



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF MONTENEGRO PUBLIC PROCUREMENT SYSTEM

2024





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MONTENEGRO

Assessment of the Public Procurement System Volume I

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Telephone: 202-473-1000 Internet: www.worldbank.org

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CURRENCY EQUIVALENTS

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1 Euro = 1.087 USD

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Montenegrin Fiscal Year: 1 January-31 December

In this document:

Fiscal year (FY) refers to the Gregorian FY, unless described as Montenegrin FY.

Year refers to the Gregorian calendar year, unless described as Montenegrin calendar year.



Acronyms and Abbreviations

ADR	Alternative dispute resolution
APC	Agency for Prevention of Corruption
APW	Administration of Public Works
CA	Contracting Authority
CPB	Central Purchasing Body
CPRPPP	Commission for the Protection of Rights in Public Procurement Procedures
CRB	Complaint Review Board
CSO	Civil society organization
DCB	Decision on Capital Budget
DLI	Disbursement-linked indicator
DPPP	Directorate for Public Procurement Policy
DPs	Development Partners
EO	Economic Operator
EPCG	Montenegrin Electric Enterprise AD Niksic
EPPS	Montenegrin Electronic Public Procurement System, “CeJN” in Montenegro
GDP	Gross domestic product
GoM	Government of Montenegro
HIF	Health Insurance Fund
HRMA	Human Resources Management Agency
IAU	Internal Audit Unit
ICB	International Competitive Bidding
IDA	International Development Association
IFB	Invitation for Bids
IFMIS	Integrated Financial Management Information System
INTOSAI	International Organization of Supreme Audit Institutions
IPPF	International Professional Practices Framework
ISO	International Organization for Standardization
KPI	Key performance indicators
LBFR	Law on Budget and Fiscal Responsibility
L/C	Letter of credit
LIB	Limited International Bidding
LNB	Limited National Bidding
MAPS	Methodology for Assessing Procurement Systems
MEAT	Most economically advantageous tender
MDG	Millennium Development Goals
MoF	Ministry of Finance
MSE	Micro and small enterprise
NCB	National competitive bidding
PAR	Public administration reform



PB	Public Body
PE	Procuring Entity (=Public Body)
PEFA	Public Expenditure and Financial Accountability
PFM	Public financial management
PforR	Program-for-Results (the World Bank financed operation)
PIFC	Public internal financial control
PPL	Public Procurement Law
PPP	Public-private partnership
SAA	Stabilization and Association Agreement
SAI	State Audit Institution
SDG	Sustainable Development Goal
SIGMA	Support for Improvement in Governance and Management initiative
SOE	State-owned enterprise
SPD	Standard Procurement Document
SPP	Sustainable Public Procurement
TAIEX	Technical Assistance and Information Exchange instrument of the European Commission
TI	Transparency International
UNCAC	United Nation Convention Against Corruption
UNCITRAL	United Nations Commission on International Trade Law



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This MAPS Assessment is co-led by Tanvir Hossain, Senior Procurement Specialist, and Orjana Ibrahim, Senior Procurement Specialist, and assisted by a team established by the Bank, including Carmen Calin, Procurement Specialist, Zuhra Osmanovic-Pasic, Senior Governance Specialist, Serena Coccio, Governance Specialist, and Tamara Travar, Procurement Specialist. The team received valuable support from Ana Đurnić, Local Consultant, and Huseyn Ibrahimli, data analytics Consultant. Rajesh Kumar Shakya, e-Procurement international expert, directed the e-GP assessment, and Yolanda Tayler, International Development Consultant provided overall guidance and direction as well as valuable substantive input. The assessment was conducted under the oversight of Chenjerani Simon B. Chirwa, Practice Manager. We would also like to thank Milan Lakicevic, Country Economist in Montenegro, Dragana Varezic, Senior Program Assistant, and Sara Tadic, Team Assistant.

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Executive Summary

1. Background

Montenegro, a small upper-middle-income country in the Balkan peninsula, that aspires to attain the living standards of the European Union (EU) yet faces economic challenges with a GDP per capita only one-fourth of the EU average. The National Strategy for Public Administration Reform 2021-2030 and the Reform Agenda 2022-2024 underscore the significance of enhancing public sector capacity and improving procurement processes for better value for money. While Montenegro has made progress in reforming its public administration, particularly in public procurement, the European Union Annual Implementation Report for Montenegro 2022 emphasizes the need for continued efforts in transparency, competition, and efficiency within procurement processes. A Public Expenditure and Financial Accountability (PEFA) assessment in 2019 identified deficiencies in the public procurement system and a lack of capacity in the public sector.

The Directorate for Public Procurement Policy (DPPP) under the Ministry of Finance (MoF) requested the World Bank's technical assistance in carrying out a holistic assessment of the public procurement system using the Methodology for Assessing Procurement Systems (MAPS). The World Bank, in collaboration with other development partners, including EBRD, EIB, CoEB, supported the government by conducting the assessment of the public procurement system in Montenegro with the primary objective to determine their quality and effectiveness, identifying strengths and gaps to enable government reforms by adopting and implementing modern, efficient, sustainable, inclusive procurement systems nationally. Additionally, the assessment included an evaluation of Montenegro's electronic public procurement system (EPPS) using MAPS electronic procurement supplementary module. While various procurement reform initiatives were undertaken over the last decade, there has not been any recent comprehensive assessment of the system strategically grounding the procurement reform efforts. EU membership remains the top priority and has been driving the reform process. Montenegro has been working to align its legislation and institutional setup with EU standards. The latest report from the European Commission, issued in November 2023, included an assessment of the requirements of Chapter 5 – Public Procurement, under which, the EC judged that Montenegro is in between “moderate” and “a good level of preparation” in the area of public procurement. Some progress was achieved in 2022 in aligning with the EU *acquis* and in further improving the functioning of the electronic procurement system. In July 2020, the government adopted a new Procurement Law with several bylaws, which is well-aligned with the EU *acquis*. The law continues to be based on principles of transparency, open competition, fairness, equal treatment, non-discrimination, cost-effectiveness, and efficiency in use of public funds, but also adds new principles, including the principles of environmental protection, social and labor law and ensuring energy efficiency, freedom, and proportionality. Yet, translating the new framework of laws into effective implementation continues to be an ongoing effort.

The Government adopted a new 2021-2025 Strategy for improving public procurement and public-private partnership policies in October 2021. Accordingly, the Report on Implementation of the Action Plan for 2021-2022 was adopted and published on the DPPP website. The electronic public procurement system (EPPS), known as CeJN in Montenegrin, became fully operational in 2021. By March 2023, 675 contracting authorities and 4158 economic operators were registered in the system. The



implementation of e-procurement has the potential to significantly reduce the risks of corruption and breaches of competition rules, limiting the number of appeals.

In 2022, the total contracted value of Montenegro's public procurement reached EUR507 million or 8.6 percent of GDP, twice the value contracted in 2021¹ (EUR220 million or 4.4 percent of GDP), but still below the 2019 levels when the contracted amount reached 10.3 percent of GDP. The top 10 procurement categories by contracted amount account for about 70 percent of the procurement spend in Montenegro over the analysed period. These include construction works, medical equipment, chemical products, transport equipment, sewage, refuse, cleaning and environmental services, repair and maintenance services.

2. Assessment Methodology

The assessment was conducted from November 2022 to December 2023, using the MAPS II 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 (with 55 sub-indicators and 210 criteria) and 15 quantitative indicators, as a mandatory minimum.

The assessment covered the public procurement system as it applies in the entire country of Montenegro. The assessment was conducted through data analysis, interviews, desk review of documents, a survey of the private sector, and workshops. An analysis of the data available in the Electronic Public Procurement System (EPPS) was conducted for the period February 2021-March 2023 to provide an overall picture of the public procurement market in Montenegro. The assessment of the performance of the public procurement system based on the e-procurement data for the above-mentioned period included 12,523 bidding processes at the national level, managed by 675 contracting authorities, resulting in 12,324 contracts.

To complement the data analysis, a sample of 60 procurement cases from 7 procuring entities was also selected to support the qualitative assessment. This included an appropriate mix of goods, works, and consultancy contracts completed during the period 2018-2022 with a focus on strategically important and top-spending ministries and cutting across different levels of government. The sample selection followed the guidance of paragraph 28 of the MAPS Methodology 2018 to represent a mix of entities and categories of procurement to make it representative at an aggregate level. The strategy was discussed and agreed with the DPPP during the kick-off mission.

To validate the findings, the assessment team held on November 30, 2023, the validation workshop with stakeholders, including public bodies, the private sector, and development partners. The findings and recommendations were presented and discussed during these workshops. The opinion of the private sector was also sought through a workshop and a survey. Feedback received from 40 workshop participants and written feedback that was submitted by stakeholders after the workshop was considered in the MAPS report.²

¹ Such low values for 2021 are a consequence of the late adoption of the 2021 Budget (adopted in June 2021).

² DPPP, Commission for Protection of Rights in Public Procurement, State Audit Institution, and Administration for Inspection in Public Procurement submitted written comments that are attached to the minutes of the validation workshop.



3. Key Findings and Areas of Improvement

The Montenegrin government is highly motivated to enhance its public procurement system to boost confidence among both local and international parties in the system's integrity and efficiency. This is crucial for attracting more investment and promoting economic expansion. Ensuring equal access of all companies to public procurement, and particularly for SMEs is vital for economic growth as it fosters competition, innovation, and contributes to local development through job creation and supply chain networks. Concurrently, it leads to efficiency improvements for the government by reducing the costs and improving service delivery to citizens. Additionally, there is a strong focus on improving the allocation of resources and achieving better value for public funds. By doing so, the government aims to use its limited fiscal resources effectively to support vital national goals, including infrastructure development, social welfare improvement, and sustainable growth. These efforts reflect a dedication to sound governance and fiscal prudence, as well as a wider ambition for Montenegro's socio-economic progress on the international stage.

Over the last decade, the primary drivers of reform in Montenegro's procurement system have been the requirements set by the European Union. Montenegro's EU accession negotiations, particularly the conditions set within Chapter 5 – Public Procurement, have significantly influenced these reforms. The importance of these reforms was further highlighted in 2021 when Montenegro agreed to the revised enlargement methodology for its EU accession talks. This new approach means that negotiations for each cluster, including the one that contains Chapter 5, are opened collectively after meeting specific benchmarks. Chapter 5 is now linked with four other challenging chapters, such as Chapters 23 and 24, which cover economic criteria, public administration reform, and democratic institutions' functionality. Given this context, since the start of negotiations in 2012, the Montenegrin public procurement system has gained unprecedented importance. It is anticipated that this critical aspect of foreign policy will continue to be a key driver for procurement system reforms.

3.1. Strengths and Gaps of Montenegro Procurement System

The most notable **strengths** of the public procurement system in Montenegro include:

- The legal and regulatory framework is adequately recorded and is organized hierarchically, with precedence clearly established. The legal framework ensures the right to complain and the independence of the appeal body.
- Open Procedure is the default market approach and 80% of the tenders are realized through this method. The overall duration for implementing this procedure is around 76 days.
- The Montenegrin EPPS, established by the Public Procurement Law in 2019 and introduced in 2020, is an important development of the Montenegrin public procurement system covering important stages of the procurement cycle. Strengthened with a set of corresponding by-laws, it captures numerous data on the results of procurement procedures conducted through the system.
- The legal framework for PPPs and Concessions are based on fundamental public procurement principles, including the protection of public interest and of competition, transparency, non-discrimination, and environmental protection, among others.
- Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used. Contracting authorities apply consistently the guidelines and templates made available by DPPP.



- The PPL provides a clear description of the institutions that are involved in the domain of public procurement. In terms of existing forums for dialogue between the government and the private sector, both formal and informal mechanisms are in place.
- Recent reforms have introduced improvements that establish a comprehensive framework for internal controls and internal and external audit.

The most notable **gaps** of the public procurement system in Montenegro, include:

- The level of competition in Montenegro is low (an overall average of 3.5 bids per tender and 1.7 bids per lot over the analyzed period)³. The single bidder rate is very high irrespective of the procurement procedure (68% for the open tender).
- The legal framework does not regulate rules of participation in the public procurement market in a manner that eliminates barriers to participation, such as national licensing. Contract management is not defined in PPL or in the by-laws and there is no evidence that the country has a sustainable public procurement (SPP) strategy in place to implement SPP.
- The assessment has revealed low procurement efficiency, perceptions of collusion, lack of transparency and openness that discourage economic operators from participating in tenders. Unlike the 2019 PPL, the 2023 PPL does not include a clear statement regarding confidentiality and non-disclosure of information.
- Major deficiencies in the planning stage, such as lack of needs assessment, market research or contracting strategies to document the planning process. On planning and the budget cycle, there are no effective controls to ensure that all commitments are systematically captured in the FMIS and, as a result, CAs may exceed the budget amount if incurring commitments in excess of funds warranted to them.
- Incomplete tender documents published without contractual conditions, missing sustainability criteria and lack of merit-based criteria are hindrance to competition.
- Existing EPPS challenges include lack of IT experts within DPPP and lack of essential functionalities such as e-catalogues or electronic invoicing. The EPPS does not reflect the payments made under the signed contracts. No linkages to other relevant information for promoting transparency and competition are ensured through the EPPS, such as cases of corruption handled by the Agency for Preventing Corruption (APC), or court decisions for convicted firms.
- Procurement is not recognized as a specific function, with procurement positions defined at different professional levels, job descriptions and the requisite qualifications and competencies specified.
- Lack of specialized procurement audits, limited frequency of parliamentary hearings, and poor parliamentary oversight as well as the limited follow up on SAI's recommendations, all these hampers the implementation of audit recommendations and accountability of public procurement.
- The resolution of appeals has slowed down over the years and private sector perceptions are negative overall.
- There are no clear legal definitions of fraud, corruption, and other prohibited practices in procurement and available evidence and reports suggest very poor enforcement of laws on corruption, fraud, and other prohibited practices in procurement.

³ A tender means the procurement process of inviting and evaluating bids from suppliers to provide goods, works or services and it may have one or more lots.



- While the participation of CSOs in government's legislative drafting processes is prescribed by the law, legal gaps, such as the absence of specific provisions in PPL on CSO participation on the public procurement process, hamper citizen engagement in public procurement.

3.2 Key opportunities for improving procurement system efficiency.

The findings and gaps identified during the assessment, listed above and further detailed in the report, lend way to a series of recommendations aimed at advancing developments and addressing important gaps and challenges that prevent the public procurement system of Montenegro to reach its full implementation capacity. The key recommendations are grouped below around five (5) Strategic Objectives and that are presented in more detail in later sections, fall into broader categories as defined immediately below.

Strategic objective #1. Ensure that the public procurement legal framework achieves the agreed principles and complies with applicable obligations.

The legal framework should regulate rules of participation in the public procurement market to serve as a framework that battles any barriers to participation such as national licensing. Excessive bureaucratic requirements that impose constraints for participation of foreign bidders should be examined and streamlined or eliminated entirely. To expedite registration to EPPS, digital certificates should be processed to both national and international potential bidders. Additionally, the Law should spell out the eligibility requirements and exclude bidders with history of criminal or corrupt activities. Issues of confidentiality and exclusions to the scope and application of the law must be properly addressed. The legal framework needs to to strengthen contract management, allow appeals for simple procurement and reaching decisions on administrative debarment and other legitimate exclusions or international agreements.

Several priority actions are proposed to achieve this strategic objective:

- The rulebook that regulates simple procurement to ensure the protection of rights of participants in public procurement by including appeals for simple procurement.
- The legal framework to regulate rules of participation in the public procurement market, eliminating any barriers to participation, beyond the public procurement framework.
- The legal framework to (i) include process for reaching decisions on administrative debarment as well as other legitimate exclusions such as, adherence to UN Security Council or international agreements and exclusions for criminal and/or corrupt activities; (ii) mandate DPPP with the role of finalizing the administrative debarment and publishing the list of debarred economic operators in EPPS and (iv) further develop and define functions and responsibilities for managing contracts.
- Prepare a consolidated set of rules to cover the entirety of the procurement cycle and complement with separate regulations specific processes. Elaborate guidance notes for Contracting Authorities on the use of different ratio of thresholds between price and quality aspects during evaluation process.
- Elaborate template of procurement for different types of procurements under works, goods and services and ensure the option of customizing based on different selection methods within this type of procurement documents. Templates would be supplemented with a minimum set of



contract clauses or standard contract conditions for works, goods, and services consistent with internationally accepted practices.

- Develop a Sustainable Public Procurement strategy as part of the National Public Procurement Strategy and include relevant actions to implement SPP as part of the Public Procurement Action Plan for 2023-2025

Strategic objective #2. Enhance EPPS capabilities and its impact on public procurement efficiency.

Current challenges of the system can be addressed by prioritizing the interventions required. Most crucial is developing IT expertise within DPPP ranks to lessen dependency on external contracting agency while ensuring the establishment of a business continuity team, followed by enhancing the functionalities of the EPPS to capture payments, and support publication of crucial information, such as, evaluation reports and contract management data. Enhancement of the EPPS would require interfaces and interoperability with the supporting government services to facilitate the efficiency and consistency of data, particularly with the central register of companies, tax, budget/treasury authorities, and banks. Regular high-quality reporting of system performance is an important step, which also needs a strong, strategic overview that focuses on evidence of what is being achieved through public procurement and what scope there is to achieve more. The development of the monitoring mechanism, based on a system of performance indicators and interconnection of data sources will strengthen DPPP's monitoring function. A thorough review of the different practices at system level, in specific sectors or authorities will provide insights into potential ways to increase efficiency. Conducting spend analysis at country level to identify the most appropriate procurement strategies for different procurement categories will also inform the development of centralized procurement with a focus on revamping its capabilities and efficiency.

Several priority actions are proposed to achieve this strategic objective:

- Develop EPPS strategy to support open data standard and data analytics features, sustainability, capacity building for in-house expertise, communication, and governance frameworks.
- Upgrade the functionalities of the EPPS to support publication of crucial information on the tendering and contract management processes, capture data on contract management, craft dedicated debarment, complaints and appeal mechanism sections, and enhance efficiency of centralized purchasing based on a spend analysis.
- The system should be linked with the budget system in the Ministry of Finance to ensure the funds are committed for the procurements and other relevant business information systems.
- Develop a monitoring mechanism, based on a system of performance indicators and interconnection of data sources. Offer timely, comprehensive, and accurate data on procurement in an open-data and reader-friendly format on all aspects of the procurement process, including contract implementation.
- Establish a business continuity team and a dedicated helpdesk to be managed by DPPP.

Strategic objective #3. Strengthen competition in public procurement by resolving perceptions of collusion, lack of predictability of applicable contract conditions, lack of transparency and openness.



Competition levels are low in Montenegro and addressing anticompetitive practices calls for a set of measures ranging from examination of high entry barriers to determine whether they can be eliminated, fostering a regulatory environment that promotes competition in certain key sectors, for example licenses and standards requirements, and moving from qualification criteria and/or requirements designed to favor certain firms, as noted by the survey respondents. The analysis of EPPS data indicates that this issue of low competition may be beyond the powers of Contracting Authorities and that the Government of Montenegro should support Contracting Authorities by developing national, regional, or sectoral programs to enhance trust in the public sector, to foster private sector participation. Additionally, the entire procurement process merits revision and completeness; from the planning process, commencing with the assessment of the needs, the market, the sectors, and the capabilities of those carrying out procurement work to strategies for contracting. Procurement documentation must include all related information that potential bidders would need to be fully informed in advance, including the contract conditions. Contract management practices need to be recorded, monitored and reported consistently.

Several priority actions are proposed to achieve this strategic objective:

- Perform a wider review of the barriers which prevent economic operators accessing the procurement market by carry out an in-depth study of existing specific legislation, licensing, standards, and other requirements beyond public procurement which might impact the competition in public procurement. Resolve key obstacles related to the highly complex administrative process during contract execution and the delays in payments that may explain the low competition levels.
- Analyze the opportunity to introduce lists of approved economic operators (i.e., prequalified) in key sectors and the potential for aggregation of procurement demand, including introducing e-catalogues, to enhance competitiveness and achieve economies of scale. Analyze the reasons for cancellation to identify the appropriate measures to improve performance at system level and at sectoral or category level.
- Publish procurement plans early in the planning process, improve portfolio planning and develop outcome-oriented procurement strategies. Prepare guidance and tools to carry out market engagement, market research and consultation, to establish the estimate values, to increase transparency of the procurement activities and facilitate the understanding of interested parties, including the civil society and the economic operators, and issue complete tender documents, inclusive of contractual provisions.
- Conduct market consultations for major and/or complex projects and ensure predictability of the applicable contract conditions. Prepare annual public procurement strategy by contracting authorities managing high capital expenditure budgets. Conduct market engagement at government level.
- Develop tailored capacity building programs for economic operators to increase capacity to compete in public procurement. Prepare communication plans and organize dissemination sessions on key topics of interest.

Strategic objective # 4. Impulse professional development and continuous capacity building of key stakeholders.

Capacity building and professionalization of public procurement requires a broader and more inclusive outlook that would embrace, in addition to civil servants, private sector, non-governmental organizations,



and civil society for a more efficient public procurement system and to contribute to improved monitoring of public procurement market. It is essential to professionalize public procurement and recognize it as a specific function, with procurement positions defined at different professional levels and job descriptions with requisite qualifications and competencies specified. Training should be adequate and available. Both workload and capabilities of staff must be measured and systematically evaluated.

Several priority actions are proposed to achieve this strategic objective:

- The legal framework on civil servants and state employees includes provisions to ensure that procurement is recognized as a specific profession and establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.
- Elaborate, as part of the training program, also the system for evaluation of trainings conducted and analysis of feedback to inform the preparation of training program for the upcoming year.
- Tailor training programs in key sectors that could be drawn based on a needs assessment with the view to increasing the participation in public procurement. This could be part of a wider training strategy plan that would target all stakeholders of the public procurement system, according to the mandate and needs.
- Provide dedicated training to Line managers in Cas.
- Perform training programs targeted to private sector and civil society to raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists, and journalists to monitor procurement procedures.

Strategic objective # 5. Review of the efficiency and effectiveness of the control bodies, actively promote accountability, integrity, and transparency in the procurement process and streamline the control function.

The system of reporting corruption in public procurement as described in the normative and regulatory framework has yet to become fully effective in practice. Clear definitions of fraud, corruption and other prohibited practices in procurement should be inserted in relevant by-laws. There needs to exist a mechanism for detecting and effectively preventing corruption in procurement, because despite current framework, with responsibilities assigned to various government agencies, general private sector opinion about the effectiveness of anti-corruption measures is unfavorable. The legal regime should add a requirement or practice of adopting codes of conduct or ethics in areas of PFM or procurement. Encourage and support participation of CSOs and their watchdog function as well as citizens' participation.

Several priority actions are proposed to achieve this strategic objective:

- Introduce definitions of fraud, corruption, and other prohibited practices, as well as specific provisions on CSO participation in relevant by-laws and in procurement manuals, ensuring consistency with current definitions provided in the PPL and the Law on Prevention of Corruption.
- Introduce requirement for CAs to have a mandatory code of conduct in areas of PFM or procurement. Ensure that the Government's Code of Ethics for Civil Servants and Employees applies to PFM or procurement reporting to central government along with integrity training.
- Conduct a comprehensive review of the Appeals Body to identify organizational and capacity gaps and identify measures to improve its performance.



- Review of the efficiency and effectiveness of the control bodies and, where needed, streamlining the control function.
- Develop an integrated anti-corruption strategy and allow the use of modern technologies in detecting corruption, of which, many can be embedded in the EPPS.
- Strengthen accountability by introducing periodic specialized procurement audits, ensure effective parliamentary oversight and follow up of SAI's recommendations.



4. Proposed Strategic Planning for Implementation of Reforms

As a first step in the implementation of the reforms in public procurement, the Government of Montenegro may consider the following proposed action to be included as part of the Strategy for Public Procurement and respective Action Plans based on the priority level the proposed actions are categorized in three groups:

- (i) Immediate action within 2024
- (ii) medium term action within 2025-2026
- (iii) long term actions within 2027-2029.

