant to water supply projects, such as electromechanical, pipes, and fittings, which constitute a significant portion of water sector contracts and that may be equally affected by market price fluctuations. Equally, amendment no. 2 of the PPD dated December 15, 2016, setting forth different qualification criteria for domestic and foreign bidders, applies to those contractors registered under the Ministry of Urban and Infrastructure, which did not include the Water works contractors who were registered by the then Ministry of Water, Irrigation and Electricity at the time of amendment. Furthermore, the content of amendment refers to road, building and bridges. Against this backdrop, it is unclear if and how the differing qualification criteria under Amendment no. 2 is relevant to and applied in the Water sector contracts. **Addis Ababa**: Same as for federal. No specific regulations for the Water sector are issued. **Water Sector**: The Federal and Addis Ababa legal procurement framework, including the implementing regulations, apply to procurement procedures in water sector.
Gap analysis The Federal PPD that applies to the Water sector contradicts the PPL in different areas (see also analysis under indicator 1(a)(a)). The main issue continues to be inconsistency between circulars, directives, or similar advisory documents and primary legislation. In many cases, the lower-level documents alter the higher legislation. For example, the circular issued by Ministry of Finance on 4 March 2021 G.C. allowing contract price adjustment (due to high inflation) even for contracts that did not include a price adjustment clause goes against the provisions of the PPD (A.16.14.3) which states that price adjustment are allowed in respect of works contracts after 12 months from the effective date of such contracts, where it is confirmed that in respect of works contract, the performance of the contract requires more than 18 months. In other cases, the circulars deviate from the PPL. For example, a letter providing that certain procurement can be done through restricted bidding if they are manufactured by more than one manufacturer in Ethiopia, and through direct procurement if the above-mentioned items are manufactured by one supplier only. In some cases, the circulars de facto amend the PPD provisions, making their position in the legal hierarchy unclear. They have the de-facto authority (not authorized by any law) to modify a directive or standard bidding documents based on the specific purpose for which they are issued, though this purpose is not always clearly stated in the circular itself. Circulars and other advisory letters do not appear to always consider the nature and needs of water sector contracts. For example, the 4 March 2021 (GC) price adjustment circular focuses on building materials such as re-bar, cement, and finishing material which are relevant to constructions works in the water sector, but it does not contain items relevant to water supply projects, such as electromechanical, pipes, and fittings, which constitute a significant portion of such contracts and may be subject to volatile prices.
Recommendation Identify and remove the inconsistencies between the PPL and PPD. Circulars should not be used to amend the PPD. All amendments to PPD should be named and numbered as such and preferably be consolidated in one document.
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: **Substantive gap**

[16] http://www.ppa.gov.et/index.php?option=com_joomdoc&view=documents&path=procdirectives%2Fpublicprocurementdirectiveenglishpdf&Itemid=263

Red flag: **No**

Qualitative analysis

Federal: PPD is generally clear, however, there is not always full alignment between the PPL and the PPD (see indicator 1(a)(a)). PPD can be amended through formal amendments or circulars issued by the Authority, which do not cross refer to a specific PPD provision. For example, the Authority has issued four (4) circulars[18] about price adjustment which is regulated in the PPD. Some of these circulars introduce changes to the PPD provisions on price adjustment. The Federal PPD applies to Road sector.

Addis Ababa: The Directive is a document in two parts with the main section and annexes found in separate documents. The annexes provide different templates including reporting templates, bid security etc. It also provides table on bid floating times, a list of common user items, etc. It lacks provisions on participation of SOEs, abnormally low bids, unbalanced bid, eligibility and exclusion grounds. The legal procurement documents including the Directive are not accessible electronically.

Gap analysis

Amendments and circulars with effect of amending the PPD are not incorporated into the PPD document leaving it intact as was issued in 2010.

Recommendation

Consider combining all PPD revisions through amendments, circular or other letters into a single comprehensive document to ensure precision and clarity on the wording and application of amended provisions and thus, facilitate practical understanding of stakeholders.
Any future PPD amendments should be referred to as such and not be made through circulars.

Assessment criterion 2(a)(c):

Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly

Conclusion: **Minor gap**

Red flag: **No**

Qualitative analysis

Federal: PPL A.78(1) provides that the Council of Ministers may, where necessary, issue regulations for the implementation of the PPL. PPL A.78(2) provides that the Minister (of Finance) may issue directives implementing the provisions of the PPL. The PPD was issued in 2010 and amended[19] since, but it has been amended time to time through amendments or circulars leaving the old version of the PPD intact. The responsibility for maintaining the PPD is assigned to the Ministry of Finance.

Addis Ababa: PPL A.67(1) provides that the Addis Ababa City Government Cabinet may, where necessary, issue regulations for the implementation of the PPL. PPL A.67(2) provides that the Bureau may issue directives implementing the provisions of the PPL.

Gap analysis

The present updating process for the PPD is more reactive, addressing specific topics of importance to public bodies. There has been no regular updating of PPD as a whole.
Few revisions to address the current evolving challenges related to market dynamics and change in water sector industry are initiated. The water sector is highly exposed to the challenges pertaining to the supply chain dynamics.

Recommendation

Consider combining all PPD revisions through amendments, circular or other letters into a single comprehensive document to ensure precision and clarity on the wording and application of amended provisions and thus, facilitate practical understanding of stakeholders.
Develop a framework for soliciting and receiving continual feedback from all stakeholders across all sectors, which will feed into PPD revisions.

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

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 in the sector

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Federal: PPL A.15 authorizes the Authority to issue standard bidding documents (SBDs) and approve any deviations to those. In this respect the Authority has issued SBDs for a wide range of goods, works and services including consulting services. They date back to 2011, and they can be found in the Authority's website[20]. For each procurement category, there are separate SBDs for international competitive bids (ICB) and national competitive bids (NCB). There are also ICB and NCB SBDs for the procurement of goods under framework agreements and for procurement of Information Systems, Textbooks and Health Sector Goods.

Addis Ababa: The procuring entities/bodies in the City Administration use the Federal SBDs for goods, works, consulting services and non-consulting services. The use is authorized by the City Administration through the letter of 22 February 2017.

In the **Water sector**, same federal SBDs are used by all entities in all sectors both at federal and City levels. Public bodies typically use SBDs on a Design-Bid-Build and admeasurement contract basis. Water works, on the other hand, include a wide range of works, goods, and services related to water supply, sewage systems, wastewater treatment facilities, and irrigation projects. These contracts often comprise civil works and electromechanical equipment, and the DBB/admeasurement contracts are not always sufficient.

Gap analysis

The current suite of SBDs does not appear to be enough to meet the needs of the Water sector which comprises works, goods, or services relating to water supply, sewerage systems, wastewater treatment facilities, and irrigation projects. Current SBDs are best suited for traditional project delivery method Design-Bid-Build (DBB) and paid upon admeasurement (unit price). It has limitations in terms of application for other project delivery methods such as EPC, DBO, BOT, and BOOT and payment type which would require a diversified range of contract modalities such as lump sum, cost plus, target cost etc. Life cycle costing (LCC), value engineering, or other evaluation criteria which is critical to ensure value-for-money for DBO or other forms of contracts are missing from the SBDs. Reportedly, procuring entities are often forced to modify/introduce provisions on electro-mechanical portion of the contract without any knowledge by the Authority.

[18] (1)Circular on price adjustment on construction inputs issued on 25/06/2013 E.C (04/03/2021 G.C) with reference number ገ/ኢ/1/53/32. (2) Second Circular on Price Adjustment on Contract Administration of Works Contract (Clarification on the first circular) issued on 05/11/2013 E.C (12/07/2021 G.C)) with reference number ገ/ኢ/1/53/49. (3) Circular on correcting the price adjustment formula included in clause 62.12 of the GCC, issued on 13/08/2014 E.C (21/04/2022 G.C) with reference number ሙማን/ሙ-1/1/342, and (4) Circular on notifying price of inputs to be used in price adjustment formula, issued on 06/06/2022 G.C

[19] 2015, 2016 and October 2021

[20] http://www.ppa.gov.et/index.php?option=com_joomdoc&view=documents&path=SBDs&Itemid=257 (website was visited on April 13, 2023)

The various feasibility studies, designs, and supervision of water supply, irrigation, sewerage system, and wastewater treatment plant necessitate customized RFPs; however, no such customized RFPs are available; instead, a generic model procurement document is available, which is also used for non-design/supervision services.

Recommendation

- The 2011 SBDs must be evaluated and revised as needed to reflect current practices, market conditions, and changes in the sector and laws.
- Create new or customized model procurement contracts that may be utilized for various project delivery methods and payment conditions (EPC, BOT, BOOT, DBO, MCA21) and different payment terms (cost plus, lump sum target cost etc.) appropriate for Water sector.
- Create new or modified Request for Proposals (RFPs) for design and supervision consultancy services for both time-based and lump payment contracts.

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

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Federal: PPL A.37 sets out the mandatory content of the bidding documents. PPD A.16 provides that public bodies must use the standard bidding documents prepared by the Authority, though ultimately**,** they must ensure that the bidding documents incorporate the contents set out in PPD. The contents listed in the PPD are detailed. The SBDs include Instructions to Bidders with information on the bidding process including evaluation and award, Statement of Requirements, General and Special Conditions of Contract and Bidding/Contract Forms including the bid submission sheet. The Instructions to Bidders and General Conditions of contract should remain unchanged, with bid data sheet and special conditions of contract reflecting the characteristics of the bidding in question. In addition, there are standard templates covering invitation to bid, bid opening and evaluation; including a bid opening checklist, minutes of bid opening, report on bid submissions and bid evaluation report. There is also a sample letter of notification of award. These are included in the Manual at Appendix 8. The general conditions of contract for NCB and ICB are the same, with the difference of foreign currency which is allowed under ICB. Standard bidding documents and contract conditions are mandatory for use in Water sector contracts. They apply under NCB and ICB.

Addis Ababa: PPL A.29 sets out the mandatory content of the Bidding Documents. PPD A.15.3.2 provides that public bodies must use the standard bidding documents prepared by the Bureau without making any changes in the Instruction to Bidders and General Condition of Contract section of the SBDs (as already stated, reliance is placed on Federal SBDs). Changes to the procurement schedule (equivalent of data sheet) and special conditions of contract are permitted to suit the context. The Bureau has not issued any documents to be applied at City level. However, Finance Bureau has issued letter of 22 February 2017 GC instructing the use of the Federal SBDs, which is the current practice.

Gap analysis

The standard conditions do not always reflect the legal framework. In some instances, e.g., ICB/NCB works, the standard conditions of contract are not compatible with the PPL and/or PPD. Below are some examples that illustrate the said discrepancies.

i. The SBDs for ICB works specify under ITB 14 that *for those inputs to the Works which the Bidder expects to provide from within Ethiopia, the prices shall be quoted in the Ethiopian Birr. For those inputs to the Works which the Bidder expects to provide from outside Ethiopia, the prices shall be quoted in a freely convertible currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but use no more than three currencies different from Ethiopian Birr.* The general conditions do not differentiate between local bidders and foreign bidders. However, the PPD at 17.4 (e & f) allows quotation of bid price in foreign currency with reference only to foreign bidders, though no explicit prevention is made on local bidders. In practice, local bidders are not allowed to quote in foreign currency the portion of contract for inputs originating from abroad. Generally, contractors, including foreign contractors, face significant challenges to get paid on time especially the portion of contract in foreign currency.
ii. Payment to contractors. The PPD (A.28.5) provides for review by engineer of payment requests within 7 days and payment by public body within 14 days (21 days in total). Whereas the GC 64.5 of the ICB works contract states that the engineer has 30 days to approve the request and the public body has 90 days to pay the contractor which can be extended should the public body determine that the payment is ineligible.
iii. PPD (A.28.5.a) requires the retention money to be deducted from interim payments, but the general conditions do not specify how that deduction should happen. Also, there are inconsistencies between conditions for release of retention money and substituting it with an unconditional bank guarantee between the PPD and standard conditions of contract.

Recommendation

A review of the existing contract terms should be conducted to identify and eliminate any inconsistency with the PPD and other documents in the legal framework.

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

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Federal: PPL A.15(4) 'Functions of the Authority' provides that the Authority is responsible for preparing, updating, and issuing authorized versions of the Standard Bidding Documents, procedural forms and other attendant documents. The SBDs have not been updated since 2011 when they were first issued.

Addis Ababa: PPL A.12(4) Functions of the Bureau: provides that the Bureau is responsible for preparing, updating and issuing authorized versions of the SBDs, procedural forms and other attendant documents. The Bureau has not issued SBDs nor official authorization to use the federal SBDs.

Gap analysis

The gaps identified in the Core MAPS report both for Federal and Addis Ababa carried out in 2021 remain relevant.
The most recent available SBDs were issued in 2011, over a decade ago, and there is no practice of regular updating. In lieu of regular revision/update, the Authority issues circulars to provide temporary solutions to the challenges that procuring entities face in the Water Sector, such as the price adjustment circular, which directs public bodies on the correct formula to use instead of the formula provided in the SBDs for works. Issuing circulars to handle ad hoc demands from procuring entities or to revise SBDs is not sustainable and produces layers of legislation that are not adequately recorded in a single document.

Recommendation

The recommendations identified in the Core MAPS report both for Federal and Addis Ababa carried out in 2021 remain applicable. The Authority should update the SBDs by establishing a mechanism for requesting ongoing feedback from public bodies, the private sector, and other stakeholders, particularly those in highly specialized sectors such as the Water sector, which should subsequently be considered and reflected in SBD revisions.

Sub-indicator 2(c)
Standard contract conditions used in the sector

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

Conclusion: Substantive gap

[21] Management Contracting Approach

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Red flag: No

Qualitative analysis

Federal: The SBDs include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.37 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PPD 16.3.1 requires the use of SBDs issued by Authority, and at a minimum it requires that bidding documents incorporate the content listed in the PPD. PPD 16.3.2 provides that public bodies must include the general conditions of contract [prepared by the Authority] in bidding documents without making any changes. The general conditions of contract are identified for NCB and ICB, but they are identical with exception of foreign currency provisions that are included in ICB SBDs.

Addis Ababa: The Federal SBDs include standard contract conditions for works, goods, consultancy services and non-consultancy services contracts. There are both general conditions of contract and special conditions of contract. PPL A.27 Bidding Documents requires the bidding documents used by public bodies to include the general and specific conditions of contract. PPD 18.7.2 provides that public bodies must include the general conditions of contract in bidding documents without making any changes. In practice, the entities at City Administration level are instructed to use the Federal SBDs.

Water Sector: The Federal SBDs, including standard conditions of contract, are mandatory for use in the Water sector. The most common types of procurement activities in the water sector are water supply (civil works and electromechanical components), irrigation, sewerage systems, consulting services such as design and supervision of civil work, feasibility study of water supply and irrigation projects. The public bodies are required to use the SBDs and RFP developed and issued by the Authority. However, given the nature of the procurable activities there is a need for fit for purpose and customized contract terms and conditions which currently do not exist.

Gap analysis

The existing conditions of contract are not suitable and adaptable for all types of projects/contracts in Water sector. The federal SBDs which include the standard conditions of contract for works are based on a conventional Design-Bid-Build (D/B/B) concept and payments are made on completed inputs by the contractor (otherwise known as an admeasurement/unit contract). They have no conditions related to the electromechanical equipment, in terms of payment schedule, delivery on site and installation, use of INCOTERMS and the quality control mechanism. These D/B/B conditions are not appropriate for use or would require major adaption in case of Design-Build-Operate (DBO) of water and wastewater treatment plant, where contractor is engaged to design, build and operate the facility on a single responsibility basis and is paid upon achievement of performance standards. Other types of contracts, such as EPC, Build-Own-Operate-Transfer (BOOT) which would be appropriate for water sector infrastructure projects, also do not exist.

Recommendation

Consider development of customized conditions of contracts suitable for the different types of Water sector contracts.

Assessment criterion 2 (c)(b):

The content of the standard contract conditions used in the sector is generally consistent with internationally accepted practice

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Federal: Provisions of the PPL (A.59.3) and PPD (A.17.4.g) have stipulated that public bodies should use an internationally recognized general and special conditions of contract for projects procured for use in open international bidding, to the extent that such terms and conditions are not in conflict with the Proclamation, these Directive and other documents governing public procurement. In this respect, the standard contract conditions contain provisions that are commonly found in international contracts.

Addis Ababa: same comment as the Federal SBDs, as the City applies the federal SBDs and has not issued its own conditions of contract.

Gap analysis

The existing conditions of contract are not suitable and adaptable for all types of projects/contracts in the water sector. There are international model contracts and/or standard conditions of contract that would be appropriate for the water-sector procurement depending on the type of water infrastructure, public-private partnerships, financing arrangements, etc., such as EPC, Build-Own-Operate-Transfer (BOOT), DBO, Design-Build where contractor may be engaged to design, build and operate the facility on a single responsibility basis and is paid upon achievement of performance standards. The federal SBDs which include the standard conditions of contract for works are based on a conventional Design-Bid-Build (D/B/B) concept and payments are made on completed inputs by the contractor (otherwise known as an admeasurement/unit contract). They have no provisions/conditions related to the electromechanical equipment, in terms of payment schedule, delivery on site and installation, use of INCOTERMS and the quality control mechanism. These D/B/B conditions are not appropriate for use or would require major adaption in case of Design-Build-Operate (DBO) of water and wastewater treatment plant.

Despite the requirements of provisions of the PPL and PPD instructing that “public bodies should use an internationally recognized general and special conditions of contract for projects procured for use in open international bidding, to the extent that such terms and conditions are not in conflict with the Proclamation, these Directive and other documents governing public procurement”, some of the existing provisions of the standard conditions of contract are not fully in line with international good practices. Examples include the following:

- **Price adjustment:** There are contradictions between the PPD, standard bidding documents, and several circulars on this subject. Price adjustments are permitted after twelve (12) months from the effective date of the Contract if the fulfillment of the contract needs more than 18 months, according to the PPD and standard bidding documents. The application of price adjustment only after 12 months is restrictive and inconsistent with international good practices, which allow for price adjustment to be applied at any point in time, for example, using the period of 28 days prior to bid closing date with actual payment in relevant currency based on indices 49 days prior to applicable payment certificate date as the base date. Moreover, according to one of the Ministry of Finance circulars dated 4 March 2021 G.C., a public body can adopt a price adjustment Ministry of Finance on 4 March 2021 G.C. allowing contract price adjustment (due to high inflation) even for contracts that did not include a price adjustment clause. According to international norms, this practice of introducing price adjustment after inviting bids on a fixed priced basis would be unfair to bidders.
- The price adjustment provision in the standard conditions also omits to include currency conversion factor Zo/Zn, in cases where currency of index is different from currency of payment.
- **Settlement of disputes:** The contracts for ICB have no provision on alternative dispute resolution, such as, dispute adjudication board or dispute review board to settle disputes between parties, rather the require the parties to resolve the disputes amicably, and as a next step to appeal for judicial review in accordance with Ethiopian law as seen in the GCC A(67) for ICB SBD (works). This may be appropriate for domestic bidders but would likely create difficulty for foreign bidders who may prefer a more independent and objective forum for example of more technical and international character.
- **Rate of Progress and Termination:** Contract lacks provisions for monitoring rate of work progress. There is no provision that enables the Engineer to issue notice in cases where the contractor’s rate of progress does not ensure completion of the work within the agreed duration. In the case of the international practice such as FIDIC Red Book, there is provision that entitles the Engineer to issue notice requesting the contractor to make the necessary arrangements for improving rate of progress. For example, in case of FIDIC Red Book, failure of the contractor to take measures as per the Engineer’s notice is also considered as a default that entitles the employer to terminate the contract. Under the Federal SBDs, the employer is entitled to terminate the contract after elapse of the contract time as indicated in the contract and after the maximum amount of liquidated damages is reached.

Recommendation

- Consider expanding the suite of existing SBDs and contract conditions to allow for DBO, BOOT, BOT, and EPC and other types of contracts that are suitable for Water sector procurement.
- Conduct a review of the existing contract conditions for ICB to check whether they incorporate the good international practices for contracts in Water sector.
- Regarding the price adjustment provisions, the following recommendations can be considered:
    - As a general rule, all long-term contracts, such as those lasting more than 18 months, should include a price adjustment clause that can be invoked at any time when costs need to be altered.
    - Allow for possibility of applying price adjustment provisions including for shorter duration contract due to inflationary situation and future local inflation, when expected to be high.
    - Any future circular, directive, advisory letter, clarification to be issued by the Authority in relation to price adjustment, should also specify the validity of previous documents on price adjustment. It would be most appropriate for the Authority to issue to public bodies a dedicated guidance note, or as part of the Manual, on application of Price Adjustment for Works Contract and withdraw all current letters, circulars, etc.
    - Future price adjustment should consider components or materials commonly used in water sector and that are affected by price fluctuations.

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
Federal: The general and special conditions of contract are an integral part of the SBDs (PPL A.37, PPD A.16.3.2, PPD 16.7). They are mandatory to be included in the bidding documents. General conditions of contract should not be modified. If any modification is needed, it should be made through the special conditions of contract depending on the type and nature of the procurement with reference to the provisions of the general conditions of contract.
Addis Ababa: no provisions in the legal framework about this, but since they follow the Federal SBDs, same practices apply here.

Gap analysis

Recommendation

Assessment criterion 2(c)(d):
Public entities in the sector use the national standard contract conditions, if applicable, or standard contract conditions that surpass the quality of the nationally provided standard documents.

Conclusion: Substantive gap

Red flag: No

Qualitative Analysis
The water sector public bodies utilize the national standard contract conditions. As noted under sub-indicators 2(c)(a) and 2(c)(b), the national standard conditions of contracts are not always suitable for all procurement in water sector.

Gap Analysis
See sub-indicators 2(c)(a) and 2(c)(b).

Recommendation
See sub-indicators 2(c)(a) and 2(c)(b)

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

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

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
Federal: The Authority publishes Manuals, including the Public Procurement Manual (December 2011), Manual on Public Procurement Complaint Procedure (April 2011) and Manual on the use of Framework Agreements (May 2011). The Public Procurement Manual is quite comprehensive. The manual guides the users how to prepare a procurement plan including packaging, open/close bids, evaluate bids, etc. However, there is no manual providing specific guidance on Water sector projects/contracts. The procurement manuals issued by Federal Government and Addis Ababa City Administration apply to water sector procurement at both levels
Addis Ababa: Addis Ababa City Administration published a procurement manual (2011), which is comprehensive.

Gap analysis
The gaps identified in the Core MAPS report under sub-indicator 2(d) both for Federal and Addis Ababa carried out in 2021 remain valid.
The Federal-level Manual elaborates on the procurement procedures process but in some cases, it expands upon provisions in the PPL or PPD or introduces provisions which are more properly placed in primary or secondary legislation. The Manual is very generic. Procedure on price adjustment is not detailed, inter alia how the price indices and various parameters in the price adjustment formula can be managed to arrive at a reasonable outcome.
However, the Manual does not include any guidance on Water sector procurement which is highly specialized and would benefit from more specific guidance.