Table 1: Proposed actions to implement the Strategic Planning of 2024 –2029

Proposed action	Priority Level	Responsible institutions	Timeline
Pillar I. The Public Procurement Legal Framework achieves the agreed principles and complies with applicable obligations			
The legal framework to include process for reaching decisions on administrative debarment and respective role of DPPP in conduction administrative debarment process	High	DPPP	2024
The legal framework further develops and define functions and responsibilities for managing contracts.	High	DPPP	2024
The rulebook that regulates simple procurement to ensure the protection of rights of participants in public procurement by including appeals for simple procurement	High	DPPP	2024
Review the current coverage of the procurement regulation and prepare a consolidated set of rules to cover the whole procurement cycle and complement with separate regulations specific processes. Elaborate guidance notes for Contracting Authorities on the use of different ratio of thresholds between price and quality considering the type of contracts and apply a differentiated ratio based on the features of works, goods or services contracts.	Medium	DPPP	2025-2026
Elaborate template of procurement for different types of procurements under works, goods and services and ensure the option of customizing based on different selection methods within this type of procurement documents. Templates would be supplemented with a minimum set of contract clauses or standard contract conditions for works, goods, and services consistent with internationally accepted practices.	Medium	DPPP	2025-2026
	Medium	DPPP	2025-2026



Develop a SPP strategy as part of the National Public Procurement Strategy and include relevant actions to implement SPP as part of the Public Procurement Action Plan for 2023-2025			
Pillar II. Institutional Framework and Management Capacity			
Conduct data analysis to identify opportunities for aggregation of demand and enhance the efficiency of centralized purchasing. Analyze the benefit of establishing a dedicated Central Purchasing Body outside existing public institutions which have diverse core functions of activities under centralized procurement in order to enhance the efficiency of centralized purchasing.	Medium	Ministry of Finance	2025 - 2026
Develop EPPS strategy to support open data standard and data analytics features, sustainability, capacity building for in-house expertise, communication, and governance frameworks.	High	DPPP	2024
Upgrade the functionalities of the EPPS to support publication of crucial information on the tendering and contract management processes, capture data on contract management, craft dedicated debarment, complaints and appeal mechanism sections, and enhance efficiency of centralized purchasing based on a spend analysis. Details are provided in the EPPS Module Assessment Report.	Medium	DPPP	2025-2029
Revision of the legal framework on civil servants and state employees includes provisions to ensure that procurement is recognized as a specific profession and establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.	Low	Ministry of Finance	2027-2029
Perform training programs targeted to private sector and civil society to raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists, and journalists to monitor procurement procedures.	Medium	DPPP	2025-2029
Develop a monitoring mechanism, based on a system of performance indicators and interconnection of data sources.	Medium	DPPP	2025-2026
Pillar III. Public Procurement Operations and Market Practices. Access to public procurement and enhance competition			
Perform wider review of the barriers which prevent economic operators to access the procurement market (survey with economic operators to address the entire market/per sector and an assessment of the existing specific sectoral legislation, standards and other requirements which impact the competition in public procurement.	High	DPPP and Contracting Authorities	2024



Conduct sectoral analysis to review procurement practices and competition levels (key contracting authorities, key procurement categories, etc.) and portfolio analysis and develop outcome-oriented procurement strategies (key contracting authorities).	High	DPPP and Contracting Authorities	2024
Conduct market engagement and market analysis at government level and with specific focus on complex projects.	Medium	DPPP and Contracting Authorities	2025-2026
Pillar IV. Accountability, Integrity and Transparency of PPS			
Conduct a comprehensive review of the Appeals Body to identify organizational and capacity gaps and identify measures to improve its performance.	High	CPRPP	2024
Review of the efficiency and effectiveness of the control bodies and, where needed, streamlining the control function	High	Ministry of Finance	2024
Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement to PPL and relevant bylaws, and a comprehensive list of prohibited practices (including coercive, obstructive and collusive	Medium	DPPP, Agency for Preventing Corruption	2025-2026
Develop an integrated anti-corruption strategy and allow the use of modern technologies in detecting corruption, of which, many can be embedded in the EPPS.	Low	DPPP, Agency for Preventing Corruption	2027-2029
Introduce requirement for Cas to have a mandatory code of conduct in areas of PFM or procurement Ensure that the Government's Code of Ethics for Civil Servants and Employees applies to PFM or procurement reporting to central government along with integrity training.	Medium	DPPP, Agency for Preventing Corruption, Contracting Authorities	2025-2026
Provide training and guidance to staff on how to report on cases of corruption and other malpractice and strengthen working relationship among the relevant agencies (DPPP, CPA, Prosecutors Office, Inspection) including through e-links and Incorporate procurement integrity training in the public financial management training program or as a regular standalone program.	Medium	DPPP, Agency for Preventing Corruption	2025-2026 2027-2029
Amend Law on Free Access to information to enable unrestricted access to relevant public information, in line with the EU Acquis.	Medium	DPPP	2025-2026



Strengthen capacity of CSOs to exercise social audit and control in procurement through training, coalition building, stronger support from international partners, and stronger collaboration with government and private sector.	Medium	DPPP, Agency for Preventing Corruption	2025-2026 2027-2029
Strengthen accountability by introducing periodic specialized procurement audits, ensure effective parliamentary oversight and follow up of SAI's recommendations. Prepare a procurement audit manual.	Medium	SAI	2025-2026 2027-2029

5. Overview of Compliance

Assessment results based on the assessment criteria in respective MAPS pillars are described in Table 2, by indication the number of criteria met, by pillar.

Table 2. Assessment Results Summary: Number of Assessment Criteria Met, by Pillar

MAPS Pillar	Full compliance	Gaps identified	Substantial gaps	Total
Pillar I: Legal, Regulatory, and Policy Framework	2	8	8	18
Pillar II: Institutional Framework and Management Capacity		6	8	14
Pillar III: Public Procurement Operations and Market Practices		1	5	6
Pillar IV: Accountability, Integrity and Transparency of the Public Procurement System	2	8	7	17
Total	4	23	28	55
Percentage	7%	42%	51%	100%

Source: Assessment team

Table 3 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.

Table 3. Overview of Assessment Findings



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) – Scope of application and coverage of the legal and regulatory framework		X		
	1(b) – Procurement methods		X		
	1(c) – Advertising rules and time limits		X		
	1(d) – Rules on participation			X	✓
	1(e) – Procurement documentation and technical specifications		X		
	1(f) – Evaluation and award criteria			X	
	1(g) – Submission, receipt, and opening of tenders		X		
	1(h) – Right to challenge and appeal	X			
	1(i) – Contract management			X	
	1(j) – Electronic procurement (e-procurement)		X		
	1(k) – Norms for safekeeping of records, documents and electronic data			X	
	1(l) – Public procurement principles in specialized legislation		X		
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures			X	
	2(b) – Model procurement documents for goods, works, and services			X	
	2(c) – Standard contract conditions			X	
	2(d) – User's guide or manual for procuring entities		X		
3. The legal framework reflects the country's secondary policy objectives	3(a) – Sustainable public procurement (SPP)			X	
	3(b) – Obligations deriving from international agreements	X			



and international obligations.					
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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		X		
	4(b) – Financial procedures and the procurement cycle		X		
5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory function		X		
	5(b) – Responsibilities of the normative/regulatory function		X		
	5(c) – Organisation, funding, staffing, and level of independence and authority			X	✓
	5(d) – Avoiding conflict of interest		X		
6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities and formal powers of procuring entities		X		
	6(b) – Centralised procurement body			X	
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology			X	
	7(b) – Use of e-procurement			X	✓
	7(c) – Strategies to manage procurement data			X	
8. The public procurement system	8(a) – Training, advice and assistance			X	



has a strong capacity to develop and improve	8(b) – Recognition of procurement as a profession			X	✓
	8(c) – Monitoring performance to improve the system			X	

PILLAR III		Full compliance	Gaps identified	Substantive gaps identified	Red flags
9. Public procurement practices achieve stated objectives.	9(a) – Planning			X	
	9(b) – Selection and contracting			X	
	9(c) – Contract management in practice			X	
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector		X		
	10(b) – Private sector's organization and access to the public procurement market			X	
	10(c) – Key sectors and sector strategies			X	

PILLAR IV		Full compliance	Gaps identified	Substantive gaps identified	Red flags
11. Transparency and civil society engagement strengthen integrity in public procurement.	11(a) – An enabling environment for public consultation and monitoring		X		
	11(b) – Adequate and timely access to information by the public		X		
	11(c) – Direct engagement of civil society			X	
12. The country has effective	12(a) – Legal framework, organization and procedures of the control system			X	✓



control and audit systems.	12(b) – Co-ordination of controls and audits of public procurement		X		
	12(c) – Enforcement and follow-up on findings and recommendations		X		
	12(d) – Qualification and training to conduct procurement audits	X			
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals	X			
	13(b) – Independence and capacity of the appeals body		X		
	13(c) – Decisions of the appeals body			X	
14. The country has ethics and anti-corruption measures in place.	14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountability and penalties			X	✓
	14(b) – Provisions on prohibited practices in procurement documents		X		
	14(c) – Effective sanctions and enforcement systems			X	✓
	14(d) – Anti-corruption framework and integrity training			X	✓
	14(e) – Stakeholder support to strengthen integrity in procurement		X		
	14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour	X			
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules			X	✓

Source: Assessment team.



1. Introduction

1.1. Context

Montenegro, a small upper-middle-income country in the Balkan peninsula, aspires to attain the living standards of the European Union (EU), yet faces economic challenges with a GDP per capita only one-fourth of the EU average. The National Strategy for Public Administration Reform 2021-2030 and the Reform Agenda 2022-2024 underscore the significance of enhancing public sector capacity and improving procurement processes for better value for money. While Montenegro has made progress in reforming its public administration, particularly in public procurement, the European Union Annual Implementation Report for Montenegro 2022 emphasizes the need for continued efforts in transparency, competition, and efficiency within procurement processes. A Public Expenditure and Financial Accountability (PEFA) assessment in 2019 identified deficiencies in the public procurement system and a lack of capacity in the public sector.

Montenegro's population of about 622,000 is aging and shrinking. Nearly 25 percent of the population live in the capital, Podgorica, and 40 percent live in rural areas. In 2019, Montenegro's gross domestic product (GDP) per capita was US\$8,909, one-fourth of the average for EU member states. Its purchasing power parity GDP per capita stood at US\$24,036, half of the EU average.

The National Strategy for Public Administration Reform 2021-2030 mentions the need to strengthen the e-Procurement system, enhance transparency, and promote competition in public procurement. The Reform Agenda 2022-2024 outlines the government's commitment to improving efficiency and effectiveness across all sectors, including public procurement. It specifically mentions the need to further digitalize procurement processes, strengthen oversight mechanisms, and enhance transparency.

The European Union Annual Implementation Report for Montenegro 2022 acknowledges the progress made by Montenegro in reforming its public administration, including in the area of public procurement. However, it also highlights the need for further efforts to improve transparency, competition, and efficiency in procurement processes. Statements by government officials consistently emphasize the importance of public sector capacity building and improving efficiency in procurement processes.

The Public Expenditure and Financial Accountability (PEFA) assessment of Montenegro in 2019 identified a need for improvements in the public procurement system. It also found that there was a lack of capacity in the public sector to manage procurement processes effectively.

As Montenegro progresses towards EU accession, aligning its e-procurement system (www.cejn.gov.me) with EU directives and best practices is crucial for ensuring transparency, efficiency, and fair competition in public procurement. This requires full electronic processing of procurement procedures, transparent access to procurement information, electronic communication and submissions, non-discrimination and equal treatment of bidders, robust oversight and audit mechanisms, capacity building and training for public procurement officials, and continuous improvement and modernization of the system. Meeting these requirements will establish a robust and transparent e-procurement system that aligns with EU standards and contributes to a more efficient and competitive procurement environment, enhancing the quality of public procurement, strengthening investor confidence, and contributing to Montenegro's overall economic development.



The Directorate for Public Procurement Policy (DPPP), under the Ministry of Finance, has requested the World Bank's technical assistance in carrying out a holistic assessment of the public procurement system using MAPS 2018. DPPP has also proposed to give particular attention, as part of the core MAPS assessment, to the electronic procurement supplementary module, as the national e-procurement system was launched on January 1, 2021, and needs an in-depth assessment for the purpose of further strengthening the system's capacity and operability. The assessment was carried out with a broad view of the public procurement system, reflecting on the procurement reform efforts made so far and the remaining challenges, and its conclusions will be based on both qualitative findings and quantitative analysis to support evidence-based recommendations and follow-up actions for the government's consideration in devising a strategic plan for systematic enhancement of the system.

The development objective of the assessment is to support the Government of Montenegro to develop a reform plan for its public procurement system. The analytical work assesses strengths, weaknesses and gaps in the system and benchmarks it with international practices using the second version of the MAPS tool.

Specifically the assessment will: (1) develop a shared understanding of the current state of Montenegro's public procurement system amongst all stakeholders to strategize future reform efforts to achieve a modern and harmonized procurement system; (2) identify the strengths and weaknesses of the public procurement system and suggest appropriate mitigation measures; and (3) assess Montenegro's electronic procurement system using MAPS electronic procurement supplementary module to identify key issues and its further development ensuring self-sustainability.

This assessment has been conducted by a MAPS assessment team led by the World Bank in close coordination with EBRD, and EIB. Another assessment of the e-procurement system of Montenegro using the MAPS e-Procurement Supplementary Module (pilot) was also carried out in parallel in response to the need to deepen the assessment of the e-procurement system formulated by the Government of Montenegro. The action was funded by Multi Donor Trust Fund to support the Global Procurement Partnership

1.2. Objectives

The Government of Montenegro (GoM) represented by the Directorate of Public Procurement Policy (DPPP) under the aegis of the Ministry of Finance has conducted the assessment of the public procurement system and e-Procurement system of Montenegro using the June 2022 version of the MAPS Core Assessment and Supplementary e-Procurement Module, being one of the first countries to pilot it.

Specifically the assessment will: (1) develop a shared understanding of the current state of Montenegro's public procurement system amongst all stakeholders to strategize future reform efforts to achieve a modern and harmonized procurement system; (2) identify the strengths and weaknesses of the public procurement system and suggest appropriate mitigation measures; and (3) assess Montenegro's electronic procurement system using MAPS electronic procurement supplementary module to identify key issues and its further development ensuring self-sustainability.

1.3. Scope

The assessment was conducted on all the four pillars of MAPS:



I. Legal, Regulatory and Policy Framework

II. Institutional Framework and Management Capacity

III. Procurement Operations and Market Practices

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

The assessment focused on the strengths, weaknesses, and gaps of the public procurement system in Montenegro and provides the recommendations for improvements.

1.4. Methodology

The methodology included a desk review, a field mission for the consultation with the stakeholders of the public procurement system and its ecosystem, a validation workshop with the stakeholder, qualitative and quantitative survey and dataset analysis to support the assessment, preparation of the draft report, review of the draft report by the stakeholders, incorporation of the comments and feedback, and the finalization of the report.

The field mission for the assessment was conducted in-person and as an e-mission in Montenegro during the period from January 28 to February 4, 2023. The assessors had meetings with the DPPP, EPPS developer and service provider, and other stakeholders.

1.5. Assessment Team

The assessment of the Electronic Procurement System of Montenegro using MAPS Supplementary Module on e-Procurement, pilot version dated June 2022, was initiated at the request of the Government of Montenegro (GoM), Directorate for Public Procurement Policy, under the aegis of Ministry of Finance.

This MAPS assessment team is led by Tanvir Hossain and Orjana Ibrahimli, Senior Procurement Specialists, and a team established by the Bank, including Carmen Calin, Procurement Specialist, Zuhra Osmanovic-Pasic, Senior Governance Specialist, Serena Cocciolo, Governance Specialist, and Tamara Travar, Procurement Specialist. The team received valuable support from Ana Đurnić, Consultant, and Huseyn Ibrahimli, Consultant. Yolanda Tayler, International Development Consultant, provided substantial input. The EPPS assessment is led by Dr. Rajesh Kumar Shakya, Senior Procurement Specialist (e-GP and Sustainable Public Procurement). The assessment team received technical support of the development partners in Montenegro including Evgeny Smirnov (Associate Director, Procurement Policy Advisor), Stana Maric (Associate Director, Procurement Policy Advisor, Legal) and Rafael Torrente (Associate Director, Project Implementation Advisor) from EBRD, Andreja Lamza Neral (Senior Procurement Specialist) from EIB and Constantino Longares (Deputy head of procurement division) from CEB during the assessment and Validation Workshop.

The assessment was conducted under the oversight of Chenjerani Simon B. Chirwa, Practice Manager. We would also like to thank Milan Lakicevic, Country Economist in Montenegro, Dragana Varezic, Senior Program Assistant, and Sara Tadic, Team Assistant.

The World Bank team received valuable guidance from Christopher Gilbert Sheldon, Country Director for Montenegro and Denis Mesihovic, Operations Officer.

1.6. Consultations with the Key Stakeholders



The meetings and consultations undertaken during the mission were essential to ensure data collection and organization as well as to ensure that the assessment of public procurement system of Montenegro is based on the MAPS core and e-Procurement Supplementary Module and is in accordance with international standards and guidelines as specified by the MAPS Secretariat.

The assessment team held detailed discussions with the DPPP, EPPS system developer and service provider, and other stakeholders.

1.7 Validation Workshop

A validation workshop was organized in Podgorica, Montenegro, on November 30, 2023. Stakeholders comprising government departments, public bodies, state-owned enterprises, statutory bodies, private sector entities and development partners participated in the workshop both physically and virtually. The purpose of the validation workshop was to present to the stakeholders the status of the e-procurement system of Montenegro, the strengths and gaps identified by the assessment applying the MAPS e-procurement module and initial recommendations to address the gaps. The workshop also provided a forum for comments and feedback from stakeholders. The validation workshop broadly validated the assessment findings. Before the stakeholder validation workshop, several consultations were held with the DPPP.

1.8. Limitations

There were no substantial limitations in the assessment.

2. Analysis of Country Context

2.1. Economic, historical, governmental and political, country outlook

Montenegro is a small upper-middle-income country in the Balkan peninsula that aspires to achieve the living standards of the European Union (EU). Montenegro's aging and shrinking population is about 626,485 in 2023, registering a 0.1 percent decline from 2022. Urban population as a percentage of total population was reported at 68.16 percent in 2022. Podgorica's 2023 population is now estimated at 209,968. In 1991, the population of Podgorica was 146,121. Podgorica has grown by 1.02 percent annually. Montenegro's life expectancy at birth is 75.9 years that is about in the mid-range among OECD countries. These population estimates and projections come from the latest revision of the UN World Urbanization Prospects.

Economic overview

During 2015-2019 Montenegro's economy grew strongly, primarily supported by robust investment in infrastructure, tourism, and energy. During the same period, the GDP grew at an average annual rate of 4 percent, reaching 5.1 percent growth in 2018, the strongest in a decade. In 2019, Montenegro's GDP per capita was US\$8,909, one-fourth of the average for EU member states. Its purchasing power parity GDP per capita stood at US\$24,036, half of the EU average. The construction of the first section of the Bar-Boljare highway, the largest and most expensive infrastructure project in Montenegro's history, has supported GDP growth since its implementation started in 2015. Public investments were accompanied



by strong private investments in tourism and energy facilities, resulting in total gross investments reaching a 10-year high of 32 percent of GDP in 2018.

The strong economic growth between 2015-2019, however, was reversed by the COVID-19 crisis, which caused a sharp drop in tourism, capital outflows, credit rationing, and high uncertainty. Despite government support, employment fell to a 9-year low, with the tourism, construction, and trade sectors hit hardest; unemployment went up by 13 percent and poverty increased to an estimated 20.2 percent of the population in 2020. Public debt rose to 105 percent of GDP, requiring vigilant fiscal management. By 2022, nonetheless, GDP had bounced back to pre-COVID values equivalent to US\$ 6.1 billion and US\$11.7 billion subsequently in 2023. The average level of debt held by the Government of Montenegro was 72.6 percent, the highest in the Western Balkan region, which was 49.4 percent of GDP in 2018, but much lower than the average of OECD countries (108.6 percent).

Between 2008 and 2018 debt as a percentage of GDP grew in all economies in the Western Balkan region, however, the largest increases occurred in Montenegro where such a trend is explained by a variety of factors, including large publicly-funded infrastructure projects, the costs associated with increases in public employment and salaries, subsidies and government guarantees of privately owned enterprises.⁴

Government

Montenegro is a parliamentary republic that gained full independence from Serbia in June 2006, following a referendum in May in which just over the required 55 percent of Montenegrins voted to secede from the federation. In 2007 Montenegro's parliament adopted the country's first constitution. Montenegro is governed by independent executive, legislative, and judicial branches. The president is the head of state, elected directly for a period of five years. The unicameral parliament of Montenegro is led by the President of the Parliament. Its judicial branch includes, among others, a Constitutional Court composed of seven judges with twelve-year terms and a Supreme Court with 19 judges that have life terms. As regards local government, Montenegro's local government has 24 municipalities of which 22 are local administrative units, and two are urban municipalities (i.e., the Capital City of Podgorica and the Historic Royal Capital of Cetinje).⁵

The legal framework for an accountable state organization is in place, but not implemented purposefully. Management of public administration is focused on compliance with formal requirements. Access to information is not fully functional, as evidenced by the significant number of appeals and the high share of successful appeals. The administration is often unresponsive to requests within the statutory deadline, and proactive publication of information is inconsistent. The effectiveness of the work of the oversight institutions is limited, based on the low implementation rate of their recommendations. The average duration of administrative court procedures has significantly increased compared to 2017 due to the high number of incoming cases.⁶

Political structures, aspects of conflict, corruption

⁴ IMF, Annual Report, 2019, <https://www.imf.org/external/pubs/ft/ar/2019/eng/>

⁵ 2019 OECD-UCLG World Observatory on Subnational Government Finance and Investment

⁶ The Principles of Public Administration – Montenegro – November 2021, SIGMA – OECD.



Montenegro follows the principle of division of powers. Its judicial, legislative, and executive branches are independent of each other. The judiciary is autonomous and independent. The ruling of the courts must be in accordance with the Constitution and the laws of Montenegro.

In a new report evaluating the effectiveness of the framework in place in Montenegro to prevent corruption amongst members of the government and other top executives and in the police, the Council of Europe's Group of States against Corruption (GRECO) calls for strong political measures to strengthen the coherence of the anticorruption system. It recommends establishing a national anti-corruption strategy and emphasizes that all public authorities, and not solely the Agency for the Prevention of Corruption (APC), should take ownership of its effective implementation. GRECO provides 22 recommendations to the authorities and will assess Montenegro's compliance after 31 of December 2023, by when the authorities should submit a report on the measures taken.⁷

2.2. The Public Procurement System and Its Links with the Public Finance Management and Public Governance Systems

Montenegro's public procurement market corresponded to 8.74 percent of GDP in 2022, and the value of all public procurement procedures amounted to some EUR 507 million. This was much below the values achieved in 2020 and caused by the very late adoption of the 2021 state budget, major organisational changes in the public administration and COVID-19 crisis.

In the reporting year 2022, the Inspectorate for Public Procurement carried out a total of 333 inspections, revealing 234 irregularities. Inspection supervision was carried out at 302 entities engaged in the procurement of goods, works and services, namely: state authorities (35), local self-government units (16), public services or companies (239), public contracting authorities in the field of electricity, gas and heat, water management, transport, airports and seaports, postal services, oil exploration and production, coal and other solid fuels (12).⁸

A regulatory and institutional framework is in place on integrity and conflict of interest in public procurement.

The capacity to manage public procurement processes continued to improve, to a large degree thanks to the introduction of e-procurement. Nonetheless, the high number of contracting authorities remains a challenge to the overall efficiency of the procurement system. The capacity of smaller municipalities to conduct larger and more complex public procurement procedures, including under EU-financed projects, remains very limited. The Directorate for Public Procurement Policy (DPPP) in the Ministry of Finance (MoF) systematically organises trainings on the legal framework in public procurement and examinations for candidates for procurement officer positions. It also prepares and publishes technical instructions and expert guidance on the procurement rules on its website.⁹

Public procurement framework in Montenegro

⁷ Council of Europe. Group of States Against Corruption (GRECO) 25 of October 2022

⁸ Work Report by the Administrations for Inspection Affairs – 2022.

⁹ <https://ujn.gov.me/en/nadleznosti/>



The DPPP is responsible for procurement legal framework and policies in Montenegro. Several enhancements to the public procurement system in Montenegro have been made over the past few years. The latest report from the European Commission, issued in October 2022, concluded that Montenegro is “moderately prepared” on Public Procurement (Chapter 5), but that overall, good progress was achieved in 2021, with full implementation of the electronic procurement system and further improvement in the functioning of the remedy system.¹⁰ In July 2019 the government adopted a new Public Procurement Law (PPL) and bylaws well-aligned with the EU *acquis* that came into force in 2020. The law continues to be based on principles of transparency, open competition, fairness, equal treatment, non-discrimination, cost-effectiveness, and efficiency in the use of public funds, but also adds new principles, including the principles of environmental protection, social and labor law and ensuring energy efficiency, freedom and proportionality. The law also introduced new procedures, such as competitive dialogue, partnership for innovation, and competitive negotiation procedures, and it also mandates the Contracting Authorities to select the most advantageous bid based on either 1) offered price; 2) best price-quality ratio; or 3) life-cycle cost.

The Government also adopted the new Strategy for Development of the Public Procurement System for the period 2021-2025 with the Action Plan for its implementation. The new strategy highlights new steps in the implementation of the EPPS, which include all modules and interoperability with other e-systems to be implemented by 2023, as well as the goal for 300 additional economic operators to be registered in the system by 2025. The strategy also focuses on the increased use of framework agreements, centralized purchasing and the promotion of SMEs, green procurement, and women-owned businesses. Regarding centralization, Montenegro increased efficiency in public procurement through centralization of seven commonly used goods and services for all government agencies, however, the share of contracts awarded through centralized purchasing was only 17.8 percent (90,449,544/506,954,976) in 2022. The strategy also aims at creating standards for women-owned business and women-led business so that the EPPS can distinguish which firms are women-owned.

Amendments to the PPL were processed in 2022 and came into force in January 2023.

Despite good progress in the legal reform, the public procurement market in Montenegro exhibits signs of limited competition and transparency compared to peer countries, which undermines the level playing field.¹¹ The share of single-bid contracts for open procedures was 68%¹². While receiving a single bid could be attributed to an insufficient number of national bidders, it could also indicate a non-competitive bidding procedure. Lack of competition allows for awarding above-market price contracts and extracting monopoly rents. For about 4 percent of the e-procurement contracts, a call for tender was not published in the official procurement journal, indicating a lack of transparency in the bidding procedure. Although these contracts were competitively negotiated, declining to publish a call for tender in the official

¹⁰ https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2023_en

¹¹ The indicators for non-competitive procurement practices, such as single bidder, short advertising period, and number of bids won by a single firm are based on Fazekas, M., & King, L. (2019). “*Perils of development funding? The tale of EU funds and grand corruption in Central and Eastern Europe*,” *Regulation and Governance*, Vol. 13. <https://doi.org/10.17863/CAM.14169>. These indicators can signal lack of access to public procurement market and undermine competition.

¹² Data elaborated by assessment team based on data of EPPS.



procurement journal restricts competition and fixes tenders by making it harder for competitors to prepare a bid.

Competitively negotiated contracts without prior publication accounted for 11 percent (55,715,957/506,954,976) of the total value of public procurement in 2022. Procurement contracts in Montenegro in 2022 were awarded following five types of procurement procedures: open, limited, negotiated without prior publication, simple procurements and a call based on the framework agreement. Fifty percent of the published e-procurement contracts in 2022 were simple procurements (contracts with low value below the thresholds regulated by the procurement law).¹³ Forty-three percent of the e-procurement contracts followed open procedures. The percentage of published contracts that were competitively negotiated without prior publication of a call for tenders was 3.2 percent. Only twenty-four contracts (or 0.35 percent) followed restricted procedures. Open procurement contracts amounted to about three-fourths of the total value of contracts awarded in 2022, with an average contract value of 87,458 euros for supplies, 60,510 euros for services and 375,951 euros for works. Contracts awarded as simple procurement correspond to about 8.6 percent of total value of procurement contracts, with an average value of 10,393 euros for supplies, 8,969 for services and 19,229 for works. Competitively negotiated contracts without prior publication were among the highest in value, amounting to an average of 168,900 euros per contract and adding up to 13 percent of the value of total procurement. The average contract value procured using limited procedures is 126,907 euros, amounting to only 0.4 percent of the total value of contracts awarded in 2022.

Public Financial Management as an integral part of the Government development agenda

Montenegro is making progress to ensure integrity in the management of its public resources. The Global Competitiveness Report (2019) ranks Montenegro 73rd out of 141 countries, while Freedom House improved its rating in 2021 to “partly free” from its 2020 rating of “hybrid regime”. The implementation of reforms foreseen in the previous Public Administration Reform Strategy and in the Public Finance Management Reform Program remains limited, as fewer than half of the objectives were achieved by their expiration date in 2020. In its 2022 Montenegro report, the European Commission assessed there was limited progress overall in the area of the rule of law, with no progress made in judiciary, as the implementation of key judicial reforms is stagnating while concerns remain over the institutional performance of the Judicial and Prosecutorial Councils.

¹³ Simple procurement refers to procurements of a value that is below the thresholds prescribed by the Law and regulated by the Ordinance on the manner of conducting simple procurements (Official Gazette of Montenegro, No. 061/20, 065/20, 071/20, 074/20, 102/20). In particular, simple procurement refers to procurement of goods, services, and works, the value of which does not exceed 5,000 euros per year, procurement of goods and services the value of which is estimated between 5,000 and 20,000 euros per year, or procurement of works, the value of which is estimated between 5,000 and 40,000 euros. These procurements are initiated exclusively by publishing on the electronic public procurement system. Open procurement procedures are the most transparent and can achieve the highest level of competition. Restricted procedures are used in special conditions when conducting open procedure is not possible due to the specificity of the procurement. Negotiated procedures without prior publication of a call for tenders refer to urgent procurements awarded in accordance with the EU law.



Table 4.

Value of Contracted Public Procurements and Procurements in 2018-2022, euros

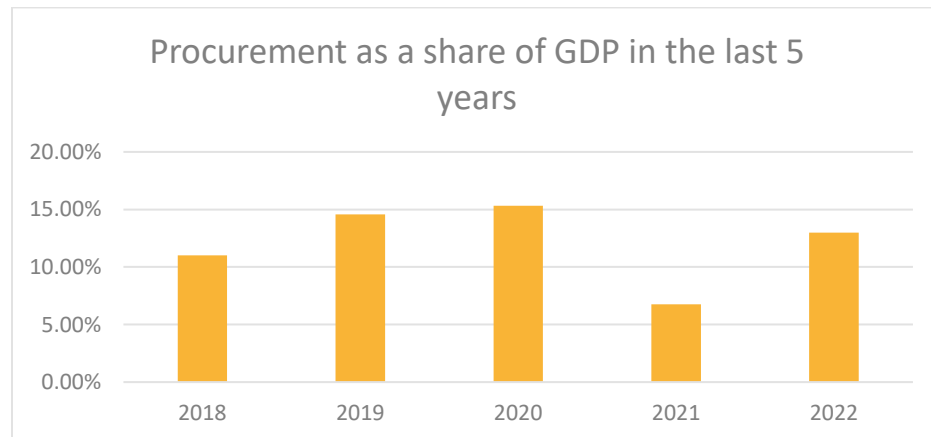
<i>Years</i>	<i>Total value of public procurement</i>	<i>Total value of electricity and coal supply</i>	<i>Total value of purchases</i>
2018	449,373,407.93	85,739,160.97	535,112,568.90
2019	608,224,346.95	107,425,391.96	715,649,738.91
2020	545,150,791.50	97,346,199.40	642,496,990.90
2021	219,680,113.13	112,609,062.06	332,289,175.19
2022	506,954,976.2	246,772,232.57	753,727,208.77

Source :Data from DPPP Annual Report ,2022.

The total value of public procurement in table 4 presented above refers to the value of public procurement conducted using public procurement procedures, simple procurement below 5,000 euros and simple procurement conducted through the EPPS,¹⁴ while the total value of purchases refers to the sum of public procurement and the value of electricity and coal procurement.

The share of procurement and public procurement represents a significant share of the gross domestic product in Montenegro. In 2022, the share of procurements ¹⁵ in GDP amounted to 13 percent, while the share of public procurement in this period amounted to 8.74 percent. Figure 2 below presents a comparative overview of procurement as a share of GDP over the past five years.

Figure 2. Procurement as a Share of GDP in Montenegro in 2018-2022



Source: Data from DPPP Annual Report ,2022.

¹⁴ Above 5.000 euro and below 20.000 euro for goods and service, and 40.000 euro for goods. This was now amended with 2022 Amendments to PPL to 8.000 instead of 5.000, 25.000 euro instead of 20.000, while the threshold for works remained the same – 40.000 euro.

¹⁵ The total value of public procurements refers to the value of public procurements conducted using public procurement procedures, simple procurements conducted through the CEJN and simple procurements below 8,000 EUR, while the total value of procurement refers to the sum of the values of public procurements and the value of electricity and coal procurement.



The underutilization of procurement potential in Montenegro can be attributed to several factors, linked with the size and structure of the economy and the incentives applicable to attract foreign companies, administrative cost of participation particularly for SMEs, perception of corruption in public procurement which remains a significant concern, despite advances in the legislative framework and its application. Overall, improved procurement utilization can have a broad and significant impact on a country's fiscal health and economic development. It can lead to a more judicious use of public funds, stimulate the private sector, and contribute to sustainable economic growth. By streamlining procurement processes and increasing competition, governments can achieve lower prices for goods and services. This results in direct cost savings for the public sector, which can then be reallocated to other areas of need within the budget. Procurement practices can improve the quality of goods and services procured. High-quality inputs can lead to better public services and infrastructure, which can have long-term economic benefits. It is anticipated that competitive procurement processes can foster innovation as suppliers strive to offer better value for money and lead to the adoption of new technologies and practices that can spur economic growth.

Key institutions in the domain of public procurement

While EU membership remains the top priority and has been driving the reform process, governance and institutional weaknesses more broadly continue to hinder the necessary reform policies to reduce Montenegro's vulnerabilities. And even though Montenegro has been working to align its legislation and institutional setup with EU standards, translating the new framework laws into effective implementation is lagging. There is a need to strengthen transparency, stakeholders' participation, and the government's capacity to implement reforms. Slow institutional progress results in partial policy implementation, policy reversals, public sector inefficiencies, and concentrated ownership of business activity.

Institutional responsibilities for public procurement have traditionally been centralized but procuring roles have also been undertaken by municipalities and other local procuring entities. DPPP in the Ministry of Finance (MoF) is the central unit responsible to oversee public procurement in Montenegro at present. The DPPP was established in 2018 and since its inception, it has led the function, overseeing nationwide public procurement projects in all key sectors of the economy.

In 2006, the first Public Procurement Directorate was established with jurisdiction to implement the Public Procurement Law. By entering into force, the 2008 Decree on State Administration Organization and Operations, Directorate received a status of an independent administrative authority called Public Procurement Administration.

The public procurement landscape is characterized by a structured but complex interplay of responsibilities and oversight mechanisms. The Ministry of Finance, through the DPPP, plays a central role, supported by inspection authorities and the SAI, which provide oversight and audit functions. The Commission for Protection of Rights and Internal Audit functions serve as additional layers ensuring fairness and compliance.

The extended landscape of stakeholders in public procurement includes not only governmental and oversight bodies but also the private sector, civil society, and the media. Each stakeholder group has distinct roles, interests, and levels of influence:



1. **Governmental and Oversight Bodies (MoF, DPPP, Inspection Authority, SAI, Internal Audit):** These entities are central to policy formulation, implementation, and oversight. They ensure that the procurement process is compliant with laws and regulations, and that public funds are used effectively.
2. **Government Entities (Central and Local Levels):** These entities execute the procurement processes and are directly affected by procurement policies and regulations. They are crucial in implementing any changes or reforms suggested by oversight bodies.
3. **Economic Operators (Suppliers and Contractors):** Represent the private sector's involvement in public procurement. Their engagement and feedback can highlight practical challenges and opportunities for improvement in the procurement process.
4. **Civil Society and Media:** Play a critical role in ensuring transparency and accountability in public procurement. They can influence public opinion and push for reforms, serving as external checks on the system.

2.3. National Policy Objectives and Sustainable Development Goals

In December 2015, the government of Montenegro adopted the National Strategy for Sustainable Development (NSSD) until 2030. The NSSD considered national circumstances and commitments while defining the strategic goals and measures on SDG action and aligning sectoral policies to the SDGs. The Strategy structured the strategic objectives into five priority themes, including preservation of natural capital (SDGs 14, 15); and the introduction of a green economy, governance, and finance for sustainable development (SDGs 7, 8, 9, 12).

By participating in international dialogue on the SDGs and Agenda 2030, Montenegro expressed commitment to the priority issues of sustainable development, such as: the introduction of a green economy, strengthening the efficiency of use natural resources (SDGs 2, 3, 6, 7); climate change (SDG 13); conservation of sensitive ecosystems and coastal areas (SDGs 14, 15); and sustainable production and consumption (SDG 12).

Montenegro has made some progress on reforms in the areas of public service and human resource management and service delivery, while in other areas reforms have stalled. Compared to its neighbours in the Western Balkans, Montenegro is exceeding the regional average around accountability. However, in other reform areas Montenegro is at or below the regional average. The implementation of reforms foreseen in the previous PAR Strategy and in the Public Finance Management Reform Program remains limited, as fewer than half of the objectives were achieved by their expiration date in 2020.¹⁶ The new Public Procurement Law (PPL), updated in late 2022, was originally adopted in 2019, along with a strategy for the period from 2021-2025 for improving public procurement and public-private partnership policies, and an action plan for 2022. The new EPPS has been in operation since January 2021 and encompasses the publication of procurement plans, tender documents, the public opening of tenders and tender submissions to the e-complaint system. Nevertheless, systematic changes in the public procurement system have not been followed by an adequate capacity-building strategy for the employees of contracting authorities. All contracting authorities must obtain prior approval for their procurement plans from the MoF, which causes unnecessary delays in the process. The Montenegrin system is largely prone to corruption and misconduct,

¹⁶ The Principles of Public Administration – Montenegro – November 2021, SIGMA – OECD.



especially in cases involving large-scale projects and contracts. The system is still highly politicized with ties between political parties and companies.¹⁷

2.4. Public Procurement Reform

On December 30, 2019, and subsequently on January 10, 2023, amendments to the PPL were published on the Official Gazette of Montenegro. The most recent amendment aimed at ensuring a full alignment with EU Directives on public procurement.¹⁸ The key secondary legislation includes comprehensive set of corresponding by-laws, such as decrees issued by the Government of Montenegro, rulebooks issued by the MoF in charge of public procurement system, and manuals and guidelines issued by the regulatory institution. The full set of legal frameworks in the ambit of public procurement are all available at the website of the DPPP, whose jurisdictions are regulated by the PPL Article 44. The institutional setup for public procurement is comprehensive, including for PPPs, for which an Investment Agency was established. Concessions, on the other hand, remain underregulated as it concerns institutional setup. The competences and staff of the Public Procurement Agency (PPA) were transferred to the Ministry of Finance (MoF) on 31 December 2018, the policy-making body for both public procurement and PPPs/concessions, as well as the body responsible for drafting legislation and monitoring the public procurement system.

In 2021, good progress was achieved with full implementation of the electronic procurement system and further improvement in the functioning of the remedy system. By June 2022, all 662 contracting authorities and 3,687 economic operators were registered in the system. The implementation of e-procurement has the potential to significantly reduce the risks of corruption and breaches of competition rules, limiting the number of appeals. Further functionalities of the EPPS were implemented in the course of 2022, including connections to the electronic registers of the Ministry of Justice and the Revenue and Customs Administration. These improvements will be instrumental for eligibility checks on the economic entities that participate in public procurement procedures and should further increase the transparency and fairness of the procurement system in Montenegro.¹⁹ Likewise, the system has greatly improved the way of reporting, primarily by enabling accurate and timely collection of data on all the characteristics of public procurement procedures carried out.²⁰

The capacity to manage public procurement processes continued to improve, to a large degree thanks to the introduction of e-procurement. Nonetheless, the high number of contracting authorities remains an obstacle to the overall efficiency of the procurement system. The capacity of smaller municipalities to conduct larger and more complex public procurement procedures, including under EU-financed projects, remains very limited. The DPPP systematically organizes trainings on the legal framework in public

¹⁷ UNCAC Civil Society Coalition: New Civil Society Report on Montenegro: Comprehensive Legislation Not Matched with Practical Enforcement of Anti-Corruption Measures - 22 August 2023.

¹⁸ Montenegro 2022 Report of the European Commission confirms that the legal framework on public procurement is well aligned with the EU *acquis*. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf>.

¹⁹ Ibid.

²⁰ DPPP Annual Report, 2022.



procurement and examinations for candidates for procurement officer positions. It also prepares and publishes technical instructions and expert guidance on the procurement rules.

A regulatory and institutional framework is in place on integrity and conflict of interest in public procurement and the legislation on the right to appeal is broadly in line with the EU *acquis*. Cases are handled by the Commission for Protection of Rights in Public Procurement Procedures. During the period from June 15, 2021, to June 15, 2022, the Commission received 162 complaints, which represents a decrease of 33 percent in comparison to the previous period. The Commission also acted on 20 judgements received from the Administrative Court of Montenegro, which represents cases returned for reconsideration. There were no significant delays in the treatment and resolution of the complaints.²¹

Overall, Montenegro has made efforts to increase its fiscal transparency and to make budget information available; however, public participation and budget oversight by the legislature and the auditing institution remain weak. And despite the solid framework for state contracting regulating procurement rules and practices, having evolved over the years, the sector is still prone to corruption and malpractice, especially involving large-scale projects, contracts, and licenses. There are persistent concerns about the independence of procurement committees and a lack of effective oversight of their work.²²

In the coming years, Montenegro should continue to further improve the functionality of the EPPS and its interoperability with state administration registers; and, as a country aspiring to join the European Union, Montenegro should fully honor EU public procurement rules in all relevant cases.

3. Assessment

3.1. Pillar I - Legal, Regulatory and Policy Framework

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

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

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

²² UNCAC Civil Society Coalition: New Civil Society Report on Montenegro: Comprehensive Legislation Not Matched with Practical Enforcement of Anti-Corruption Measures - 22 August 2023.



- **Synthesis of the indicator**

The public procurement legal framework in Montenegro complies with the agreed principles and applicable obligations. The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, etc.) to detailed regulation, procedures and tender documents formally in use. The public procurement legal framework is aligned with EU Procurement Directives and covers goods, works, and services under classical procurement and sectorial contracts, although there are noted several exclusions from the application of the procurement framework. A separate set of laws regulate public-private partnerships (PPPs) and concessions.

The Montenegro's legal framework, which is contained mostly in the Public Procurement Law 074/19 and 003/23 as amended and in force (PPL), covers majority of relevant aspects, but some remaining uncovered gaps in the law relate to the following:

- lack of defined processes for reaching decisions on administrative debarment as well as other legitimate exclusions in adherence to UN Security Council or international agreements
- lack of clear provision on non-disclosure of information during bid evaluation process
- lack of defined functions for undertaking contract management along with corresponding responsibilities
- lack of provision establishing security protocols to protect records (physical and/or electronic).

Even though the PPL don't impose any barrier to participate in public procurement procedures, the assessment has revealed that other sectoral legal framework imposes underlying barriers to participation due to the requirement of national licensing for certain types of works and services and that procurement legal framework can be used to relieve those barriers.

- **Findings**

Public procurement legal framework is found to be in compliance with the MAPS assessment criteria. Generally, the legal framework for public procurement is aligned with the European directives in this area (notably 2014/24/EU and 2014/25/EU).

Scope and coverage of the legal and regulatory framework

The legal framework is organized hierarchically distinguishing between international agreements, constitution, laws and regulatory acts and their precedence is clearly established in the Montenegrin Constitution. Public procurement is regulated by the PPL transposing directives 2014/24/EU and 2014/25/EU in many aspects of public procurement cycle.

The PPL is supplemented with relevant implementing rules, and relevant government institutions are given the power to regulate more detailed procedures in their area of competence, e.g., decrees issued by the Government of Montenegro, rulebooks issued by the Minister of Finance (MoF) in charge of the public procurement system, and manuals and guidelines issued by the Directorate for Public Procurement Policy (DPPP) for the use of the Electronic Public Procurement System (EPPS).

The PPL applies to all public bodies including local self-government unit and entities as indicated in its Article 2 whereby differentiation is made between Public Contracting Authorities and Sectoral Contracting



Authorities. The PPL covers also utility sector procurement such as electricity, gas and thermal energy, water management, traffic service, airports and seaports, postal services research and production of oil, gas, coal or other solid fuels.

The defense and security services are also regulated by the PPL and also by a separate Government Decree on the List of Military Equipment and Products, the Procedure and Manner of Public Procurement in the Defense and Security Area. Several exemptions are listed in the PPL, and they generally are the same as those indicated by the EU Directive 24/2014, with some more added and detailed below under the gap section. Special public procurement rules apply to procurement for diplomatic and consular missions and military-diplomatic representatives and these procurements are prescribed by the Government of Montenegro unless otherwise specified by international treaty or agreement.

PPL is not applicable for simple procurement for the (i) goods, services and works with an annual estimated value up to 8,000.00 euro (ii) goods and services with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 25,000.00 euro; (iii) works with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 40,000.00 euro. Simple procurement is regulated by the Rulebook on Conducting Simple Procurement.

Public-private partnerships (PPPs) and concessions are regulated by separate laws, and they generally comply with the main principles of public procurement including transparency, equal treatment and non-discrimination, and efficiency. The legal framework sets out clear policy objectives to prepare, choose and implement PPP projects or concessions, facilitates the identification, selection, prioritization, evaluation, structuring, market sounding, procurement, negotiation, financing, and delivery of PPP projects. It indicates clear roles and responsibilities for each entity involved in PPP project delivery or concession granting.

Laws and regulatory acts relating to public procurement and issued by the Government, or the Minister of Finance are published in the Montenegrin Official Gazette (OG). Laws and regulations related to public procurement are accessible on the website of the DPPP. Although DPPP publishes all legal updates on their website, reference to the most recent legal version is missing as the uploaded version does not always represent the official version of the act and is not linked to the Official Gazette portal. Also, DPPP uses website announcements to inform contracting authorities about legislative changes in a timely manner. These announcements also include training opportunities, and novelties related to the EPPS.

Procurement methods

The procurement methods provided by the PPL include competitive and less competitive procurement procedures and provide an appropriate range of options for Contracting Authorities to select the type of procurement procedure that ensures value for money, fairness, transparency, proportionality and integrity.

Procurement methods applicable as per provisions of the PPL and forms of conducting public procurement are fully transposing the EU Procurement Directive 24/2014. The procurement methods that are envisaged and described under the PPL include open procedure (Art. 54), restricted procedure (Art. 55, 56), competitive procedure with negotiation (Art. 57,58), negotiated procedure without prior publication of a contract notice (Art. 59, 60, 65), competitive dialogue (Art. 61, 62), partnership for innovation (Art. 63), negotiated procedure with prior publication of a contract notice (Art. 64).



The PPL sets out the conditions under which the Contracting Authority shall select a procurement method depending on the type, the essential characteristics, and specific conditions of the subject of public procurement. Even though the Contracting Authorities are given discretion to choose the procurement procedure, this discretion is limited by the same PPL as it requires that CAs must follow the requirements applicable to such procedure as set out in the relevant articles of the PPL.

The PPL sets out thresholds applicable to each procedure and minimum bid submission deadlines. When deciding to apply reduced deadline for submission, Contracting Authorities are requested by the PPL provisions to provide a written justification. Also, in case of applying the negotiated procedure without prior publication of a contract notice, an opinion from the DPPP is required (except in a situation of urgency). Further relevant articles of the PPL regarding procurement methods, clearly describe the obligations of the Contracting Authorities to transparency concerning the publication of tender documents.

Procurement procedures by default should be organized in lots. When Contracting Authorities have not divided the subject of procurement into lots, they shall provide in the tender documentation an indication of their reasons for doing so. Contract fractioning with the aim to limit competition and circumvent the application of the PPL is prohibited. Also, fractioning of items to be procured is recognized by PPL as a serious offense, and the responsible oversight body may impose an administrative fine on the Contracting Authority and a pecuniary penalty shall also be imposed on a responsible person that is found responsible for the offence in the Contracting Authority.

Advertising opportunities, rules and time limits

The legal framework requires that procurement opportunities are publicly advertised unless the restriction of procurement opportunities is explicitly justified as in the case of negotiated procedure without prior notice. All procurement opportunities, including the simple procurement above 8,000 euros, are advertised in the EPPS. The Montenegrin EPPS enables the publication of tender documentation and dispatching of public procurement notices above the thresholds to the Publications Office of the EU for further publication in the Official Journal of the EU. The EPPS portal is easily accessible at no cost.

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

Time limits are determined based on the thresholds of public procurement varying from the minimum of 15 days to 30 days from the publishing of a procurement notice. Contracting Authority may shorten the period for bid/proposal submission if required so by a reason of urgency which is not caused by the fault of the contracting authority. In such circumstances, the CA shall provide an explanation in the invitation for submission of bids for the reasons of urgency due to which the bid submission period was reduced. Each article that describes the procurement methods provides for the minimum timeframes for the publication timeline. It is clear from the different provisions of the PPL that the range of minimum timeframe from 15 days to 30 days reflects the complexity of procurement procedures associated with increased procurement threshold.



Public procurement procedure commences with publishing or sending the tender documentation which shall contain a call for competition, the technical specification of the procurement subject, methodology for bid evaluation, the instruction for preparation and submission of bids and the instruction on legal remedy. The tender documentation includes enough information to allow potential bidders to determine whether they can submit a bid and are interested in submitting one, with the exception of contract clauses, which are not included in the tender document, and the potential bidders don't have information on the expected contractual clauses in advance. Information on the type of information that the tender document may indicate are provided on the Rulebook on Forms of Conducting Public Procurement, including information about a contracting authority, type of award procedure, subject-matter of procurement, estimated value of procurement, conditions for participation, deadline for the submission of an application/bid, time of opening of applications/bids and other relevant information which will reasonably inform bidders on subject-matter of procurement and the public procurement procedure.

Rules on participation

The legal framework provides for participation based on qualification and provides rules on eligibility and exclusions. Contracting authorities are obliged to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner.

The PPL mandates the right of economic operator to participate in public procurement procedures guaranteeing fair and equal access to all prospective bidders. Conditions for participating in a public procurement procedure and grounds for exclusion are clearly elaborated listing the mandatory conditions for participation; requesting fulfilment of qualification requirement being of professional nature, economic and financial standing, and technical and professional ability; and listing exclusions from public procurement procedures.