Recommendation

- The Manual should be aligned with the PPL and the PPD.
- The Authority, in collaboration with normative technical bodies, will determine whether a Water sector-specific manual would be helpful in providing further guidance and support to public bodies in the sector.

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

Conclusion: Substantive gap

Red flag: No

Qualitative analysis
Federal: The responsibility for maintenance of the Manual is clearly established. PPL A.78(3) provides that the Authority shall issue manuals. The Public Procurement Manual has not been updated since 2011.
Addis Ababa: PPL A.12.4 assigns the responsibility to issue SBDs, procedural formats, and any other attendant documents to the Bureau. There has been no updating of the manual since 2011.

Gap analysis The Manual has not been updated since its issuance in 2011. The Manual appears to elaborate on the provisions to expand on the PPL and PPD.
Recommendation - The Manual should be aligned with the PPL and the PPD and it should be updated regularly. - Consider establishing a feedback loop system through which the Authority can timely update the procurement manuals to reflect the market conditions, provide clarity and guidance on issues identified during monitoring and oversight. - The Authority together with normative technical bodies to assess whether Water sector specific manual would be helpful to provide guidance to public bodies in the sector. In the alternative, any future revisions of the procurement manual could also include a dedicated chapter on the Water sector`s specific procurement requirements.
Assessment criterion 2(d)(c): **A sector specific user's guide or manual, if any, is consistent with the user's guide or manuals provided within the procurement framework of the country**
Conclusion: No gap
Red flag: No
Qualitative analysis There is no sector specific user's guide or manual for Water sector. The Federal-level Manual issued by the Authority is applicable to all procurement procedures in Water sector by federal agencies. The procurement manual issued by the City applies to Water sector procurement procedures carried out by the City entities.
Gap analysis
Recommendation

Indicator 3. The legal framework applicable to the sector reflects the country's horizontal policy objectives and international, including regional and sub-regional obligations

Sub-indicator 3(a) **Existence of sectorial policies and strategies that are clear and well-articulated to facilitate the determination of sector procurement needs**
Assessment criterion 3(a)(a): The sector has a clear and well-articulated sectorial development strategy accompanied by the related operational documents, for the medium and long term
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis **Federal**: The Ministry of Water and Energy has issued "Ethiopian Water Resources Management Policy", with main goal to "enhance and promote all national efforts towards the efficient, equitable and optimum utilization of the available Water Resources of Ethiopia for significant socioeconomic development on sustainable basis." The policy focuses on socio economic development which can be achieved through investment on the available water resources. Procurement is not explicitly mentioned in the Policy, but it indicates that the use of the water resource is done in an efficient manner which imply proper investments that commensurate with the stipulated policy objectives. It also addresses the capacity building aspect in the sector including retaining skilled manpower and developing the local capacity in consultancy and construction. The policy comprises sub-polices of the sector and comprised polices on the following: water supply and sanitation policy, Irrigation policy and hydropower policy. There is also a ten-year strategic plan (2013 to 2022E.C.) that shows the road map of water development in water supply, sanitation and hygiene, irrigation and energy including hydropower where the main water infrastructures in the sector are outlined with quantity set for each year along with the required budget. The policy addresses some of the critical issues in the sector such as drilling of wells, which is found to be one of the most challenging areas in terms of getting capable contractors. The policy, among others, provides important strategic interventions to tackle the challenges in this area as follows: *i) Develop regulations, standards, guidelines and by-laws for manufacture and import of drilling rigs.* *ii) Promote capacity for the development and operation of shallow wells that can be developed at a local Level.* *iii) Since advanced and indigenous technologies, water pumps, etc., drilling techniques, skilled manpower and energy are the necessary inputs for ground water development and utilization; to promote the initiation of training, research, and studies on the same.* Moreover, the policy under the "cross cutting issue" covers the "Technology and Engineering" that deals with, (i) standards and design criteria, (ii) Consultancy and contracting which are key for the success of the sector`s developments. In addition, with the broad objectives of achieving universal access to water, sanitation and hygiene services to all people in Ethiopia, the One WASH National Program (OWNP) which is a sector wide approach (SWAp) was established. The OWNP is functional since 2013 and the basis for the program is the Memorandum of Understanding (MoU) and the WASH Implementation Framework (WIF) signed by the four ministries (Water, Irrigation and Energy; Health; Education; and Finance). The procuring entities use the national Standard Bidding Document and RFPs issued by FPPPA which are relevant for operationalizing the strategy document. **Addis Ababa**: Addis Ababa has a ten-year strategic plan covering the period from 2013 to 2022 E.C. (2020/21 to 2029/30 GC), and 5 year (2013-2017EC or 2020/21 to 2024/25GC) Strategic Plan.
Gap Analysis Operational documents to implement the sector strategy and policy do not exist.
Recommendation Prepare operational documents which will help to streamline the implementation of sector strategy
Assessment criterion 3(a)(b): **The principal types of public procurement as well as their technical requirements or characteristics, are identified in the sectorial strategy or in the applicable sector operational documents**
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis

The sector strategic plan deep dive in the following sector development demands, such as design and construction of various water supply projects, sanitation, irrigation and energy (hydropower, solar, wind and solid waste). The ten year plan(from 2020/21 to 2030/31 include the envisaged procurement activities related to design and construction of water supply schemes, irrigation schemes, hydropower plants etc However, the plans do not include any information on sectorial technical requirement and characteristics of the envisaged procurement. However, information related to cash flow requirement for the envisaged procurement activities was indicated in the strategic plan.

Gap analysis

The sector strategy did not address technical requirements and characteristic for an efficient utilization of the water resources through the envisaged procurement activities. It does not include information on procurement strategy options such as value for money, selection methods to be used.

Recommendation

Include the technical requirements and characteristics for principal types of public procurement. Though PPP is one of the popular delivery modalities in water sector, there are no initiatives to finance water projects through PPP arrangement. Unlike other sectors like Energy, Health, Housing and even road which has identified projects for PPP arrangement, the water sector is lagging behind in benefiting from the PPP arrangement. Besides, PPP is not yet adopted in Addis Ababa City Administration and in other regional states.

Sub-indicator 3(b)
Sustainable Public Procurement (SPP) in the sector

Assessment criterion 3(b)(a):
The country has a policy/strategy in place to implement SPP in support of broader national policy

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Federal: Some elements of sustainability (economic, social and environment) are reflected in the PPL (A.25) by providing opportunities for small and micro enterprises (SMEs) by preferential schemes and price preference for domestic goods and domestic contractors/consultants. The legal provisions address "life-time approach" (life-cycle costing) (A.65). PPD A.9(1)(f) requires a public body, when identifying its procurement needs, to take into account that "the procurement need is environmentally friendly". PPL A.25 provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods (at least 35% from Ethiopia), services, or companies. PPD A.16.20 goes into further detail. It provides the various margin of preference applied for different categories[22] of procurement. Additional price preference for small and micro enterprises is 3% where such enterprises compete with local suppliers in national competitive bidding. This additional price preference does not apply to international competitive bidding where local contractors are awarded a price preference of 7.5%. Small and micro enterprises may submit a letter of guarantee in lieu of bid security, performance security or advance payment guarantee. The small and micro enterprises shall be entitled to obtain bidding documents free of charge. **However, the country has not yet developed a comprehensive sustainable public procurement strategy/policy in support of broader national policy objectives.**

During the assessment period, two individual consultants were hired by PPPA with support from the World Bank are studying the opportunities and challenges to implement SPP which, as per the information from PPPA, will be used as input to develop SPP strategy/policy. However, the country has not yet developed comprehensive sustainable public procurement strategy/policy.
For the water sector under the Ethiopia `s Climate-Resilient Green Economy a climate resilient strategy was prepared to achieve a clean energy to reduce carbon emissions which can be accessed from the following link: https://mowe.gov.et/sites/default/files/resource/water-and-energy_cr_.pdf

Addis Ababa:

There is no evidence of a policy/strategy in place to implement SPP in support of broader national policy objectives. There is, however, in place an incentive scheme for the benefit of SMEs. The legal provisions address "lifetime approach" and environmentally friendly procurement only at a high level. There is also an incentive to use locally manufactured goods/ local contractors etc. and SMEs, which is intended to provide jobs to young graduates. According to PPL A.17.4, locally manufactured goods are those that have 35% value addition in Ethiopia. PPD A.15.2 provides preferences to goods manufactured locally, local contractors, Consultants and SMEs as follows: procurement of drugs and medical equipment 25% price preference; other procurement of goods 15%; on works procurement and consultancy services 7.5%. In addition, 3% is added to the preference in respect to SMEs.

Gap analysis

There is currently no comprehensive sustainable public procurement policy/strategy in place to implement sustainable public procurement (SPP) in support of broader national policy objectives and thus no implementation plan or systems and tools to operationalize, facilitate and monitor the application of SPP. The few environmental, social and economic factors now permitted, originate from the legislation and are mainly in the form of price preference during evaluation. There are no established targets for contract awards to SMEs or other groupings. There is little information on the consistency with which the existing measures are applied.

Recommendation

Develop a comprehensive SPP Strategy/Policy as well as a supporting plan to implement SPP (economic, environmental (including climate considerations) and social (including gender equality and responsiveness) in support of broader national policy objectives and reflecting national priorities.

Revise the legal framework to provide for sustainability among the core procurement principles and objectives. Also, put in place mechanisms for implementation of the environmental, social and economic dimensions of SPP throughout the procurement cycle, starting from identification of procurement needs, to planning, drafting of technical specifications, evaluation and contract execution.

Assessment criterion 3(b)(b):
The SPP implementation plan is based on an in-depth assessment of appropriate tools and systems that are in place to operationalize, facilitate and monitor the application of SPP

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

There is no SPP implementation plan in place because there is no SPP policy adopted yet. The few existing sustainability measures are mainly in the form of price preferences during bid evaluation.

Gap analysis

SPP implementation plan does not exist.

Recommendation

See recommendations under criterion 3(b)(a) above regarding adoption of a national and comprehensive SPP policy/strategy and an implementation plan.

Assessment criterion 3(b)(c):
The legal and regulatory framework allows for sustainability (i.e. economic, environmental, and social criteria) to be incorporated at all stages of the procurement cycle

[22] 25% for drugs, pharmaceutical products; medical equipment (provided for in the Directive, and not in the PPL); 15% for other products; 7.5% for construction and for consultancy services.

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Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Federal: **There is no policy/strategy in place to implement SPP in support of broader national policy objectives.** However, some elements of sustainability (economic, social and environment) are permitted by the PPL and PPD. Some of those provisions address "life-time approach" (life-cycle costing) (A.65), price preferences to SMEs, domestically produced goods, domestic contractors and consultants. Furthermore, the PPD A.9(1)(f) requires a public body, when identifying its procurement needs, to take into account that "the procurement need is environmentally friendly". PPL A.25 provides that where evaluation of bids results in the award of equal percentage points for bidders offering similar price and quality, preference shall be given to local goods (at least 35% from Ethiopia), services, or companies. PPD A.16.20 goes into further detail. It provides the various margin of preference applied for different categories[23] of procurement. Additional price preference for small and micro enterprises is 3% where such enterprises compete with local suppliers in national competitive bidding. This additional price preference does not apply to international competitive bidding where local contractors are awarded a price preference of 7.5%. SMEs may submit a letter of guarantee in lieu of bid security, performance security or advance payment guarantee. The SMEs shall be entitled to obtain bidding documents free of charge.

PPD A.16.20 also sets out details on conditions which must be satisfied, such as on the calculation of the 35% of value added in Ethiopia, and how local companies engaged in construction or consultancy services qualify for preference. The following conditions must be satisfied for local companies engaged in Construction or Consultancy Services to qualify for preference:

a) The company has to be incorporated in Ethiopia.

b) More than fifty per cent of the company's capital stock has to be held by Ethiopian natural or juridical persons.

c) More than fifty per cent of members of the board of the company have to be Ethiopian nationals.

d) At least fifty per cent of the key staff of the company must be Ethiopian Nationals.

Currently, standard conditions of contract incorporate only a few labor and employment aspects.

Addis Ababa:
PPD A.9(1)(f) requires a public body, when identifying its procurement needs, to take into account that "the procurement need is environmentally friendly". There is also an incentive to use locally manufactured goods, local contractors/consultants and SMEs.

Gap analysis
The gaps identified in the MAPS Core methodology assessment under indicator 3(a) both for Federal and Addis Ababa carried out in 2021 remain valid. See the gaps identified under indicators 1(d)(c) and 3(b)(a).

Recommendation
The recommendations identified in the MAPS Core methodology assessment both for Federal and Addis Ababa carried out in 2021 remain valid.

- Revise the legal framework to provide for sustainability among the core procurement principles and objectives. Also, put in place mechanisms for implementation of the environmental, social and economic dimensions of SPP throughout the procurement cycle, starting from identification of procurement needs, to planning, drafting of technical specifications, evaluation and contract execution.
- Use existing enabling provisions in the legal framework to implement specific SPP elements. Preference for small and micro enterprises, for example, price preferences, promotion of environmentally friendly goods through the development of environmentally/climate friendly specifications, use of life cycle costing in bid evaluation, use of rated criteria related to SPP aspects, application of Economically Most Advantageous Tender (EMAT) as contract award criteria for all procurement, introduction of contractual terms that elaborate on environmental and social aspects, employment and labor standards, health and safety, gender-based violence obligations, subcontracting arrangements.
- The Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle. It is advisable to share experience from other countries and international institutions on the priorities, modalities and tools for implementing SPP.

Assessment criterion 3(b)(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

Federal: The legal provisions address life cycle costing and environmentally friendly procurement. The PPL, PPD and SBD allows provisions to enhance access to public procurement market, through price preference margin granted to local contractors and locally manufactured goods & services only to the extent limited in the PPD (**which is price margin of preference of 7.5% for construction and consultancy service, 25% for procurement of drugs or pharmaceutical products or medical equipments and 15% for procurement of other products**) this provision allows public bodies to apply the sustainability criteria in a balanced manner and to ensure value for money. Though the sustainability provision doesn't accommodate other aspects of sustainability such as Environment.

The PPL includes ensuring of value for money as a procurement principle. The PPD also stipulates Economically Most Advantageous Tender (EMAT) as one of contract award criteria though that is limited to consulting services. There is no guidance when and how to apply EMAT when using sustainability and other non-price criteria for goods, works or non-consulting services. Some requirements that are linked to environmental standards are to be applied during the construction stage, but the impact on environment as externality is not stipulated as a criterion for bid evaluation.

Addis Ababa: There are no specific provisions in the legal framework relating to sustainability. However, there is incentive for SMEs. PPD (A.15.20.5) gives a 3% price preference to SMEs during national competitive bids, as well as requirements for bid security is relaxed for SMEs.

Gap analysis
The legal provisions address the few sustainability considerations and do not address the issue of well-balanced application of sustainability criteria to ensure value for money.

Recommendation
The Authority could develop guidelines, toolkits, standard bidding documents, and other tools to help public bodies incorporate environmental, social, and economic factors throughout the procurement cycle and how to balance them with value for money principles. Countries around the world have devised a variety of techniques to incorporating sustainability into public procurement.

Sub-indicator 3(c)
Environmental and Socio-economic development aspirations

[23] 25% for drugs, pharmaceutical products; medical equipment (provided for in the Directive, and not in the PPL); 15% for other products; 7.5% for construction and for consultancy services.

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Assessment criterion 3(c)(a): **The country has a policy/strategy in place to implement its socio-economic development aspirations, as defined herein, in support of broader national policy objectives**
Conclusion: No gap
Red flag: No
Qualitative analysis **Federal:** A ten years development plan from 2021 to 2033 was prepared by the then planning and development commission and now Ministry of Planning and Development. The development plan clearly articulates the past economic performance and its major challenges and propose a home grown economic reform(HGER) in a bid to implement the economic development aspirations of the country. Moreover, one of the main targets in the development plan, inter alia, is to increase socio-economic development and resilience capacity from 50% to 90%. The ten-year development plan has properly identified past development deficiencies and challenges and set clear plan for future sustainable development goals in all forms – economic, social, environmental, administrative, and institutional. The gender and social inclusion section of the development plan has the objective of empowering various sections of the society and enabling them to benefit from economic development through skills development, capacity building and equitable participation. The ten-year development plan includes various main targets set to achieve the ten-year water resource development plan with the aim of enhancing the socio-economic development aspirations of the country. National policies such as fiscal policy, monetary policy and social protection policy are interwoven with the ten years development plan to support the broader national policy objectives.
Gap analysis
Recommendation
Assessment criterion 3(c)(b): **The implementation plan for the socio-economic initiatives is based on an in-depth assessment and appropriate tools and systems, clearly defined, are in place to operationalize, facilitate and monitor their application**
Conclusion: Minor gap
Red flag: No
Qualitative analysis At national level, the ten years development plan provides the roadmap for implementation of the socio-economic initiatives while the sector`s ten year strategic plan will provide details of the activities to be accomplished which is used as an implementation plan and is prepared based on critical assessment of the past performance including SWOT analysis. The Ministry of planning and Development has prepared a national Key Performance Indicators (KPIs) which will serve as a monitoring tool during the implementation of the development plan. Moreover, the sector strategic plan also sets key result areas which are monitored through KPIs. The monitoring mechanism is also a bottom-up approach where Woredas, Regions and Federal will closely follow up the execution of the implementation plan. The institutional system in place at all levels and human resource is considered as a potential element which can create a conducive environment to operationalize the socio-economic initiatives.
Gap analysis **The current systems and tools are not adequate enough for efficient operationalizing and monitoring.**
Recommendation Develop necessary tools and systems to operationalize and monitor the implementation of the plan.
Assessment criterion 3(c)(c): **The legal and regulatory framework permits the consideration of sustainability criteria in public procurement**
Conclusion: Minor gap
Red flag: No
Qualitative analysis See input under sub-indicators 1(d)(c) and 3(b)(c).
Gap analysis See input under sub-indicators 1(d)(c) and 3(b)(c).
Recommendation See input under sub-indicators 1(d)(c) and 3(b)(c).
Assessment criterion 3(c)(d): **The legal provisions are consistent with primary objectives of public procurement and ensure value for money**
Conclusion: Minor gap
Red flag: No
Qualitative analysis To the extent this relates to SPP, see input under sub-indicator 3(b)(d).
Gap analysis See input under sub-indicator 3(b)(d).
Recommendation See input under sub-indicator 3(b)(d).
Sub-indicator 3(d) **Obligations deriving from international, regional/sub-regional agreements applicable in the sector** **Public procurement-related obligations deriving from binding international, regional and sub regional agreements relating to the sector are:**
Assessment criterion 3(d)(a):

clearly established
Conclusion: No gap
Red flag: No
Qualitative analysis According to article 9(4) of the Constitution of Ethiopia 1994 all international agreements ratified by Ethiopia are an integral part of the law of the land. International agreements and treaties are adopted and ratified as proclamations.
Gap analysis
Recommendation
Assessment criterion 3(d)(b): **consistently adopted in laws and regulations and reflected in procurement policies**
Conclusion: Minor gap
Red flag: No
Qualitative analysis There is a practice publishing **international, regional and sub regional agreements through NEGARIT News paper, in the form of proclamation. However** obligations that emanate from such treaties or agreements are not consistently adopted in the PPL and PPD. For example Ethiopia is a member to the Agreement Establishing the African Continental Free Trade Area (AfCFTA). Member States of AfCFTA are working on harmonization of public procurement policies, which is ratified through proclamation no 1124/2019. Accordingly, a continental procurement policy is planned to be developed to ensure that procurement policies are in harmony. AfCFTA will develop a model law that can be adopted by member states. Despite ratification of this agreement through proclamation, the PPL and PPD are not updated to include obligations that emanate from this agreement. Similarly, Ethiopia signed the United Nation Convention against Corruption (UNCAC) on 10 December 2003, and ratified it through Proclamation no 544/2007 on 26 November 2007. UNCAC calls for: • Article 9 (1) (a) of UNCAC, calls for the "public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders". • Article 9 (1) (b) of UNCAC, calls for the "establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication". However the obligations indicated in the above Articles of UNCAC are not adopted to the PPL and PPD. The African Union Convention on Preventing and Combating Corruption is another international agreement with impact on procurement is also ratified through Proclamation number 545/2007. Member states of this Convention undertake to adopt legislative measures to create, maintain and strengthen their procurement system and management of public goods and services. The UN Convention for Anti-Corruption provides that parties undertake to establish appropriate systems of procurement based on transparency, competition, and objective criteria to prevent corruption. **Ethiopia has also ratified the Convention on Recognition and Enforcement of Foreign Arbitral Awards, through Proclamation No 1184/2020, though** obligations that emanate from the Convention are not yet adopted to the public procurement legislations. In addition, Ethiopia is also a member state of the African Union whose headquarters are hosted by Ethiopia in Addis Ababa. As its member. Ethiopia can benefit from the AU's work, for example of the New Partnership for Africa's Development (NEPAD) Authority, which is the implementing arm for the AU's Agenda 2063 development strategy. NEPAD's structure includes several committees that are complemented by various panels, such as procurement and recruitment as well as directorate and division level quality assurance task teams.
Gap analysis International agreements and conventions are ratified through proclamation, however obligations that emanate from the agreements and convention are not yet adopted to the public procurement legislations.
Recommendation Consider adoption of obligations that emanate from the agreements and convention in to public procurement laws and regulations.

Pillar II. Institutional Framework and Management Capacity

Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system at the sector level

Sub-indicator 4(a) **Procurement planning and the budget cycle in the sector** The legal and regulatory framework, financial procedures, and systems for the sector, provide for the following:
Assessment criterion 4(a)(a): Annual or multi-annual procurement plans are prepared for the sector, to facilitate the budget planning and formulation process and to contribute to multi-year planning
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis **Related to Annual or multi-annual procurement plan,** the entities in the sector prepare annual procurement plan and there is no practice of preparing multi-annual procurement plan**.** The provisions related to annual procurement plan preparation, budget planning and formulation from the legal framework,

macroeconomic and fiscal framework, Government Budget Administration Directives and project administration and management proclamation and Financial Administration Regulation is described as under:

Legal Framework
The legal framework [24]stipulates the public bodies to prepare an annual procurement plan that is also in harmony with the work program.

Microeconomic and Fiscal Framework
MoF issued a five year Macroeconomic and Fiscal Framework (MEFF) from 2022/23 to 2026/27 dated March 2022 that provides an estimate on the budget for the period of five years for major areas of expenditure such as capital and recurrent, among others. The MEFF is prepared to use the government resources based on the current macro-economic condition and capacity of the public bodies comprises a rolling plan for the period from 2022/23 to 2026/27. The Federal Financial Administration Proclamation No 648/2009 under A.19 states the MEFF shall cover three consecutive years and contain, inter alia: estimates of all revenue, estimates of capital and recurrent expenditure. In the MEFF, program-level discussion is carried out by the Council of Ministers and the budget ceiling for each year is assigned, which is the basis for assigning the budget ceiling for the sector. Based on the ceiling, public bodies allocate resources for their programs and request budget. Though detailed procurement plan is not prepared to inform budget preparation, the MEFF enables consideration of future and existing commitment associated with new and ongoing programs in each of the public bodies. Thus, at the national level, the MEFF provides opportunity to consider a multiyear budget requirement for new and ongoing programs.