Registration in the EPPS is not a barrier to participation in a procurement process and based on the number of international firms (economic operators) registered to date, there is no evidence of such barriers. International bidders are not required to obtain any national e-certification to register and can use their own national e-certifications.

Although the PPL itself doesn't impose any barrier for economic operators to participate, it is found that there exists an underlying barrier which is the requirement of national licensing for providing certain types of services and/or works. Interested bidders are required to comply with Montenegrin law in respect to the sectoral legal framework such as on construction, cadaster of immovable property, health and safety at work, among others. Only certified companies can provide the required services, and licenses are usually requested at the time of procurement of the intended works or services. The laws typically apply not only to companies but also to professionals composing the proposed teams who are required to be certified by relevant authorities in the country. At times, the process for obtaining or validating similar international certifications in Montenegro is a lengthy and costly process that benefits mostly local participants and involves a barrier to fair and equal competition. It is noted that the DPPP does not get involved in the matter and delegates the licensing requirements to the competence of relevant contracting authority.

PPL details the eligibility requirements and provides for exclusions for criminal or corrupt activities, but not the process for reaching decisions on administrative debarment as well as other legitimate exclusions such as, adherence to UN Security Council or international agreements, including the process related to



any possible appeals. From the above, it appears that each of the Contracting Authorities can conclude its own debarment process.

Additionally, there isn't a unified list of debarred Economic Operators, which raises the risk of debarred firms being awarded contracts from public funds. The PPL doesn't provide grounds to reject tenderers that are subject to UN Security Council sanctions, nor any other international institution such as EU debarment list.

There are no provisions on establishing rules for the participation of state-owned enterprises that promote fair competition. The same participation conditions apply for privately owned as well as state-owned economic operators.

PPL details the type of requirements used to verify a bidder's ability to perform under a specific contract by assessing conditions on the capability to pursue the professional activity, economic and financial standing and/or technical and professional ability.

The conditions to pursue the professional activity are further detailed in PPL Art. 102 stating what type of evidentiary documentation is required for proving the fulfilment of the condition. Financial and economic capacities are determined in PPL requesting information related to a certain minimum yearly turnover in the preceding two years, including a certain minimum turnover in the area covered by the contract; and/or the ratios of assets and due liabilities; and/or other financial parameters.

Technical and professional parameters are described in PPL and are related to a specific experience with high-quality and successful execution of same or similar activities related to the field of the procurement subject, the necessary expert and personnel resources that will be involved in the contract execution; mechanical and technical equipment and/or other capacities necessary for timely and high-quality execution of the contract, quality management system in place which is relevant to the area of the subject of procurement and an environmental protection system in place. The PPL don't foresee any provision to recognise the legal effects of supporting documents required to the same awarded economic operation during a period of time to verify its' self-declaration submitted during tender phase. According to Article 135b, before awarding contracts, contracting authorities must require the awarded tenderer to submit up-to-date supporting documents such as certificates, statements, and other means of proof regarding exclusion grounds. This rule is applied every time before the contract award, regardless of how often the contract is awarded to the same tenderer which may pose administrative and financial burden to participants.

Procurement documents and specifications

The minimum content of the procurement documents is regulated in the law. There are several by-laws such as rulebooks in use providing standardized forms to be used for each type of procurement process and each stage in a procurement process. Manuals and guidelines for bidders which provide clear instructions to bidders on how to register in EPPS, fill in all required data and submit their bid through the system have also been developed and are in use.

As per PPL, technical specifications shall contain clear, precise and commonly understandable information to enable submission of adequate and comparable qualification applications or bids as well



as all information on the costs that a bidder may bear in relation to his participation in public procurement process. Articles 87-98 set out a manner the tender documents are to be written by procuring entities and their content by explaining the required content of technical specifications, use of technical characteristics, requirements related to execution of subject contract, essential requirements and charges for the use of patents, requirements related to labels, amendments and clarifications to tender documentation, means of financial securing, etc.

The PPL requires that the content of the procurement documents is detailed in the Rulebook on Forms of Conducting Public Procurement. However, there are numerous forms which the bidder should collect to prepare the bid and they are not deriving from a standard tender document that CAs can easily extract, collect, assemble and use.

PPL Art. 87 on setting out the rules for drafting technical specifications provides that technical specifications shall be determined:

- 1) as a performance-related or functional requirement, in a manner that the required parameters are defined precisely enough to enable the bidders to prepare an adequate bid and contracting authorities to properly select the most advantageous bid;
- 2) with reference to Montenegrin standards, norms and related documents, technical regulations and technical specifications concerning project design, execution of works or utilization of goods which are harmonized with European standards, technical regulations or common technical specifications stating the words “or equivalent”, and when there are no such norms, technical regulations and technical specifications in Montenegro, the contracting authority refers to European standards, technical regulations, common technical specifications, internationally recognized standards and other technical reference systems determined by European standardization bodies.

Also, Article 87(2) provides that the law does require recognition of standards that are equivalent, when neutral specifications are not available.

Potential bidders are allowed to request a clarification of the procurement document not later than 10 days before the deadline for the submission of qualification applications or bids, and the procuring entity is required to publish or supply clarification of the tender documentation via the EPPS with no delay and at the latest within five days as of the day of receipt of the request.

Evaluation and award criteria

The evaluation criteria are determined depending on the type of procurement subject, in accordance with requirements of the PPL and based on the Rulebook on the Methodology of Evaluation of Bids.

PPL provides that Contracting Authorities shall determine the criterion in the tender documentation and establish a methodology for evaluation of bids. The criterion for selection of the most advantageous bid shall be descriptive, determined by points, related to the subject of procurement and non-discriminatory. Each member of the commission carrying out procurement procedures shall separately (individually) evaluate regular bids based on the criteria established in the tender documentation.

To ensure objective and value-for-money decisions, the PPL (Art. 117) envisages selection of the most advantageous bid in a public procurement procedure applying the principle of cost-effectiveness, on basis of the offered price, best price-quality ratio, or life-cycle cost. Price as the only criterion for selection of



the most advantageous bid can be exclusively used in a negotiated procedure without prior publication of a contract notice, in a process of concluding the contract on the basis of the, in an electronic auction or a dynamic purchasing system, in a contract award procedure for social and other specific services and in the case of public procurement for the needs of defense and security or for the needs of diplomatic missions, consular offices and military and diplomatic representatives abroad.

According to PPL Art. 117, Contracting Authorities are obligated to determine the criterion in the tender documentation and establish a methodology for evaluation of bids. The same article further provides that the bid evaluation methodology shall contain the method and the maximum number of points which could be assigned to a bid in accordance with the determined criterion and each envisaged parameter.

Rulebook on methodology of bid evaluation in public procurement procedure defines methodology of bid evaluation to select the most advantageous bid based on criteria and methodology defined in the procurement documents. Further, Art. 118 provides that where the price has been previously determined, the bids shall be evaluated solely based on the quality parameters. The ratio between the price and the quality shall be determined in such a manner that the number of points given based on price may not exceed 90 percent of the total determined maximum number of points.

However, the Rulebook does not provide a clear methodology on evaluating technical capacity for consulting services. Although PPL Article 118 provides for the parameters to be considered while determining the price-quality ratio, there is a lack of forms to provide guidance on the methodology on evaluating the technical capacity in consulting services.

All the selection methods defined by PPL apply to all types of procurements (goods, works and services), and the PPL does not define consulting services as a category but services in general. Definition of services as subject to procurement is defined in Art. 76 which provides that the subject of procurement of services shall be the services from the following fields: transport; finances; ICT; education, science and research; accounting and auditing; consultancy; project design; expert supervision; hospitality, healthcare, social care, as well as other services, apart from those covered by procurement of goods referred to in Article 75 of the PPL.

The current PPL doesn't have a clear provision stating that the information on the review of bids shall be confidential until contract award. Namely, Art. 134 indicates that the commission responsible for conducting the procurement procedure is responsible to review and assess the bids, after opening of bids, without the presence of the authorized representatives of bidders but it doesn't mandate that members of the commission are accountable to ensure that bids information is not disclosed. Previous PPL had a clear statement regarding non-disclosure of information during bid assessment that was removed in the 2023 PPL.

Submission, receipt and opening of tenders

Opening of tenders is done in the EPPS at the moment of lapse of the time limit for tender submission, without the presence of the authorized representatives of the bidders. EPPS automatically creates Minutes of Opening of Bids immediately after opening of bids has been completed and forwards it to all bidders, jointly or individually, depending on the type of the public procurement procedure. The obligation of retaining complete documentation from public procurement procedures conducted is defined by the PPL providing also that the documentation, which is recorded in the EPPS, shall be archived



for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data. Furthermore, the Rulebook on Manner of Operation and Use of the EPPS provides that each publication must be available in the archives of the EPPS for at least five years from the date of publication with the objective of unrestricted access and search to the ordering party who conducted the procedure, to the competent authority for public policy procurement, the Commission for the Protection of Rights in the Public Procurement Procedure and the competent inspection body.

PPL doesn't regulate particularly the issue of maintaining security and confidentiality of bids in various stages of public procurement procedure such as prior to bid opening and after the award of contracts. Only on the matter related to data protection, the PPL required that a contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential, but it doesn't link it with the confidentiality of all documents received as part of the tender documents. The disclosure of specific sensitive information is prohibited, as regulated in the legal framework by PPL Art. 30 which provides that a contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential.

The modality of submitting tenders and receipt by the government is well defined. Tenders are to be submitted in electronic form to a contracting authority via the EPPS. An economic operator declaration and a bid guarantee shall be submitted in electronic form via the EPPS. If the bidder cannot submit a bid guarantee in an electronic form, it shall be obliged to submit a copy of the bid guarantee via the EPPS, and to submit or deliver original of the bid guarantee to the contracting authority directly or via registered mail no later than tender submission deadline. All the details regarding communication between the contracting authorities and bidders via the EPPS, submission of tenders, their receipt and confirmation by contracting authorities, etc. are elaborated in detail in the Rulebook on Manner of Operation and Use of the EPPS.

Right to challenge and appeal

The legal framework provides for the right of a participant in public procurement procedure to challenge decisions or actions by a procuring entity. Protection of rights of participants in a public procurement procedure, in accordance with PPL and a regulation governing public procurement in area of defense and security shall be exercised before Commission for the Protection of Rights in Public Procurement Procedures (CPRPPP). Also, complaints related to procedures for awarding contracts on public-private partnership are handled by the CPRPPP.

The procedure for the protection of the right is initiated by an appeal which is filed with the CPRPPP through the contracting authority (CA). Upon receipt of an appeal, CAs publish appeals at the EPPS and suspend the procurement procedure. CAs notify the CPRPPP on all appeals received, including those adopted in whole, along with evidence of publishing their decisions. Appeals not adopted in whole by CAs are automatically passed to the CPRPPP through the EPPS. However, this requires an action by a CA in the system. Organization and status of the CPRPPP is provided in the PPL Articles 198-208.

An appeal with the CPRPPP may be filed against tender documentation; changes and/or supplements to the tender documentation; decision on exclusion from a public procurement procedure; decisions on the selection of the most advantageous bid; decisions on annulment of the public procurement procedure. The PPL Art. 185 elaborates in detail on each of the above-listed items which serve as a basis for an appeal.



Time frames for the submission of challenges and appeals by Economic Operators are within (i) 20 days following the day of publication or delivery of the tender documentation, or modifications and supplements to the tender documentation, if the deadline for submitting qualification applications or bids is at least 30 days; 10 days following the day of publication or delivery of the tender documentation, or modifications and supplements to the tender documentation, if the deadline for submitting qualification applications or bids is at least 15 days; until the lapse of half of the time limit for submitting qualification applications or bids, if the deadline for submitting qualification applications or bids is at least 15 days; (ii) within 10 days of supply of the decision on exclusion from a public procurement procedure publication of the decision on selection of the most advantageous bid or the decision on annulment of a public procurement procedure.

PPL also regulates the following deadlines for decision-making by the CPRPPP which is stipulated as (i) 8 days from the date it receives the appeals and related documents to reject the appeal if it finds it unallowed, untimely, submitted by an unauthorized person, incomplete, or not in order; or to stop the appeals procedure if the appellant withdraws the appeal; ii) 30 days from the date it receives the appeals and related documents to reject an appeal as unfounded, or to adopt an appeal in part or in whole and annul the CA's decision or procedure or act found unlawful. This deadline can be extended by up to 10 days if the CPRPPP determines that it needs to engage an expert witness or obtain opinions from relevant public bodies or if the documents to review are extensive.

Applications for appeal are published on the EPPS within 3 days from the date the appeal is lodged, and the decision of the CPRPP is published in EPPS 3 days after the resolution on the appeal is rendered.

PPL grants also the right for judicial review on decision taken by the CPRPPP, however filing a court claim doesn't have suspensive character for the conclusion of a public procurement contract. The CPRPPP shall publish on its website and the EPPS the notification concerning the commencement of administrative proceedings before the courts and the resulting decision.

The PPL also recognizes that any person who suffered damage due to violation of the PPL has a possibility of damage compensation before the competent court in accordance with the Law on Administrative Procedures and Law on Administrative Disputes.

The right to challenge an award decision is not granted for simple procurement since it is granted only in the procurement procedures that follow the PPL, and as such it is out of the scope of application for simple procurement procedures. The Rulebook on Conducting Simple Procurement doesn't envisage the right of the bidders to challenge the decision of Contracting Authorities.

Contract management

Contract management is partially covered by the procurement legal framework. The existing regulation of this matter is insufficient to cover the whole range of functions and responsibilities required to complete the whole process of contract management. The main responsibility for contract management is with the Contracting Authorities which perform control over execution of a concluded public procurement contract and prepare the report on the implementation of the contract and publish it on the EPPS within 30 days after the implementation of the public procurement contract. The contract implementation report prepared by CA provides only administrative data of the contract such as the



singed date, implementation period, contract value and don't capture the information of technical or physical implementation of the contract etc. Contract management data are also missing in EPPS.

PPL defines conditions for contract amendments under Article 151 considering all valid aspects which could lead to contract amendments including inter alia where the modifications, irrespective of their monetary value, have been provided for in the tender documentation and the increase of the contract value may not exceed 20 percent of the original contract value; for procurement of additional goods, services or works that have become necessary and that were not included in the original contract whereupon the increase of the contract value may not exceed 20 percent of the original contract or when the need for modification has been brought about by circumstances which a contracting authority could not foresee and the modification does not alter the overall nature of the contract, whereupon the increase of the contract value may not exceed 20 percent of the original contract; when a need to modify the contract resulted from circumstance the contracting authority could not have envisaged at the time the contract was concluded, and the modification does not change the nature of the contract but it only reduces the contractual values; when the economic operator, following corporate restructuring, including takeover, merger, acquisition or insolvency, is universally or partially replaced by an entirely or partly new legal successor, or an economic operator which fulfils the originally established criteria of the public procurement contract. However, the PPL and the secondary legislation don't ensure that there are control mechanisms in place to ensure that contract amendments ensure economy.

PPL provisions don't directly regulate the process of dispute resolution during the performance of a public procurement contract. Instead, PPL Article 149 refers to the provisions of the law governing obligation relations for execution and responsibility of contractual parties to meet the obligations from the public procurement contract. According to the Law on Obligations, a contract dispute resolution in Montenegro implies that the parties to a contract have to attempt to settle disputes through mutual adjustment, mediation or in some other form of peaceful methods.

Alternative dispute resolution (ADR) is regulated the Law on Alternative Dispute Resolution published in the Official Gazette no. 77/2020 of 29.7.2020 which indicate the use of mediation, early neutral assessment of disputes and other methods of alternative dispute resolution, in accordance with internationally accepted standards. The law does not apply to the procedure for amicable settlement of disputes before an arbitrator, which is regulated by a separate Law on Arbitration (Official Gazette no. 47/2015) and is consistent with generally accepted practices of neutrality of arbitrators, due process, appropriateness and enforceability. Arbitration Law governs domestic and international arbitration, recognition, and enforcement of arbitral awards, as well as matters of jurisdiction and court procedure in relation to arbitration. The arbitration process can be handled by a sole arbitrator or an arbitral panel.

The outcome of litigation procedures before a court is regulated by the Law on Obligations, and court decisions are binding with due consideration of judicial review.

For dispute resolution under the ADR, it is provided that the settlement concluded before the mediator is binding on the parties who concluded it. Also based on the Arbitration Law an arbitral award rendered by an arbitral tribunal in the territory of Montenegro shall have the force and effect of an enforceable document and shall be enforced in accordance with the law governing the procedure for enforcement and security. International arbitration decisions rendered outside Montenegro are recognized and enforced by the competent civil courts in Montenegro in line with the NY Convention on Enforcement of International Arbitral Award to which Montenegro is a member since 2015.



Electronic procurement

The legal framework mandates e-procurement solutions covering partially the public procurement cycle.

The use of EPPS is mandated by the PPL and is supplemented in the Rulebook on Manner of Operation and Use of the EPPS. Although EPPS covers most of the procurement cycle, it doesn't allow for contract implementation documents to be registered in the system. Only the report on contract completion is published, but not the progress report, billing and payments, etc.

PPL provides that electronic means for communication, as well as their technical characteristics shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict access for economic operators in a public procurement procedure. Communication, exchange and storage of information and data in a public procurement procedure shall be done in a way that ensures the integrity and confidentiality of data included in qualification applications, bids, plans and projects. Furthermore, Art. 45 requires that processing, exchange and publication of data in electronic form within the EPPS shall be conducted in accordance with the laws governing electronic government, electronic identification and electronic signature, electronic document, electronic trade and information security.

PPL defines that the whole public procurement process will be managed electronically. Tenders are submitted in electronic form via EPPS. An economic operator declaration and a bid guarantee are to be submitted in electronic form via EPPS. However, exceptions are allowed in specific situations but only in terms of submitting a bid guarantee as a part of a bid, which can be submitted by postal service directly to a contracting authority, such as if the bidder cannot submit a bid guarantee in an electronic form, it shall be obliged to submit a copy of the bid guarantee via EPPS, and to submit or deliver original of the bid guarantee to the contracting authority directly or via registered mail no later than the lapse of the time limit for submission of bids. The original bid guarantee in written form shall be submitted in an envelope. The Rulebook on Manner of Operation and Use of EPPS further regulates the whole submission process and communication between contracting authorities and participants in public procurement process.

Electronic means for communication, as well as their technical characteristics are non-discriminatory, generally available and interoperable with the ICT products in general use and must not restrict access for economic operators in a public procurement procedure. Communication, exchange and storage of information and data in a public procurement procedure are to be done in a way that ensures the integrity and confidentiality of data included in qualification applications, bids, plans and projects. Furthermore, the PPL requires that processing, exchange and publication of data in electronic form within the EPPS shall be conducted in accordance with the laws governing electronic government, electronic identification and electronic signature, electronic document, electronic trade and information security.

Norms for safekeeping of records, documents and electronic data

PPL defines that contracting authority shall store the complete documentation from public procurement procedures conducted at least four years after the day of execution of the public procurement contract. The documentation, which is recorded in the EPPS, is archived for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data.



The Rulebook on Manner of Operation and Use of EPPS provides that each procurement notice, depending on the type of public procurement procedure, and the associated documentation must be publicly available for review in EPPS at least one year from the date of publication. Each publication must be available in the archives of the EPPS for at least five years from the date of publication with the objective of unrestricted access and search to the contracting authority who conducted the procedure, to the competent authority for public policy procurement, the CPRPPP, and the competent inspection body. This is also regulated for simple procurement by The Rulebook on Methods for Conducting Simple Procurement which foresees that the Contracting Authority shall safekeep the documentation on the simple procurement for five years following the day the simple procurement contract is concluded.

Access to procurement records for public inspection is limited. The inspection as a control authority does not have automatic access to what is being kept in the EPPS but has to obtain CA's approval in the system. What is available for public inspection (media, NGO, citizens) is rather limited, especially in the part of contract implementation where there is almost no data available.

The contracting authority is obliged to store the complete documentation from public procurement procedures conducted in accordance with PPL for at least four years after the day of execution of the public procurement contract or framework agreement. The documentation, which is recorded in the EPPS, is to be archived for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data.

The subsequent by-law, the Rulebook on Manner of Operation and Use of EPPS also provides that each procurement notice, depending on the type of public procurement procedure, and the associated documentation must be publicly available for review in EPPS at least one year from the date of publication. Each publication must be available in the archives of the EPPS for at least five years from the date of publication with the objective of unrestricted access and search to the contracting authority who conducted the procedure, to the competent authority for public policy procurement, the CPRPPP, and the competent inspection body. However, neither PPL nor the subsequent by-law on EPPS requires or defines the establishment of security protocols for records management. Despite the fact that security protocols are not defined in the legal framework governing public procurement, they are regulated at the state level and apply to all public administration bodies, specifically the Law on Archiving and Decree on Office Management of Public Administration Bodies. In contrast, the EPPS ensures security protocols for electronic records.

Public procurement principles in specialized legislation

Public procurement principles generally do apply in specialized legislation. Public procurement in the utilities sector, i.e., procured by contracting entities operating in the sectors of water, energy, transport and postal services is covered by specific provisions in of the PPL. Also, the procurement procedures that are to be followed in sectoral contracts are elaborated throughout and envisage same procurement methods and procurement principles as in classical procurement:

- (i) Open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue, for the procurement of each procurement subject
- (ii) Partnership for innovation, if it has the need for innovative goods, services or works that cannot be satisfied by the procurement of goods, services or works already available on the market



(iii) Negotiated procedure without prior publication of a contract notice, if there are circumstances referred.

PPL applies to defense procurement with the exception of the list of equipment and specialized procurements in the field of defense and security which are excluded from the application of PPL and are regulated by the Decree on the List of Military Equipment and Products, Procedure and Method of Implementation of Public Procurements in the Field of Defense and Security. The provision regulates the obligation of contracting authority to ensure economical use when carrying out the procurement from public funds, in accordance with the purpose, type and estimated value of the procurement object in order to achieve the best value for the contracted price, which is not higher than the market price for comparable volume, content and quality of the subject of procurement, if that subject of security procurement is available on the market and adequate to the needs of the client. Principle of transparency is limited in defense and security procurement due to its sensitive nature. Selection and contracting of public-private partnerships (PPPs) are regulated by the specialized legislation which is the Law on Public-Private partnership. According to this law, principles of protection of the public interest; security and affordability; transparency; non-discrimination; proportionality; protection of competition; environmental protection apply in the selection process of PPP contracts.

The law also precisely defines the issues related to the preparation of tender documentation and justification analysis and regulates the entire procedure through which the proposal of one project passes to the final adoption. It is also important that the legislator especially emphasized the importance of the public interest, since the analysis of justification that accompanies each public-private partnership project is its important segment. Equally, the Law on Concessions considers some of the public procurement principles equivalent to those in the PPL. The Law on Concessions provides that granting concessions is based on the principles of transparency, non-discrimination and competitiveness.

Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned, there is a special legal entity established by the Law on PPP for the purpose of implementation of PPPs, investments, and promotion of investment potential of Montenegro as a destination for investments, namely the Montenegrin Investment Agency. The organizational structure of the agency is also clearly defined by the PPP Law with clear responsibilities assigned. Its role is to promote and monitor the realization of public-private partnerships and investments. In addition, the agency and the Ministries of Finance and Social Welfare give an opinion on public-private project proposals. At the same time, all PPP contracts shall be registered before the Contracts Register of the agency and published on its web page. Similarly, for the concessions the respective Law on Concessions, assigns the Commission for Concessions of Montenegro, which is independent and autonomous in its work, with responsibilities for carrying out duties established by this law along with its organizational structure and responsibilities.

- **Gaps**

Substantive gaps

Rules on participation

There are two substantial gaps under this assessment criteria.



1. Although the PPL itself doesn't impose any barrier for firms (mainly international) to participate, it appears that there exists an underlying barrier which is the requirement of national licensing for providing certain types of services and/or works. As a general practice, interested bidders are required to comply with Montenegrin law in respect to the sectorial legal framework such as on construction, cadaster of immovable property, health and safety at work, among others. Only certified companies can provide the required services. Licensing is usually requested at the time of procurement of the intended works or services, and the process for obtaining or validating similar international certifications in Montenegro is a lengthy and costly process that benefits mostly local participants and involves a barrier to fair and equal competition. The laws typically apply not only to companies but also to professionals who compose the proposed teams. Companies and experts are certified by relevant authorities in the country. From the interviews with DPPP it was noted that they don't get involved in the matter and delegate the licensing requirements to each relevant authority. The level of risk associated with this gap is considered high as it is found that application of licenses and authorization may result in reducing participation and consequently affect the level of competition. It is assigned a red flag due to the fact that this gap cannot be easily mitigated within the procurement system.

2. PPL recognizes that a Contracting Authority may exclude an economic operator from participation in a procurement procedure. However, the PPL doesn't elaborate the process for reaching decisions on administrative debarment. It appears that each of the Contracting Authorities can conclude its own debarment process. Additionally, the DPPP does not apply a debarment list for Economic Operators which are ineligible to participate in public procurement procedures and Contracting Authorities are not aware of the list of debarred EO from other CAs and the decision is not reflected in the EPPS. The PPL doesn't provide grounds to reject tenderers that are subject to UN Security Council sanctions, nor any other international institution such as EU debarment list.