Government Budget Administration Directive
For Federal PEs, the current practice of budget planning and formulation is conducted based on the Federal Government Budget Administration Directive number 2/2003, A.7; which require public bodies to prepare, inter alia, the following : (i)preparing estimated expense necessary to develop budget,(ii)conduct evaluation on the public bodies Half year performance or budget utilization, and (iii)prepare work plan and related activities and use it as input to develop their budget and submit the following year budget need until 30th of January of the current year.

Project Administration and management proclamation
The project Administration and management proclamation number 1210/2020 (which was draft proclamation at the time of conducting the CORE MAPS) is proclaimed, which enter in to force as of July 29/2020. The proclamation, inter alia, under A. 17(7) require project implementing bodies to prepare a project implementation plan, based on their feasibility study, for projects which have been selected and prioritized, and submit the same to the Planning and Development Commission for recommendation. The project implementation plan as defined in the proclamation under A. 2(11) means a physical and financial implementation plan prepared by project implementing bodies for a project which has been appraised and confirmed to be viable, prioritized and selected for budgeting. in order to make sure that the necessary preconditions have been met for implementation before budgeting;

Article 19(3) has stated the following among powers and duties of the Ministry of Finance: “Based on the project prioritization, recommendation and the implementation plan submitted by the Planning and Development Commission, ensuring that new projects are included in the budget, and monitoring their approval at different levels”;

Furthermore Article 17 (9) require project implementing bodies to prioritize Government Projects which have been included in annual budget or revise the implementation plan submitted upon their inclusion in annual budget and submit the final implementation plan to the Ministry of Finance and the Planning and Development Commission within one month of the commencement of the budget year;

Financial Administration Regulation
The Financial administration regulations No 190/2010 enacted by the council of Ministers under A.4(1) stipulates about budget preparation as follows: budget estimates shall be prepared in accordance with the **financial limits and formats** prescribed by the Ministry in the annual budget call letters on the basis of the macro-economic and fiscal framework to be approved by the council of Ministers. Such statement showed the budget estimate which is one of the key aspect in budget planning is separately prepared in a different format but not derived from the procurement plan.

Actual Practice

The customary practice in the sector is to prepare formal procurement plan after getting the approved budget, which is proclaimed through Federal Negarit Gazetta in case of Federal and Addis Negartit in case of Addis Ababa which shows the budget planning is used as a basis to prepare the procurement plan. However, while preparing the procurement plan the entities prepare a cost estimate of the envisaged procurement activities.

Gap analysis

Annual or multi-annual procurement plans are not prepared for the sector, to facilitate the budget planning and formulation process but the annual plans are not prepared using typical procurement plan template and misses important information like proposed procurement method and time frame for milestone activities.. The Federal Public Projects Administration and Management System Proclamation under A. 10 defines “Project Prioritization, Selection and Budgeting” as follows: means a process of prioritizing and selecting for budgeting, a new public project which has been appraised and confirmed to be viable, based on **annual budget demand and supply**; this definition entails the prioritization, selection and budget allocation is based on **annual** and the inclusion of the project also depends on availability of the annual budget (budget supply). Hence, the use of procurement plan derived from the actual needs of the project as a basis to support the budget planning was not addressed in this proclamation and need of multi-year planning neither.

lack of enforcing the legal requirement-such as the already enacted project Administration and management proclamation number 12120/2020 which will help to include formal procurement plan as part of implementation plan.

The annual budget leads the annual procurement plan, in that, the annual procurement plan is prepared to fit with the available budget than preparing an annual procurement plan that commensurate with the need of the user section.

Recommendation

More explicit provisions that demand the integration of budgeting with procurement plan should be considered.
Planning and Development Commission to ensure inclusion of formal procurement plan as part of project implementation plans, submitted by project implementing bodies, in relation to projects prioritized and selected for budgeting; so that the procurement plan will be used as an input in the process of planning and budget formulation.

Enforcing and implementing the Public Project Administration and Management System Proclamation would help to integrate the budgeting with the Procurement plan.

[24] PPL A.22 for Federal and PPL A.14 for Addis Ababa

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Ministry of Planning and Development to ensure inclusion of formal procurement plan as part of project implementation plans, submitted by project implementing bodies, in relation to projects prioritized and selected for budgeting; so that the procurement plan will be used as an input in the process of planning and budget formulation.

Assessment criterion 4(a)(b):
Budget funds for the sector 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: **Substantive gap**

Red flag: Yes

Qualitative analysis

Related to timeliness and sufficiency of funds, the allocated budget is notified in Negarit Gazette at the beginning of the fiscal year and as required by the Proclamation should ideally be sufficient to cover the amount required to perform the contract in the budget period.

Annual Budget Notifications

Budget funds for the sector are committed through proclamation that enter into force as of 8th July of every year. For example the budget fund for the FY 22/23 is proclaimed and published on the website of MOF, https://www.mofed.gov.et/resources/budget/ . The allocated capital budget for the sector for FY 22/23 is 20,363,209,827ETB which is around 7.5% from the total capital budget.

Requirement under Proclamation
Annual budgets are proportioned in a way to cover the estimated annual cash flow of the projects (new and ongoing) which the proclamation 648 under A.32(3) stipulates: Notwithstanding the provisions of sub-article (2)of this Article, in the case of concluding a long-term contract relating to a project lasting for more than one fiscal year, the ascertainment of budget appropriation for the first fiscal year of the project shall be sufficient.

Actual Practice
However, the challenge is when the declared budget which is assumed to be collected from different sources will not be achieved in full (100%), there might be a problem to meet the budget requirement of the sector. In such cases where there is a deficit of the budget fund allocated for the specific contract the procuring entities are empowered to transfer the budget from unutilized contracts. Article 4 (2) of the Budget proclamation enacted for FY 22/23 states that: "Request for budget transfer between programs administered by public bodies shall be made by the head of the public body and presented to the Ministry of Finance for approval. "On the other hand Article 4(3) of the Budget proclamation enacted for FY 22/23 stipulates that:" Budget transfer under program within sub programs, projects or main activities shall be made upon approval by the head of the public body. The public body shall notify such transfer to the Ministry of Finance before payment is effected."

Sometimes due to delay in the procurement process, the allocated budget may not be even utilized as planned, where instead of deficit in budget there will be surplus which may be considered for the next fiscal year due to delay both at the procurement stage and execution as well. Example: In Addis Ababa unutilized budget reported as "Unused liquid cash" that roll from FY 21/22 in the amount of 2,000,0000,0000ETB was considered for FY/22/23 as shown in the Addis Ababa City Administration 22/23G.C. fiscal year budget proclamation.

Gap analysis

While allocating annual budget, there is a gap to consider the inflation in construction materials and there are cases where the annual budget may not be ample to cover the inflation. This has an impact on the execution of projects including lodging of claims for price adjustment.
High shortage of foreign currency in the economy impacting timely importation of materials equipment required for construction in the water sector. According to the report "*Assessment and Establishment of competitive market costs of water borehole drilling in Ethiopia, Kenya, South Sudan and Tanzania, issued in March 2023*" due to shortage of foreign currency, the cost of drilling in Ethiopia has dramatically increased.

Though budget is appropriated and proclaimed timely as of July 8 of the fiscal year, but actual disbursement took around 2 to 3 months which will affect implementation of rolled and new project.

Recommendation
Devise a mechanism for timely release of the proclaimed budget for the fiscal year.
Government should allocate foreign currency portion of the contract amount as part of the contracts' budget prior to solicitation of tender.
Consider the effect of the inflation while committing and appropriating the budget funds for the sector.

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis
The requirement of feedback mechanism reporting is stipulated in Budget Administration Directive and Project Administration and management proclamation as briefly described below:

Budget Administration Directive

As stated in the CORE MAPS each procuring entity that utilize the Federal Government budget complies with the requirement stipulated in Article 6(4) of the Budget Administration Directive; as a result procuring entities in the sector provide quarterly reports within 15 days after each quarter and annual consolidated report before July 30 of the next budget year. After closing of the financial year, the Minister of Finance reports on the budget execution to the Parliament on all budget lines. Similarly, procuring entities under the sector of Addis Ababa City Administration submit quarter and annual physical and financial execution reports to Bureau of Finance pursuant to the requirement stipulated in the respective Finance administration proclamation.

Project Administration and Management Proclamation

While the general feedback mechanism for reporting on budget execution of public bodies is in place, as stated above. The feedback mechanism/reporting on budget execution upon completion of major contracts in the sector is included in the project administration and management proclamation number 1210/2020[25], as explained through principle, role of project implementation bodies, role of planning and development commission and role of Ministry of Finance. The proclamation, inter alia, comprise the principles related to project evaluation, budget revision and also to prepare a project completion report as one of the role of the project implementing bodies. It also require the planning and development commission to review a budget beyond the limit prescribed

[25] https://www.lawethiopia.com/index.php/legislation/federal-legislation/public-finance

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by law as requested by the implementing bodies. Additionally, the proclamation also stipulates approval of the budget revisions and considering the recommendation of the development commission as one of the role of the Ministry of Finance. The detail aspect on the feedback mechanism reporting can be referred from the proclamation 1210/2020 on the following articles: A.12 (2), A.12 (5), A.12 (6), A.17 (4), A.17 (5), A.17 (10), A.17 (11), A.17 (12) and A.18 (6). The proclamation can be accessed from : https://www.lawethiopia.com/index.php/legislation/federal-legislation/public-finance.

Actual Practice

Though the Legal Framework provides the above mechanism for reporting budget execution upon completion of major contracts, the procuring entities in the sector didn't yet start implementing the prescribed legal requirement. Procuring entities used to request the Public Procurement and Property Authority for getting special permission of proceeding in the execution of contracts, where they encounter a change or variation that require additional budget above 30% of the contract value. On the other hand procuring entities proceed execution of contracts for variation works in case the additional budget requirement do not exceed 30% of the contract value, as per the stipulation in Article 25 (3) (b) of the Federal Public Procurement Directive.

IFMIS which is a web based system that is used for budget planning and reporting shows the budget execution and can be used as a feedback mechanism reporting, however, the budget execution in IFMIS is only shown as an aggregate and did not generate budget execution on contract basis.

The PEs in Addis Ababa prepares a monthly financial report to BoF which is also available in IBEX. BoF can also counter check the monthly financial reports with the records in IBEX.

Gap analysis

The project administration and management proclamation number 12120/2020 stipulate a feedback mechanism reporting on budget execution but is not enforced in the sector. Hence, lack of implementation of feedback mechanism on budget execution: though the Legal Framework provides a feedback mechanism through reporting on budget execution, including report on completion of major contracts, the procuring entities in the sector didn't yet start implementing the prescribed legal requirement.

IFMIS is not generating information on budget execution on a contract basis rather generates information for the aggregate budget.

The public procurement directive didn't require public bodies to get permission if they encounter variation work within the limit allowed by law, however Article 17 (4) of the project administration proclamation require public bodies to get approval of Ministry of Finance for revisions of projects that could result with amounts within the limit set under the law.
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Recommendation

Enforce the law for timely provision of feedback mechanism reporting on budget execution.

Enter major contracts in IFMIS and generate a report on budget execution of these contracts to be used as a feedback mechanism reporting for budget execution.

Ensure consistency of provisions in the project administration and management proclamation with provisions of the public procurement directive, that deal with getting approval of variation works that result with amount within and beyond the limit allowed by law.

Sub-indicator 4(b)

Financial procedures and the procurement cycle in the sector

The legal and regulatory framework, financial procedures, and systems applicable to the sector ensure that:

Assessment criterion 4(b)(a):

No solicitation of tenders/proposals takes place in the sector without certification of the availability of funds

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

Related to solicitation of tender /proposal after certification of availability of funds is described as under as per proclamation and in practice:

Financial Administration Proclamation

Federal financial administration proclamation do stipulates the public bodies to refrain from signing a contract if there is no earmarked and available budget which is read as under A.32(2) as, no contract or other arrangement requiring payment shall be entered into by any public body unless there is a sufficient unencumbered balance from the budget to discharge any debt that will be incurred during the fiscal year in which the contract or other arrangement is made. The same provision is also stipulated in proclamation 16/2009 A.33 for Addis Ababa which indicate set a requirement to abstain from contract signing before funds are available. Such stipulations open a room for the public bodies to initiate procurement in the sector including solicitation, also to award a contract without ensuring the availability of funds.

Actual Practice

The current practice in the sector from the assessment showed that, annual Procurement plan is prepared after the annual budget is approved, the procurement department will prepare the annual procurement plan, once they get a confirmation from the budget department that the annual budget is approved and earmarked for the envisaged activities. Hence, the finance department of the PEs in the sector will not let the procurement department to publish procurement notices unless the availability of the budget is confirmed but such practice is not clearly captured in the procurement and financial legal framework.

Gap analysis

The Proclamation provides that no contract shall be signed before certification of availability of budget and not before solicitation of tenders. The legal requirement should look into and address the reputational risk and transaction cost associated with unsuccessful procurement in case of lack of funds at the time of contract signing.

Absence of provision related to the solicitation of tenders/proposal is conditional up on certification of the availability of funds.

Recommendation

Set a clear provision in the public procurement proclamation as well as financial administration proclamation, that, certification of availability of funds to be a condition for solicitation of tenders/proposals in the sector.

Assessment criterion 4(b)(b):

The national regulations/procedures for processing of invoices and authorisation of payments are followed in the sector, are publicly available and clear to potential bidders

Conclusion: **Substantive gap**

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Red flag: No

Qualitative analysis

The provisions on national regulation/procedures, general conditions of contract for processing of invoices as in legal framework and in practice is described as under:

Provisions in Legal Framework

The legal framework [26]indicates the timeframe to effect payment for works contract based on authorization/verification from the consulting engineer and also set out the obligations to pay in a timely manner and set out a procedure to be followed in processing payment for long term works contracts.

The above procedures are available in the procurement directive and since the directive is available for the public the potential bidders can get the full information on payment request and approval process.

Provision in General Conditions of Contract

The GCC under SBD(Works) clause 59.3 for works contract read as *"Payments to the Contractor of the amounts due under each of the interim payment Certificates and the final statement of account issued by the Engineer shall be made by the Public Body within 90 days of such certificate of statement being delivered to the Public Body".* Such provision has a different time frame set for processing of invoices in the PPD.

Actual Practice

Most of the procedures are followed but the timeframe set for effecting payment to the contractor on the PPD is different from that shown in the conditions of contract.

The procedure to be followed by procuring entities that utilize budget of the Federal Government, which is not known by potential bidders, in requesting the specific fund from MoF is laid in the Federal Government Payment Procedure Directive No 4/2003(E.C) which defines the procedures for processing of invoices and authorization of payments. Similarly, the procedure to be followed by procuring entities under the Addis Ababa City Administration is laid in the City's disbursement directive no. 5/2003 Article 9, which provides detailed descriptions including required documentary evidence in processing payment which includes contract/purchase order, inspection report, Supplier invoice, and goods receiving note is unknown to potential bidders or not reflected in the procurement documents.

Due to additional formalities, payment is usually delayed due to the delay by MOF in releasing the fund, which caused non-compliance to the number of days stipulated in the public procurement directive and in the conditions of the contract. Considering the additional layers for approving payment, the MOF has issued CIRCULAR on 25/1/2014 E.C, which states that, considering the time required to verify payment by the consulting engineer & the time necessary for the procuring entities to get fund, for certified payments, from MOF the period for effecting payment for works contract is decided to be a maximum of 45 days from the date requested by the contractor

The sector usually follows the signed contract agreement to effect payment. The public bodies will check if proper rate is used in payment certificate as well as the actual quantity is properly measured (as from the takeoff sheet), the supervising engineer shall check through all the payment request from the Contractor and submit the same after rigorous review for approval to the public bodies (Client). Such procedure is also indicated in the SBD for works under the General Condition of Contract where the potential bidders can also easily look through and understand the payment process.

Quantitative analysis

The PFM system used in the sector such as IFMIS did not provide the detail information on payment process and hence invoice data on selected contracts is collected and analyzed to see the trend in payment which is presented as follows:

On Average out of 96 reviewed invoices in 3 PEs, 49% were paid on time. The proportion of timely paid invoices in the three PEs is 57%, 20% and 11%.

Payment delays up to 660 % were recorded in sampled invoices which in days was 197 days.

Gap analysis

There are procedures which are not publicly available and clear to bidders such as the cash management at the Federal level and Addis Ababa disbursement directive.

Different procedure for payment in the PPD and general conditions of contract (works) in terms of specifying the timeframe considered to effect payment.

Recommendation

Harmonize the procedure followed in processing of invoices including the timeframe required in the procurement directive, circular and SBD (works).

- publish all payment procedures including the procedure for release of budget from the MoF, so that it will be clearly known by potential bidders

Ministry of Finance shall devise robust mechanism of effecting payments (both local and foreign portion) within the contractually agreed period.

Indicator 5. The sector has an institution in charge of technical normative functions.

Sub-indicator 5(a) **Status and legal basis for the normative functions entrusted to the sector agencies**
Assessment criterion 5(a)(a): The legal and regulatory framework specifies the normative function of development and validation of technical standards in the sector
Conclusion: **Substantive gap**
Red flag: Yes
Qualitative analysis In relation to the normative function of development and validation of technical standards is described here under:

[26] Addis Ababa PPD and Federal PPD under A.36-38 and sub article 28.5 respectively

Legal framework:

Ethiopian water resource management proclamation No.197/2000 under A.8(e) read as:" establish quality standards for surveys, design and specification of waterworks as well as standards for the construction of waterworks, necessary for the development of water resources; it shall also supervise compliance of water works with the established standards; bestow such power and duties to the supervising body which in this case, the definition of "supervising body" as per proclamation under A.2(7) "Supervising body" means the Ministry where it pertains to water resources at central level, or any organ delegated by the Ministry pursuant to Article 8 (2) of this Proclamation; and in the same proclamation "Ministry" or "Minister "means the Ministry and
Minister of Water Resources respectively;

In the legal framework [27] the functions of the FPPPA is stated, inter alia: to set a standard for major items of public bodies representing important fixed assets and follow-up adherence to such standards.

The proclamation[28] on duties and powers of executive organs stipulates the Ministry of Water and Energy inter alia, have the following responsibility under A. 32(l) read as: prepare national potable water and sanitation study and design, construction and institutional management standards and manuals and disseminate the same and follow up their implementation. However, the same proclamation did not specify the normative function for developing design standards related to irrigation projects. The proclamation also bestow the power to "authorities" including the Ethiopian Construction Authority among others states under A.11(3) to Issue standards when required mainly in its sector and based on the standards perform regulatory functions; or implement standards issued by the concerned organ. Though the Authority has such responsibility by law, technical standards are not developed for the sector.

The Institute of Ethiopian standards issue various technical standards for the sector such as for pipes, pumps, irrigation equipment's, well casing, waste water treatment facilities. The institute provides most of the technical standards related to items used in water supply and irrigation but is not comprehensive in terms of technical specification related to civil component of the waterworks construction.

The legal framework has no provision on the validation of technical standards. Ethiopian National standardization Council has been setup by the Government and has been drawn from the pertinent government organization and other body. The council has a close working relationship with the Institute of Ethiopian Standard (IES) and it is the higher body which approves the national quality and standardization strategy proposed by the Institute .Besides the council determines products for the use of national standard mark and **also approve mandatory standard requirements which are proposed by the respective national technical committee** on a certain products and services standards which are to be regulated from the safety, health ,environmental and national security. The national standards council approves mandatory standards on a certain products which indicate that not all standards get validated.

Moreover on proclamation No. 64/2019 of Addis Ababa City Government Executive Organs Reestablishment did not state on the development of standard for the sector.

Overall, some legal framework specifies the normative function entrusted to various public bodies in the development of technical standards while other did not, implying that there is no uniform provision in terms of specifying the normative function at all levels in the sector.

Gap analysis

The normative function for validation of technical standards in the sector is not stipulated in the legal framework.
The Federal Proclamation No.1263/2021 did not stipulate the normative function for development of technical standards related to irrigation.

Recommendation

Include in the legal framework the normative function for the development of technical standards for all types of sub projects in the sector. .

Establish a system for validation of technical standards including assigning a responsible public body for review and validation of technical standards in the sector.

Assessment criterion 5(a)(b):
The technical norms respond to the needs of the country

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

In relation to whether the technical norms responding to the needs of the country, the following description is provided:

Needs of the Country
The needs of the country, as far as the sector is concerned, is to utilize the available water resource through the construction and operation of sustainable water works project including ensuring hygiene through provision of various sanitation facilities. In this perspective, the technical norms need to be available and detailed enough to address the sector`s technical requirement, which, however the sector has no such national technical norms that can be referred and used in the procurement and implementation of various contracts.

Adequacy of Technical Norms
The technical norms for the sector are referred from international standards due to absence of national standards and are not evidenced if such standards respond to the needs of the country. Owing to the significant disparity of weather condition and topography in the country use of international standards may not fully address the need of the country in terms of planning, designing and constructing water supply, irrigation and similar infrastructure in various locations of the country.

The water sector has no national technical norms as compared to other sectors such as Bat CODA[29] for building and hence is not possible to check whether the norms/standards respond to the needs of the country. Absence of such standards will have an effect on the quality of infrastructures including sustainability.

Gap analysis

The technical norms currently prepared by firms/consultants usually are based on other country`s requirement which may not exactly respond to the need of the country and there is no verification mechanism how fit the standard is to the country`s requirement given the range of climate condition and topography in various construction sites of water supply, irrigation etc projects.

[27] Federal PPL A. 15(18) and Addis Ababa PPL A. 12(18)
[28] Federal Proclamation No.1263/2021
[29] Codes and standards issued by Ethiopian Building and Transport Construction Design Authority focusing on technical specification and method of measurement

Recommendation

Customize the international standards for the sector context in particular and country in general.

Capacitate Ethiopian Construction Authority to follow and address all the sector`s technical requirement and issue a comprehensive technical standard applicable for a range of works, services and goods.

Assessment criterion 5(a)(c):
The use of the technical norms does not affect competitiveness and transparency

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

In light of whether using technical norms affect competitiveness and transparency or not, the following description is provided here under:

General
From the reviewed sample contracts it was observed that bidders will not decline to bid for a reason related to technical norms, which, they will also have information on such requirement in the Bill of Quantity (BoQ) which must be filled and submitted as a bid price . Hence, when bidders enter the unit price for an item in the BoQ the technical requirement will be considered, as cost depends on the specification.

Effect on Competitiveness and Transparency
The use of technical standards was construed as a mandatory in public procurement, but as there is no national standard for the sector, the procuring entities use the one prepared by the engineering consulting firms, and this might depend on the experience and skill of the firm in terms of preparing a fit for purpose specification. Such practice has a drawback, in that, in case if the prepared specification is made to align with a certain product or material, it might be a case which can potentially affect the transparency of the procurement process. This is mainly because the firms tend to use “other standard” due to absence of national standard which may have the possibility of presenting the technical norms differently from what is actually required. The assessment did not identify any such gaps but there is a likely hood of affecting the competition.

For electro mechanical parts of a water supply, in some public bodies, there is a prepared specification which is not updated and aligned equally with the advance in technology, the use of such out dated specification has affected the competition due to mismatch with the latest technology in the market.

Gap analysis

The use of standards prepared through firms or SOEs could have an effect on competition where there might be personal judgment of including/excluding or revising some of the international standards which may not create a level playing field for the market.

Absence of national technical standard for the sector may also impact the consistency of the technical specification and hence the transparency in the procurement process.

Recommendation

Review, comment and validate those standards prepared by firms/SOEs rather than using it as a first hand source for the sector.
Prepare a fit for purpose national standard that can foster competitiveness and transparency in the sector.

Indicator 6. Definition, responsibilities, and formal powers of procuring entities in the sector

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

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

Conclusion: **No gap**

Red flag: No

Qualitative analysis

The procuring entities in the sector as defined in the legal framework is described here under:

Legal framework

As stated in the CORE MAPS, A. 2 of the PPL Defines a “public body” (procuring entity) as “any public body, which is partly or wholly financed by the Federal Government budget, higher education institutions and public institutions of like nature”. Similarly A.2 of the AA city administration Proclamation No, 64/2019 defines “public body” (procuring entity) as “any public body, which is partly or wholly financed by the City Government budget, higher education institutions and public institutions of like nature”.

Gap analysis

Recommendation

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

Conclusion: **No gap**

Red flag: No

Qualitative analysis

In relation to the responsibilities and competencies of procuring entities, the following description is provided here under:

Legal framework

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The legal framework clearly defines responsibilities and competencies of procuring entities. The Responsibilities of the Heads of Public Bodies are listed at PPL A.8. PPL A.9 stipulates one of the responsibilities of procurement department in a public body is to execute public procurement in a perfectly ethical and skillful manner;

The Duties and Responsibilities of the Procurement and Property Administration Unit within the public body are listed at PPL A.9, the Procurement Endorsing Committee at PPL A.10.

PPL A.11 Accountability: confirms that heads of public bodies, heads and staff of procurement administration units and endorsing committees are accountable for their actions.

Similar provision is stipulated under the public procurement proclamation of the Addis Ababa City Administration.

Gap analysis

Recommendation

Assessment criterion 6(a)(c):
Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity, and capability

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

As to the establishment of a specialized procurement function, the following description is provided here under from the legal framework perspective:

Legal framework:

Procuring entities are required to establish a designated, procurement function with the necessary management structure, capacity, and capability, as shown in the below provisions of the PPL:-

PPL 8 (a) stipulates that one of the responsibilities of the heads of public bodies is to establish an adequately staffed unit for procurement and property administration; A Procurement and Property Administration Unit whose duties and responsibilities are listed at PPL A.9.

One of the responsibilities of procurement department in a public body is to execute public procurement in a perfectly ethical and skillful manner, PPL 9 (a);

A Procurement Endorsing Committee (PEC) whose duties and responsibilities are listed at PPL A.10.

Similar provision is stipulated under the public procurement proclamation of the Addis Ababa City Administration.

However, establishment of specialized procurement unit is not specified in the legal framework and it is left for discretion to the head of the public body. In practice, from the sampled PEs in the sector only two have established a designated procurement unit specialized for engineering procurement while the other has no engineering procurement department and instead depends on procurement staff temporarily hired for the project period to manage World Bank financed project which are paid from the project resource based on agreed deliverables.

Civil Service Commission Decision on Procurement Staffing:
The PPL[30] did bestow the public bodies to establish an adequately staffed procurement unit under A.8 (a). Though the law give such power to the public bodies in the sector the qualification, experience, number including the procurement structure is decided/approved by the civil service commission that is in conflict with the PPD[31] A.5(1) which is presumed to hinder in the establishment of a specialized procurement function. Sometimes there is a complaint from some public bodies that the procurement structure including the procurement positions sent from the commission is not in line with the size, value, complexity and nature of procurement contracts managed by the public bodies. In most of the cases the procurement staff positions grades approved through the commission seems to have lower job grades and unattractive salary that will not attract high caliber professionals. Hence, become a bottleneck towards establishing specialized procurement function.

Quantitative analysis
Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):

The procuring entities do have a procurement unit .In view of considering the procurement unit established to manage engineering procurement as a specialized procurement function, 2 PEs out of 3 considered in the sector do have such units which is around 67%. One PE has a unit but is not established with adequate staff to manage a range of works contract in the sector.

Gap analysis

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Though the PPL gives public bodies authority to establish adequately staffed procurement unit, final decision on the qualification, experience, number including the procurement structure is decided by the civil service commission which is in conflict with the PPD A.5(1) and limit the authority of public bodies in establishing a specialized procurement function. The MoWE in particular has not established an adequately staffed procurement unit commensurate with the volume and complexity of the procurement in the ministry except for projects financed by the donors

Recommendation

The sector needs a specialized procurement function with the necessary management structure, capacity and capability and same should be clearly stipulated in the legal framework.

Consider including provision that require Procuring entities to establish a specialized procurement function with the necessary management structure, capacity, and capability. Involvement of the procurement regulatory bodies such as FPPPA and Addis Ababa BoF in deciding the management structure, manpower, experience, qualification and job grade of the procurement positions for the public bodies in the sector (as for procurement process the public body is responsible and accountable and not the Civil Service Commission).

[30] Both Federal and Addis Ababa
[31] Federal

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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: **No gap**

Red flag: No

Qualitative analysis

In relation to if the lower competent levels are delegated for procurement decision or not, the description is provided here under:

Legal framework

Yes, decision making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.
As stated in the CORE MAPS, The PPL A 10 provides the authority to approve procurement decisions to the procurement Endorsing Committee on all procurements above the specified threshold in the directive. According PPD A 24/2 (amended) the public body requires the approval of the bid endorsing committee for procurement of Works Birr 500,000, Goods Birr 200,000, Consultancy Birr 120,000 and Services Birr 150,000. The threshold is consistent with the threshold for use of National Competitive Bidding.
PPD Article 5(13) of the Public Procurement Directive has stipulated the following as part of the duties and responsibilities of the head of a Public Body in relation to procurements of small value which do not need the approval of the Procurement Endorsing Committee:-
a) Delegate authority of approval of such procurements to the procurement unit or
b) Delegate authority of approval to the head that has direct relation to the procurement.
c) The delegation of procurement authority by the head of the Public Body may be given to persons with various levels of responsibility with specified limits of procurement value.

Similar provision is stipulated under the public procurement proclamation of the Addis Ababa City Administration. Moreover the lower level units such as Woredas under the sub cities have procurement delegation.

Gap analysis

Recommendation

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The accountability related to decision making in the legal framework is presented here under:

Legal framework

Article 5 (4) of the PPL stipulates accountability for decisions made and measures taken with regard to public procurement and property administration, as one of Public procurement and property administration principles to be complied with.

Article 11 of the PPL states “Procurement and property administration staff or heads of procurement and property administration units and members of the Procurement endorsing committee in public bodies shall be accountable for their actions in accordance with this Proclamation and the directives to be issued by the Minister.”

Accountability for the Heads of public bodies is defined in the laws/Regulations establishing these public bodies. Other actors are not covered in the accountability provision.

Gap analysis
Accountability provision is limited to few actors and doesn’t include all actors that are directly or indirectly involved in procurement.

Recommendation
Consider expanding accountability provisions to include all actors that are directly or indirectly involved in procurement decisions.

Sub-indicator 6(b)
Centralized procurement body

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The benefit of establishing a centralized procurement function in the sector is described here under with respect to the prevailing legal framework:

Legal framework

Yes the country/sector has considered the benefits of establishing a centralized procurement function in charge of consolidated procurement, framework agreements, or specialized procurement for the sector. A.60(1) of the PPL provides that a central body shall be established, by Regulation of the Council of Ministers, to be in charge of large value procurements having national significance, and of procurement of supplies for which a demand is shown by more than one public body. Accordingly The centralized procurement body is established by Council of Ministers regulation no 184/2010.

Similarly the Addis Ababa City Administration PPL has also stipulated the following under Article 52.1: “there shall be established a central body in charge of the execution of large value procurements having city wide significances procurements of supplies for which a demand is shown by more than one public body by a regulation to be issued by the city government Cabinet”. Accordingly Regulation 55/2013 for the establishment of the Public Procurement and Property Disposal Agency of the Addis Ababa City Government established the Public Procurement and Property Disposal Agency (PPPDSA) to carry out procurement of common user items, goods and services which have national strategic significance.

However centralized procurement function in charge of specialized procurement for the sector is not established.

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Gap analysis
Though there is centralized procurement system to establish framework agreement for common user items required in the sector and beyond, there is no centralized procurement function to consolidate and procure sector specific requirements centrally.

Recommendation
Consider to establish centralized procurement function in charge of procuring sector specific requirements centrally. For example, sector entities with need to procure construction machineries, spare parts and other items related to the sector could benefit if centralized procurement function in charge of specialized procurement for the sector is established. This could be carried out through delegation of the existing procurement units at federal level or in regional states based on ability and comparative advantage to process such procurements competently.

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: **No gap**

Red flag: No

Qualitative analysis

In relation to centralized procurement body as to the legal status, funding, responsibilities and decision making as well as accountability for decision is described here under in reference to the legal framework:

Legal framework:

The centralized procurement body is established by council of ministers regulation no 184/2010. The established body is referred as Public Procurement and Property Disposal Service (PPDS).

The established body is funded by budget allocated from government, as indicated on A. 12 of the regulation. A. 7 of the regulation has enacted organization of PPDS to have ;(i) Management Board,(ii) a director General and two Deputy Director Generals. Accordingly PPDS is organized with one Director General, two Deputy Director Generals and 15 Directorates.

Similar provision is stipulated under Regulation 55/2013 of the Addis Ababa City Administration.

Gap analysis

Recommendation

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The internal organization and staffing for the centralized procurement body is presented here under:

Legal framework:
As stated in the CORE MAPS, The Centralized procurement body has adequate organizational structure commensurate with its responsibilities. It is managed by the Director General and two Deputy Directors General, one focusing on the management of Procurement and Contract Administration, and the other one focusing on Property Administration functions.

Actual Condition:
Procurement activities of PPDS are carried out by the procurement lead executive. There are only 15 staff members out of the required 40 staffs required by the structure for the procurement directorate. The available workload is too much to be handled by the available staffs of the directorate.

Similarly, The Public Procurement and Property Disposal Service of Addis Ababa City Administration is led by the General Manager who directly reports to the Head of the BoF. There are five main units under the General Manager: Procurement & Contract Administration, Finance, Human Resources, Planning and Budget and Property Disposal units.

Gap analysis
Inadequate staffing of Centralized Procurement Bodies: there were vacant positions to the one required as per the approved staff plan in the procurement directorate. The assessment team was informed that recruitment to fill up the vacant position is started.
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Recommendation
Expedite the hiring of the procurement professionals and fill all the vacant positions in the procurement directorate. Ensure that the centralized procurement body maintains adequate structure and staffing commensurate with the volume of work.

Indicator 7. Publication of public procurement information in the sector supported by information technology

Sub-indicator 7(a)
Definition, responsibilities, and formal powers of procuring entities in the sector
The sector uses an information system that meets the following requirements:

Assessment criterion 7(a)(a):
Information on procurement, in the sector, 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

As to whether the Information on procurement is accessible, timely and complete in the sector or not is presented here under:

Actual Condition:
Information on procurement, in the sector, is not easily accessible in media of wide circulation and availability. Some information such as procurement plan, notice for invitation to bid and contract award of sector entities under Federal Government are published in the website of e-GP. However, the e-GP system is not fully functioning to provide procurement information on contract implementation such as payment, variation, contract amendments, trend analysis etc. Moreover, sector entities under Regional Government didn't yet develop their e-GP system and they are not using the system developed for the Federal Government.

Contracts directly awarded to SOEs in most cases are not easily accessible and hence procurement information is not timely and complete.

Gap analysis
Lack of complete information on procurement, in the sector, that is easily accessible in media of wide circulation.

e-GP did not start to generate procurement information at the time of assessment and hence information on procurement in the sector was not easily accessible.

Recommendation

Expedite the rollout of the e-GP system for providing sufficient information on procurement, in the sector.

Expedite the rollout of the e-GP system in the city administration and regional governments.

Assessment criterion 7(a)(b):
The country's (or sector's) information system is fully utilized by sector entities, provides up-to-date information and is easily accessible to all interested parties at no cost

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

In relation to whether the information system is fully utilized and provides up to date information for the sector entities including free of cost for interested parties is described here under:

Status at the time of Assessment

The e-GP website is a portal that is used by sector entities under Federal Government. So far 143 procuring entities have uploaded their procurement plan for the year 2015 E.C and procurement plan of the previous year (2014 E.C), but the but the sector`s procurement plan is not fully uploaded and only few contracts related to common user items were uploaded, information on procurement opportunities (Invitation to Bid) is also uploaded in a timely manner. The information is easily accessible to all interested parties at no cost. However the e-GP system is new and it doesn't start compilation and dissemination of information on implementation of projects.

On the other hand, it has been noted that there is no any information system under Addis Ababa City Administration that provide up to date information to interested parties and to sector entities. The e-GP system is implemented only for Federal government and it is not yet rolled out to Regional Governments and City Administrations.

Some of the public bodies in the sector do have their own website, but even that is not used to populate information relevant to the sector procurement.

Gap analysis

e-GP did not start to generate procurement information at the time of assessment and hence information on procurement in the sector was not easily accessible.

The e-GP system is not yet rolled out to sector entities under Regional Governments and City Administrations

Recommendation

Expedite implementation of the e-GP system to provide complete procurement information, including information on contract implementation, trend analysis etc.

Expedite rollout of the e-GP system to sector entities under Regional Governments and City Administrations.

Assessment criterion 7(a)(c):
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

Qualitative analysis

Existence of a functional centralized online portal is presented as here under:

Existence of centralized online portal:

The e-GP system developed by FPPPAA is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost. The e-GP system has published procurement plans of sector entities under Federal Government and it also

provides information on invitation to bid and list of awarded contracts. However the system is not yet providing information on contract implementation and procurement statistics as the system is at early stage of implementation.

On the other hand FPPPAA has developed web based information system to be used by entities under the Federal Government. The system provides information on procurement opportunities (invitation to bid) and it also provides some information related to implementation stage of construction projects procured by the budget of the Federal Government only. However many procuring entities do not upload their project information in a complete and timely manner. As a result the information in FPPPAA portal is incomplete and obsolete.

Proclamation on project central database establishment :
The Public Project Administration and Management System Proclamation Number 1210/2020 requires Ministry of Planning and Development to develop, approve and monitor the implementation of a central database system, and the content thereof, for organizing, compiling and disseminating project related information in collaboration with the Ministry of Finance. However as per the discussion conducted with Planning and Development Commission, no database is developed so far and there is no any national or sector level information system that provide information to sector entities.

Quantitative analysis

While there is no centralized online portal to publish procurement information, assessment was made what procurement information is published in other means. The quantitative assessment has shown that none of the PEs reviewed publish procurement plan on their website or PPAs website. All of procurement opportunities under reviewed contracts were published in a national newspaper. The sampled contracts were ICB and NCB open bidding.

At the time of the assessment,15 bid announcements that belong to two PEs (2 for one and 13 for another) were posted in PPA's website. The status of the old bid announcement was not updated and all bid announcements including those advertised years back show that they were under "Evaluation" stage. Few (only 3) are indicated as "Awarded" This shows that even for IFB, PPA's website is not complete and up to date. The below link opens the page for bid announcement in PPA's website: http://www.ppa.gov.et/index.php. Its to be noted that MoWE has taken over procurement activities previously being carried out by Water Development Commission. The 13 old bid announcements are published in the name of Water Development Commission.

In none of the PEs visited or PPA, there is a practice of publishing complete key procurement information along the procurement cycle such as contract award, contract implementation information, appeals decisions. No annual procurement statistics are published.

Gap analysis

The e-GP system is not yet providing information on contract implementation and procurement statistics as it is at early stage of implementation.

Information provided on PPA's website is incomplete and obsolete.

Absence of the National Database System that is required to be established by Ministry of Planning and Development.

Recommendation

Ministry of Planning and development to establish National Database required by Proclamation Number 1210/2020.

Expedite the rollout of e-GP system to all Federal agencies and to regional governments.

Enhance the functionality of PPA website to capture latest procurement information.

Assessment criterion 7(a)(d):
The information system provides for the publication of:

- Procurement plans;
- Information related to specific procurements, as a minimum: Advertisements or notices of procurement opportunities, contract awards including procurement method and amendments, information on contract implementation including payments, appeals decisions;
- Linkages to rules and regulations and other information that is relevant to promote competition and transparency

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The information system currently in operation is e-GP which is described here under on the publication requirement of the system:

Current Status of the information system:

The information system (e-GP) of FPPPAA provides for publication of Information related to specific procurements, such as: Advertisements or notices of procurement opportunities, contract awards including procurement method and amendments, information on contract implementation. However the information system didn't include payments and appeals decisions. There is also a linkage to the public procurement proclamation, directive, manuals and standard bid documents.

Procurement plan of sector entities under Federal government is published in the e-GP website of PPPA (https://egp.ppa.gov.et/egp/home). Though sector entities are not fully utilizing the e-GP system, the e-GP website includes the following information that include:-

•Total Active Tenders
•Tenders Published Today
•Tenders Under Evaluation
•Tenders cancelled
•Tenders Closed Today
•Tenders Published to date
•Tenders Opening Today
•Tenders Awarded
•Contract signed
•Registered Suppliers and
•Procuring Entities

The e-GP portal contains the following information that are accessible only for bidders registered to participate in the specific bid:-
•Full set of procurement documents,
•Tender opening minutes, evaluation reports,

•Full contract documents including technical specification and implementation details

Gap analysis

The contract award information published on the e-GP system is incomplete.

There is no published information on contract amendments, information on contract implementation including payments, appeals decisions

e-GP at the time of assessment was rolled out to Federal procuring entities but not implemented at Addis Ababa and Regions.

Recommendation

Consider improving the template of contract award on the e-GP system and publish a complete information on contract award. Consider Open Contracting Data Standard in the system for generation of open data, integration of automatic red-flag identification module and standardized technical specification including sustainability criteria, as applicable.

Expedite implementation of the e-GP system to provide complete procurement information, including information on contract implementation, trend analysis etc.

Roll out the implementation of e-GP for Addis Ababa and Regions.

Assessment criterion 7(a)(e):
In support of the concept of open contracting, in the sector, more comprehensive information is published on the centralized online portal, in each phase of the procurement process including the full set of procurement 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

Though the e-GP provides for publication of information listed under criteria 7 (a)(d), there is no publication of comprehensive information, in support of open contracting, through open data format. The e-GP website is serving as a centralized online portal for sector entities under the Federal Government as most of the entities are handling their procurement through e-GP, however the e-GP system is not yet rolled out to sector entities under the regional governments. Ministry of planning and Development is expected to establish Central Database

Such comprehensive information on each phase of the procurement process for previous contracts completed before the introduction of e-GP can not be available in the system making it difficult to access procurement information of those contracts implemented before introduction of e-GP.

Quantitative analysis

No procurement information is published in open data format for none of the PEs.

Gap analysis

There is no publication of comprehensive information in support of open contracting.

Recommendation
Consider the publishing of comprehensive procurement information, in support of open contracting, on the centralized online portal, in each phase of the procurement process including the full set of procurement documents, evaluation reports, full contract documents including technical specification and implementation details.

Ministry of Planning and Development to develop and implement the national database (centralized online portal) and monitor publication of comprehensive project information required by proclamation no.1210/2020

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

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

Publication of information in open data format is described here under:

There is no system that publishes information through an open and structured machine-readable format, using identifiers and classifications (open data format) except for the procurement notice.

Gap analysis

There is no system for publishing comprehensive procurement information in open data format.

Recommendation

Consider the publishing of procurement information in the sector through open data format.

Assessment criterion 7(a)(g):
Responsibility for the management and operation of the sector information system is clearly defined

Conclusion: **No gap**

Red flag: No

Qualitative analysis

In relation to management of the e-GP system, the following is presented here under:

In the case of information uploaded on e-GP, FPPPA and sector entities website the responsibility for the management and operation of the information is assigned to the respective IT-UNIT of the entities. Moreover, Ministry of science and Technology is responsible for maintaining cyber security on the e-GP system.

Gap analysis

Recommendation

Sub-indicator 7(b)
Use of e-Procurement in the sector

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

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

In relation to the use of E-Procurement in the sector at all level of the government, the current status is presented here under:

Current status of E-procurement in the sector:

Implementation of E-procurement is started in sector entities at the Federal level. On the other hand the E-procurement system is not yet rolled out and implemented in sector entities of regional governments and city administrations.

FPPA has a plan to widely use the E-procurement in the sector at all levels of the government.

Quantitative analysis

2 of the 3 PEs assessed are introducing e-procurement system as pilot. So far the two entities have published 7 contracts using e-GP. They are among the entities selected for e-GP piloting. So far it is only these 7 contracts which are under process using e-GP.

Gap analysis

The E- procurement is not rolled out to regional governments and city administrations and is only at Federal level. Hence, it is not widely used in the sector.

Recommendation

Expedite rollout of the e-GP system so that it will be implemented widely and progressively in sector entities of regional governments and city administrations.

Support FPPA in its endeavor to expand the E- procurement at all levels of the government.

Assessment criterion 7(b)(b):
Sector officials have the capacity to plan, develop and manage e-Procurement systems, as required (e.g., by a national road map or general framework)

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

Capacities of the sector officials to plan, develop and manage e-procurement system is described here under based on legal perspective:

Legal framework

Planning, developing and managing the e-procurement system is the role of the FPPPA in case of Federal and BoF in case of Addis Ababa. FPPPA has developed e-GP which at the time of the assessment is at early stage of implementation.

Current status:

The sector officials under the Federal government has received a training on e-procurement with the objective to capacitate in managing the system. But, the sector officials did not attain the required capacity to manage the e-procurement at the Federal level; moreover, while the sector officials at Regions and city administrations have no capacity to manage the e-procurement given it is not yet rolled out to these public bodies.

Gap analysis

Sector officials in regional governments and city administrations are not capacitated to practice and implement the E-procurement system.

The e-GP system is not rolled out to sector entities under Regional Governments And City Administrations.

Recommendation

Rollout implementation of the e-GP system in to sector entities under Regional Governments And City Administrations.

Provide training, on practicing and implementing the E-procurement system, for officials of sector entities under Regional Governments And City Administrations.

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

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

Regarding the skills of the procurement staff and required facilities for the use of e-procurement system is presented here under:

Current Status at the time of the assessment:

Procurement staffs of the sector entities, under Federal Government, have taken training for practicing and implementing the e-procurement system. Procurement staff in sector entities of Federal government is not adequately skilled where in one of the entity there was a gap to upload the FY22/23 procurement plan which leads to shifting of the procurement process to manual. There is also a gap in reliable internet connection and full-fledged IT facility. to reliably and efficiently use e-Procurement systems.