The level of risk is considered high, considering the impact of not properly recording information that is publicly available to all Contracting Authorities regarding debarred firms, may have on engaging in contracts with economic operators which are in breach of legal norms.

Evaluation and award criteria

The legal framework doesn't clearly mandate that during the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process, but it refers only to non-participation of bidders' representatives during the evaluation. Previous PPL had a clear statement regarding non-disclosure of information during bid assessment but was removed in the 2023 PPL.

The level of risk associated with this gap is considered medium and can be mitigated through the implementation of the recommendation provided.

Contract management

Contract management function is the responsibility of contracting authorities, however, the PPL doesn't elaborate those responsibilities, nor is it done in the subsequent bylaws. The existing regulation requires that the contracting authority assigns a person to execute public procurement contract, without describing the role and it is insufficient to cover the whole range of functions and responsibilities required



to complete the whole process of contract management. Also, the contract implementation report prepared by CA doesn't capture the information of technical or physical implementation of the contract but provides only administrative data of the contract such as the signed date, implementation period, contract value, etc.

The lack of contract management rules clearly elaborated by the legal framework and supplemented by the secondary legislation, creates gaps in the contract execution process. Contract management data are consequently not maintained as required and made available through EPPS. The level of risk assigned is high and it can be addressed by the procurement system.

Norms for safekeeping of records, documents and electronic data

Neither PPL nor the subsequent bylaws require or define the establishment of security protocols for records management.

The risk level is considered medium and can be addressed by the recommendation provided.

Substantive gaps and recommendations for this indicator are summarized in table 5.

Minor gaps

Scope of application of Public Procurement Law and public access

Considering the list of exceptions, it may be affirmed that the PPL doesn't cover all procurement using public funds. Compared to the Directive 2014/24/EU on public procurement the number of exclusions in Montenegro PPL, is almost identical in number and type of exclusions. Although the PPL indicates some exclusions which are not foreseen in the said directives, such as financial, legal or other services in the proceedings related to the privatization of the economy, procurement of election materials and tasks related to the development and adoption of planning documents as stipulated by the law governing spatial planning, many of these exclusions are regulated by other sector laws and bylaws (decrees, rulebooks) other than PPL legal framework, which makes it hard to identify the limitation of PPL application to all procurement using public funds. The high rate of simple procurement registered at 2021 and 2022, respectively, at 37 percent and 16 percent of total procured amount indicate that PPL is not applicable to a considerable budget slice. It is noted that the total value of budget that can be procured yearly under simple procurements by a CA is not limited in the PPL, nor in the secondary legislation.

The consolidated version of the legal framework is not available free of charge at the Official Gazette and readers need to search for both original acts and amendments to make reference the most recent legal version. Although DPPP publishes all legal updates on their website, reference to the most recent legal version is missing as the uploaded version does not always represent the official version of the act and is not linked to the Official Gazette portal.

Procurement method

The timeline to submit tenders in the dynamic purchasing system is not regulated and there a standard 30 days' time apply. The PPL foresees in Article 70 that the examination of requests to participate in dynamic purchasing system should normally be performed within a maximum of 10 working days with the



possibility for extending with 5 more days, as prescribed in EU Public Procurement directives, but it does not provide for shorter time limits for the receipt of tenders at the second stage (whereas the directives contain a 10-day time limit). This means that a 30-day deadline would have to apply, as in restricted procedures.

Rules of participation

Contracting authorities must require the awarded tenderer to submit up-to-date supporting documents such as certificates, statements, and other means of proof regarding exclusion grounds. This rule is applied every time before the contract award, regardless of how often the contract is awarded to the same tenderer which may pose administrative and financial burden to participants.

Advertising rules and time limits

The tender documentation includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one, with the exception of contract clauses. The model tender documents don't provide for standard contract conditions. Up until 2019 PPL amendments, it was obligatory that the tender document contain contract model as a rule, however the current PPL in force does not require it anymore.

Evaluation and award criteria

PPL does not define consulting services as a category but services in general in accordance with the EU Directive 24/2014. All the selection methods defined by PPL apply to all types of procurements (goods, works and services) and there is no distinction in this regard. Therefore, it is assumed that the award criteria apply also for consulting service including the price-quality ration criterion. Although PPL provides for the parameters to be considered while determining the price-quality ratio, the Rulebook on Methodology for the Assessment of Offers doesn't provide a clear methodology evaluating the technical capacity in services (including consultancies).

The PPL indicates that when assessing the most advantageous bids the ratio between the price and the quality shall be determined in such a manner that the number of points given based on price may not exceed 90 percent of the total determined maximum number of points. Although the legal framework sets the upper ceiling and not the minimum of such ratio, the assessment team considers that the ratio between price and non-price factors is set at high level toward price element, which doesn't ensure that value for money in public procurement is promoted.

Submission, receipt, and opening of tenders

Security and confidentiality of bids is maintained prior to bid opening, but there are no clear provisions to ensure that same confidentiality is kept until the award of contracts is made. The provisions of the PPL are not clearly indicating that disclosure of information may be done upon a request of law enforcement institutions.

Protection of rights of participants in public procurement procedure should be reflected in the legal framework that regulates simple procurement



There is no right to challenge an award decision for simple procurement. The Rulebook on Conducting Simple Procurement doesn't envisage the right of the bidders to challenge the decision of Contracting Authorities.

Electronic procurement

Although EPPS covers most of the procurement cycle, it doesn't allow for contract implementation documents to be registered in the system. Only the report on contract completion is published, but not the progress report, billing and payments, etc.

Norms for safekeeping of records, documents and electronic data

The legal framework envisages the list of documents that should be recorded and the timeline for its safekeeping, however from the interviews with stakeholders it was confirmed that access to procurement records for public inspection is limited. The inspection as a control authority does not have automatic access to what is being kept in the EPPS but has to obtain CA's approval in the system. What is available for public inspection (media, NGO, citizens) is rather limited, especially in the part of contract implementation where there is almost no data available. On the other side, the retention policy for 5 years seems to be shorter than the time limitation for prosecuting fraud and corruption cases which may vary from 5 to 10 years depending on the type of law infringement.

Recommendations

A number of recommendations mirror the identified gaps. Most of these relate to changes in the law or implementing regulation and are completed by recommendations in other indicators that address the issue from an implementation perspective. Following the MAPS methodological guidance and user's guide, the recommendations refer to the legal framework as currently in force.

Scope of application of the legal framework

- The legal framework should ensure that the list of exceptions is in full accordance with the EU Directive 2014/24/EU.
- The secondary legislation should include provisions to limit the level of budget that a Contract Authority can launch using simple procurement below 8,000 Euro within a budget year.
- DPPP should ensure to keep laws, regulations and procedures in the area of public procurement up to date and preferably on a single, freely accessible online portal. In order to ensure a wider access to economic operators a link or reference to this portal is provided at the e-procurement portal for ease of reference.

Procurement method:

- The PPL should indicate the appropriate timeline to submit offer in the second stage of dynamic purchasing system in accordance with proportionality principle.

Rules of participation

- The secondary legislation should provide clear reference on the applicability of authorization and license by including in tender documents instructions to allow that proof of applying for a license should be sufficient evidence of a qualification at the tendering phase and that the license should



be presented at contract signature stage. In addition, the tender documents should indicate what will be considered an equivalent license and provide a description of the procedure for obtaining a license from the competent authorities.

- DPPP should coordinate with relevant institutions in at least identifying the relevant licensing requirement that impose a barrier to public procurement procedures and provide widely this information to accessible sources of information for potential bidders.
- The legal framework should (i) include process for reaching decisions on administrative debarment as well as other legitimate exclusions, such as adherence to UN Security Council or international agreements, and (ii) mandate DPPP with the role of finalizing the administrative debarment and publishing the list of debarred economic operators in EPPS. EPPS should provide for mechanism to identify the status of debarred firms during the execution of procurement procedure.
- The legal framework may include provisions to recognize the legal effects of supporting documents submitted by the same awarded economic operator, within a specific timeframe.

Evaluation and award criteria

- The secondary legislation should provide for a methodology on evaluating technical capacity for consulting services.
- The secondary legislation should provide different ratio of thresholds between price and quality considering the type of contracts and guide the CA to apply a differentiated ratio based on the features of works, goods or services contracts.
- The legal framework should provide for security protocols to protect records (physical and/or electronic).

Submission receipt and opening of tenders

- The legal framework should mandate that the security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts. The legal framework should clearly mandate that disclosure of information during procurement procedure can be allowed upon request of law enforcement agencies.

Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity

- Protection of rights of participants in public procurement procedure should be reflected in the legal framework that regulates simple procurement. It might be worth exploring if such function can be executed by DPPP.

Contract management

- The legal framework should further develop and define functions and responsibilities for managing contracts.
- EPPS should include features to capture data on contract management. In addition, DPPP should elaborate a Contract Management Manual.

Electronic Procurement



- EPPS should cover the procurement cycle entirely with full application in practice including substantive information on contract implementation.

Norms for safekeeping of records, documents and electronic data

- A system for safekeeping of records and documents should cover the entire procurement process, including contract management, and this should be clearly defined in the PPL outlining the importance of availability of information and records that track each procurement action. Revision of the law should also define different levels of access to procurement documents in the system for different types of users.
- The legal framework should provide for security protocols for procurement related documents.

Table 5. Summary of Substantive Gaps and Recommendations for Indicator 1

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 1(d) Rules on participation		
1 (d)(b) Although procurement legal framework doesn't explicitly impose any barrier for firms to participate, the analysis of the national legal framework indicates that there is an underlying barrier, namely licensing for providing certain types of services and/or works.	High risk and a red flag	The secondary legislation should provide clear reference on the applicability of authorization and license by including in tender documents instructions to allow that proof of applying for a license should be sufficient evidence of a qualification at the tendering phase, and that the license should be presented at contract signature stage. In addition, the tender documents should indicate what will be considered an equivalent license and also provide a description of the procedure for obtaining a license from the competent authorities.
1 (d)(c). There are no details on the procedures that lead to the debarment procedure for Economic Operators or grounds to reject tenderers due to other legitimate exclusions such as those in adherence to UN Security Council sanctions or any. There is lack of a list of debarred firms.	High risk and not a red flag	<p>The legal framework should include process for reaching decisions on administrative debarment as well as other legitimate exclusions, such as adherence to UN Security Council or other obligations deriving from existing international agreements.</p> <p>Normative/regulatory body should be tasked with the role of finalizing the administrative debarment process and publishing the list of debarred economic</p>



operators in EPPS. The right to appeal to such a decision should be granted.

EPPS should publish the list of debarred firms and ensure for mechanism to identify the status of debarred firms during the execution of procurement procedure.

Sub-indicator 1(f) Evaluation and award criteria

1(f)(e). Lack of a clear provision stating that the information on the review of bids shall be confidential until contract award.	Medium risk and not a red flag	The legal framework should clearly indicate non-disclosure of information during bid evaluation for all parties outside the evaluation process.
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Sub-indicator 1(i) Contract management

1(i)(a). Contract management in its full range is not defined. The existing regulation of this matter is insufficient to cover the whole range of functions and responsibilities required to complete the whole process of contract management	High risk and not a red flag	The legal framework should further develop and define functions and responsibilities for managing contracts. EPPS should include features to capture data on contract management. In addition, DPPP should elaborate a Contract Management Manual
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Sub-indicator 1(k) Norms for safekeeping of records, documents and electronic data

1 (k)(c) There aren't established security protocols to protect records (physical and/or electronic) in public procurement framework.	Medium risk and not a red flag	There should be established security protocols to protect records (physical and/or electronic).
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Source: Assessment team.

Indicator 2. Implementing regulations and tools support the legal framework

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



- **Synthesis of the indicator**

The Montenegro public procurement system largely complies with this indicator. Necessary regulations and guidance exist, and they are adequately recorded and organized hierarchically. However, there are numerous regulations issued to cover specific steps in the procurement process and, consequently, lack of systematization of procurement may create uncertainty for Contracting Authorities. It is recommended to review and consolidate the current coverage of the procurement regulations in main set of regulations that generally cover the entire procurement cycle. There is also a need to supplement the implementing regulations with instructions on different matters such sustainable public procurement and contract management.

- **Findings**

Implementing regulations to define processes and procedures

There are a set of regulations that are enacted by the Government which supplement the implementation of the PPL. They include three types of acts: the higher, embedded in a decree which is approved by the Government of Montenegro; lower-level regulations compared to the decrees are foreseen in the rulebooks approved by the Minister of Finance, and the third level are the manuals and guidelines prepared by the DPPP. The full set of sublegal acts are published in the DPPP website and are accessible to public. In total there are 2 procurement decrees, 10 rulebooks and 7 manuals. The reviewed regulation appears to cover majority of PPL provisions and provide details on their implementation. However, the PPL is lacking more comprehensive regulation of specific areas such as sustainable procurement, including the use of energy efficiency. Also, Contracting Authorities are not furnished with adequate operational tools to implement Article 11 of the PPL. There is no recorded case where it was established that one of these implementing acts contradicts the PPL.

It is noted that for separate processes within procurement cycle there are separate regulations which might create confusion for Contracting Authorities. Forms for public procurement procedures and forms for bidders are described in different rulebooks, although they can be seen as an integrated process of preparing the tender documents by the Contracting Authorities. In other instances, the manual prepared by the DPPP reflects only the instructions of conducting the referenced process in the EPPS, rather than providing guidance from the procedural contexts.

The MoF, through its DPPP, has the responsibility to further define rules that are issues in accordance with the PPL and also to provide technical guidance on the implementation of the PPL. The DPPP updates the set of regulations as needed and based on any change of the PPL issued by the Parliament. The most recent update of the regulations was done in February 2023 after the 2023 amendments to the PPL.

Model procurement documents for goods, works, and services

The Rulebook on Forms for Conducting Public Procurement Procedures developed and adopted by the Ministry of Finance includes the templates of procurement documents for the following selection methods:

- open public procurement procedure
- limited public procurement procedure



- competitive procedure with negotiations, competitive dialogue, innovation partnership and negotiated procedure with the prior publication of procurement notice
- negotiated procedure without prior publication of procurement notice
- invitation for tenders in a competitive process with negotiations, competitive dialogue, partnership for innovation and negotiated procedure with prior publication of procurement notice.

The above-mentioned rulebook doesn't provide for a template of procurement documents based on the type of contracts (goods, works and services). The Contracting Authorities are required to adjust the format based on the characteristics of procurement.

The forms on conducting procurement procedures generally include clauses that reflect the provisions of the PPL and the Rulebook on the Forms of Conducting Public Procurement Procedures. Information presented in the standard procurement documents include:

- Information about the contracting authority
- Data on the procedure and subject of public procurement
- Type of procedure
- Subject of public procurement (type of case, name and description of the case)
- Estimated value of the subject of procurement
- Method of purchase
- Special form of procurement
- The Framework Agreement
- Conditions for participation in the public procurement procedure and special grounds for exclusion
- Criteria for the selection of the most favorable tender
- The manner, place and time of submission of bids and opening bids
- The deadline for making a decision on the selection
- The term of validity of the offer
- Guarantee

From the above listed, it is evident that a set of critical and mandatory contractual provisions is lacking, and it should be part of the forms on conducting procurement procedures.

Standard contract conditions

PPL indicates that a public procurement contract shall be concluded and executed in conformity with the conditions determined by the tender documentation, the selected bid and the decision on selection of the most advantageous bid. However, SPD forms do not provide standard contract conditions for different types of contracts. Up until 2019 PPL amendments, it was obligatory for the tender document to contain contract model as a rule, however the current PPL in force does not require it anymore.

User's guide or manual for procuring entities

DPPP has issued different manuals for Contracting Authorities (CAs) and Economic Operators (EOs). They mainly refer to use of the EPPS for the different steps covered by each manual.

The following manuals are available for CAs:

- Registration form for Contracting Authority
- On Simple Procurement



- On Public Procurement Plan Preparation
- On Evaluation of Bids
- On Data Entry in EPPS

For the EO the following manuals are made available:

- Bidder Registration Form
- Manual for Bidders.

The above set of manuals is rather fragmented and does not provide clarity for all procurement procedures that need to be followed to ensure a correct implementation of the PPL and its regulations. The present manuals have more focus on describing the functionality of the EPPS rather than being focused on functional details of the procurement processes.

- **Gaps**

Substantive gaps

Implementing regulations to define processes and procedures

There are no separate tender documents for works, goods or services. The model tender documents are prepared based on the procurement selection methods and lack separate templates for works, goods and services. Also, the model documents don't provide for all related information that the potential bidders need to be informed in advance, in particular, the standard contract conditions.

The regulations lack to be clear and consolidated since there is a numerous list of regulations and rulebooks which is set in different levels of legal hierarchy. It is noted that for separate processes within procurement cycle there are separate regulations which might create confusion and not enable easy reference and application by CAs.

There is lack of a consolidated set of regulation to summarize in one single act the full cycle of the procurement procedures.

The risk associated with the gap is considered high considering the different procurement practices that may be established due to lack of systematization of implementing rules and it could affect procurement system efficiency. But since it can be addressed within the procurement system a red flag is not warranted.

Model procurement documents for goods, works and services

There are no separate tender documents for works, goods or services. The model tender documents are prepared based on the procurement selection methods and lack to have separate templates for works, goods and services. Also, the model documents don't provide for all related information that the potential bidders need to be informed of in advance, in particular, the standard contract conditions. There is also a separate Rulebook on the Content of the Bid in the Public Procurement Procedure which gives instructions on how to prepare a bid in response to a call for tender issued by the Contracting Authorities. Both rulebooks don't provide clear information on the type of documents that the bidders are requested to submit, nor ensure for templates that can be used by bidders to facilitate preparation of bids.

The risk associated with the gap is considered high taking into account the different procurement practices that may be established due to lack of systematization of implementing rules, and it might affect



procurement system efficiency. But since it can be addressed within the procurement system, a red flag is not warranted.

Standard contract conditions used

The PPL indicates that a public procurement contract shall be concluded and executed in conformity with the conditions determined by the tender documentation, the selected bid, and the decision on selection of the most advantageous bid. However, in the forms establishing the standard tender documents, there are not listed the standard contract conditions for different types of contracts.

Contracting Authority doesn't include the form of the contract as part of the procurement documents issued to bidders, thus creating uncertainty to potential bidders on the contractual conditions. Since there are no standard contract conditions, the assessment could not establish if the contract conditions are consistent with internationally accepted practices.

The risk is high and is associated with undefined practices followed by different Contracting Authorities while exposing the contractual relationship with the economic operator to unclarities. But since it can be addressed within the procurement system, a red flag is not warranted.

Substantive gaps and recommendations for this indicator are summarized in table 6.

Minor gaps

User's guide or manual for procuring entities

DPPP has issued different manuals for Contracting Authorities (CAs) and Economic Operators (EOs). They mainly refer to use of the EPPS for the different steps covered by each manual. The assessment team found that there is a fragmented set of manuals which doesn't give clarity for all procurement procedures that need to be followed to ensure a correct implementation of the PPL and its regulations. The present manuals have more focus on describing the functionality of the EPPS, rather than being focused on functional details of the procurement processes.

- **Recommendations**

Implementing regulations to define processes and procedures

- Review the current coverage of the procurement regulation and prepare a consolidated set of rules to cover the whole procurement cycle and complement with separate regulations specific processes. Elaborate a guidance note for the Contracting Authorities to cover the application of sustainable public procurement, including social, environmental and innovations aspects in public procurement.

Model procurement documents for goods, works and services

- Elaborate model standard procurement documents for different types of procurements under works, services and goods and ensure the option of customizing based on different selection methods within this type of procurement documents. Model contract conditions should be available as part of procurement document based on different types of procurement.



Standard contract conditions used

- Forms on conducting procurement procedures should be supplemented with standard contract conditions for works, goods and services.

User's guide or manual for procuring entities

- Consolidate the existing guidance with additional missing guidance notes, into a comprehensive public procurement manual to allow for a synchronized instruction covering all steps of procurement cycle from Contracting Authority and Economic Operator perspectives.

Table 6. Summary of Substantive Gaps and Recommendations for Indicator 2

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 2(a) Implementing regulations to define processes and procedures		
2(a)(b) The regulations are clear, but there is not a consolidated set of regulations to summarize in one single act the full cycle of the procurement procedures.	High risk and not a red flag	Review the current coverage of the procurement regulations and prepare a consolidated set of rules to cover the whole procurement cycle and complement with separate regulations for specific processes.
Sub-indicator 2(b) Model procurement documents for goods, works and services		
2(b)(a) The model tender documents are prepared based on the procurement selection methods and lack separate templates for works, goods and services and to provide for all related information that the potential bidders need to be informed of in advance, in particular model contract clauses.	High risk and not a red flag	Elaborate model standard procurement document for different types of procurements under works, services and goods and ensure the option of customizing based on different selection methods within this type of procurement documents. Model contract conditions should be available as part of procurement document based on different types of procurement.
Sub-indicator 2(c) Standard contract conditions used		
2(c)(a) There is a lack of standard contract conditions for the most common types of	High risk and not a red flag	



contracts, and their use is mandatory

2(c)(b) The content of the standard contract conditions couldn't be assessed if it is generally consistent with internationally accepted practice.

High risk and not a red flag

Forms on conducting procurement procedures should include as part of procurement documents the model contract conditions based on the type of contracts.

2(c)(c) Standard contract conditions are not an integral part of the procurement documents and made available to participants in procurement proceedings.

High risk and not a red flag

Source: Assessment team.

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

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

- **Synthesis of the indicator**

The legal procurement framework generally supports the sustainable development of the country and also reflects adequately the implementation of international obligations. A national Public Procurement Strategy is prepared for 2021-2025 and it refers partially to objectives related to green public procurement mainly linked to the capacity building activities. However, a detailed sustainable public procurement (SPP) action plan should be prepared, and SPP should be further regulated into the secondary legislation and guidance should be provided to Contracting Authorities to allow for a wider application of social and environment responsive procurement.

- **Findings**

Sustainable public procurement

The Government of Montenegro approved a broader Sustainable Development Strategy until 2030, but there is no reference to public procurement related objectives. The Public Procurement Strategy refers to the objective of promoting the green and sustainable procurement and education of participants in public procurement procedures on ways to implement SPP. The Action Plan for implementing the Procurement Strategy stresses only the number of trainings received to measure the performance indicator of such



measure confirming that there is no strategy in place to implement SPP and thus the focus remains only at professionalization enhancement in the area of sustainable procurement.

There is not an SPP implementation plan in place which is based on an in-depth assessment. There are no tools in place to operationalize, facilitate and monitor the application of SPP. The Action Plan for implementing the Procurement Strategy stress only the number of trainings received to measure the performance indicator of such measures, confirming that there is no strategy in place to implement SPP.

The PPL allows for sustainability in all stages of the procurement cycle.

Contracting Authorities shall take appropriate measures to ensure that in the performance of public contracts, economic operators comply with applicable obligations in the fields of environmental, social and labor law, including collective agreements, in accordance with the law and internationally ratified conventions on environmental protection and social and labor law. Contracting authorities shall procure goods, services or works while ensuring the adequate reduction of energy consumption costs, that is, while observing the principles of energy efficiency.

Reserved procurement is foreseen in the PPL for which Contracting Authorities may in tender documentation establish the right to participate in public procurement procedures for economic operators whose aim is the social and professional integration and employment of disabled persons, as well as of disadvantaged persons in accordance with the law governing professional rehabilitation and employment of disabled persons, provided that those persons account for at least 30 percent of the employees, whereupon all participants of the joint bid and all subcontractors belong to the said group. Technical specifications may include requirements concerning the environmental protection, energy efficiency, social care and/or protection and transfer of intellectual property rights. Contracting Authorities may include as part of technical and professional ability required in the tender document that an environmental protection system is in place. Also Contracting Authorities may require in the tender documentation that economic operators submit evidence or certificates issued by accredited certification bodies on fulfilment of quality assurance conditions related to the subject of the procurement as well as the environmental protection requirements.

The PPL foresees the award criteria to select the most advantageous bid in a public procurement procedure applying the principle of cost-effectiveness, on basis of the following criteria:

- 1) offered price;
- 2) best price-quality ratio or
- 3) life-cycle cost.

However, the maximum rate for price doesn't allow for a well-balanced application of sustainability elements. The PPL foresees that the ratio between the price and the quality shall be determined in such manner that the number of points given on the basis of price may not exceed 90 percent of the total determined maximum number of points. Although the PPL doesn't set a minimum threshold but a maximum one, the application of this article in the reviewed sample contracts shows that the applicable rate from Contracting Authorities varies from 90 percent to 80 percent for price and 10 percent to 20 percent for quality. In practice, Contracting Authorities tend to apply the limit rates in the PPL even though the PPL doesn't prevent the quality criteria to be rated higher compared to price. The PPL doesn't provide for a mandatory application of sustainability criteria and thus the legal provision doesn't ensure by default a well-balanced application of sustainability criteria.



Obligations deriving from international agreements

Montenegro has clear obligations arising from membership in the World Trade Organization (WTO) Government Procurement Agreement (GPA), the Central European Free Trade Agreement (CEFTA), North Atlantic Treaty Organization (NATO) and Stabilization and Association Agreement (SAA) with the EU.

SAA between the EU and Montenegro is concluded on March 2010 and establishes a free trade area between the EU and the country, identifies common political and economic objectives and encourages regional co-operation. In the context of accession to the European Union, the SAA serves as the basis for implementation of the accession process. In the ambit of public procurement, the SAA considers the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity, following in particular the WTO rules, to be a desirable objective. With the entry in force of the SAA, EU companies established in Montenegro and those not established in Montenegro shall be granted access to contract award procedures in Montenegro under treatment no less favorable than that accorded to Montenegrin companies.

The GPA, which Montenegro joined in July 2015, aims to free access to the public procurement market by member states of the agreement. It is based on equality and reciprocity principles through establishing a multilateral framework of balanced rights and obligations concerning public contracts. The GPA applies to contracts above certain GPA thresholds. Montenegro's obligations as a member of the GPA include:

- informing members about possible legislation changes;
- statistical reporting on public procurement procedures above EU thresholds;
- active participation in GPA Secretariat's working bodies.

Obligations arising from Montenegro's membership from 2007 in CEFTA to promote free trade and the region's economic progress based on WTO principles and values, include free access to the public procurement markets of the countries in the region. To that end, Montenegro updates information on possible changes in the legal framework governing public procurement annually.

Montenegro's membership in NATO since June 2017 brings the right of Montenegro-based business entities to participate in public procurement procedures for the needs of this military alliance under identical conditions. It also offers economic entities based in NATO member countries the possibility to participate in public procurement procedures organized for military purposes in Montenegro.

PPL clearly indicates the exclusions for procurement procedures deriving from international arrangements. The PPL shall not apply to procurements of goods, services or works that are conducted in accordance with the following:

- 1) particular rules determined by an international organization, on basis of a ratified international agreement with that international organization;
- 2) the procedures different from those laid down in this law, on basis of legal instruments establishing international legal obligations, such as ratified international agreement between Montenegro and one or several third states, for procurements which will be jointly implemented or used by contractual parties;
- 3) particular rules determined by an international organization or an international financial institution, provided that such organization or institution funds or secures funding of the project, unless otherwise agreed – if the contract is co-financed by more than 50 percent by an international organization or international financial institution, the contractual parties shall agree on the rules pertaining to the public procurement procedure they will apply.



- **Gaps**

Substantive gaps

Sustainable public procurement

The country doesn't have a strategy in place to implement SPP nor does it have SPP implementation plan in place which is based on an in-depth assessment. Albeit in the Public Procurement Strategy it is stated the objective to promote green and sustainable procurement it is seen from the optic of increasing practitioners' capacities only. The Action Plan for implementing the Procurement Strategy stress only the number of trainings received to measure the performance indicator of such measure. There are no tools in place to operationalize, facilitate and monitor the application of SPP and there is a lack of operational tools available for Contracting Authorities to support implementation of SPP.

Considering that PPL ensures the application of sustainable procurement, and Contracting Authorities have no legal restriction in applying SPP, the gap identified is considered to have low risk and it can be mitigated within procurement system, therefore no red flag is warranted.

Substantive gaps and recommendations for this indicator are summarized in table 7.

Minor gaps

Sustainable public procurement (SPP)

PPL foresees that the ratio between the price and the quality shall be determined in such manner that the number of points given on the basis of price may not exceed 90 percent of the total determined maximum number of points. Although the PPL doesn't not set a minimum threshold but a maximum one, the application of this article in the reviewed sample contracts shows that the applicable rate from Contracting Authorities varies from 90 percent to 80 percent for price and 10 percent to 20 percent for quality. The maximum rate for price doesn't allow for a well-balanced application of sustainability elements.

Contracting Authorities tend to apply the edges of indicated rates in the PPL even though the PPL doesn't prevent the quality criteria to be rated higher compared to price. The PPL don't provide for a mandatory application of sustainability criteria, and such a legal provision doesn't ensure by default a well-balanced application of sustainability criteria.

- **Recommendations**

Sustainable public procurement

- Develop a SPP strategy as part of the National Public Procurement Strategy and include relevant actions to implement SPP as part of the Public Procurement Action Plan for 2023-2025
- Elaborate a specific regulation to cover the application of SPP, including social, environmental and innovations criteria in public procurement.
- Elaborate guidance notes for Contracting Authorities on the use of a different ratio of thresholds between price and quality considering the type of contracts and apply a differentiated ratio based on the features of works, goods or services contracts.

Table 7. Summary of Substantive Gaps and Recommendations for Indicator 3



Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 3(a) Sustainable Public Procurement (SPP)		
3(a)(a): Lack of a policy/strategy in place to implement SPP in support of broader national policy objectives	Low risk and not a red flag	
3(a)(b)There is no SPP implementation plans based on an in-depth assessment; systems and tools are in place to operationalize, facilitate and monitor the application of SPP.	Low risk and not a red flag	Develop an SPP strategy as part of the National Public Procurement Strategy and include relevant actions to implement SPP as part of the Public Procurement Action Plan for 2023-2025.

Source: Assessment team.

3.2. Pillar II - Institutional Framework and Management Capacity

Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.

Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Montenegro has necessary public procurement functions and institutions covered in this pillar. Contracting authorities, the normative function and central procurement bodies are clearly established, e-procurement has been implemented, and first steps have been taken in the area of procurement professionalization.

Gaps in this pillar relate to implementation, including lack of data to analyze payment delays and a not fully utilized CPB role. Functionalities and interoperability of the EPPS with other system are limited, and the granularity in data gathering and monitoring is missing.



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

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

- **Synthesis of the indicator**

The legal and regulatory framework covers necessary aspects. There is no formalized system of certification of availability of funds and lack of a solid monitoring mechanism to ensure the yearly allocations are made appropriately. Evidence-based data for monitoring of payments within timeline is missing.

- **Findings**

Procurement planning and the budget cycle

PPL foresees that annual procurement plans are prepared by Contracting Authorities by January 31 of each year and are submitted to the Ministry of Finance (DPPP) for approval. Publishing procurement plans in the EPPS is required. Also, any subsequent change in the approved procurement plans should be submitted to the MoF for publication. The PPL and its implementation acts don't foresee the multiannual planning process, however this does not prevent multi-annual commitments or commitments that continue in the following year. Annual procurement plans are prepared in line with the adopted annual budget and stay within budgeted allocations for spending units. Non-binding medium-term budget estimates and expenditure ceilings are prepared for two years following the budget year, but they remain mostly provisional. There is a requirement by which multi-annual contracts need to be approved by the MoF before being tendered out by spending units. The MoF monitors whether such contracts are within budget appropriation/medium-term limits.

However, there is no centralized control mechanism which would include hard control to prevent undisclosed liabilities showing up after the authorization stage. Heads of spending units are accountable for entering into commitments. Commitment control is decentralized to financial management and control systems within individual spending units, and there is no effective ex-ante control to prevent spending units from entering into contractual commitments beyond budget limits. Effective controls for multi-annual commitments require ex-ante approval by the MoF before the respective contracts are signed, but the application of such controls in practice is lagging. Medium-term expenditure estimates remain provisional and are rarely analysed on a rolling basis. There are also concerns with the accuracy of available data on such commitments and the resulting liabilities.

Following the provisions of the PPL the procurement procedure cannot start unless the activity is included in the annual procurement plan and estimated budget is allocated by the Contracting Authority. Multiannual contracts have financial coverage only for the one-year budgetary period, but they are included in the medium-term budget planning. The Law on Budget and Fiscal Responsibility (LBFR) sets a clear budget calendar. According to the calendar, the spending units have two months to prepare financial plans after receiving the budget circular. The budget is submitted to the parliament and adopted within the prescribed deadline of December 31 of the current for the following year's budget. The exception was



the budget for 2021. Due to the Covid-19 pandemic the budget was adopted in June 2021. The execution of the budget prior to the adoption was based on decision on temporary financing. However, interim calendar steps included in the budget approval are not always adhered to.

Procurement plan, and respective contracting, remain within the budget allocations and therefore financing of the contract amount for the given budget period is secured. The annual budget allocations and monthly payment allotments provide limits for budget execution. Budget execution remains within ceilings of the annual budget and monthly payment allocations determined as part of in-year financial planning. Treasury Directorate of the MoF is in charge of the budget execution process in terms of processing payments, monitoring expenditures and reporting on budget execution. The Treasury Directorate prepares annual cash flow forecasts on inputs from the Budget Directorate and Economic Policy Directorate. Revenue estimates are updated monthly, based on the monitoring of the information on the actual revenue collected and on expenditures submitted for payment. Spending estimates reflect the approved spending plans submitted by the spending units, which are broken down by month. The forecasts are continuously monitored, and corrections are made each month on a rolling basis. No such detailed procedures are prescribed for medium-term budgeting. The medium-term budget estimates and expenditure ceilings exist and are prepared for two years following the budget year but they remain non-binding and provisional.

Spending units report quarterly on budget execution to the MoF. The first-tier spending units that have responsibility for certain public institutions which are second-tier spending units, receive and consolidate their financial information on a quarterly basis before reporting to the MoF. In-year reports compare the spending with the latest revised budget where applicable, not the original budget. The MoF does not publish the budget outturn reports at the full level of detail as presented in the original budget, only at an aggregated level. No direct comparison to the original budget is possible since the reports do not show separately different spending units, functions, or programs, only the economic classifications.

Quarterly budget execution reports are formally prescribed by the legislation, and they are prepared by the Treasury Directorate based on the Treasury Main Ledger and information reported from the spending units. The MoF Treasury Directorate also produces monthly aggregate reports from the SAP system shortly after the end of each month. There are no major concerns regarding the accuracy of in-year budget reports. In preparation of the consolidated quarterly report prepared by the MoF, the reported data from the spending units is reconciled with the Treasury Main Ledger by the MoF.

The PPL asks for semi-annual and annual reports to be prepared by each Contracting Authorities which should contain information on the public procurement procedures conducted and concluded contracts for simple procurements. Based on the provision of the same PPL, the MoF shall prepare and submit to the Government/Council of Ministers the semi-annual report on conducted public procurement procedures and concluded public procurement contracts, as well as a report on procurements and concluded contracts/accounts for the simple procurements. For contract implementation phase, Contracting Authorities are obliged also to prepare contract monitoring reports which are also published. However, data on the payment execution level are not presented in these reports.

The implementation monitoring and reporting framework of investment projects is defined by the Decision on Capital Budget (DCB), Article 15. The DCB prescribes that the Administration for Traffic and the Administration for Public Works report at least quarterly on investment implementation to MoF in a standardized format. The financial execution of the capital budget is shown on aggregate level as part of



in-year quarterly budget execution. While financial implementation reporting for investment projects follows the regular quarterly reporting, the physical implementation reports are prepared and submitted to Government of Montenegro on annual basis. Both administrations prepare their annual reports, which encompass both the financial and physical implementation of projects and submit them for approval to the Government of Montenegro.

Although, as confirmed by the assessment, contract implementation data is fragmented, overall reports on budget execution which include also major contracts, are timely and reliable.

Financial procedures and the procurement cycle

PPL clearly links the start of a procurement procedure with the budget allocation and inclusion of such procedure in the annual procurement plan. However, the PPL doesn't describe how the certification is obtained. Also, the implementing regulation foresees the same requirement. The Decree on Simple Procurement mandates the procurement procedure shall be conducted if financial resources and funds for VAT for estimated value of the procurement subject matter are allocated under the budget for such procurement, in accordance with the law.

Budget is executed within the limits provided by the annual budget allocations and monthly payment allotments. Following the approval of the annual budget, the MoF apportions the approved budget month by month taking the inputs from the spending units. MoF's annual cash forecast is updated monthly on a rolling basis from monitored revenue and expenditure flows. The MoF estimates limits on expenditure warrants for the first-tier spending units for each month of the current fiscal year based on revenue projections and historical treasury data. Upon receiving expenditure warrants, first-tier spending units prepare a monthly spending plan that is submitted to the MoF. Spending units receive information timely in advance as to how they can commit funds within their annual budget allocations and make payments within monthly limits. There is no formalized system of certification of availability of funds.

Spending units must submit payment orders on the Treasury Directorate template for all payments to be executed from the Single Treasury Account. The Treasury Directorate executes payment orders only after matching them to reservations. However, no effective control is in place to ensure that all commitments on orders, contracts, and other liabilities are systematically captured in the Integrated Financial Management Information System (IFMIS). The spending units are therefore not effectively prevented from incurring legal commitments in excess of the funds warranted to them. They may delay entering a budget commitment and filing their payment requests until they have sufficient warranted funds available, and in such a way create arrears.

The national regulation and procedures for processing of invoices and authorisation of payments are clearly defined. These are followed in practice and ensured by sound internal control procedures within the contracting institutions. Appropriate authorizations for payments by senior officials are embedded in internal control procedures. Likewise, only authorized personnel within spending units can submit requests for payments to the Treasury. Segregation of duties in key processes is singled out as a required control activity in the Law on Management and Internal Control, intended to prevent the same member of government staff from being responsible for any two of authorization, approval, execution, recording, and control.



The procedures for processing the invoices are part of the financial management legal framework and also are incorporated as part of the specific public procurement contract. The procedures are publicly available, and Contracting Authorities are mandated to follow them within their organization.

- **Gaps**

Substantive gaps

There is no substantive gap identified for this indicator.

Minor gaps

Procurement planning and the budget cycle

The PPL doesn't envisage the process of multi annual procurement planning. There is a requirement by which multi-annual contracts need to be approved by the MoF before being tendered out by spending units. The MoF monitors whether such contracts are within budget appropriation/medium-term limits. However, there is no centralized control mechanism which would include hard controls to prevent undisclosed liabilities showing up after the authorization stage. Heads of spending units are accountable for entering into commitments. Commitment control is decentralized to financial management and control systems within individual spending units, and there is no effective ex-ante control to prevent spending units from entering into contractual commitments beyond budget limits. Effective controls for multi-annual commitments require ex-ante approval by the MoF before the respective contracts are signed, but the application of such controls in practice is lagging. Medium-term expenditure estimates remain provisional and are rarely analysed on a rolling basis. There are also concerns with the accuracy of available data on such commitments and the resulting liabilities.

Financing of contracts beyond the budget year is not allocated and secured in each annual budget, however contract amount/portion for the budget year is fully cover by budget allocations and available funds. For multiannual contracts, the one-year budgetary period is a cap for projects that present a higher rate of progress either than originally estimated or when cost overruns arise. This provision leaves, in many instances, contracts to be held or suspended until the new budgetary year is approved.

Financial procedures and the procurement cycle

The Treasury Directorate executes payment orders only after matching them to reservations. However, no effective control is in place to ensure that all commitments on orders, contracts, and other liabilities are systematically captured in the IFMIS. The spending units are therefore not effectively prevented from incurring legal commitments in excess of the funds warranted to them. They may delay entering a budget commitment and filing their payment requests until they have sufficient warranted funds available, and in such a way create arrears. Certification of availability of funds is conducted manually by the Ministry of Finance for all procurement plans that are submitted for approval to DPPPP and not linked with government financial system.

The assessment team confirms that the data on invoice payment are not available and retrievable form a public financial management system. Also, for the review of sample contracts (performed under Pillar 3) the information of payment was not provided by all Contracting authorities to enable the team to conclude the quantitative assessment of the criterion. Lack of transparency on financial aspects of public contract can be further addressed by interfacing EPPS with Financial Management System.



- **Recommendations**

Procurement planning and the budget cycle

- Effective system of controls should be instituted and applied in practice, which ensures that multi-annual commitments stay within medium-term expenditure ceilings and are properly recorded.
- Ensure that commitment controls and approvals are automated and interfaced with EPPS.
- Medium-term plans and budgets should be strengthened to provide more robust and binding allocation of funds for multi-annual contracts.

Financial procedures and the procurement cycle

- Automate the certification for availability of funds through government financial management systems and interface with EPPS and ensure that invoices are registered in FM Systems.

Summary of substantive gaps and recommendations for Indicator 4

N/A

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

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

- **Synthesis of the indicator**

The public procurement system partially complies with the indicator. All aspects of the normative and regulatory function are clearly assigned; the main regulatory institution, DPPP, appears to possess the necessary status and means to fulfil its role. However, a substantive gap relates to the dispersion of responsibilities over a large number of institutions, which results in a less strategic approach and inefficient and ineffective implementation. Oversight role remains at the limit of an administrative function and no evidence was found that it ensures effectiveness in improving procurement system performance. Certification process for procurement catheter is established however there are issues with the quantitative and qualitative capacities of Contracting Authorities to perform public procurement, especially for small scale CA. Procurement is not recognized as a profession and there are no evidence that carrier development is based on performance.

- **Findings**

Status and legal basis of the normative/regulatory institution function



The PPL provides a clear description of the institutions that are involved in the domain of public procurement. The administrative authority responsible for public procurement is the Ministry, however without mentioning the ministry responsible for public finance management. The reference to the Ministry of Finance being responsible for public procurement can be found only in the Decree on the Organization of the State Administration.²³ The overarching responsibility stays within the Ministry of Finance which executes all responsibilities listed in the PPL through the Department for Public Procurement Policy (DPPP). The role of the DPPP in the ambit of public procurement is elaborated in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance.

Oversight on implementing PPLs is attributed to MoF, while inspection oversight is attributed to authority in charge of inspection affairs. The findings of the inspection are shared with DPPP, although during the assessment it was not concluded based on evidence how and if the findings are taken into account in a systematic manner by the DPPP in order to improve the efficiency of the procurement system. From the data collected by the assessment team it was confirmed that the role of the Administration for Inspection in Public Procurement adheres to the provision of the PPL, however this role seems to remain at the limit of an administrative function only. The Administration of Inspections in Public Procurement doesn't provide for a summary of most identified irregularities in procurement procedures review. During the assessment it was not possible to gather how these findings were taken into consideration by DPPP to issue any instruction or guidance to the Contracting Authorities on avoiding the same systematic issues. The assessment team consider that there is scope for a functional review of the efficiency and effectiveness of the control bodies and, where needed, streamlining the control function.

Protection of rights of economic operators is assigned to the CPRPPP, and the PPL elaborates the procedure to appoint CPRPPP members and their responsibilities which are also elaborated in the internal Book of Rules.

The State Audit Institution (SAI) is mandated to carry out compliance, financial, and performance audits of entities that are financed from the budget or with other means of state support and to manage state assets that were founded or are majority owned by the state. This includes entities at central and local level, as well as state-owned enterprises (SOEs). SAI also conducts Information Technology (IT) audits, audits of political parties, and follow-up (control) audits. Every year SAI conducts an annual audit of the Government's budget. SAI conducts audits based on its internal audit plan. SAI informs heads of audited institutions on audit results through audit reports. The financial and compliance audits cover public procurement, focusing on the entire procurement process, including implementation of procurement legislation and contract implementation.

There is an operational Internal Audit function²⁴, positioned as an organizationally and functionally independent advisory function to the top management of each institution. Internal Audit reports are

²³ Official Gazette of Montenegro, no. 049/22 from 06.05.2022, 052/22 from 13.05.2022, 056/22 from 27.05.2022.

²⁴ In line with Article 49 of the Management and Control Law, the Internal Audit function can be organized through (i) establishment of an Internal Audit Unit in the spending unit, (ii) agreement on sourcing of the Internal Audit function from another spending unit with MoF approval, or (iii) provision of the Internal Audit function from another sector-linked spending unit.



submitted to the head of public body and management responses are documented in the central registries of internal audit recommendations held by each Internal Audit Unit.

Responsibilities of the normative/regulatory function

PPL defines clearly the roles and functions assigned to several institution to perform regulatory functions.

Providing advice to procuring entities: MoF provides advisory assistance to Contracting Authorities and economic operators upon their request.

Drafting procurement policies: There is no clear reference to the role of drafting procurement policies, the PPL refers only to function of providing technical guidance to the implementation of the PPL. Although it is not explicitly mentioned in the PPL, it is regulated by the Decree on Organization of State Administration under the Ministry of Finance.

Proposing changes/drafting amendments to the legal and regulatory framework: There is no clear reference to this role in the PPL. However, this role is mentioned under the responsibility of the DPPP in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance.

Monitoring public procurement: It is under the responsibility of the MoF.

Providing procurement information: MoF is responsible for publishing public procurement plans, tender documentation, decisions and other legal acts of contracting authorities issued during the public procurement procedure, including the amendments thereof, public procurement contracts and framework agreements, modifications of contracts and notifications concerning lodged complaints on the EPPS.

Managing statistical databases: MoF is responsible for establishing and maintaining records on registered bidders in the EPPS; preparing, publishing, and updating the list of contracting authorities, which are registered in the EPPS, and the list of public procurement officers; preparing and submitting to the Government reports which contain statistical data captured from the EPPS.

Preparing reports on procurement to other parts of government: the MoF has the role of preparing and submitting reports to the Government (Council of Ministers headed by the Prime Minister and composed by Ministers as members of the Cabinet). As per Article 182 the reports refers to statistical reports on conducted public procurement procedures and concluded public procurement contracts, as well as a report on procurements and concluded contracts/accounts for the simple procurements. The frequency of reports is semiannually and annually.

Developing and supporting implementation of initiatives for improvements of the public procurement system: There is no clear reference to this role in the PPL, however the role, even if not explicitly, is embedded in the other functions spelled out in this article and is executed by the MoF.

Providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement: MoF has the function of organizing and carrying out professional development and education for employees of contracting authorities and other persons for performing public procurement tasks.



Supporting the professionalisation of the procurement function: MoF has the function of organizing the taking of the professional examination for performing tasks in public procurement field and issuing certificates for the work in public procurement field.

Designing and managing EPPSs: MoF has the role of establishing, maintaining, and managing the EPPS and monitoring its use.

Organisation, funding, staffing, and level of independence and authority

The PPL indicates that the administrative authority responsible for public procurement is the Ministry, however without mentioning the ministry responsible for public finance management. The reference to the Ministry of Finance can be found only in the Decree on Organizing the State Administration. In the latter the MoF is mandated as the regulatory institution in the domain of public procurement. The functions and responsibilities of the Ministry listed in the PPL are executed through the DPPP established within the Ministry of Finance as a General Directorate following the description provided in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance.

The Head of the DPPP is a high-level civil servant at the level of General Director that is appointed by the Minister of Finance. The Director reports only to the Minister of Finance and not directly to the Government, however the annual reports prepared by the DPPP are presented to the Government by the Minister of Finance. Although the head of DPPP does not have direct reporting line within the Government (Council of Ministers), the team assesses that the Director has adequate mechanism to influence policy enhancement through the Minister of Finance.

Since the regulatory functions is performed within a department of the MoF, the required of the DPPP is planned and executed as part of the main budget of the MoF. During the assessment time, a lack of sufficient budget to support maintenance and upgrades of EPPS was noted.

The organization of DPPP is reflected in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance. Based on the rulebook, the DPPP is headed by a General Director and is composed of 4 main directorates with a total staff of 23:

- (i) Directorate for Normative – Legal Affairs and Monitoring in Public Procurement (9 staff)
- (ii) Directorate for Vocational Training, Training and Passing the Professional Examination in the Field of Public Procurement (5 staff)
- (iii) Directorate for monitoring the public procurement system and management of electronic public procurement (5 staff)
- (iv) Directorate for Public-Private Partnership (4 staff)

At the time of the assessment the number of vacancies was 3. During the discussion with the DPPP is evidenced the increasing workload of the present staff, which calls for high attention to the needs of increasing the human capacities and providing continued support through capacity building. The EPPS requires more additional IT staff to allow for smooth operation.

Avoiding conflict of interest



The PPL foresees different articles regarding the conflict of interest which include responsibilities of parties involved in procurement procedure to identify, report and avoid a conflict-of-interest situation. As such these articles elaborate the responsibilities of Contracting Authorities representatives and economic operators participating in procurement processes. No specific reference to establishing a system to avoid conflict of interest within the DPPP is mentioned in the PPL. The PPL provides specific tasks to the PPP including approval of yearly procurement plans before publication to EPPS, providing opinion on application of negotiated procedure without publication of a prior notice and in such context even though the role in core procurement procedure is minimal, the DPPP doesn't have an integral procedure to avoid conflict of interest. Nevertheless, the DPPP as part of the MoF is required to observe the Code of Ethics and also prepare the Annual Integrity Plans which all DPPP staff report for.

Also considering the result of the survey, there is the perception that the regulatory function is not fully able to identify and addresses cases of conflict of interest. In the survey of the private sector, in response to the question if the normative/regulatory institution enables that the conflict of interest is identified and avoided, only 39 percent of respondents replied that the normative/regulatory enables that the conflict of interest is identified and avoided. The rest of respondents either believe that regardless of executing the normative and regulatory function, the institution is unable to identify and address conflicts of interest or preferred not to respond.

- **Gaps**

Substantive gaps

Organisation, funding, staffing, and level of independence and authority

Considering the function assigned to the DPPP, the current human resources are not completely sufficient to perform the responsibilities properly and in due time as foreseen by the PPL. EPPS requires more additional IT staff to allow for smooth operation.

The risk is high considering that lack of appropriate human and financial resources impact the timely and adequate execution of responsibilities. Considering that allocation of budget to support additional resources is outside procurement system, a red flag is warranted.