Procurement staff in the sector entities under regional governments and city administrations does not have the skill to reliably and efficiently use e-Procurement systems, for the reason that the e-GP System is not yet rolled out to regional governments and city administrations.

Gap analysis

The procurement staff is not adequately skilled and equipped to efficiently use the e-procurement system.

Recommendation

Provide a continuous training and even hands on extended implementation support may be required until the procurement staffs in the sector are fully capable to operate the system including managing minor system glitches.

Adequately equip the procurement staff to efficiently use the e-procurement system.

Assessment criterion 7(b)(d):

Suppliers in the sector (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

The use of digital technology in public procurement and participation of supplies including the MSE is described here under:

Current status:

Suppliers in the sector, at Federal Government, participate in a public procurement market increasingly dominated by digital technology due to the introduction of e-GP where at the time of the assessment 8,376 suppliers were registered. However micro, small and medium-sized enterprises, are not participating in a public procurement market increasingly dominated by digital technology, as the sector entities are not using the e-procurement system in relation to bids that invites MSE.

On the other hand suppliers for regional governments and city administrations do not have the opportunity to participate in a public procurement market dominated by digital technology, as e-GP system is not rolled out to sector entities of regional governments and city administrations.

Quantitative analysis

Two of the three PEs assessed are introducing e-procurement system as pilot. So far only 7 contracts are piloted and procurement process is ongoing on the 7 contracts.

There is no experience of e-procurement or submitting bids online by micro, small and medium-sized enterprises in the sector.

Gap analysis

Micro, small and medium-sized enterprises didn't have the participation in the e-procurement system, as procuring entities in the sector are not using e-procurement system in relation to bids that suite for participation of micro, small and medium-sized enterprises.

Suppliers for regional governments and city administrations do not have the opportunity to participate in a public procurement market dominated by digital technology, as e-GP system is not rolled out to sector entities of regional governments and city administrations.

Recommendation

Encourage procuring entities to use e-procurement system in relation to bids that suite for participation of micro, small and medium-sized enterprises.

Provide adequate training to enable micro, small and medium-sized enterprises to participate in a public procurement market increasingly dominated by digital technology.

Expand the e-GP system and rollout to sector entities of regional governments and city administrations.

Assessment criterion 7(b)(e):

If e-Procurement has not yet been introduced, the sector has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

While e-Procurement has been started in sector entities of Federal Government, the regional states and city administrations didn't yet introduce the system. The Addis Ababa City Administration has communicated with FPPPA for adopting the e-GP system implemented in the Federal Government. PPPA has prepared an e-GP rollout strategy document. The strategy envisages a two-phase approach to roll out the system nationally where the first phase targets all federal institutions, and the second phase targets regional administrations. Change management, training, support, and maintenance activities are ongoing.

There is a plan in Addis Ababa City to embark the readiness assessment following the introduction of the e-GP at Federal level. Addis Ababa City BoF has invited the Consultant that developed the Federal e-procurement system to submit technical proposal to assess readiness and develop e-procurement system for the City.

Gap analysis

Sector entities under regional government are in the process of adopting e-Procurement roadmap based on an e-Procurement readiness assessment

Recommendation

Expedite the ongoing preparation of roadmap based on readiness assessment and rollout e-GP to regional governments.
Map all the public bodies in the sector with no prior experience of using e-procurement and work with the respective procurement Authorities and Finance Bureau to start the introduction of e-procurement based on detail assessment and clear roadmap.

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

Assessment criterion 7(c)(a):

A system is in operation in the sector for collecting data on the procurement of goods, works and services including consulting services supported by e-Procurement or other information technology.

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Conclusion: **Minor gap**
Red flag: No
Qualitative analysis Existence of functional system for collecting data on procurement of goods, works and services is described here under: **Current status:** The e-GP is the only system that FPPPA has currently introduced. The system is operational across Federal public bodies. The system captures all the procurement stages including implementation phase and integrates the KPI system which collects data on the procurement of goods, works and services. However, the e-GP did not start to generate data at the time of the assessment and given it is also limited at Federal level could not represent the "system" [32]requirement of the sector. Since the e-GP is not yet rolled out to Regions and City Administrations, there is no system to collect data on procurement of goods, works and services.
Gap analysis Only e-GP is introduced at the Federal level which only encompasses those public bodies at the Federal level. Hence, did not alone provide the complete data for the sector on the procurement of goods, works and services. KPI system is not working as e-Procurement system is not yet fully rolled out and functional.
Recommendation Expedite the roll out of the e-GP system to Regions and City Administrations.
Assessment criterion 7(c)(b): The system manages data for the entire procurement process, in the sector, and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis In relation to the whether the system manages data for the entire procurement process or not thereby provides information on participation, economy and efficient is presented here under: **Current Status:** The e-GP system is designed to manage data for the entire procurement system and the system has features that allow analysis of trends and levels of participation. However the system is at early stage of implementation and it doesn't start generating reports. Given the e-GP is only rolled at the Federal level; there is no system that manages data for the entire procurement process at Regions and City Administrations.
Gap analysis The e-GP system manages data for the entire procurement process; however the system didn't yet start generation of report on analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements, as it is at early stage of implementation. Regions and City administrations are not yet using systems such as e-GP.
Recommendation Expedite implementation of procurement through e-GP and benefit from the full feature of the EGP system, including generation of data for the entire procurement process and analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements. Roll out the e-GP system to Regions and City Administration for managing data for the entire procurement process.
Assessment criterion 7(c)(c): The reliability of the information is high (verified by audits)
Conclusion: **Substantive gap**
Red flag: No
Qualitative analysis At the time of assessment the e-GP did not start generating data as it is at the early stage of implementation, moreover there is also no audit conducted in relation to evidencing the reliability of the data from the system. Hence, reliability of the system is not yet verified by audit.
Gap analysis The system is at early stage and no audit is conducted so far.
Recommendation FPPPAA shall monitor reliability of the information generated by the e-GP system through audit, as the system progressed in generating information.
Assessment criterion 7(c)(d): Analysis of information is routinely carried out, in the sector, published and fed back into the system
Conclusion: **Substantive gap**
Red flag: No

[32] Systems like e-GP

Qualitative analysis

In relation to analyzing of information from the e-GP and using it as a feedback mechanism is presented here under:

Current status:

Analysis of information in the sector, publishing and providing feed back into the e-GP system is not yet started as the system is at early stage of implementation. Moreover as the e-GP system is not rolled out to regional governments and city administrations, The e-GP system at Federal level cannot provide analysis of sector level information.

Quantitative analysis

On a newsletter posted on the PPA`s web page home it is reported that out of the 746 billion ETB government budget for the fiscal year 2022/23, 560 billion ETB is for procurement. Which in percent is 75%.

No report on total volume of contracts awarded through competitive and other methods is found.

Gap analysis

Analysis of information in the sector, publishing and providing feed back into the e-GP system is not yet started as the system is at early stage of implementation.

e-GP is not yet rolled to Regions and City Administrations.

Recommendation

Expedite implementation of procurement through e-GP System and start analysis of the necessary information.

Rollout the e-GP to regions and City Administrations to start analyzing information from the system.

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

Sub-indicator 8(a) **Training, advice and assistance in the sector** There are systems in place, in the sector, that provide for:
Assessment criterion 8(a)(a): Substantive permanent training programmes of suitable quality and content for the needs of the procurement staff in the sector
Conclusion: **Minor gap**
Red flag: No

Qualitative analysis

In relation to the provision of substantive permanent training in the sector, from the FPPPA training program and sector entities information, is presented here under:

Routine training is often provided covering the basics of procurement including on legal framework and standard bidding documents.

The procurement in the water sector is associated with sub projects/activities related to: drilling, pipe installation, reservoir construction, water treatment plant construction, sewerage system, waste water treatment plants, dams, irrigation head works, irrigation canals, pumps, generators etc as well as various feasibility, design and supervision consulting services that highly demands a caliber professional to properly plan the activities, manage the procurement process and follow up the implementation. Due to such uniqueness and complexity in scope, the training so far provided was not a tailored one encompassing procurement of the above stated activities, rather a generic procurement training was provided which did not equip the professionals in the sector to manage procurement of works contract with the scope and size as listed above as well as consulting services related to feasibility, design and supervision of the various sub projects/schemes.

As stated in the CORE MAPS, FPPPA had established a procurement training program that certifies trainees at three levels: Essential, Basic, and Advanced. The program also covers the Specialized level which is not yet supported with training modules. The professionalization training is dependent on the resources from donor-supported projects and the sustainability of the program is not guaranteed. It has no regular timetable. Moreover the permanent professionalization training is not yet recognized by the civil service commission and it is not contributing for appointment of staffs in different procurement position. Due to the nature of the water works construction, the procurement training program was not much customized to address the need of the procurement staff in the sector. At the time of assessment the procurement staff did not participate in the various training levels organized by FPPPA.

Gap analysis

The sustainability of the procurement professionalization training program is at risk due to lack of budget source.

No training module for specialized level training which is very essential for the sector staffs, hence training module shall be developed for this level and start providing the training for engineering staffs.

The permanent professionalization training is not recognized in the procurement career structure.

Recommendation

The professionalization training should be supported by sustainable budget resource so that it will not be discontinued due to lack of resource from donors. Therefore, FPPPA should look for budget source so that the professionalization training will resume. . Introduce mechanism to ensure financial sustainability of the program through collection of training fees and providing associated advisory services which should lead to a diminishing trend on government budget. Collaboration with the private sector and other stakeholders contractors' association would be useful in this regard.

Prepare training module and initiate the specialized level training as it is very important for sector entities. The delivery and training logistics should be the responsibility of the training institution.

Ensure the quality of the procurement professionalization training and recognize in the career structure.

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

In relation to conducting a routine evaluation and adjustment on training programs is described here under based on actual practice:

Actual Practice:

In relation to the training program conducted by FPPA: contents of the permanent professionalization training program is updated in each round of the training based on the feedback of trainees collected in each round. Moreover FPPPA has evaluated effectiveness of the permanent training program, through consultant, and has identified that the training materials are inadequate as there is no any manual/module for trainees. The training has been provided only using power point slide. As a result FPPPA has now prepared training manual for trainees corresponding to each training module provided in each of the three competency levels. As stated in criterion 8(a)(a), this training program is not sector specific to address the challenges pertinent to procurement of water supply project, irrigation, waste water treatment plants etc and selection of consultants for feasibility study, design and supervision of various water works contracts.

Training organized by the public bodies in the sector showed that there is a customary practice of collecting feedback from trainees, but such information is not used as an input to adjust the next training programs, and sometimes the training will not be continuous and hence the feedback collected from previous trainings will not be used.

Gap analysis

Periodic adjustment of training programs is not carried such as developing training manuals/modules though feedbacks are collected.However, PPPA sponsored a consultant and carried out gap assessment of the professionalization training program and as a result of the assessment, revision of the modules and developing e-learning module are considered in the reform action plan.

Recommendation

Carryout a periodic adjustment of training programs to suit to the sector need.

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

FPPPA provides advisory service and resolve questions from procuring entities, pursuant to Article 15(1) of the public procurement proclamation no 649/2009. FPPPAA has also been providing advisory service to suppliers whenever requested, however it has now stopped its previous practice of responding queries from suppliers after being aware that function of FPPAA as per Article 15 (1) of the proclamation is limited to providing advice for the Federal Government and providing technical assistance to the regional governments and city administration. However in some cases, according to severity of the problem, FPPPAA provide advice for the private sector, especially when the issue is brought to FPPPA through associations. Therefore FPPPA is not serving as a dedicated help desk to resolve questions raised by suppliers. Moreover, sector entities suggest for FPPPA to include engineering units in its structure so that effective advisory service will be provided for sector specific issues.

Similarly, Addis Ababa City Administration's BoF provide advisory/support service to sector entities under the city administration. However, sector entities has indicated that the advisory service is inadequate and lacks technical depth to help them resolve real time issues. The BoF also provides advisory service to the Suppliers when requested.

Gap analysis

Limited support provided o the private sector through the Help Desk established in the FPPPAA.
The PPL do not have provision that stipulates provision of advice and technical assistance to suppliers as part of the Agency's (FPPAA) function.

Absence of engineering units in the structure of FPPPA that will help to provide advisory service in relation to sector specific issues.

Recommendation

Introduce provision that enable FPPPA to provide Advisory service to all involved in public procurement including private sector

Introduce engineering units in the structure of FPPPA and BoF so that effective advisory service will be provided for sector specific issues.

Assessment criterion 8(a)(d):
A capacity development strategy that is well integrated with other measures aimed at developing the capacities of key actors involved in public procurement, in the sector

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

FPPPA, as part of its function, used to provide two short term trainings per year with the aim of building capacity of procuring entities, suppliers and SMEs. The training for each group of key actors is prepared separately. However, as stated in the CORE MAPS, there was no strategy in place to improve the capacity of the private sector as key players in public procurement, despite the challenges PEs face as a result of limited capacity of the private sector, particularly the small-scale suppliers and contractors. The capacity building activities of FPPPA were not integrated with strategy, as preparation of capacity development strategy was completed very recently. Currently, FPPPAA has developed capacity building strategy, at the end of 2014 E.C (August 2022 G.C), through finance provided by African Development Bank (AfDB).

Gap analysis

The capacity development strategy of FPPPA is developed in August 2022 and it is not yet implemented.

Recommendation

Expedite implementation of FPPPA's capacity development strategy and consider integration of the strategy with other measures aimed at developing the capacities of key actors involved in public procurement, in the sector.

Assessment criterion 8(a)(e):
The environment surrounding individuals and organizations that supports the sound practices and behaviours learned

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

The procurement environment in most procuring entities is not shaped to maximize the knowledge input of an individual as well as creating a conducive working environment and hence there is no such sound practices and behaviors which can be learnt.

Ideally, in the procuring entities there is no such "sound practice" observed. And also there is no attempt of consolidating good practices and reducing bad ones.

Lessons learnt in the process are not documented including preparation of completion report for all projects, which could have been a valuable opportunity for the team to grasp the challenges faced and take remedial measures for future similar investments/actives which in reality is not happening.

Gap analysis

Lack of conducive procurement environment to emulate the sound practices. There are no on the job trainings offered in the sector that is comparable or similar to the road sector.

The environment surrounding individuals and organizations is not much sensitized to support the sound practices and make use of this opportunity to learn from it.

Recommendation

Create a vibrant environment which can support the sound practices in the sector and share the best practice as a lesson to others. Establish on the job training to equip newly hired and assigned staff get experience and skill from experienced and more qualified experts.

Ensure the procurement environment is conducive enough to support new ideas and thoughts that generate sound practices and behaviors which can be shared as a lesson in the sector.

Sub-indicator 8(b)
Monitoring performance to improve sector outputs and outcomes

Assessment criterion 8(b)(a):
The sector 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

As stated in the CORE MAPS, There is no workable and consistently applicable performance measurement system that focuses on both qualitative and quantitative aspects. However, PPA introduced performance measurement system based on identified Key Procurement Performance Indicators (KPI). The system uses an Excel format to collect, analyze, and report procurement performance against the indicators.

The system is based on an Excel format and intended to support PBs in collecting procurement data, analyzing and reporting for purpose of improving procurement performance. The following nine indicators were adopted: improvement in procurement cycle time, reduction in number of cancelled bidding processes, increase in the use of competitive procurement methods, increase in average number of bids, improvement in realism of procurement plans, increase in number of complaints resolved within the standard time, reduction in contract cost overrun, reduction in contract time overrun, and reduction in poor quality of contract deliverables.

The performance measurement through KPI was started in 2009 E.C . All entities (including road sector entities), 5 sectors from each of the regional governments, i.e Road, Health, Agriculture, water and education sector are included in the performance measurement system and they submit annual report, to FPPPA, through an Excel format prepared for the purpose of measuring progress of entities against the defined KPI. Sector entities do not submit the KPI report in a timely manner.

Currently the e-GP Portal is integrated the KPI system and it is designed in a way to collects real time data, on the procurement of goods, works and services, from Procuring Entities that implement the e-GP system. However the e-GP website is at early stage of implementation and it doesn't start generation of report on measurement of performance that focuses on both quantitative and qualitative aspects. On the other hand the e-GP system is not yet rolled out to sector entities under regional governments and City Administration.

Gap analysis

The e-GP Portal is established at Federal government level and it is integrated with the KPI system to collect real time data from Procuring Entities that implement the e-GP system, however the system didn't yet start generating report on performance measurement as it is at an early stage of implementation.

Moreover, Sector entities under regional governments and city administrations didn't yet establish a performance measurement system on both quantitative and qualitative aspects, as the e-GP system is not rolled out to regional governments and city administrations.

The excel based KPI system, that was developed by FPPA, is not rolled out successfully. Moreover It is not a comprehensive tool in measuring performance in qualitative and quantitative terms. It is important to enhance the KPI system and integrate it with the procurement system to allow real-time data collection, analysis and reporting both on qualitative and quantitative terms.

Recommendation

Expedite implementation of procurement through e-GP and benefit from the full feature of the EGP system, including generation of report on performance measurement.

Roll out implementation of the e-GP system to regional governments and city administrations and ensure integration of KPI with the e-GP System.

Assessment criterion 8(b)(b):
The information is used to support strategic policy making on procurement in the sector

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

FPPPA claims that it uses the KPI report of sector entities as an input in developing capacity building program and devising policy issues. However, as stated in the CORE MAPS, there is no system allowing for collection and analysis of data to support strategic policy making on procurement. The information collected through the KPI system is not complete and accurate to be used as reliable data source for procurement policy making.

Currently the e-GP Portal is integrated the KPI system and it is designed in a way to collects real time data, on the procurement of goods, works and services, from Procuring Entities that implement the e-GP system. However the e-GP website is at early stage of implementation and it doesn't start generation of report.

The integration of KPI system with the e-GP portal is an important milestone as the e-GP system will provide reliable KPI data that will be used to support strategic policy making on procurement in the sector. Expediting implementation of the e-GP system and starting generation of report is, therefore, a priority issue to benefit the maximum from the system; including the use of relevant information for supporting strategic policy making.

Gap analysis

The e-GP website is at early stage of implementation and it doesn't start generation of information that will be used to support strategic policy making on procurement in the sector.

Recommendation

Expedite implementation of the e-GP system and start generation of information that will be used to support strategic policy making on procurement in the sector.

Assessment criterion 8(b)(c):
Strategic plans, including results framework, are in place and used to improve sector system performance

Conclusion: **No gap**

Red flag: No

Qualitative analysis

FPPPA has developed, in 2018, strategy and action plan for e-GP. The strategy was developed by Dr. Rajesh Kumar Shakya, who is an e-GP specialist consultant. The e-GP strategy document requires for development of e-PMIS (Procurement Management information System). The e-PMIS is required to include workflow and permission / authorization trails, and all information transactions in any part of the procurement process including contract management, contract planning, and interactions between stakeholders. All important events and data are required to be linked to the Audit log module and e-PMIS for analyses, reporting and performance assessments.
The strategy document indicates that the analysis from e-PMIS provide the basis for the implementation business case and a list of baseline measures from which Key Performance Indicators (KPI) shall be developed. Areas of such analysis should be flexible by the user but shall be guided by the FPPA and could include:

- Analysis of attainment of e-Procurement Strategic objectives by a set of well- defined performance indicators.
- Procurement Performance of procuring entities through a set of indicators classified to cover all areas of core principles of good governance in public procurement (Efficiency, accountability, value for money, Equity, Fraud and Corruption Control, compliance, etc.)

Therefore, strategic plan and result framework are currently in place and intended for the use of improving procurement performance of the sector as well as the country.

Gap analysis

Recommendation

Assessment criterion 8(b)(d):
Responsibilities for performance measurement in the sector are clearly defined

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

Yes, Responsibilities for performance measurement in the sector are clearly defined. As stated in the CORE MAPS, the procurement Proclamation 649/2009 Article 15 (2) mandates PPA to monitor and report on procurement performance. Therefore, performance measurement of sector entities under Federal Government is responsibility of FPPPA.

On the other hand, as stated in the CORE MAPS, the procurement proclamation of the Addis Ababa City Administration has stipulated under Article 12 that 'one of the functions of the BoF is to monitor and report to the Mayor's office on the performance of the public procurement and property administration systems in the City Government and initiate amendments on laws and implementation system improvements'. Hence BOF is responsible for performance measurement of sector entities under the City Administration.

Gap analysis

The findings of the coreMAPS remain valid for this criterion for both the Federal and Addis Ababa.

Centralizing to measure procurement performance in the sector may have a drawback where entities in the sector may not be timely measured on their performance due to capacity limitation of the regulatory body.

Recommendation

The recommendation of the coreMAPS remains valid for this criterion for both the Federal and Addis Ababa.

Establish sector based central body within PPA and BoF that can vet only on sector performance measurement and define the responsibilities in the course of performance measurement including procedure for realistic performance measurement.

Pillar III. Public Procurement Operations and Market Practices

Indicator 9. Public procurement practices achieve stated objectives in the sector

Sub-indicator 9(a) **Planning in the sector**
Assessment criterion 9(a)(a): Needs analysis and market research guide a proactive identification of optimal procurement strategies in the sector
Conclusion: **Substantive gap**
Red flag: No
Qualitative analysis The Federal PPD in A.9 (1, 2 &3), and Addis Ababa PPD A. 8(1,2&3) stipulates the points to be considered in the process of identifying the needs and how to organize the need in the annual procurement plan. The provision in the legal framework merely describe how the needs shall be incorporated in the procurement plan and the use of the market price survey during procurement plan preparation. The current practice at Federal showed the sector lack such need analysis and market research which is supposed to feed in the process of identifying optimal procurement strategies , rather the need for water work projects depend on the output of the "Feasibility Study". If the feasibility study concludes the schemes will worth planning and constructing, the feasible scheme will be considered as a "need" and included in the procurement plan, otherwise not. The available budget for the sector determines the number of feasible schemes to be considered in a given fiscal year which finally are construed as a need of the public bodies in the sector. In the sector, in lieu of identification of optimal procurement strategies, it is merely related to procurement method identification which basis on the threshold set for works and consulting services as defined in the PPD. In addition, a public procurement strategy guideline is not available to guide the public bodies in the sector how to conduct market research including need analysis. This is particularly observed in using one stage bidding as a default method along with conformance specification for water supply/irrigation projects including admeasurement contract but not on other procurement strategies such as two stage bidding and performance specification as well as turnkey contact which are a common procurement strategy adopted in the sector elsewhere. Similarly, for Addis Ababa, the procuring entity in the sector focus more on price data collection for goods, to merely use it for the purpose of cost estimation and given there is a continuous and significant inflation, the data could not capture the real time market price and anticipated bid price. Hence, would not help much in the process of identifying optimal procurement strategy.
Gap analysis Overall, the procurement planning depends on collection of procurement needs from the technical section/user section, in case of water supply/irrigation projects, those projects with feasibility study and detail design will be considered at the planning stage, it is the feasibility report that decides as to whether the that project will be included in the APP or not. Hence instead of conducting need analysis, the planning depends on feasibility studies of various schemes. Market research and analysis is one of the gaps in the sector where before planning there is no market survey/study to understand the extent of the participation of the market and hence no optimal procurement approach followed rather it is a kind of learning by doing, where the procuring entities realize the challenges during the procurement process than early anticipation of such problems and devising optimal procurement approach which will minimize the expected risks. The market research is merely considered as market price study which did not provide comprehensive information on devising the optimal procurement strategy. Regardless of the value, size and complexity of the envisaged contract in the sector a default approach of using one stage bidding with performance specification and admeasurement contract is not uncommon which seems to neglect other approaches due to absence of identification of optimal procurement strategy.
Recommendation Develop a simple guideline for the sector on the procedure how an optimal procurement strategy can be identified based on need analysis and market research which helps to select the fit for purpose approach suited with the size and value of the envisaged contract.
Assessment criterion 9(a)(b): The requirements and desired outcomes of contracts, in the sector, are clearly defined
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis Generally in contract documents the scope of the contract is specified under special condition of contract. The desired outcome depends on the design and Bill of Quantities for the case of works and TOR for the case of Consulting Services. The requirements are defined through the use of technical specification as well as scope for the case of works and for consulting services through listing of the deliverables. Hence, the requirements and desired outcomes are included and defined in a contract document.

However, contract documents in some cases are not complete enough to clearly define the requirements and outcomes through a comprehensive description of Bill of Quantities, technical specification and design for works and TOR for consulting services manifested with change orders and amendments, among others.

Gap analysis

The requirements and desired outcomes are not properly controlled and monitored during contract implementation including the use of state of the art method to achieve the desired outcomes and requirements.

Capacity of the contractors and consultants, as observed, in some water works constructions is limited that the desired outcome and requirement of a contract lacks clear definition manifested through design revision, variation or contract amendment.

The supply chain could have also an impact on the desired outcome and requirement of a contract, where, in the sector due to such shortage in supply of materials as well as inflation in the market could affect the desired outcome and requirement of a contract.

The study conducted on " Assessment and Establishment of Competitive Market Costs of Water Borehole Drilling in Ethiopia, Kenya, South Sudan and Tanzania[33]"showed that the procuring entities when preparing Bill of Quantity for drilling borehole they will copy and paste the standard BoQ where there is no contextualization to the local hydrogeological conditions and water demand. This practice has effect on achieving the desired outcome of contracts.

Recommendation

Enhance the capacity of the public bodies in defining desired outcomes of contracts and monitoring during implementation. Clearly stipulate the requirement and desired outcome of contracts through the use of comprehensive technical specification, Bill of Quantity (BoQ), design for works and TOR as well as deliverables for consulting services. And follow with close supervision during contract implementation.

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

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

As indicated in 3(b) (d), there is no sustainability criterion. However, one of the principles stipulated in the public procurement proclamation is to ensure value for money.

Sustainable criteria is a basis for promoting sustainable Public Procurement (SPP) through integration of the three pillars of sustainable development: economic development, social development and environmental protection. Article 43 (8) of the PPL stipulates the following in addition to the least evaluated method of selection:-

"*if the public body has so stipulated in the bidding documents,* ***the bid offering better economic advantage*** *ascertained on the basis of factors affecting the economic value of the bid which have been specified in the bidding documents, which factors shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable*;".

Moreover the public procurement directive, Article 16.8.2 (b), allow public bodies *to determine the functional or economic value of the procurement and the relative weight to be ascribed to each criterion and selecting the bidder with the highest cumulative result by conducting evaluation based on these criteria*.

Furthermore Article 16.8.3 of the PPD states that **the criteria selected for conducting evaluation as described in article 16.8.2 shall be objective and that can, as far as possible, be expressed in monetary terms in respect of achieving maximum value for money.**

However Section 3 of the SBD document, issued by FPPPAA, which included a sub section with title "**Determining the Bid Offering Better Economic Advantage"** is not drafted as per the requirements stipulated on Article 16.8.2 & Article 16.8.3 of the PPD. The criteria in the SBD stipulated for **Determining the Lowest Evaluated Bid (the bid offering better economic advantage)** are the same as the technical requirements stipulated as a 'must meet criteria' in the method of selection through **the lowest price. The criteria indicated in the SBD for determining the bid that offer better economic advantage** are not designed in a way to be expressed in monetary terms or other sustainability criteria (such as environmental protection and social development) that ensure value for money.

The following" Must meet criteria" are used to determine, technical qualification of bidders:-

1. **Adequacy of Technical Proposal**
2. **Specific experience of the Bidder**
3. **Qualifications and competence of the key professional staff**

Qualifications and competence of the key professional staff

Hence, **the use of functional or economic value criteria in a balanced manner with price criteria is compromised** as the criteria in the SBD that are alleged to ensure **Better Economic Advantage** have failed to meet the requirement stated in Article 16.8.2 & 16.8.3 of the PPD criteria.

Similar provision is stipulated under the public procurement proclamation, directive and SBD of the Addis Ababa City Administration.

While the pitfalls of the legal provisions is as described above, sector entities do not use sustainable requirements as a qualification criteria and the method of selection in all of its bids is the lowest price method. On the other hand sector entities require bidders to comply with environment, social as well as health and safety standards during implementation of the contract, as a result sector entities include in their bidding document qualification and experience of environmentalist and safety engineers required to be deployed during contract implementation.

Moreover, the public procurement directive of both the Federal and Addis Ababa stipulate the procurement practice to be environmentally friendly and did not harm the safety of the public.

The evaluation and qualification criteria in the bidding document tends to focus on legal, technical, financial and professional aspects with no room to consider sustainability criteria such as social and environment as well as economic implication.

[33] By Beles Engineering P.L.C contracted by Children's Investment Fund Foundation(CIFF)done in March 2023

Gap analysis

The environmental, social and economic aspects are not considered as an evaluation criteria and neither used in the course of evaluation. The criterion is more on the technical and financial aspect.
The public bodies do have no practice of using sustainability criteria and is a new concept for the sector.

Criteria stipulated in the SBD in relation to **determining the Bid Offering Better Economic Advantage are ineffective**

While contracts of the sector include environmental and social requirements and require compliance of the requirements during implementation; sustainability requirements are not defined as qualification criteria, instead bidders are required to deploy professionals necessary for implementing environmental requirements

Recommendation

The regulatory body to introduce the use of the sustainability criteria in the legal framework along with a guideline framed to capture the sector context.

- Revise the criteria used in the SBD for determining bid offering better economic advantage. Provide verification protocols, monitoring KPIs and contract management mechanism for the sustainability and non-price attributes. While social and environmental considerations have been recommended, the government should be defining the SPP specific targets in social and environmental category, based on which the SPP criteria should be provided in bidding documents.

Introduce procurement provision that require public bodies to set sustainability requirements as qualification criteria.

Develop qualification criteria that used to evaluate bidders' capability on complying for sustainability requirement

Sub-indicator 9(b)
Selection and contracting in the sector
Analysis of a sample of contracts in the sector shows that:

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

The Federal PPL A(57) &(58) stipulates the condition and procedure for two-stage bidding. Moreover, about pre-qualification on PPD A(20). The provision stipulates the procedures followed to ensure qualified and eligible participants are included in the competitive process. However, the procuring entities follow the common procedure-single stage bidding even for complex procurements.

There is neither use of pre-qualification nor two-stage bidding for the case of Addis Ababa City Administration.

According to the Federal PPD, sub article (18.1) the use of two-stage bidding is indicated as "other international procurement procedure" and hence applies to only international bidding.

Gap analysis

Though two-stage bidding and pre-qualification are included in the Federal PPL and PPD, the procuring entities in the sector are not using even for complex projects that comprise Dam construction, in case of irrigation and deep well construction in case of water supply

Some procuring entity in the sector thinks that there is no complex procurement, and all the technical specifications (schedule of requirement) can be developed by a consultant or with the public body staff. Hence, there is a notion that the procurement scope did not require the additional input from the market for better development of schedule of requirement. However, the procuring entities do plan and execute complex projects such as water supply and mega irrigation projects that may necessitate to deviate from the default approach of conformance specification and seek the market input through the use of performance specification.

Lack of standard bidding document for pre-qualification and for two-stage bidding including the invitation to bid as well as evaluation formats has discouraged the procuring entities in the sector to focus on using commonly used arrangements such as a single-stage one envelope or two envelope procedures.

The capacity of the procuring entities in the sector to manage multi-stage procedure is limited including when and how to apply/use. Moreover, there is also a notion that the multi-stage procedure could take much time in the process of identifying the successful bidder.

Recommendation

Assist the procuring entities in the sector to use multi-stage procedures during procurement of works contract related to water supply and/or irrigation to benefit from the market in providing a comprehensive technical specification, thereby, ensuring qualified bidders in the process.

Develop and disseminate required procurement documents that can easily guide the procuring entities in the sector to use multi-stage procedure including customized standard evaluation formats.

Provide a guidance note to the public entities in the sector on the application of multi-stage procedure including international practice to help the entities to strategically adopt such procedure in procurement of water supply and irrigation schemes regarded as high value and high risk.

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 SBD(works) prepared by FPPPA [34]for national and international is used as a standard for the sector regardless of the size and value of the contract. The current SBD(works)-dated November 2011 in most cases support the works contract planned through a Design-Bid-Build approach. The SBD comprised the required parts and sections and is clear for the prospective bidders.

[34] Can be accessed from the website: http://www.ppa.gov.et/index.php?option=com_joomdoc&view=documents&path=SBDs&Itemid=257

Gap analysis

The current SBD(works) dated November 2011 is mostly applicable for works contract planned based on a Design-Bid-Build project delivery method and can not be used comprehensively for other types of project delivery methods such as: Engineering Procurement Construction(EPC)/Turnkey, Build Own Transfer(BOT), Build, Own, Operate and Transfer(BOOT), Management Contracting Approach(MCA).

Water supply projects do comprise electromechanical equipment, pipes and fitting, among others, and the current SBD(works) did not have such provisions for proper management of the supply and installation of the items. Hence, the procuring entities in the sector are forced to insert additional provisions, other than, standardized ones.

There is no standardized procurement document that can be used for contracts that focus on outputs such as performance based contracts.

Moreover, the SBD (works) dated November 2011 has either a unit price/admeasurement or lump sum approach for payment. And did not consider other payment approaches such as cost plus, target cost where some could have implication to reduce claims related to price adjustment for items as observed in unit price/admeasurement contracts that is currently and commonly used in the sector.

For bidders with interest in EPC, BOT and BOOT, the current SBD in use in the sector did not attract and affects the broad participation of potential competitors especially for mega projects related to irrigation as well as some in water supply.

Moreover, the current SBD is not suited for use while planning and executing small value works contract.

Recommendation

Prepare SBD(works) that can be used in the sector for a range of project delivery methods and contract types, inter alia, are: Engineering, Procurement and Construction(EPC)/Turnkey, Build Own and Transfer(BOT) and Build Own, Operate and Transfer(BOOT) as well as cost plus, performance based contracts and small value contracts.

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

As per the public procurement proclamation, the default procurement method is open bidding, and procuring entities may use other methods in accordance with the conditions stipulated in the proclamation.

The choice of the procurement method is usually based on the threshold set in the directive, and in most of the cases the threshold dictates the procurement method.

Beyond the threshold, depending on the construction site location and attributed to security and remoteness and related issues, where it is presumed that private contractors may not be interested to participate, in which case the work will be directly given to SOEs that has a good track record of accomplishment.

Absence of sufficient local contractors in the sector for the execution of contracts related to drilling of wells(which is also reported on a study conducted on "Establishment of Water Borehole Cost Drivers and Competitive Market Prices[35]" on page-6, table 2.1 shows active drilling companies in the range of 30 to 40 in number out of the 393 recorded in the government licensing authority),construction of medium and large dams gives rise to contracts being directly awarded to SOEs.

Whenever, there is the need to go for other methods, justifications are documented in a public body if required as per the legal framework. For example in using restricted tendering, the documentation is kept indicating the tender is advertised twice nationally but failed to attract bidders. The applicable thresholds during the time of assessment was shown in the below table:

Procurement method	Type of Procurement	Existing Threshold in Birr	Improved/Upgraded Threshold in Birr
Open bid through NCB	Works	150,000,000	600,000,000
	Goods	50,000,00	200,000,000
	Consultancy Service	7,500,000	30,000,000
	Non Consultancy Service	21,000,000	84,000,000
Restricted Bid			
	Works	6,000,000	15,000,000
	Goods	1,500,000	3,750,000
	Consultancy Service	900,000	2,250,000
	Non Consultancy Service	1,200,000	3,000,000
Proforma			
	Works	500,000	1,000,000
	Goods	200,000	400,000
	Consultancy Service	120,000	240,000
	Non Consultancy Service	150,000	300,000

[35] Study conducted by Beles Engineering P.L.C on Ethiopia, South Sudan, Kenya and Tanzania contracted by Children's Investment Fund Foundation(CIFF) dated March 2023

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Gap analysis

There is a customary practice in the sector to deviate from the legal framework while choosing procurement method in two ways,(i) through decision of the public body`s higher officials recorded with minutes of meeting ,and (ii) Request Letter to FPPPA(in case of Federal) from procuring entities demanding waiver to use other procurement methods such as direct or restricted procurement method this has been observed in some of the irrigation projects as well as procurement of water pumps, tractors with plough. Both approaches of changing procurement method from the default recommended method is mostly to expedite the completion of works/delivery of the goods without taking into account the principles of the public procurement.

Direct procurement to SOEs in the sector for the construction of various water works is allowed without conducting detail market analysis, and solely on the basis of justifications unrelated to procurement where the essence is to expedite the work and shielded with a reason that the private sector has a limited capacity.

For mega irrigation projects there is a tendency to deviate from using open international competitive procedure despite it meets the threshold specified for international bidding, this is to skip the challenge related to securing foreign currency had the contract been awarded through open international competitive procedure. Hence the package is sliced not to fall within the threshold set for international competitive bidding.

Procurement strategy is not prepared to guide the choose of the optimal procurement method in the sector.

Change in threshold that highly determines the procurement method is usually communicated to the public bodies in the sector through a circular as an amendment to the procurement directive. This change in the threshold applies uniformly to all sectors and did not account the market condition affecting the sector procurement especially related to drilling of boreholes and medium and large dam construction.

Recommendation

In all situations, follow the provision in the legal framework to choose the right procurement method in the sector that is supported through detail market research.

Security, remoteness and other issues may trigger to deviate from the recommended procurement method but should also be substantiated with the pros and cons against ensuring the principles of the public procurement, so as to also provide same opportunity for the market and arrive at the most suitable procurement method in such situations.

Contracts that involve drilling of boreholes should be carefully and exceptionally managed to select the suitable procurement method that also commensurate with the market condition (availability of sufficient drilling companies). As per the study conducted by Beles Engineering P.L.C contracted by CIFF dated March 2023 and titled as “Establishment of Water Borehole Cost Drivers and Competitive Market Prices” indicates not more than 40 active drilling companies exist out of the registered 393(as taken from the database of the licensing authority) with an implication that the majority left the drilling business or become inactive imposing a risk on the business.

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: **Minor gap**

Red flag: No

Qualitative analysis

The SBD(works) under the Bid Date Sheet (BDS) - ITB 25.1 and 28.1 further allows the PEs to specifically indicate all pertinent information to bidders on bid submission procedure as well as the bid opening place, time and date.

The ITB 28.1 also clearly stipulates the bid opening ceremony will be held in the presence of the bidders or their legal representatives. Their absence will not preclude the public body from opening the bid. There is bid submission register and opening attendance sheet. Bid opening minutes are signed and properly documented.

There is no practice of inviting civil society to monitor the bid submission, receipt and opening. However, the invitation to bid and instruction to bidder allows the presence of “any other “who chose to attend the opening ceremony.

Gap analysis

Extension of bid closing, if any, in the reviewed contracts are not found and properly documented in the sector.

Procurement notices in some cases in the sector did not exactly indicate the date and time of bid closing and opening, in lieu, left for the prospective bidders to arrive through counting the floating period against the date of invitation.

There is no practice of attending the bid opening ceremony by civil societies.

Issuing of receipt for bidders who submit their proposal is not commonly practiced in procuring entities under Addis Ababa City Administration.

Recommendation

Provide comprehensive information on the bid submission procedure including feasible deadline date and time for submission on the issued bidding document.

Clearly indicate the deadline date and time in the procurement notice to avoid confusion on bid submission which sometimes become a source of complaint due to late submission to avoid the biased approach to arrive at the deadline for submission though counting the floating periods as of the advertised date.

Procuring entities should be encouraged to invite representatives from civil societies for attending the bid opening ceremony and demonstrate transparency of the bid process.

Procuring entities under Addis Ababa City Administration are recommended to practice Issuing of receipt for bidders to confirm submission of proposal by the respective bidders.

Assessment criterion 9(b)(e):
Throughout the bid evaluation and award process, confidentiality is ensured

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The procurement legal framework [36]require the process to be confidential.

The assessment identified the practice followed by the public bodies in the sector that, it starts from the bid opening where the bid opening committee will check the bid box is well sealed and timely opened immediately after the deadline of the bid submission(usually after 30 minutes of bid closing) in the presence of bidders/their representatives, the committee shall check, inter alia, and records the name of the bidders, readout price, bid security amount and type and sign on the envelopes which then will be transferred to the ad-hoc committee to commence the evaluation which ensures confidentiality in the process.

In addition, the public bodies will establish technical evaluation committee (an ad-hoc committee) who will by law[37] is obliged to notify that the members of the committee have actual or possible conflict of interest there by refraining in the process, which will help to keep the confidentiality of the process.

The Procurement Endorsing Committee in addition will review and check whether the evaluation was based on the issued bidding document or not as well as PPL ad PPD which also help to monitor any malpractices during the evaluation process.

In some of the cases when the procurement is directly awarded to SOEs, there might be lack of attention to keep the confidentiality of the process.

Gap analysis

The practice of direct contracting and restricted bidding to high value contracts in the sector could gradually affect the extent of confidentiality in the overall procurement process.

The PPL para 32 (Rule of Ethics in Public Procurement and Property Administration) requires personnel engaged in public procurement and property administration to maintain confidentiality throughout the procurement process. Besides, the assessment didn't come across cases of breach of confidentiality. However, specific measures within the procurement system in support of confidentiality are not taken like requiring evaluators to sign a declaration to uphold confidentiality in the sector.

Recommendation

Use the most optimal procurement approach and strictly follow the procedure in the legal framework for bid opening, evaluation and award to keep the confidentiality of the procurement process in the sector.

As indicated in the coreMPAS, consider providing tools and templates in the sector to enforce confidentiality provisions including for declaration form for conflict of interest.

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: **Substantive gap**

Red flag: No

Qualitative analysis

As indicated in the coreMAPS, the procurement proclamation [38]allows two types of evaluation approaches: (i) the bid that is found to be responsive to the technical requirements and with the lowest evaluated price;(ii) bid offering better economic advantage ascertained on the basis of factors affecting the economic value of the bid which have been specified in the bidding documents, which factors shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable.

In works contract that comprise electromechanical part, the selection criteria mostly focus on attributes related to civil work and did not apply appropriate techniques to comprehensively consider the electromechanical part.

Given a quantitative indicator is not set for the criterion, the assessment team requested the private sector in the survey about absence of rule on "abnormally low bids" has led bidders to get contracts that did not account the best value for money (Q.57). Nearly 89% of the 38 respondents said that bidders get contracts having no capacity to execute contracts with high quality and cost effective manner. 11% responded "No".

Gap analysis

The volume of the work and realistic completion period in most of the cases is not sufficiently indicated in the bidding document which has an impact on the use of appropriate techniques, thus making it difficult to achieve the best value for money.

The technical criteria set in the bidding document in some cases are not in conformity with the volume of work (example: annual turnover requirement may be on the higher side which may not achieve competition and difficult to arrive at the best value for money).

As indicated in the coreMAPs, the award criteria are limited to the least cost and merit point evaluation only. Given the development in the market and the increasing complexity of procurement, other award criterion should be considered in the legal documents and applied in practice.

Recommendation

Set criteria and appropriate evaluation techniques in the sector which are pertinent enough to determine the best value for money that commensurate with the size and value of the envisaged contract.

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

[36] A.36 of Addis Ababa PPL and A.44 of Federal PPL
[37] A.321(1-a) of the Federal PPL and A.24(1-a) of Addis Ababa PPL
[38] A.43(8) of the Federal PPL and A.35(8) of Addis Ababa City Administration PPL

As stated in the coreMAPS, the procurement legal framework [39]stipulates the manner in which the contract award is notified. The PEs comply with the provision by notifying the contract award decision both to the successful and unsuccessful bidders including the reason why the unsuccessful bidders are not considered.

In some of the reviewed procurement contracts with reference number BG/OWNP/W/01/2020 and BG/OWNP/W/02/2020, it was noted that the letter written to the unsuccessful bidder was not found. This was also associated with poor record keeping.

Gap analysis

The proclamation[40] demands to announce to the public the award of the works contract for those with a value of more than ETB 10M and above 2METB for consultancy services on the PPA`s website but such practice is rare and often awards not announced through the website. Moreover the website[41] lacks to capture recent awards concluded by the public bodies in the sector. And it was found that the same list as indicated in the coreMAPS was observed during the time of assessment from the FPPPA`s website that indicates lack of regular updating.

Due to poor record keeping it was found that the letter written to unsuccessful bidders was not found showing an indication of non-compliance with the provisions of the legal framework to announce the outcome of the evaluation for all participated bidders.

Recommendation

Timely announce as prescribed by procurement law for all participated bidders, the outcome of the evaluation taking into account all the pertinent information as indicated in the procurement law for the sector.

Scale up the practice of contract award in the sector through publishing in a media of wide circulation in addition to issuing an award letter.

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

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

As stated in the coreMAPS, details related to protection of environment is stipulated in SBD(works) under section-6: “schedule of requirement”.

Moreover, the SBD(works) issued by FPPPA comprised clause (GCC 34.4) on environment where the contractor is expected to consider the latest technologies to preserve the environment while in construction. The clause is read as follows: *The Contractor shall ensure that Works conform to applicable environmental and quality standards, that no chemical or other product/equipment is used in such a way as to cause negative impact on the environment in general and occupational health hazards and shall employ the most recent technology, safe and effective equipment, machinery, materials and methods, as necessary.*

Other than the environment, the social aspect is not included in the contract clause and neither the economical aspect including life cycle costing.

The new Federal proclamation endorsed by the council of ministers requires public bodies to consider sustainable procurement as stipulated under A.28.

Gap analysis

Contract clauses used in the sector did not adequately address the sustainability aspects of the project with respect to, inter alia, on social and economy.

Recommendation
Revise the available SBD(works) and RFP(Consulting services) to adequately include the sustainability consideration in the General Condition of Contract and where appropriate.

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

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The SBDs(works) have no such provision under the General Condition of Contract nor the special condition of contract stipulate on incentives/disincentives. A provision of bonus clause implies there is incentive, and penalty clause for disincentive. However in the current SBD used for works for both the national and international, there is neither bonus clause nor penalty clause.