A summary of substantive gaps and recommendations for this indicator can be found in table 8.

Minor gaps

Status and legal basis of the normative/regulatory institution function

The PPL foresees two types of oversight. (i) The Ministry shall carry out oversight over the implementation of the PPL and regulations adopted pursuant to it, and (ii) Inspection oversight over the implementation of PPL shall be performed by the administration authority in charge of inspection affairs through a public procurement inspector, in accordance with the PPL and the law governing inspection oversight. Even though the PPL provides more clearly the oversight responsibilities of the inspection administration, it lacks to clearly indicate the responsibility of the Ministry of Finance in order to avoid any potential overlap since both entities are mandated with overseeing the implementation of the PPL.

In the interview with DPPP staff it was emphasize that the DPPP monitors the overall public procurement with the objective to ensure its enhancement and improvement, while the role of inspection is more



compliance driven and is focused on identifying misdemeanors of CAs/staff involved in public procurement. The inspection oversight prepares annual reports which are submitted to the working bodies of the Parliament and a monthly report about the performed oversight and the measures undertaken, which shall be submitted to the Ministry. During the assessment in the interview with DPPP it was confirmed that the reports received from Inspection Administration are not used/analyzed to identify systematic issues in public procurement systems that need improvement.

Based on PPL Article 210, the Inspection cannot perform inspection oversight during the public procurement procedure, which raise the question of effectiveness of the oversight function towards ensuring the correct implementation of the PPL.

Financing of the regulatory body is not secured by the legal/regulatory framework; however, it is implied that the MoF executes its function under the public procurement through the overall assigned budget. During the assessment time there was noted a lack of sufficient budget to support maintenance and upgrades of EPPS. Also, the analysis on post systematization of DPPP demonstrates that number of addition staff needed to perform DPPP functions are restricted due to lack of adequate financial resources allocated to DPPP.

Organisation, funding, staffing, and level of independence and authority

Considering the function assigned to the DPPP, the current human resources are not completely sufficient to perform the responsibilities properly and in due time as foreseen by the PPL. High demand for additional IT staff to support running of the EPPS.

Avoiding conflict of interest

Although the PPL refers to the parties involved in the procurement process while describing the conflict of interest principles, it doesn't refer particularly to conflict of interest of the regulatory institution /DPPP. The institution doesn't have a specific system to avoid conflict of interest tailored to procurement functions within DPPP but observe general requirement of Government Code of Ethic. Also considering the result of the survey there is the perception that the regulatory function is not fully able to identify and addresses cases of conflict of interest.

- **Recommendations**

Status and legal basis of the normative/regulatory institution function

- Perform a functional review of the efficiency and effectiveness of the control bodies and, where needed, streamline the control function and refine their responsibilities in the legal framework.

Organisation, funding, staffing, and level of independence and authority

- Ensure that the MoF budget includes sufficient budget to allow DPPP functioning including, additional staff and EPPS maintenance and/or upgrade.
- Conduct yearly workload analysis and the findings to guide the revision of the rulebook and post systematization applicable to DPPP.

Avoiding conflict of interest



- DPPP should establish a separate system to identify and avoid conflict of interest during execution of its functions.

Table 8. Summary of Substantive Gaps and Recommendations for Indicator 5

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 5(c) Organisation, funding, staffing, and level of independence and authority		
5(c)(c) The institution's internal organisation, authority and staffing have limited human and financial resources to execute its responsibilities.	High risk and a red flag	Conduct yearly workload analysis and the findings to guide the revision of the rulebook and post systematization applicable to DPPP.

Source: Assessment team.

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 centralized procuring entity exists.

• Synthesis of the indicator

The legal framework provides for clear definitions on the procurement institutions and their roles, but there is no clear provision to request delegation of authorities. There is substantial gap that is related to CPB function not being fully utilized.

• Findings

Definition, responsibilities and formal powers of procuring entities

The PPL defines the procuring entities (Contracting Authorities) which may either be a public contracting authority or a sectoral contracting authority.

Public contracting authorities include a state body; local self-government unit; public service, that is, an undertaking which fulfils several conditions;²⁵ association founded by two or more contracting authorities.

²⁵ It has a capacity of a legal person; it was founded with an aim of meeting the needs of public interest and does not perform an activity of an industrial or commercial character, and in which the state and/or local self-government unit owns more than 50 percent of the shares or interest, or which receive more than 50 percent of their funding from the budget of Montenegro and/or budgets of local self-government units and other public revenues or which are controlled by the contracting authority or which have more than half of their management body or oversight body members appointed by the contracting authority.



Sectoral contracting authorities are public contracting authorities pursuing one of the sectoral activities established by PPL; an economic operator in which a public contracting authority has a dominant influence, and which performs one of the sectoral activities, or other economic operators performing one of the sectoral activities on the basis of special or exclusive rights assigned to them by a competent state body or a competent body of a local self-government unit.

The PPL provides for definition of terms used such as state body, local self-government unit, public service.

There is no single list of responsibilities and competencies of procuring entities, but PPL in its entirety provides without ambiguity the responsibilities and competencies of procuring entities. PPL lists the responsibilities of Contracting Authorities (CAs) in identifying and addressing conflict of interest. It also provides for the responsibilities of CAs during the execution of different procurement methods, such as restricted procedures, open procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure without prior publication of a contract notice, partnership for innovation, competitive dialogue, negotiated procedure with prior publication of a contract notice.

More CAs competences are listed for preparing procurement plans; to conduct market analysis; to prepare tender documents and draft technical specifications; to issue clarification for tender documents; for evaluation bids received; on the approval of the decisions after the evaluation process is completed; on concluding the contract, amending it, or terminating; on monitoring and reporting on execution of contracts.

PPL requires that every CA is obliged to appoint at least one person to perform tasks of a public procurement officer. A public procurement officer shall be a person that has passed the professional exam for performing public procurement tasks. MoF/DPPP is informed with the resolution that appoints such officer in every CA. Also, the PPL provides for the functions and responsibilities of the public procurement officer, which include taking part in preparing public procurement plans; supplying interested persons with the part of the tender documentation containing confidential data in accordance with law; keeping records of public procurements; drafting reports on conducted public procurement; carrying out administrative tasks in the course of a public procurement procedure, and performing other tasks in accordance with this law and secondary legislation.

Based on the size of the CA, the number of procurement officers can be more than one and usually they are included within the structure of legal departments of the institutions or finance and budget departments. Big CAs have a separate unit for public procurement.

Based on the quantitative analysis, 100 percent of CA have at least one procurement officer who has passed the exam appointed. By end of 2022 in total there are 675 Contracting Authorities registered in the EPPS and 811 public procurement officers have passed the exam. These numbers indicate that there are at least an adequate number of procurement officers to perform the function for all contracting authorities that have been registered in Montenegro.

The PPL indicates that within each procurement entity a commission for conducting the public procurement procedure shall be established by the resolution of the authorized person of the contracting authority. The responsibility to make procurement decisions stays within this commission which should be composed of an odd number of members comprised of employees of contracting authority, and also the procurement officer may be part of the commission. Commission on conducting public procurement



is accountable to prepare and establish tender documentation and amendments and supplements to the tender documentation and provide clarifications; review, assess, and evaluate bids or qualification applications; write minutes of the review, assessment and evaluation of bids; prepare and propose to the authorized person of the contracting authority decisions on the exclusion from a public procurement procedure, decisions on the selection of the most advantageous bid and decisions on the annulment of procedures; prepare responses to appeals.

The PPL doesn't make any distinction in terms of decision-making authority based on procurement thresholds and delegation of the authority to make decisions based on the risk and monetary sum is not exercised and may be a source of inefficiencies in procurement execution.

The limited knowledge of procurement legislation among the Line management of contracting authorities is an issue that can undermine the integrity and effectiveness of the procurement system. Management lacks the necessary organizational, legal, and practical skills and experience to handle daily operations within public procurement at individual contracting authorities. For that purpose training modules dedicated to line management should be introduced by DPPP.

Centralized procurement body

The PPL foresees that the public procurements for the needs of state administration bodies or public services founded by the state can be implemented by a contracting authority appointed by the Government's regulation. Public procurements for the needs of the local administration bodies and public services founded by the local self-government can be implemented by a contracting authority appointed by the regulation of the competent local self-government body. Regulation on the Manner of Planning and Implementing Centralized Public Procurement provides for a description of roles, responsibilities, and scope of application of centralized procurement at central/national level.²⁶

Centralized public procurement is applicable for the following categories:

- Goods: office and other consumables, motor vehicles and other means of transport, except vehicles with priority of passage in accordance with the law regulating the safety of road traffic, fuel and engine oils, office furniture.
- Services: disinfection, disinfection and pest control, property insurance at the disposal of Montenegro (movable and immovable property), insurance of civil servants and employees.

The regulation on Centralized Procurement entitles the administration authority in charge of the state property management to execute centralized procurement. Based on the Regulation of Public Administration, state management is under the responsibility of the Administration of Cadaster and State Property. The Administration for Cadaster and State Property covers different responsibilities among which also centralized procurement for central government institutions. The regulation outlines generally the responsibilities of the administration in conducting centralized procurement, however it fails to provide reference to the legal status and funding source for the administration. It covers centralized procurement for 40 procuring entities at central government level, i.e., ministries and state bodies, while its mandate is not covering local self-government. Based on the PPL the function of the centralized procurement is executed by a different body appointed by the administration of local self-government.

²⁶ Official Gazette of Montenegro, No. 069/20 of 11.07.2020, 105/20 of 29.10.2020, 139/22 of 16.12.2022, 029/23 of 16.03.2023.



During the assessment, it is recorded that the number of staff assigned to cover the centralized procurement was 3, and the number of CAs for which they operated only in 2022 was 40, including only central level institutions.

- **Gaps**

Substantive gaps

Centralized procurement body

There are two substantial gaps under this assessment criteria.

1. Montenegro seems to not have sufficiently considered the benefits of centralized procurement function. The list of procurement activities that is covered under centralized procurement was recently reduced, by excluding defense in procurement activities, IT and several activities of the Ministry of Interior. During the assessment, it is confirmed that considering international practices there is scope for increasing the list of services and goods to be procured under centralized procurement.

From data analytics covering e-procurement data from January 2021 to March 2023, the procurement launched refers only to 13 CPVs (Common Procurement Vocabularies) and the total contractual amounts for the Cadastre Agency is 5,521,022 euro, and this amount corresponded to 63 contracts. Additionally, the contractual amount of Cadaster Agency covers 0.84 percent of total contractual volume. While as share of procurement procedures during the same period only 4 percent of the total number of procedures are centralized procurement.

In addition, considering the high rate of the use of simple procurement below 8,000 euro, it appears clear that CAs don't adequately consider the benefits of centralized procurement, nor the appropriate use of framework agreements as tools to increase efficiency and economy of scale.

The risk is assessed as moderate, taking into account that actually there is a limited application of centralized procurement function, but further enhancement of it may bring additional savings. No red flag is warranted since it can be addressed within procurement system.

2. The Administration for Cadaster and State Property covers different responsibilities among which also centralized procurement for central government institutions. During the assessment it is recorded that the number of staff assigned to cover the centralized procurement was 3 and the number of CAs for which they operated only in 2022 was 40, including only central level institutions. Considering that the responsibilities of the administration include other areas apart from centralized procurement, it is assessed that there is lack of adequate human resources to respond to this function in a systematic manner.

Inadequate staff resources to execute centralized procurement body (CPB) function is considered to have a high risk in ensuring effective procurement system, but it can be addressed within the procurement system and a red flag is not warranted.

Substantive gaps and recommendations for this indicator are summarized in table 9.

Minor gaps

Definition, responsibilities and formal powers of procuring entities



The responsibility to make procurement decisions stays within a procurement commission which should be composed of an odd number of members comprised of employees of contracting authority, and also the procurement officer may be part of the commission. The PPL doesn't make any distinction in terms of decision-making authority based on procurement thresholds. Delegation of the authority to make decisions based on the risk and monetary sum is not exercised and may be a source of inefficiencies in procurement execution. Training line managers at the Contracting Authorities is paramount to ensure efficiency of procurement system.

Centralized procurement body

Legal status of the Administration for Cadaster and State Property is not clear in the regulation for centralized procurement, although it might be captured in the Degree that regulates the functioning of Public Administration. Article 21 of the Regulation indicated the administration as an administrative body. Regulation on the Manner of Planning and Implementing Centralized Public Procurement outlines generally the responsibilities of the administration in conducting centralized procurement, however it fails to provide reference to the legal status and funding source for the administration.

- **Recommendations**

Definition, responsibilities and formal powers of procuring entities

- Elaborate in the procurement implementing regulations delegation of decision-making to the lowest competent level based on risks assessment and estimated procurement value.
- DPPP to elaborate training session for line managers at CAs.

Centralized procurement body

- Based on a spending analysis of Contracting Authorities, MoF should consider reviewing the list of activities under centralized procurement in order to enhance the efficiency of centralized purchasing. MoF may consider in the long term, based on an extended list of activities that fall under centralized procurement, to establish a dedicated Central Purchasing Body outside existing public institutions which have diverse core functions.
- Reflect the legal status of the administrative body responsible for state property management in the decree on centralized procurement.
- Conduct a workload analysis to inform the revision of the rulebook on organization and systematization of workplaces of the Administration for Cadaster and State Property.

Table 9. Summary of Substantive Gaps and Recommendations for Indicator 6

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 6(b) Centralized procurement body		
6(b)(a) The country has not considered fully the benefits of establishing a centralised procurement function in charge	Medium risk and not a red flag	Based on a spending analysis of Contracting Authorities, MoF should consider reviewing the list of activities under



of consolidated procurement, and considering international practices there is scope for increasing the list of services and goods to be procured under centralized procurement or specialised procurement.

centralized procurement in order to enhance the efficiency of centralized purchasing.

6(b)(c) The centralized procurement body lacks adequate human resources to respond to function of centralized procurement in a systematic manner. High risk and not a red flag

Conduct a workload analysis to inform the revision of the rulebook on organization and systematization of workplaces of the Administration for Cadaster and State Property.

Source: Assessment team.

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

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

• Synthesis of the indicator

The EPPS allows contracting authorities to publish tender notices, receive bids, and award contracts electronically. It is mandatory for all public entities in Montenegro to use e-procurement, apart from certain procurements that are of a very low value, for security-sensitive goods or services, or that are subject to international agreements. Overall, EPPS is well-designed and flexible, but the DPPP's full reliance on an outsourced company for all technical issues is a potential risk. EPPS does not have a specific e-procurement strategy, but the Public Procurement and Public-Private Partnership Strategy 2021-2025 includes some issues in this regard. The EPPS doesn't support Open Data Standard, nor the data analytics features.

• Findings

Publication of public procurement information supported by information technology

The legal and regulatory framework mandates all procuring entities to use EPPS. The PPL specifies that the electronic means to be used for public procurement procedures shall be the EPPS which is a web-based platform that allows contracting authorities to publish tender notices, receive bids, and award contracts electronically. EPPS enables drawing up and publishing of tender documentation and other acts related to public procurement; dispatching public procurement notices; free access, search, review and download of the published tender documentation and other acts related to conducting of public procurement procedures; drawing up, submission, receipt, assessment and evaluation of qualification



applications, bids, plans, projects and solutions, free of charge; registration and keeping records on economic operators. The competent state authorities may access the database of the EPPS.

The use of EPPS is mandatory for all public entities in Montenegro, regardless of their size or budget. The law provides for a number of exceptions to the mandatory use of e-procurement, such as for simple procurement (although data should be entered after the process is conducted), security-sensitive goods or services, and for procurements that are subject to international agreements.

The law also provides for a number of sanctions for contracting authorities that fail to use e-procurement in accordance with the law. These sanctions can include fines, suspension of the right to participate in public procurement procedures, and even criminal prosecution.

Using the system is free of charge, and system maintenance is funded through the government budget. The system is operated by CAs that are registered and Economic Operators that are registered. Third party can access also the information related to completed tender procedures and also those in process. PPL assigns the Ministry of Finance with the responsibility of regulating and setting the standards for the operation, implementation and continued improvement of the EPPS. Such responsibilities are further delegated to the DPPP in the Rulebook for the Systematization of Ministry of Finance. The EPPS is operating since January 2021 and until the date of the assessment had 675 registered Contracting Authorities and 4128 firms registered as Economic Operators. The volume of procurement during 2021 was 435,343,271 euros, while during 2022 it was 650,817,678 euros. In total, 4,599 contracts were awarded during 2021 for a total amount of 164,248,424 euros. In 2022 the number of contracts awarded is 6,879 for a total amount of 430,431,992 euros.

The EPPS provides for publication of Annual Procurement Plans and all respective revisions of the Procurement Plans. In addition, all information related to the procurement cycle from procurement notices to contract signature is accessible in the EPPS. Information on payments, however, is not captured in the EPPS, nor in the contract monitoring tables published for the signed contracts. The contract monitoring tables are required to be published in ESPP, as well as are contract amendments, however the EPPS doesn't cover contract management processes. The EPPS reflects the appeals submitted for a procurement decision, however, the appeal decision is not recorded in the EPPS. The information published on the online portal includes the full set of tender documents, full contract documents including technical specification and contract monitoring tables. However, evaluation reports are not published for the wide public, they can be accessed only by the CA members of the Evaluation Committee and auditors. Also, details of contract implementation are limited to general information on the contracts and don't ensure to capture progress of implementation. EPPS does not support machine-readable open data concept. The system is not aligned with Open Contracting Data Standard (OCDS), which is a machine-readable format for storing and publishing procurement data. This lack of support for OCDS makes it difficult to access and analyse procurement data, and it also limits the transparency of the public procurement process.

The information obtained through EPPS is easily accessible at the webpage <https://cejn.gov.me/>. The data retrieved from the system allow an overall analysis of the procurement procedures and statistical data can be obtained to assess the performance and outcome. Open data is not published, so there is no evidence of using the data by stakeholders for analysis, measuring, monitoring and evaluating procurement performances.



Use of e-procurement

The use of electronic procurement is mandatory for all procurement procedures that are subject to the Public Procurement Law. All levels of government acting as Contracting Authorities based on the categorization made by the PPL use EPPS. Also, the EPSS is used for simple procurement above 8,000 euros. DPPP is the ultimate responsible institution tasked with the responsibility to plan, develop and manage EPPS. The current structure of the DPPP doesn't foresee a dedicated team for the EPPS (as is a good practice seen in other countries in the region) and hence the capacities at the time of the assessment are limited and current human resources stretched. Presently budget funds remain the only financial source to support the EPPS. There are trainings organized by DPPP and Administration for Human Resources on EPPS functioning, for all users. DPPP performs routine evaluation and periodic adjustment of training programs on the EPPS is based on feedback and need. In addition, DPPP has prepared EPPS user manuals that facilitate the use of the EPPS.

For all procurement procedures that are published through EPPS, bidders are required to submit their offers electronically. In order to submit a bid, the private operator needs to be registered in the list of Economic Operators in EPPS. The registration is free of charge. In total there are 4,158 Economic Operators registered in the EPPS of which 2,946 are local firms and 1,212 are foreign firms.

The low number of firms registered in EPPS shows that the use of EPPS since 2021 have not ensured an increased participation of suppliers through digital technology. The lack of data on MSME (see below the quantitative analysis) participation in procurement procedures supports this finding. The results of the survey of the private sector reveal that overall there is a positive view of the EPPS but a less positive view of the ability of the system to foster competition (only 48 percent of responses confirm that EPPS fosters competition). As elaborated in assessment criteria 9 (a) (b) in Pillar III the competition levels are still very low, ranging from 1.5 to 2 bids per tender. The single bidder rate is also very high, irrespective of the procurement procedure (52 percent simple procurement, 65 percent restricted procedure, 68 percent open procedure). It should be noted that the single bid rate also increased from 2021 to 2022 (from 60 percent to 71 percent), while the average number of bidders per lot decreased from 1.7 to 1.5.

Despite the references to EPPS in national procurement strategies and policies, the absence of a national e-procurement strategy and roadmap is flagged. A well-designed strategy and roadmap could help to ensure that the Montenegrin government achieves its goals for e-procurement and that the EPPS is used effectively and efficiently by the public sector and the private sector.

Strategies to manage procurement data

The EPPS has a Reporting Module, and it provides data and reports on procurement activity, including information on procurement plans, notices, and contracts. The module also includes tools for monitoring compliance with procurement regulations and identifying areas for improvement. The data captured feed the statistical report provided in the annual procurement reports prepared by DPPP. However, this data should be analyzed manually, and the system doesn't offer data analytics tools. The EPPS is a comprehensive system that supports a variety of procurement procedures, including the two-stage bidding procedure and joint ventures. However, there are some areas where the system could be improved, such as the lack of e-catalogs, framework agreements, and dynamic purchasing systems. Additionally, the system does not have contract management with electronic invoicing modules. The system doesn't allow for a two-envelope system as well.



The reliability of information in EPPS is not yet verified by auditors. The adequacy of the data entered in EPPS is responsibility of the Contracting Authorities, and as such the reliability of data can be ensured only through audits conducted at CA level. The performance for the EPPS was measured only once so far, through a specific project implemented by the Government's Competitiveness Council, but there is no systemic performance evaluation established.

DPPP prepares semiannual and annual procurement reports, which are submitted by the Minister of Finance to the Government of Montenegro (Council of Ministers) for endorsement. These reports are published on the webpage of DPPP and contain statistical information on different procurement aspects. The data are mainly linked with the information that is captured by EPPS and is supplemented with additional information that Contracting Authorities include in their periodical reporting for areas that are not captured in the EPPS (such as simple procurement below 8,000 euros). The information retrieved from procurement data is not fed back in the system but is captured only in the annual DPPP reports.

Gaps

Substantive gaps

Publication of public procurement information supported by information technology

There are two substantive gaps under this assessment criteria.

1. Data and information published in the EPPS are not supporting completely the concept of open contracting since evaluation reports are not published and also contract implementation details including payment are not available.

The level of transparency offered by the information publicly available is not adequate to ensure the effectiveness of the procurement system, therefore the risk is high. However, no red flag is warranted since the gap can be addressed within the procurement system.

2. EPPS does not support machine-readable open data concept. The system is not aligned with Open Contracting Data Standard, which is a machine-readable format for storing and publishing procurement data.

The lack of support for OCDS makes it difficult to access and analyse procurement data, and it also limits the transparency of the public procurement process. Therefore, the risk is high, but no red flag is warranted since the gap can be addressed within the procurement system.

Use of e-procurement

The current structure of the DPPP doesn't foresee a dedicated team for the EPPS (as is a good practice seen in other countries in the region) and hence the capacities at the time of the assessment are limited and current human resources stretched. Presently budget funds remain the only financial source to support the EPPS.

There is high risk due to limited financial resources to further development of the EPPS and optimizing possible system interface with different governmental systems, and human resources managing day-to-day operation of the system and planning for its future improvement. A red flag is warranted since the accommodation of additional budget is outside the procurement system.



Strategies to manage procurement data

The EPPS supports a variety of procurement procedures, including the two-stage bidding procedure and joint ventures. However, there are some areas where the system could be improved, such as the lack of e-catalogs, framework agreements, and dynamic purchasing systems. Additionally, the system does not have contract management with electronic invoicing modules. The system doesn't allow for a two-envelope system as well. The EPPS doesn't provide for data analytics feature, and the elaboration of data is done manually by DPPP. This limits the Ministry's capacity to develop procurement policies to improve the system efficiency based on data.

There is medium risk of EPPS not supporting specific procurement procedures and not providing full information on contract management. No red flag is assigned since the improvement in EPPS can be done within the procurement system.

Substantive gaps and recommendations for this indicator are summarized in table 10.

Minor gaps

Publication of public procurement information supported by information technology

The data retrieved from the system allow an overall analysis of the procurement procedures, and statistical data can be obtained to assess the performance and outcome. Open data is not published, so there is no evidence of using the data by stakeholders for analysis, measuring, monitoring and evaluating procurement performance. The EPPS doesn't reflect the payments conducted for the signed contracts, nor the appeal decisions issued by the Commission on the Protection of Rights in Public Procurement Procedures (CPRPPP). It appears that no linkages to other relevant information for promoting transparency and competition are ensured through the EPPS, such as for example cases of corruption handled by the Agency for Preventing Corruption, or court decisions for convicted firms.

Use of e-procurement

Despite the references to EPPS in national procurement strategies and policies, the absence of a national e-procurement strategy and roadmap is a flagged. The DPPP does not have policy in place requiring updating the knowledge and skills of the staff involved in e-procurement, which may create challenges in tackling the new challenges posed by the ever-emerging technologies and meeting the expectations of the users of the system.

From the interviews with the Chamber of Commerce, the private sector has recognized the efficiency of preparing and submitting bids electronically. Although they raised the issue of system interfaces with other government systems that issue documents that attest their economic, financial standing towards fulfilling selection and qualification criteria in public procurement procedures. The results of the survey of the private sector reveal that overall there is a positive view on the EPPS but a less positive view of the ability of the system to foster competition (only 48 percent of responses confirm that EPPS fosters competition).