As stated in the core MAPS, a liquidated damage of 0.1% per day of the remaining amount shall be deducted from the contractor`s invoice provided there is a slippage of activities, but such clause merely is devised to address time slippage and not poor performance emanating from poor quality of constructions. On the incentive aspect Clause 75 of the General Condition of Contract for Works (Section 7 of SBD for WORKS issued by PPPAA) stipulates that the contractor will be paid for accelerated performance if the ACCELERATION is made in response to the public body’s request Thus, though not comprehensive, there are incentive and disincentive clauses in the SBDs.

Gap analysis

The incentive and disincentive clauses in the SBDs are not comprehensive to cover poor performance in the quality of the work.

Recommendation

Conduct a simple research on the pros and cons of using bonus and penalty clause in water sector for the construction of water supply/irrigation as well as for consulting services related to feasibility, design and supervision to decide the impact on the rate of project completion/delivery. Incentive seems to encourage the contractors to get more profit, in which case may improve the rate of project completion, which has been recorded as low for the sector.

Application of bonus clause and penalty clause in the sector depends on the willingness and readiness of both parties which necessitates discussion with the private sector before including in the procurement documents.

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

Conclusion: **Minor gap**

[39] A.46(1) of the Federal PPL and A.38(1) of Addis Ababa City Administration PPL
[40] A.6(6) of the Federal PPD
[41] http://www.ppa.gov.et/index.php?option=com_ppa&view=procurement&layout=ProjectDisclosure&Itemid=89

Red flag: No

Qualitative analysis

The efficiency of the selection process is not to the required level, at least, did not meet the planned/anticipated duration to complete the selection process, due to delay in the process attributed to, inter alia, clarification request on issued bidding document ,delay in ad-hoc committee assignment, procrastinated evaluation session, and PEC approval delay.

The selection process is also ineffective in that the quality of the evaluation report is not exhaustive and comprehensive such as it was observed that post qualification was missed in the reviewed sample contracts.

An award letter is issued to the successful bidder. However, sometimes the content of the letter is not in accordance with the stipulation in the PPD. Moreover, though awards are required to be published in the PPA`s website above a specified threshold, there is no such practice affecting the transparency of the process.

Quantitative analysis [42]

Average time to procure per procurement method:

Method	Av. time	Range
ICB Works	243	182-297
NCB Works	167	90 - 377
NCB Goods	122	49-186
NCB Consultancy	145	77 - 329

On average, 5 responsive bids were obtained in procurements conducted using NCB procedures, and 3 using ICB procedures for Works. For Goods on average 6 submissions are obtained and 2.5 on average are responsive on NCB procedures. For Consulting Services on average 3.5 proposal submissions are obtained and 2.5 found responsive on average.

Compliance with publication requirement: The average percentage of the contracts that are fully in compliance with publication requirement are only 42%. The level of compliance again is quite different in different PEs with a range that varies from 0% to 100% of compliance.

Number of successful process: 95%.

Gap analysis

The technical specification/schedule of requirement included in the bidding documents is not either comprehensively used in evaluation or only certain aspect of it is considered affecting the quality of the evaluation and desired outcome hence make the process ineffective. Water supply projects that have both the civil work and electromechanical do have such issues where there is a tendency to focus more on the civil work during the selection process without detail review of the electromechanical parts that make the whole process ineffective.

The content of the award letter, in some cases, did not convey all the information that are pertinent as per the provisions in the PPD that affect the transparency of the process including limitation in posting award information in the PPA`s website as per the threshold specified in the directive.

Recommendation

Enhance the quality of the evaluation report including use of comprehensive specification that can be easily followed and applied to select the bidder meeting the schedule of requirement to make the selection process effective, efficient and transparent in the sector.

Contents of the award letter to be complete to convey all the required information as per the requirement of procurement directive. Moreover, to post awards in PPA`s website above the threshold specified in the procurement directive to enhance transparency in the sector.

As indicated in the coreMAPS, procuring entities in the sector to regularly review the procurement processes to identify inefficiencies and bottlenecks. Based on these, define and implement measures to improve the processes. Monitoring efficiency and transparency of the processes should be incorporated as part of the monitoring and reporting function by the regulatory body.

Sub-indicator 9(c)
Contract management practice in the sector
Examination of contract management practices based on a sample of contracts in the sector shows that:

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

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

From the sampled works contract, most are not completed in a timely manner. Some with time extension and others without recorded time extension. Various reasons is accounted for the slippage in contract implementation.

The e-GP strategy require development of e-PMIS as indicated under 8(b)(a) but so far not such system which could have helped in contract monitoring.

Quantitative analysis

Delays up to 1095 days in consultancy and 1302 in works have been identified in sampled Works contracts. The average delay in Works is 39.13% in samples contracts.
The delays noted In consultancy and goods are in the range 13-122 % in Consultancy and 33-48% in Goods

Gap analysis

Timely completion of works contract become a challenge in the sector where there is a delay in completion due to, inter alia, the following: the capacity of the local contractors, high inflation, design change, incomplete design, poor procurement planning (while estimating the contract duration which is not based on critical path method to determine the reasonable contract duration of the envisaged contracts), right of way issues etc.

Challenge to timely secure Letter of Credit (LC) from Commercial Bank of Ethiopia for imported items for civil work construction.

[42] 84% of the sampled contracts were implemented and completed during the COVID 19 and the subsequent crisis (national and international) that have significantly disrupted the economy especially the construction sector.

Lack of structured and capable contract management unit in the sector and if it exist has capacity limitation to manage works of having complex components and scope.

Clear and updated master schedule and work schedule for the envisaged works contract is not used in the sector and followed strictly in implementation.

Recommendation

Ensure there is a complete design, qualified supervision staff/consultant, and timely possession of the site to the contractor before commencing the construction.

Strictly follow and use an updated master schedule (work schedule, labor schedule and equipment schedule) during supervision and devise a means to avoid slippage and if occurs immediately introduce means of accelerating the work.

The discussion with the Ethiopian Association of Contractors forwarded the following recommendation: Contractors may fail to complete the works but there is no such effort to conduct analysis why such failure occurs and lessons learnt in the process. Hence failure analysis and learning from to enhance for the future is highly advisable.

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 supervision and contract administration in the sector including the inspection/quality control in most cases is managed through hiring SOEs or through PE`s own staff.

In most of the cases there is a procedure of provisional acceptance but when it comes to final acceptance, due to the defect liability period of 365 days the procuring entities will not give much focus to trace and pay the retention money based on detail inspection whether there is defect on the work/parts of the work and proper maintenance is carried out.

In addition there is no such project closing report(PCR) to document lesson, so as to avoid the problems in future contracts and enhance the positive aspect of contract management.

Due to the absence of national guide on contract management, the public bodies do manage contracts arbitrarily and usually there is no such order of records that shows the sequence of procedure followed to manage the contract. Various public bodies' in the sector categories contract types in a different way, sometimes in contrary to procurement documents, due to absence of national contract management guideline.

Gap analysis

Absence of contract management and supervision manual in the sector contributes to weak system in inspection and quality control as well as supervision.

The discussion with one of the PEs in the sector revealed that: Electro-mechanical test center such as for pumps is not sufficiently available and adequate in the country which will affect the installation, testing and commissioning of the water supply projects implying gap in properly carrying out inspection and quality control.

Quality control measures such as laboratory test, field test or level of workmanship is not found from the sampled contracts which contribute to loose inspection and quality control in the sector.

Inspection is merely done for payment purpose, and timely and regular inspection is not practiced in the sector.

Acceptance of goods related to water pumps and tractors with plough from sampled reviewed contract reveal that there is no proper inspection report, in lieu a letter stating the acceptance of the goods from the technical section which is annexed with the GRN is considered for final acceptance.

Recommendation

Develop a comprehensive a sector wide manual for contract management and supervision including inspection and quality control to be used by the Client and Consultants when required.

Ensure contractors` to introduce a smart method of statement to ease the inspection, quality control and supervision in the sector.

All quality control measures including laboratory tests shall be well documented and used during supervision.

Timely follow rectification of defects and settle the retention money for final acceptance of works contract in the sector.

Assessment criterion 9(c)(c):
Invoices are examined, and payments are processed as stipulated in the contract

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

Most of the contracts are admeasurement in case of works contract and payment is done based on the actual executed quantity. The consultants/PEs will review the invoices/payment certificates prepared by the contractor, and once reviewed and verified will be submitted to the public body/client. The finance unit will check the payment request against the signed contract and will be processed if there is no error in the payment calculation.

In cases where contracts are implemented far away from the public bodies, the government structure in place at Regions will also involve in the examination of invoices.

There is also case where the public body deploy its Engineers on the site in addition to Consulting engineers, in such cases, the Client`s Engineers shall also examine the invoices.

The time taken to process the payment is stipulated in the GCC 59.3 on the SBD(works) issued by FPPPA. The procuring entity usually set thirty-days and sometimes 28 days(in addition to the time in GCC for City Administration) to effect payment under special condition of the contract.

Gap analysis

Contract provisions provide a separate system for payment of civil works and electromechanical equipment, pipes and fittings in case of water supply projects. Where there is a different payment modality in one works contract. The civil work payment is based on unit price and volume of work executed while for the pipes, fittings and electromechanical equipment through percentage, based on supply and installation. However, the items can be intermingled with the works and uniform payment modality would have been used.

Recommendation

Adopt a consistent approach for examining invoices in case of water supply projects for both the civil work and pipes, fittings and electromechanical parts which are construed as part of the civil work. Hence, the recommended payment modality adopted for examining invoices for civil works shall be followed.

Assessment criterion 9(c)(d):

Contract amendments are reviewed, issued and published in a timely manner

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

Contract amendments related to variation in case of works contract are reviewed but the time taken for the review at different levels adds to the delay in timely issuing such amendments.

Contract amendment clauses not well articulated in the general condition of contract, and become a source of argument how to handle claims pertaining, for instance, to price adjustment. The contract amendments process does not follow the established procurement decision approval procedures, which includes review and approval by the Bid Endorsing Committee. The approval process of variation in sector entities under Addis Ababa City Administration involve approval of the City Planning Commission which creates delays. Regarding publication, there is no practice of publishing contract amendments in all sector entities of both Federal Government and the Addis Ababa City Administration.

Approval of contract amendment is expected to encounter more delay when approval of the Ministry of Planning & Development prior to issuing contract amendment pursuant, is sought as per the stipulations under Article 17 (5) of the project administration and management proclamation number 12120/2020.

Quantitative Analysis

On average there was an 8.29% contract amendment (0.5%-22%) on one of the PEs. On the other PE there were only two sampled Contract with contract amendment data. The Amendment in the two contract was 58% and 277%.

Gap analysis

The time taken for revision and approval for contract amendment is long, especially, for sewer line construction which has to go through various tiers of approval in the sector.

Contractors delay in claiming for an amendment will also contribute to the delay in the process due to the back and forth between the parties in the sector.

Amendments are not published, in lieu, are documented in a file box.

The delay in approving the contract amendment could significantly affect object of the procurement. Moreover mitigation of the delay would not be resolved by improving the procurement system, unless the requirements under Article 17 (5) and 18 (6) of project administration and management proclamation number 1210/2020 are improved in a way to avoid delay in approving contract amendments.

Recommendation

Provide tailored training on contract amendment and the triggering conditions for the same. Moreover, guidance note from the regulatory bodies to be issued and followed during request for amendment.

Devise an effective mechanism of processing and approving contract amendments.

Introduce practice of publishing 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

Qualitative analysis

As indicated in 7(a)(c) and 8(b)(a) for the sector, similarly there is no system in place to measure and improve the procurement practice.

FPPPA has introduced KPIs but are not used in the sector to capture key procurement data and information.

The e-GP system in the federal Government has a system that integrate the KPI system, however the system is at early stage of implementation and it doesn't start generation of key performance indicators. On the other hand the e=GP system is not yet rolled out to sector entities under regional governments and city administrations

The simplest form such as contract registration form is also not available to monitor the procurement progress.

Gap analysis

Absence of procurement statistics for completed contracts and thus is not possible to draw lessons so as to improve the procurement practice in the sector.

Given the sector finances high value and complex works contracts, there is no system in place to measure procurement practice as well as a procurement statistics not available to understand the extent of the procurement performance.

The E-GP system, which could potentially provide data on procurement statistics, is at early stage of implementation at Federal Government level and it doesn't start generation of report.

The e-GP system is not yet rolled out to sector entities under regional governments and city administrations

Recommendation
Establish a system in the sector that can adequately inform the procurement statistics for the range of contracts in the sector regardless of size and value, to be used as an input to improve the procurement practice.

FPPPAA is recommended to expedite implementation of the e-GP system and get the benefit from full feature of the EGP system.

Roll out of the e-GP system to sector entities under regional governments and city administrations should be facilitated

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

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

The PPL and PPD bestows responsibility to the head of public body, procurement unit and procurement endorsing committee to lead the procurement process of the respective procuring entities in the sector and there is no room for external stakeholders to involve in the public procurement.

The opportunity of involving relevant external stakeholders in procurement is not utilized in the sector due to absence of such provisions in the legal framework, since involvement in the public procurement is also attributed to accountability and responsibility.

However, some procuring entities in the sector sometimes held a forum with the private sectors (consultants, contractors and suppliers) to get feedback on public procurement but did not have the opportunity to directly involve in the public procurement.

In addition, the following is considered to exist in terms of legal framework:

Article 13 (3) (c) of proclamation no. 590/2008 (Proclamation on access to information and freedom of mass media), stipulates that " Any public body shall before initiating any project publish, on the principle of transparency and accountably or communicate to the public generally or the persons affected or likely to be affected by the project in particular, the relevant facts available to it or to which it has reasonable access."

Article 18 (10) of Proclamation 1210/2020 also require Ministry of Planning and Development to "Publicize the main projects information on widespread channels including the webpages;".

The above provisions provide opportunity relevant external stakeholders to access information and directly involve in public procurement. However such opportunity is not utilized as the provisions are not enforced as public bodies do not publish project information as required by the proclamation. Civil societies are also not strong enough to demand access to information on feasibility, bidding and implementation of projects, which will be the basis for their direct involvement.

As a result, there is no practice of involving relevant external holders on different stages of public procurement. However local administrations in the area where the road passes by are involved in managing right of way issues as part of contract management at contract implementation stage.

Gap analysis

There is lack of enforcement of the provisions granting opportunities for direct involvement of relevant external stakeholders in public procurement. Civil societies are not strong enough to demand enforcement of provision in proclamation on access to information and freedom of mass media that help the general public to seek information on procurement process.

Recommendation
Consider the use relevant external stakeholders in the public procurement in the sector, if, found important with proper legal support through proper revision of the PPD.

Introduce a system where whistleblowers can involve in the public procurement to enhance the transparency of the process.

Enforce provisions related to publication and access to project information

Raise awareness of the public and strengthen civil societies on accessing and utilizing project information

Create conducive environment participation of external stakeholders, such as civil societies, in the procurement process of procuring entities that include in planning phase; bid/proposal opening; evaluation and contract award and contract implementation.

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

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

Record keeping has been a challenge where there is no adequate procurement and contract records and is difficult to retrieve. As indicated in indicator-7 due to limited applicability and use of online portal and information system, records are not complete and accessible.

There is also no responsible body for record keeping and according to Ethiopian law, both financial and procurement records should be kept for at least ten years, however the current practice shows even during the construction period of schemes, there is no sufficiently available documentation that shows the history of both the procurement and contract management.

The accuracy of the records in some cases is also an issue.

Quantitative analysis

No single contracts reviewed comprise a complete and accurate records in the sector. There is no systematic data base management system and records are kept in different units (Procurement, Contract management, Finance) in the entities. There was no single contract with complete and accurate record and database in the entities assessed.

Gap analysis

Records are not complete and cannot be accessed in a single file, if found, are disordered and incomplete.

The attention given to record keeping is quite minimal, that there is a tendency to even damp the documents as if they may not be required in the future.

In this assessment, records of mega water work projects could not be accessed due to mismanagement and lack of responsible body to look after these records.

Recommendation

Devise mechanism that enables procuring entities to keep procurement records in a single file and with easy accessibility.

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Sub-indicator 9(d)
Efficiency of application of tools that support achievement of socio-economic development aspirations relative to the sector

Assessment criterion 9(d)(a):
Efficiency of application of the tools for attaining socio-economic development objectives

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

Preference is considered as a tool to attain the socio-economic development through encouraging the local construction and consultancy companies as well as Small and Micro enterprises (SMEs). The following preference is given for the local companies when competing in international bid in the procurement directive[43]:

i. For construction and consultancy services 7.5. %
ii. For Small and Micro Enterprises (SME) competing on national bid, 3.5% margin of preference is granted.

The assessment team requested the private sector in the survey about current policies of the government provide suitable incentives to SMEs to compete at a level playing field (Q.52). Nearly 34% of the 38 respondents said “Yes” and 66% responded “No”.

The assessment team requested the private sector in the survey about perception on the appropriateness of preferential policies in public procurement bidding documents (Q.46). Nearly 56% of the 41 respondents said “Favorable” and 44% responded “Unfavorable”.

Quantitative analysis

No contract is awarded through applying the margin of preference as most of the reviewed contracts are within the threshold set for national competitive bidding. No contract is sources of complaint due to margin of preference given the contracts are within the threshold set for national competition and involvement of SME is almost rare in such cases.

Gap analysis

Efficiency of the margin of preference is found to be less effective in attaining socio-economic development objectives. The winning chance of SME in national bid is less when competing with local construction companies. Moreover, international bids seldom planned and lesser chance of applying the margin of preference for local construction companies.

Recommendation

Devise an additional tool in the sector which can boost the participation of local companies including SME to largely contribute to the socio-economic development objective.

The Home Grown Economy introduced by the GoE could be a useful platform to further discover other similar tools for the sector which aims to achieve socio-economic development objectives.

Assessment criterion 9(d)(b):
The fiduciary risks associated with application of socio-economic development tools are identified and mitigated by measures that ensure the principles of transparency, competition and value for money

Conclusion: **No gap**

Red flag: No

Qualitative analysis

There is no identified fiduciary risks associated with application of socio-economic development tools.

Quantitative analysis

In all the sampled contracts reviewed, margin of preference was not applied and hence, the fiduciary risk associated with the application of socio-economic objectives appear low. The assessment did not come across sources of information such as electronic procurement system or database of national regulatory to carry out the quantitative analysis. But as per the private sector survey, the application of the preferential; treatment was favored by 53% of respondents and not favored by 47% of the respondents.

Gap analysis

Recommendation

Sub-indicator 9(e)
Protection of the environment in the sector

Assessment criterion 9(e)(a):
Level of efforts in the sector for protection of the environment

[43] Sub Article 16.20.2 of the Federal PPD and Sub Article 15.20.2 of Addis Ababa PPD

Conclusion: **Substantive gap**

Red flag: No

Qualitative analysis

Environmental Impact Assessment Guideline was issued by the Federal Environmental protection Authority dated May 2000 which, inter alia, require implementing agencies to get an EIA approval for the envisaged works contract before commencement of construction. Moreover, it presents the various assessment aspects that should be considered while conducting EIA for irrigation projects, Dams and Reservoir projects, among others.

The SBD(works) under GCC 34.4 and section-6 “schedule of requirement” clearly outline the need for the protection of the environment.
In actual construction, the Engineers on the site do overlook the environmental aspect and focus more on the physical aspect. Public bodies in the sector do have environment department which is not strong enough to take the lead in the oversight of projects as to whether protection to environment is complained or not.

In some procuring entity in the sector during design of projects carried out by consultants, environmental impact assessment is carried out; in which environmental risks associated with the construction are identified and mitigation measures proposed. In the construction phase, the construction contract provisions oblige contractors to submit environmental management plan in which risk mitigation measures are listed. In normal circumstances contractors submit the plan. The Employer/Supervisor during contract administration shall monitor as per the environmental management plan. There are however in house design of small projects for which EIA is not carried out.

Quantitative analysis

All the works contracts reviewed in the three entities have provisions for protection of environment. And in bigger contracts Contractor is required to prepare Environmental Management plan and submit for employer’s approval.

Gap analysis

Recommendation

Assessment criterion 9(e)(b):
The fiduciary risks associated with execution of measures for protection of the environment are identified and mitigated in a way that ensures transparency, competition and value for money (VfM)

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The team didn’t come across cases in which the client identified fiduciary risks associated with the execution of measures for the protection of the environment. From the discussion with the client, it appears that there were no fiduciary risks associated with the execution of measures for protection of the environment..

Quantitative analysis

The assessment did not come across sources of information such as electronic procurement system or database of national regulatory to carry out the quantitative analysis.

Gap analysis

There rae no tools and practices in identifying fiduciary risks associated with the implementation of measures associated with protection of the environment.

Recommendation

Prepare tools/guidance for assessing fiduciary risks associated with the the execution of measures for protection of the environment and implement, as appropriate.

Indicator 10. The public procurement market is fully functional and competitive at the sector level

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

Assessment criterion 10(a)(a):
The sector 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 sector procurement system. The dialogue follows the applicable ethics and integrity rules of the government

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

The sector follow the Federal public procurement directive issued by FPPPA, and whenever there are changes to procurement legal framework or procedure, in most of the cases the private sector is not part of the dialogue which is also confirmed during a workshop held in Capital Hotel and Spa with the private sectors on October 10, 2022.

The assessment team has also learnt from Ethiopian Contractors Association (ECA) that, though FPPPA invited them for dialogue, there comments/feedbacks are not considered as an input while changing some of the legal framework issued through circular.

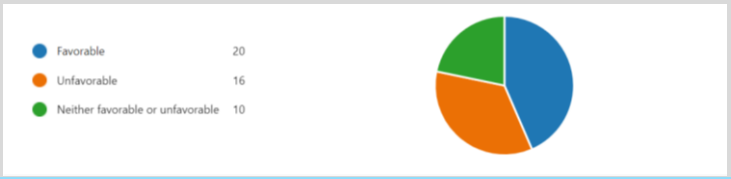
The Addis Ababa Bureau of Finance- Procurement Directorate organizes annual forum in collaboration with the City’s chamber of commerce. In the forum, representatives from the private sector, public bodies, and the oversight authorities (the Finance Standing Committee of the City Council) participate. The main focus of the forum is to discuss all relevant procurement issues that affect the procurement performance and propose possible solutions. The BoF uses the opportunity to orient the procurement rules of the city, and highlight the expectations from the public bodies and the suppliers/contracts/SMEs. However, the assessment team has not been presented with evidence showing the proceedings of the forum.

In addition, the procuring entities, held consultation with the contractors and consultants where such discussion was not properly documented and the assessor could not come up with the discussion points, conclusions made and next actions.

In all cases, there is no evidence that such open dialogue was held whenever formulating changes to the procurement system.

Quantitative analysis

The assessment team requested the private sector in the survey about perception of government officials' openness and effectiveness in engaging with the private sector in the Water Sector when developing policies, and processes to promote competition and sustainable reforms (Q.37). Nearly 43% of the 46 respondents said "Favorable" , 35% responded "Unfavorable" and 22% responded as "neither favorable nor unfavorable".



Gap analysis

Open dialogues were held with the private sector and is not clear if those dialogues were presented when initiating and formulating changes to the procurement system in the sector due to absence of documented evidence.

Recommendation

Document records and keep minutes, if possible, that can show the participation of the private sector in the open dialogue.

Introduce a system whereby the private sector can always provide, through open dialogue, inputs when formulating changes to the procurement system including other stakeholders.

Assessment criterion 10(a)(b):

The sector 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: **Substantive gap**

Red flag: No

Qualitative analysis

The private sectors mostly approach the public bodies at the time of bidding and there is no such core relationship or developmental partnership with each other. Hence, the public bodies do not have any plan to capacitate the private companies including the SME.

Procuring entity is claiming absence of sufficient and qualified drilling contractors for water supply project and on the contrary there is no program or plan to reinforce their capacity and encourage other private companies to join the drilling industry.

Same case is observed, where the local contractors have less capacity to execute dams and related structure, hence most of such projects are done through SOEs such as Ethiopian Construction Enterprise that shows the sector is not focusing on capacitating the private companies.

The assessment team requested the private sector in the survey about their participation in any capacity-building trainings organized by entities involved in the Water sector (Q.39). Nearly 38% of the 47 respondents said "yes", 58% responded "No" and 4% responded "not sure".

Gap analysis

Despite the challenge of getting sufficient drilling contractors, there is no capacity building mechanism in the sector.

For irrigations projects that comprise dams, canals, spillways etc, it is observed that there is no capable private sector for the design and execution where the procuring entity depend more on the SOEs.

Recommendation

Plan a capacity building mechanism for the private sector to the limit that they can perform to the required performance standard including designing and constructing dams, wells, spillways etc.

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

Assessment criterion 10(b)(a):

The private sector is competitive, well organized, willing and able to participate in the competition for public procurement contracts in the sector

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

The are a number of private sectors in the water sector working as contractors, suppliers and consultants with various grades as issued through the Ethiopian Construction Authority. However, their participation and competition is not satisfactory due to the fact that most have no internal capacity (both financially and technically) especially for drilling contractors which was indicated on the study conducted by Beles Engineering P.L.C[44]. to manage drilling of borehole. Hence are not well organized (capacity wise), with few competing and getting the contract.

As indicated in the coreMAPS, there is more interest on high value contracts where the private sector is competitive. On the contrary for small value contractors the interest of the private sector decline and usually small business are not competitive.

Lack of capacity in bid preparation for works contracts as number of contracts fail to meet simple requirements and at times fail in preliminary evaluation stage

Based on the discussion with the Ethiopian Contractor`s Association, the requirements set in the evaluation criteria like, annual turnover, did not commensurate with the capacity of the private sector including using tight selection criteria that contributes to lack of competition and interest to submit offers.

Quantitative analysis

Out of 40 contracts sampled from the three entities (27 works, 6 Consultancy services and 7 Goods) only one contract (works) is awarded to a foreign firm.
The sampled contract in amount total ETB

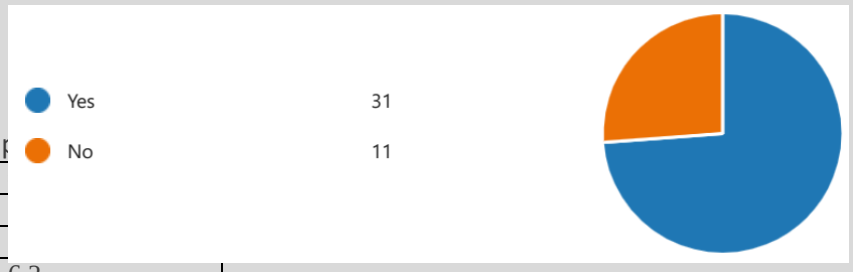
[44] Assessment and Establishment of Competitive Market Costs of Water Borehole drilling in Ethiopia, Kenya, South Sudan and Tanzania

	Total sampled contracts	Awarded to Local	Awarded to Foreign
In Number	40	39	1
In Value (ETB)	7,976,988,455.78	7,746,669,877.71	230,318,578.07
		97.1%	2.9%

It was not possible to find data on total no. of registered suppliers as well as total number of suppliers in the country.

In addition, the information collected from the private sector is presented below:

The assessment team requested the private sector in the survey about: do you agree with the statement that in the Water Sector "Few get many jobs. Many stand without jobs", which means that the current policies and practices in the country has led to an oligopolistic market (Q.50). Nearly 74% of the 42 respondents said "yes" and 26% responded "No".



The following table shows the number of bids received for p

Category	
Works- NCB	
Works- ICB	
Goods	6.2
Consultancy	3.4

Gap analysis

The private sector, following the Covid-19, has experienced significant financial decline in that it becomes less competitive and often fail to meet qualification criteria.

Only few of the private sectors are well-organized with a status comparable with ISO standard.

The willingness of the private sector gets decreasing due to the high inflation in the market which, for some, is the reason to refrain from doing such business.

Recommendation

Provide a stable supply chain for the private contractors to boost their confidence and become competitive in the public procurement market.

Provide a price inflation shield for the private sector through amendment of the legal framework including, inter alia, price adjustment for contractors with a duration less than 18-months.

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

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

Bids in the sector are open to all eligible bidders including for international companies.

The security condition in the country, in some cases, is a constraint where the private sector avoid taking a risk.

The main systemic constraints inhibiting the private sector to access the public procurement market is related to shortage of foreign currency to secure LC. The private sector is hesitant to participate in bids that involve import of items from abroad.

Inflation is also considered as one of the factors that inhibit participation in procurement opportunities. The market price is considered highly volatile, at times in a scale impossible to predict/speculate. There are no proper clauses of price adjustment included in the contracts to entertain such inflation where most of the contracts have shorter than 18 months contract duration.

As per the discussion with the Ethiopian Association of Contractor`s, during the bidding process, some clients request the bidders to present the machineries physically, which could affect and inhibit the participation of the market.

Quantitative analysis

The assessment team requested the private sector in the survey about: What is your perception of the appropriateness of conditions in the public procurement market (Q.41). Nearly 36% of the 42 respondents said "Favorable" and 64% responded "Unfavorable".

Gap analysis

There is a perception that the market is dominated or monopolized by few contractors.

- Shortage of foreign currency and the associated delay in opening Letter of Credit and effecting payment.

Challenges associated with right of way issues, inflation and its impact on the qualification of bidders. .

The procurement market is not inclusive to cater all the range of opportunities, where, some of the high value and complex contracts are directly awarded to SOEs.

Canceling bid for the purpose of fitting to specific need, which, will inhibit to access the procurement market.

Recommendation

- Consider the systemic challenges during design, preparation of bidding documents, evaluation and contract implementation. Though it is related to the overall performance of the economy, it is appropriate to define mechanism of apportioning foreign currency for priority projects and availing within the appropriate time frame. Unless availability of foreign currency is granted, avoid signing of contracts that involves payment in foreign currency. Provide necessary support for local industries and manufacturers that are engaged on production of goods and services that substitute imports.

Avoid and/or minimize the constraints that inhibit the private sector from accessing the procurement market, inter alia, shortage of foreign currency (Dollar) inflation security etc.

Open the procurement market to accommodate a range of procurement opportunities including those directly given to SOEs.

Sub-indicator 10(c)
Functionality and the level of competition in works contracts awarded in the sector

Assessment criterion 10(c)(a):
Existing data allows determination, and categorization if applicable, of the principal contractors in the sector, in a manner that is sufficiently precise

Conclusion: **No gap**

Red flag: No

Qualitative analysis

The procuring entities did not establish such a data that captures the list of major contractor`s in the sector including with their grade and category(water supply, drilling, irrigation etc). However, the data is readily available in the Ethiopian Construction Authority (ECA), which is the responsible for registering and issuing license to various contractors based on their financial and technical capability. In addition, PPPA register and publish list of contractors and suppliers that can allow categorization.

Gap analysis

Recommendation

Assessment criterion 10(c)(b):
National and international contractors qualify, in sufficient numbers, in terms of turnover, equipment and personnel, to ensure effective competition and the best value for money to meet the needs of procurement of works in the sector

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

For Addis Ababa Water Supply and Sewerage Authority, if is found that in the range of 3 to 9 qualify/become responsive for water supply and sewerage projects out of offers submitted in the range of 8 to 15. This might also be due to the vicinity of the site and availability of construction material nearby as opposed to remotely located sites.

For irrigation projects (dams, spillway etc) and Water supply project (drilling of wells), there is a problem to get qualified national contractors with the required turnover, equipment and personnel in a sufficient number that commensurate with the size and value of the contract. Thus, there is a tendency to directly award to SOEs.

In irrigation projects, it is observed that, though the volume of work is large enough to attract international market, there is a practice to fragment the work to the level it can be within the national open bid threshold. This is to avoid the risk of dealing with Foreign Currency, given the shortage and less likelihood of the procuring entity to secure foreign currency for payment to international contractors.

Gap analysis

Absence of qualified national contractors to bid for contracts related to construction of mega irrigation projects as well as drilling of wells for water supply.

Most of the national contractors are affected by Covid-19 with a decline in the financial resource and hardly satisfies the turnover requirement. Moreover, the current inflation, also, impose a risk for some to be Bankrupt.

Recommendation
Properly package irrigation projects and secure enough foreign currency to allow for participation of international contractors and increase competition in the process.

Capacitate the national contractors including joint venture with SOEs in the execution of mega irrigation projects as well as drilling of wells.

Assessment criterion 10(c)(c):
Horizontal SPP objectives are converted into bid evaluation criteria that facilitate equity in the treatment of bidders and that ensure predictability and transparency in the bidding process

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

SPP objectives are not converted in to bid evaluation criteria. The only available provision in relation to SPP objective is the 7.5% margin of preference for local contractors. It is also noted, as part of social sustainability.

The provision of 3% margin of preference for SMEs and 7.5% for domestic contractors is well indicated in the bidding documents[45]. But in sampled contracts there was no application witnessed as no SMEs and foreign firms participated in sampled contracts.

The concept of Horizontal SPP is new and the commonly used criteria are considered in the bid evaluation for works and consultancy contracts.

[45] Under ITB sub article 34.4 and 34.2 respectively for SBD(works)

Gap analysis
No bid evaluation criteria that take into account the Horizontal SPP objective.

Recommendation
Convert SPP objectives in to bid evaluation criteria that facilitate equity in the treatment of bidders and that ensure predictability and transparency in the bidding process

Justify the use of Horizontal SPP in the sector including converting into feasible evaluation criteria that is in line with the sector context.

Assessment criterion 10(c)(d):
Unit prices in the bids for construction works conform to the official reference prices published by the appropriate competent national agencies and are in line with the objectives defined in horizontal procurement policies

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

The procurement directive [46]stipulates for the purpose of price adjustment the Central Statistics Agency (CSA) to issue price index or price indicators. However, this does not represent an official reference price but merely are price index/indicators.

Official reference prices are not available for the water sector to be used for water supply, irrigation etc and neither published by any of the national or regional agencies such as CSA(Central Statistics Agency). Unit prices quoted by contractors is not checked due to absence of such reference prices, and is often not possible to identify abnormally low bids and front loaded prices.

For Addis Ababa, the construction Bureau issue reference prices where much of the item is related to buildings and few items that are common for both the water and building are considered. There is also a case where the official reference prices are higher than unit prices in the bid.

Gap analysis

The water sector lacks official reference prices and no responsible agencies to prepare reference prices.

Recommendation

Establish an agency at all levels responsible to prepare an official reference price for the sector that encompass all the range of works contract including irrigation, water supply, sewerage, treatment plants etc. to enable easy comparison of the unit price in the bid conform with the official price reference.

Assessment criterion 10(c)(e):
Major systemic obstacles limiting access of the national private sector to construction works contracts are identified and appropriate measures are defined to remove them

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

It was not possible to find such studies carried out to identify systemic obstacles limiting access of national private sector to construction.

The involvement of the SOEs in some of the mega projects where private sector is believed to have less capacity limits to access the national private contractors.

During the discussion with Ethiopian Contractors` Association, the assessment understood that collateral requirement has increased from insurance companies where most of the contractors could not afford to meet the requirement, which, affect the private sector participation and availability to bid.

In addition, delay to open Letter of Credit, delay in getting payments after being certified by the Engineer and Right of way problem also are systemic obstacles.

Gap analysis

The involvement of SOEs is most of the contract with direct award become a major systemic obstacles, where, such contracts seems to be “reserved” for SOEs limiting to access the national private sector, and this perception is deep rooted that the private sector seems to accept without complain.

Dominancy by foreign contractors thereby limiting access to the national private sector, nowadays, becomes a common agenda.

Specific experience is too stringent that it did not invite ample bidders in the process and thus limits to access the national private sector.

Recommendation

Address the systemic obstacles such as inflation, dominancy by foreign contractors and involvement of SOEs to increase the availability and easy access of the national private sector.

Avoid systemic issues like challenge of LC, delayed payments and right of way/site possession delays.

Assessment criterion 10(c)(f):
Major systemic obstacles limiting access of international private sector to construction works contracts are identified and appropriate measures are defined to remove them

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

It was not possible to find such studies carried out to identify systemic obstacles limiting access of national private sector to construction. However, the political environment and the ban on some economic activities tend to limit the access to the international private sector.

[46] Sub article 16.14.2(c) of the Federal PPD and sub article 15.14.2(c) of Addis Ababa PPD

The bilateral and multi-lateral imposition and sanctions tends to also be one issue that directly or indirectly affects the international market and hence private sector.

Management of Foreign Currency in the Banking system does dictate to access international market/private sector.

Gap analysis

Access of the international private sector for construction of various water development schemes (particularly for irrigation projects that comprise dams, spillways etc) is almost nil, mainly, due to shortage of Foreign Currency (Dollar) which cannot be met with the current capacity of the financial institutions in the country.

Measures are also not defined to remove some of the obstacles related to availability of Foreign currency.

Recommendation
Address the systemic obstacles such as scarcity of foreign currency to increase the availability and easy access of the international private sector.

Sub-indicator 10(d)
Functionality and the level of competition in works contracts awarded in the sector

Assessment criterion 10(d)(a):
Existing data allows determination of the principal national suppliers operating in the sector, in a manner that is sufficiently precise

Conclusion: **Minor gap**

Red flag: No

Qualitative analysis

See 10(c)(a) which is same for suppliers.

Gap analysis

Recommendation

Assessment criterion 10(d)(b):
National and international contractors qualify, in sufficient numbers, in terms of turnover, equipment and personnel, to ensure effective competition and the best value for money to meet the needs of procurement of works in the sector

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

From the reviewed sampled three goods contract, two are directly awarded the reason for direct award for the two contracts were due the urgency of the goods where the PE requested a waiver to change the procurement method and one contract was planned through restricted bidding where 7 local suppliers were invited out of which 3 submitted and 2 become responsive. This piece of information showed there is a risk of getting sufficient numbers of national suppliers with the required capacity.

Overall, recent trends show, limited number of suppliers in goods tenders. The reasons attributed, inter alia, are; (i)The price hike in goods over the last few years which bidders found it difficult to predict and take in to account in their offers. As per the procurement law there is no consideration of price adjustment for contracts less than 18 months and goods delivery period is normally less than 18 months, (ii)In NCB tenders, currency of payment is Ethiopian Birr; and the Ethiopian birr is consistently devaluating and bidders find it difficult to predict and accommodate the devaluation.

Gap analysis

Suppliers are hit with the shortage of foreign currency where they are not in a capacity to import goods in required quantity and quality.

The LC process with the Commercial Bank of Ethiopia is allocated for prioritized commodities which did not entertain the private sector.

Recommendation

Increase the local manufacturers` capacity to substitute imported goods, where local suppliers can be slowly transformed to manufacture goods locally.

Assessment criterion 10(d)(c):
Horizontal SPP objectives are converted into bid evaluation criteria that facilitate equity in the treatment of bidders and that ensure predictability and transparency in the bidding process

Conclusion: **Substantive gap**

Red flag: Yes

Qualitative analysis

The provision of 3% margin of preference for SMEs and 15% for locally manufactured goods is well indicated in the bidding documents. But in sampled contracts there was no application witnessed as no SMEs and foreign firms participated in sampled contracts .

SPP objectives are not converted in to bid evaluation criteria.

Gap analysis

See 10(c)(c)

SPP objectives are not converted in to bid evaluation criteria.

Recommendation
See 10(c)(c)
Introduce guidance for converting SPP objectives in to bid evaluation criteria.

Assessment criterion 10(d)(d):
Bid prices for goods conform to the official reference prices published by the appropriate competent national agencies and are in line with the objectives defined in secondary procurement policies

Conclusion: **Substantive gap**
Red flag: Yes
Qualitative analysis See 10(c)(d)
Gap analysis See 10(c)(d)
Recommendation See 10(c)(d)
Assessment criterion 10(d)(e): Major systemic obstacles limiting access of the national and international private sector to the goods supply market are identified and appropriate measures are defined to stop them
Conclusion: **Substantive gap**
Red flag: Yes
Qualitative analysis See 10(c)(e)
Gap analysis See 10(c)(e)
Recommendation See 10(c)(e)
Sub-indicator 10(e) **Functionality and level of competition in the consulting services contracts awarded in the sector**
Assessment criterion 10(e)(a): Existing data allows determination of the national consultants operating in the sector, in a manner that is sufficiently precise
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis Refer 10 (c) (a)
Gap analysis
Recommendation .
Assessment criterion 10(e)(b): National and International consultants with the requisite qualifications (personnel with experience and expertise), are in sufficient numbers, to guarantee effective competition and the best (VfM) to meet the needs for consulting services in the sector
Conclusion: **Substantive gap**
Red flag: No
Qualitative analysis From the reviewed contracts, for assignments that are planned through open national competitive, it is identified that on average around 6 firms are shortlisted with a range of 2-3 being assumed to get a score above the minimum technical score. Such figure may not show enough competition of firms in the sector where only 2 or 3 firms considered for combined evaluation may not satisfactorily meet the effective competition and value for money. No date pertaining to international consultants, as the reviewed contracts are solely planned based on open national competitive approach.
Gap analysis Getting sufficient consultants that met the minimum technical score is usually a challenge imposing lesser competition to achieve value for money. Most of the design and supervision projects are dominated by SOEs leading to decline in the participation of the private sector.
Recommendation Capacitate the consulting firms in the sector through arrangement such as joint venture to enhance their capacity.
Assessment criterion 10(e)(c): Horizontal SPP objectives are converted into evaluation criteria for offers that facilitate equity in the treatment of candidates and that ensure predictability and transparency in the consultants' recruitment process
Conclusion: **Substantive gap**
Red flag: Yes
Qualitative analysis See 10(c)(c)
Gap analysis See 10(c)(c)
Recommendation See 10(c)(c)

Assessment criterion 10(e)(d): Consultants' recruitment rates conform to cost estimates and are in line with the objectives defined in horizontal procurement policies
Conclusion: **Substantive gap**
Red flag: No
Qualitative analysis From the reviewed contracts it was observed from the annual procurement plan that the cost estimate for two consultancy assignment was 6,000,000ETB and 700,000 ETB while the contract price comes out to be 2,080,350ETB and 1,195,827.5ETB respectively. Which vividly show cost estimates are overpriced and underpriced which did not conform to the consultants offered price.
Gap analysis The public bodies in the sector have no reference prices to estimate the Consultant rates related to key staff remuneration and other expenses. And hence is difficult to align with the objectives defined in the horizontal procurement policies.
Recommendation Empower the sector to conduct regular market analysis and develop reference prices for realistic estimate of the consultants` rate.
Assessment criterion 10(e)(e): Major systemic obstacles limiting access of the national and international private sector to the consulting services market are identified and appropriate measures have been defined to stop them
Conclusion: **Minor gap**
Red flag: No
Qualitative analysis See 10(c)(f) Absence of price adjustment during the original contract period of consultancy service, even for contract periods above 18 months.
Gap analysis See 10(c)(f) Absence of price adjustment during the original contract period of consultancy service, even for contract periods above 18 months.
Recommendation See 10(c)(f) Revise provision of the public procurement directive in a way to allow adjustment of the contract price based on predefined parameters. The adjustment should be allowed at least on annual basis.

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

Assessment criterion : Accountability, Integrity and Transparency are ensured in the procurement process
Conclusion: **Substantive gap**
Red flag: Yes
Qualitative analysis The study conducted by Beles Engineering P.L.C with a title "Assessment and Establishment of Competitive Market Costs of Water Boreholedrilling in Ethiopia, Kenya, South Sudan and Tanzania" contracted by Children's Investment Fund Foundation(CIFF) dated March 2023 indicates the following as a sign of corruption "Corruption during procurement and supervision is rampant in few countries. Indirectly the hidden payment for this is included in invoice and the same company is made to pass the bidding by corruption during bid evaluation process." In addition the study indicates "In Ethiopia and Kenya there is a growing role of intermediaries (brokers). As revealed from a number of drilling companies, they pay up to 10% of the net profit to brokers. This is apparently the case in urban and peri-urban areas where private companies and individuals show interest in developing their own borehole. For government and affiliated organizations, the role of brokers is very limited. There are also rumors of widespread corruption, mainly during the procurement and supervision process." Moreover, "The licensing process is cumbersome. There is also transparency problem. It is exposed to corruption. This is especially visible, in drilling and water use permits". The PPA`s website populate a statement issued by the Director General which focus on "System is underway that will avoid corruption related to public procurement" translated from Amharic where one of the proposed approach in the statement was to introduce an electronic procurement where it is planned to launch the electronic procurement in 115 public bodies. The statement was issued to one of the Regional TV Station called Amhara Media Corporation(AMC) dated July 31, 2022(found from the website: http://www.ppa.gov.et/). From the study conducted by World Bank entitled as "Diagnosing Corruption in Ethiopia" [47]under chapter-6 presents sign of corruption in the construction sector being framed into direct and indirect warning, each of the signs are: Direct Warning Signs of Corruption: • Poor-quality construction • Inflated Costs • Delayed Implementation • Neglected Maintenance

[47] https://openknowledge.worldbank.org/entities/publication/93a1a6c6-e3f9-5589-bf43-316a85ec2ea3

Indirect Warning Signs:

- Unequal relationship between parties to the contract
- Poor enforcement of professional standards
- Higher multiplier between public sector and private sector salaries
- Discretionary Powers and Barriers to entry to market

The high turnout cost associated with the completion of works contract associated with significant cost overrun indicates the system lacks integrity where budget allocated are not properly utilized for the intended purpose, such cost overrun was shown under the respective indicator in this assessment.

Procurement information are not disclosed to the public and merely locked in a shelf where the PEs tend to avoid any criticism that arise from mal practices affecting the transparency of the process.

Gap analysis

The procurement system in the sector is not robust enough to ensure accountability, integrity and transparency.

Recommendation

The regulatory bodies in the sector to play their role to timely aware the public bodies in the sector on the procurement governance building including provision of tailored training, exercise regular procurement audits and follow the same to address the gaps.

Priorities procurement governance as a top agenda and devise a short and long term plan to achieve a good governance system.

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