There is a large number of simple procurement transactions (in number and in value²⁷) pertaining to the simple procurement below 5,000 euros, which is conducted outside EPPS. In the secondary legislation there is no threshold to limit the yearly amount for which a contracting authority can use simple procurement outside EPPS. With the increase of the threshold to 8,000 euros, the total value of such expenditure category is expected to be higher than the actual amount reported in 2022.

Strategies to manage procurement data

The EPPS doesn't provide for data analytics feature, and the elaboration of data is done manually by DPPP. This will allow the Ministry to develop procurement policies to improve the system efficiency based on data analytics. The information retrieved from procurement data are not fed back in the system but are captured only in the annual DPPP reports. No audits are performed tailored at national level to ensure the reliability of data.

- **Recommendations**

Publication of public procurement information supported by information technology

- Upgrade the functionalities of EPPS to capture payments and appeal decisions, and provide for interfaces with other systems that promote transparency such as the Agency for Preventing Corruption.
- Enhance the functionalities of EPPS to support publication of evaluation reports and contract implementation data.
- EPPS should be aligned with the Open Contracting Data Standard (OCDS) and facilitate the disclosure of e-procurement data as machine-readable data for anyone to download, share and use with appropriate licenses without any fee. A comprehensive data analytics tool should be available in the EPPS and provide access to the tool to the stakeholders with appropriate level of licenses.

Use of e-procurement

- Form a business continuity technical team under the DPPP with all technical and administrative and supporting expertise for the smooth operation of EPPS to avoid the vendor-lock situation.
- Set a mandatory training requirement for the new recruits and regular refresher trainings on the operational (functions and features and their proper use, security, communication, e-procurement challenges) as well as technical areas on a regular basis for all the staff in e-procurement operation and support them to develop the capacity to address the challenges.
- A comprehensive e-procurement strategy for the implementation of the EPPS with executable action plans should be prepared. The strategy should include, at a minimum, policies on EPPS adaptation in public entities and private businesses, e-procurement implementation policy, sustainability and governance policy, and communication and capacity building policy.

²⁷ Information on simple procurement below 5,000 euros is captured in the 2022 Annual report of DPPP. In total, during 2022 154,262 invoices for 63,117,015 euros were processed.



- Ensure that EPPS allows for interface with government systems to attest supplier economic, financial standing towards fulfilling selection and qualification criteria in public procurement procedures.
- The interfaces and interoperability with the supporting government services should be brought in use to facilitate the efficiency and consistency of data, particularly with the central register of companies, tax, budget/treasury registries, and banks.

Strategies to manage procurement data

- EPPS should be enhanced with data analytical feature and foresee a statistical module that is freely accessible.
- SAI to include in its annual audit plan a functional audit on EPPS. In addition, a third-party system security audit should be carried out. The assessment should be carried out every time major changes are made in the system to ensure new vulnerabilities are not introduced.

Table 10. Summary of Substantive Gaps and Recommendations for Indicator 7

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 7(a) Publication of public procurement information supported by information technology		
7(a)(d) Data and information published in the EPPS are not supporting completely the concept of open contracting since evaluation reports are not published, and also contract implementation details, including payment, are not available.	High risk and not a red flag	<p>Enhance the functionalities of EPPS to support publication of evaluation reports and contract management data.</p> <p>A comprehensive e-Procurement Strategy for the implementation of the EPPS with executable action plans should be prepare. The strategy should include at a minimum, policies on e-Procurement system adaptation in public entities and private businesses, e-Procurement implementation policy, sustainability and governance policy, and communication and capacity building policy.</p>
7(a)(e) EPPS does not support machine-readable open data concept. The system is not	High risk and not a red flag	EPPS should be aligned with the Open Contracting Data Standard (OCDS) and facilitate the disclosure of e-procurement data as machine-readable data



aligned with Open Contracting
Data Standards

for anyone to download, share
and use with appropriate
licenses without any fee.

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

7(b)(b) Capacity to plan, develop and manage EPPS are limited in terms of financial and human resources.

High risk and a red flag

Establish a business continuity technical team under the DPPP with all technical and administrative and supporting expertise for the smooth operation of EPPS to avoid the vendor-lock situation.

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

7(c)(b) The system doesn't manage data for the entire procurement process such as e-catalogs, framework agreements, and dynamic purchasing systems, does not have contract management with electronic invoicing modules.

Medium risk and not a red flag

Enhance data analytical feature for the EPPS.

Source: Assessment team.

Indicator 8. The 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

Montenegro has systems in place for training, advice, and assistance in public procurement. The Ministry of Finance/DPPP provides professional training and education programs for employees of contracting authorities involved in public procurement tasks. However, there is a minor gap in the quality and content of the training programs, which can be improved. Although there is in place a certification process for procurement officials, procurement is not recognized as a profession and reflected in job categorization. The system lacks a proper performance monitoring strategy that is based on measuring the progress based on key performance indicators (KPIs).

• Findings



Training, advice and assistance

PPL mandates that employees of contracting authorities involved in the conducting of public procurement tasks shall attend professional training and education courses. Contracting authorities shall provide professional development and training for public procurement officers and other persons employed by contracting authority involved in public procurement tasks. Professional training and education in public procurement field shall be conducted on basis of the program for professional training and education.

Professional training and education for the needs of contracting authorities shall be organized and conducted by the Ministry of Finance/ DPPP which shall establish the program and method of professional training and education in public procurement field. Professional training and education may be organized and conducted by the MoF also for economic operators and other persons.

During the assessment DPPP informed that there are two main types of trainings organized by the MoF – on legislative framework and the use of EPPS. In cooperation with the Human Resources Directorate the MoF has adopted the Training Calendar for the year 2022 which is publicly available at DPPP website.²⁸ Over 394 officers and interested persons were trained in a total of 12 trainings. This includes trainings organized by the Human Resources Administration – a total of 4 trainings – and those organized by the DPPP – 8 trainings. The training duration varies from 1 to 2 days. DPPP lack an annual training program which will make the training process more systematic and allow for tracking also different levels of training modules. A training curriculum for different levels is also not consolidated.

During the assessment the DPPP has not provided documents to show how the systematic evaluation of trainings is conducted and periodic adjustment of training programmes is done.

Advisory service and help desk function is provided by DPPP to Contracting Authorities and suppliers upon request. A help desk function is available and published at the website of the DPP <https://ujn.gov.me/obavjestenje-za-help-desk>, although it has only contacts of responsible persons of DPPP who can be reached to receive clarifications regarding legal issues related to the application of the PPL, professional training, improvement and taking a professional exam in the field of public procurement, electronic procurement system and public private partnerships (PPPs).

The Procurement Strategy for improving public procurement 2021-2025 addresses the issue of professionalization and education through all its strategic and operational objectives. Several activities are included to achieve the objective:

- Education of employees in the Ministry of Finance with the participation of international experts, in order to promote new techniques for concluding public procurement contracts, on the application of EU regulations in the context of the new regulatory framework for public procurement and transfer of international good practices.
- Education of contracting authorities, business entities and other interested persons on the legal framework in the field of public procurement and the method of application of the same;
- Organization of training on integrity and prevention of corruption and conflict of interest in public procurement for contracting authorities.
- Education of Contracting Authorities and business entities related to the use of EPPS.

²⁸ [TRAINING CALENDAR \(ujn.gov.me\)](https://ujn.gov.me).



- Promotion of green and sustainable procurement with a focus on environmental criteria.

However, there aren't specific parts in the Procurement Strategy to ensure that there is a well-defined and continual training strategy in place that considers the level of proficiency among procurement officials.

Recognition of procurement as a profession

Procurement is recognized as a specific function within public administration but not as a profession in the country. The PPL requires that the staff assigned within the procurement entities as procurement officer passed the professional exam for performing public procurement. The list of persons who has passed the certification exam is public and available at the website of DPPP. From 2012-2020 the number of certified procurement staff is 683, while during 2022, 65 staff has been certified as procurement officers.

Procurement professionalization is not supported however by different professional levels in public procurement. Professional levels are linked with the years of work in public administration but not the level of expertise gained in public procurement. Appointments and promotions are done mainly following the requirement of the public administration however the PPL requires that a procurement officer has received the certification for performing public procurement functions.

Monitoring performance to improve the system

The Government of Montenegro has adopted a Strategy for Improving the Policy of Public Procurement and Public-Private Partnership for the period 2021-2025 and the Action Plan for the implementation of the Strategy 2021-2022.

The strategy provides outcome and performance indicators to monitor achievement of strategy objectives and results which are aimed to improve the system.

DPPP has established a separate department which is responsible for monitoring the performance of public procurement system. The department receives also the reports from inspections but during the assessment it was not shown how these reports might contribute to undertaking changes in procurement system and improving performance of Contracting Authorities.

However, it is not clear if the DPPP has established a performance measurement system that focuses on both qualitative and quantitative aspects and that is followed and reported by each CAs. DPPP prepares and submits to the Government annual reports for public procurement procedures which provide information for different performance indicators which compared to previous years enable measurement of system performance, but there are no set targets for each of the indicators.

The action plans that will be adopted during the strategy implementation period are adopted to define activities and measures for the strategy's implementation and will be its integral part. The action plan states the strategic objective, operating objectives, activities for implementing operating objectives, activity holders, deadlines and performance indicators for implementing the strategy's activities. If necessary, action plans are subject to revision, according to the decisions and timeline determined by the Coordinating Body. The Coordination Body will define the next action plans that the Government will adopt. The Coordinating Body will monitor the strategic and operational objectives' impact of the Strategy. By the end of the year, it will prepare an annual report on the strategy and action plan implementation to assess the annual strategic and operating objective's performance. The annual report will contain elements that enable direct results monitoring in the strategy's implementation and real changes



produced by the individual activities implementation. The Coordinating Body will submit the annual report to the Government for adoption and make it publicly available on the Public Procurement Policy Directorate's website. If necessary, reporting and submission of reports to the Government can be made semi-annually.

In the last quarter of 2025, the Coordinating Body will prepare a closing report on the strategy's implementation. The report will evaluate the strategic and operational objectives set by the strategy during implementation, evaluate any unfulfilled objectives, and determine their relevance for drafting a new strategic document. Finally, the achievement of strategic and operational objectives will be evaluated in the last quarter of 2025. The person who coordinated the strategy's implementation will be appointed as the head of the evaluation. The evaluation reference group, which the Ministry of Finance will establish in the last quarter of 2025, will consist of the representatives of institutions and other stakeholders who did not participate in the strategic document's development and implementation.

Strategic plans are embedded into the strategy for procurement policy, however there are no results framework prepared to be monitored at the level of CAs and DPPP. The action plan prepared to support implementation of the strategy to improve procurement system, envisages which are the responsible bodies for undertaking the actions foreseen to achieve the objectives of the strategy. The lack of results framework makes the role of institutions in monitoring performance ambiguous.

- **Gaps**

Substantial gaps

Training, advice and assistance

During the assessment the DPPP has not provided documents to show how the systematic evaluation of trainings is conducted and periodic adjustment of training programmes is done.

Lack of systematic evaluation mechanism to improve training curricula has a medium risk in ensuring that training activities serve the scope of enhancing procurement capacities. The gap can be addressed within the procurement system and the therefore no red flag is warranted.

Recognition of procurement as a profession

Two substantive gaps are recognized in this assessment criteria.

1. Procurement professionalization is not supported by different professional levels in public procurement and such levels are not reflected in the job classification. Professional levels are linked with the years of work in public administration but not the level of expertise gained in public procurement.

Lack of recognition of procurement as a profession has a high-risk in ensuring that qualified and experienced practitioners are kept within the system and remain motivated. The gap can't be addressed fully within the procurement system since the revision of civil servants' legal framework is needed and the therefore a red flag is warranted.

2. Appointments and promotions are done mainly following the requirement of the public administration and, in addition, the PPL requires that a procurement officer has received the certification for performing public procurement functions. Another gap in this context, relates to the career path, appointment and promotion. These decisions are based on general rules for civil servants and do not take into account any



procurement-specific aspects. Appointment and promotion are based on qualifications and professional certification, but since procurement is not recognised as a profession, those qualifications and certifications are not relevant for public procurement. Based on the interviews with DPPP and Contracting Authority staff, appointed persons that don't have the certification are required to undertake the exam within one year from their appointment.

The risk of hiring not certified procurement staff is considered moderate since it will have a likelihood to affect the appropriate functioning of procurement system only during the period when the staff is not certified. The gap can be addressed within procurement system therefore no red flag is assigned.

Monitoring performance to improve the system

The action plan for implementing the strategy for 2023-2025 was not prepared until the assessment period. There is no evidence of how the DPPP uses the findings and recommendations of inspection reports to address systematic issues in public procurement. DPPP has not established a performance measurement system with set indicators that focuses on both qualitative and quantitative aspects and that is followed and reported by each CAs. There is no evidence to support that information obtained from performance monitoring is used to support strategic policy making on procurement. The strategy and its implementing action plan capture only some key development objectives to improve public procurement system.

The risk is medium, and no red flag is warranted since the gap can be addressed within procurement system.

Substantial gaps and recommendations for this indicator are summarized in table 11.

Minor gaps

Training, advice and assistance

Although training activities are conducted frequently, DPPP lacks an annual training program which will make the training process more systematic and allow for tracking also different levels of training modules. A training curriculum for different levels is also not consolidated. DPPP has not elaborated specific parts on the procurement strategy to ensure that there is a well-defined and continual training strategy in place that considers the level of proficiency among procurement officials.

Monitoring performance to improve the system

The lack of results framework makes the role of institutions in monitoring performance ambiguous. Assessors were unable to determine that contracting authorities use results frameworks to advance their work strategically.

- **Recommendations**

Training, advice and assistance

- Develop an annual training program based on levels of procurement competencies which should be delivered based on a structured training curriculum. Elaborate as part of the training program



also the system for evaluation of trainings conducted and analysis of feedback to inform the preparation of training program for the upcoming year.

- Elaborate as part of the procurement strategy a well-defined strategy for the continuous training program to be provided to procurement practitioners based on different levels of proficiency

Recognition of procurement as a profession

- The legal framework on civil servants and state employees may include provisions to ensure that procurement is recognized as a separate profession.
- Establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.

Monitoring performance to improve the system

- Action plan for 2023-2025 for implementation of public procurement Strategy should be prepared.
- Develop a comprehensive data capture and performance measurement system integrated with the EPPS to be introduced. Consider integrating the KPIs into the procurement measurement system.
- DPPP should established a systematic mechanism to ensure elaboration of reports from inspection and take measures to improve procurement performance based on the findings.
- While establishing the performance monitoring system, the roles and responsibilities at the level of CAs and DPPP should be elaborated.

Table 11. Summary of Substantive Gaps and Recommendations for Indicator 8

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 8(a) Training, advice and assistance		
8(a)(b) There is not an elaborated system for routine evaluation and periodic adjustment of training programmes based on feedback and need	Medium risk and not a red flag	Elaborate as part of the training program also the system for evaluation of trainings conducted and analysis of feedback to inform the preparation of training program for the upcoming year.
Sub-indicator 8(b) Recognition of procurement as a profession		
8(b)(a): Procurement is not recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified	High risk and a red flag	Revision of relevant legal framework on civil servants to acknowledge procurement as a profession. Establish professional levels within procurement based on the European Competency



8(b)(b) There is no evidence that appointments and promotion are competitive and based on qualifications and professional certification. Medium risk and not a red flag

Enforce the application of PPL in conjunction with public administration rules for staff appointments and promotion.

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

8(c)(a) Lack of a performance measurement system with set indicators that focuses on both qualitative and quantitative aspects and that is followed and reported by each CA. Medium risk and not a red flag

Prepare an Action plan for 2023-2025 for implementation of Public Procurement Strategy. Develop a comprehensive data capture and performance measurement system integrated with the EPPS. Consider integrating the KPIs into the procurement measurement system. DPPP should established a systematic mechanism to ensure elaboration of reports from inspection and take measures to improve procurement performance based on the findings.

8(c)(b) There is no evidence to support that information is used to support strategic policy making on procurement Medium risk and not a red flag

Source: Assessment team.

3.3. Pillar III - Public Procurement Operations and Market Practices

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

Although the contracting authorities in Montenegro generally apply the legislation and guidance issued by DPPP, the competition levels in public procurement in Montenegro are significantly reduced. The single bid rate increased from 60 percent in 2021 to 71 percent in 2022, while the average number of bidders per lot decreased from 1.7 to 1.5, 11 percent of the procurement procedures having been cancelled during the analysed period. The assessment could not tell if this is due to a lack of capacity of economic operators to respond to procurement requirements or to the fact that there are high barriers to entry (such as requirements for licenses or certifications), however this raises concerns regarding the efficiency of the public procurement system in Montenegro. Economic operators consider that the main reasons that would explain the low competition levels refer to the fact that the qualification criteria and/or



requirements are designed to favour certain firms, followed by unfair competition by some groups of firms and the insufficient budget allocation for the contract.

Contracting authorities are compliance-oriented and less focused on using public procurement as a strategic tool to ensure value for money and promote sustainability objectives. Procurement professionals in Montenegro are accredited, however there is great opportunity to tailor capacity development programs in particular in the planning and contract management stages, to address the identified limitations.

There is no evidence of risk assessment or sectoral analysis to inform procurement decisions at system level or in a specific sector despite the amount of data captured by the EPPS. Some formal and informal dialogue between the Government and the private sector, including civil society, exists, however both economic operators and NGOs appreciate that processes do not work that well and access to information is difficult.

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. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

- **Synthesis of the indicator**

Contracting authorities in Montenegro apply consistently the legislation and guidance issued by the DPPP, including the different forms and templates. As explained by the DPPP, contracting authorities cannot develop other internal procedures related to public procurement if these have already been covered by the different by-laws or rulebooks published by the DPPP. However, the efficiency of the procurement procedures is questionable considering the limited competition which may be explained by the lack of thorough market analysis, the application of inefficient procurement approaches or procedures, practices that favour a limited number of bidders or the limited capacity of the private sector to respond to procurement opportunities. These may be also connected with a low capacity of the public sector and the need to improve the knowledge and skills of procurement professionals. Although an accreditation system is applied in Montenegro, this may be still compliance-oriented, even if the procurement legislation was aligned with the EC Directives in 2017.

The planning of procurement processes is limited to meeting the mandatory requirements and contracting authorities rarely make use of their right to apply more innovative approaches to public procurement. Price remains the dominant factor for the award of open procedures. Economic operators generally perceive that business opportunities are not predictable despite the introduction of the EPPS. Biased technical specifications and qualifications and requirements that favour certain bidders are the first two main problems experienced with the tender documents by the economic operators. Not knowing the contract conditions when bidding, the unbalanced allocation of risks within the contract and the unclear mechanisms for dispute resolution are other key aspects raised by the economic operators.

Despite limited information on contract implementation for the scope of the assessment and the difficulties in appreciating the efficiency and effectiveness of the contract management processes at the



level of contracting authorities, as well as the apparent lack of transparency with regard to the actual outcomes of the contract, economic operators generally consider that contracts are implemented in timely manner and comply with the existing regulation on the time limits for payments.

Statistical reports are published by DPPP annually for transparency purposes, however, these are not used to measure and improve procurement practices.

- **Findings**

The assessment is based on the analysis of the EPPS data for the period February 2021-March 2023 and the analysis of a sample of contracts concluded during 2018-2022, as well as other reports published by the contracting authorities, the DPPP or from other sources, including the findings of interviews held during the January 2023 mission. Limited data and information were obtained with regard to contract management practices or other internal processes and procedures.

Information on the data analysis

The data analysis covers all procurement processes and all contracts registered in the EPPS during the period February 2021-March 2023. The data sets refer to 675 contracting authorities that managed 12,523 procurement procedures and 12,324 contracts with a total procurement volume of 654,545,025 euros. The data sets received from DPPP include also the simple procurement below 5000 euros (i.e., direct purchases); this is registered as “exclusions”. The data sets were used to construct most of the MAPS quantitative indicators under Pillar III.

Information on the sample analysis

To complement the data analysis conducted based on the e-procurement data, a number of contracts were selected for in-depth review. The sample analysis included 60 contracts, awarded during the period 2018-2022 by seven contracting authorities that spent high procurement budgets. These have been chosen based on the annual statistical reports published by the contracting authorities and envisaged high value contracts, different types of contracts and different types of procedures, where possible. The tender documentation and award information were accessed in the EPPS (www.cejn.gov.me) as of 2021 and in Public Procurement Portal (www.portalujn.gov.me) for contracts before 2021. According to the law, it is not mandatory to publish the contract award notice, however, the integral signed contracts are published and could be identified in one of the two systems. Data on contract information practices was requested from the selected contracting authorities. The sample analysis informed the qualitative assessment under each indicator.

Information on the survey of economic operators

The survey was launched with the support of the Chamber of Commerce in Montenegro and targeted economic operators which had previous experience with the procurement system. In total, 1,700 firms were invited to participate. The response rate was around 15 percent (i.e., 261 respondents), which is statistically representative for an online survey with firms. Some information on the characteristics of the firms that participated to the survey are presented below:

- 77 percent from central region
- 45 percent began operations in 2006 or before, 55 percent in 2007 or after



- 51 percent has less than 10 employees; 35 percent between 10 and 50; 11 percent between 50 and 250; 3 percent more than 250
- the most represented sectors are: 1) construction (27 percent); 2) wholesale and retail trade, repair of motor vehicles and motorcycles (14 percent); 3) information and communication (6 percent); 4) manufacturing (5 percent)
- 96 percent participated in public procurement since January 2020 and 82 percent won at least one contract since January 2020.

The percentage of respondents that select the “don’t know” or “prefer not to answer” option is in most cases below 15 percent, which is generally acceptable. This is however higher for questions in the module about corruption which is also generally expected.

Planning and market research

Needs assessment documents and/or contracting strategies to document the planning stage beyond the published procurement plan, are not published, therefore the completeness and correctness of the analysis performed by the procurement professionals cannot be assessed. The estimated procurement budget is generally prepared based on the historical information and experience of the contracting authorities and is specified in the procurement plan which becomes the reference for the preparation of the tender documentation. Estimated procurement budget may adjusted during the course of the year, which sometimes is more than 50 percent than the initial plan (some data from 2022: 104 percent, the capital City of Podgorica, 15 percent Administration for Capital Projects, 4 percent Traffic Administration, 52 percent Public Company Roads of Podgorica). Data at system level was not made available in order to assess to which extent this is a systemic issue or an isolated case.

Market research is rarely conducted and usually entails browsing the websites of the potential suppliers. In practice, there are noticed slightly different approaches in the way the needs analysis and market research are applied by different entities. Some base the estimates exclusively on previous experience whereas others do some assessment of prices in specific cases. This may be explained by the fact that market research is, by law, a possibility and not an obligation (Article 85). Regarding market consultations, contracting authorities are not obliged to record them or to publish the results and therefore, there is no evidence of their application. This is confirmed by the results of the survey of economic operators, which shows that only 6 percent have been frequently invited to market consultations and 28 percent estimated that this happened rarely. Only 18 percent of the economic operators believe that there is a clear process to identify firms to be invited to market consultations whilst there is a general perception that firms invited to participate in market consultations are given preference in awarding the contract (51 percent).

The tender documents issued after the entry into force of the 2019 procurement legislation (i.e., after mid-2020) do not include the contract form, the general or specific contract conditions. Although some of the important provisions of the contract are specified in the tender documentation, this practice puts the potential tenderers into a situation of unpredictability, not knowing the specific terms that would be applicable during the contract implementation. One of the main obstacles faced by firms when working under a government contract is the fact that the contract conditions are unknown when firms submit their bid (on the 4th place among obstacles identified in the survey, with 25 percent).

Issues with the tender documentation is one of the reasons why economic operators decide not to submit a bid for a tender (28 percent believe that this happened always or frequently, and 46 percent believe that this happened rarely). The main problem experienced with tender documents relates to biased



technical specification (23 percent) or biased qualifications /requirements to favour certain bidders (23 percent). Sustainable criteria are generally not used by the contracting authorities which were subject to the assessment. Some authorities use some sustainability criteria in their tenders (green criteria, safety measures, etc.), however, these are isolated cases.

Selection and contracting, efficiency of the procurement process

The EPPS captures a lot of data on the results of procurement procedures conducted through the system which, analyzed, provide a good image of the functioning of the public procurement system in Montenegro. Complete results of the data analysis for the period February 2021-March 2023 are presented in annex 9, and a brief summary is captured below.

Competition

At country level, the average number of bids is 3.5 per tender (i.e., per procurement procedure) and 1.7 bids per lot (i.e., per contract). The participation varies depending on the type of procedure as shown in table 12 below:

Table 12. Number of Bids per Tender and per Lot

Procurement procedure	Average number of bids per tender	Average number of bids per lot
All procedures	3.5	1.7
Open procedure	4.2	1.5
Simple procurement procedure	2.2	2
Procedures that resulted in a contract	3.6	1.8
Open procedure that resulted in a contract	4.3	1.5
Simple procurement procedure that resulted in a contract	2.2	2

Source: Data retrieved from EPPS

The single bidder rate is very high irrespective of the procurement procedure. Also, 13.6 percent of the contracted volume is represented by negotiated procedure without publication (9 percent of the estimated budget). This results in a very high percentage of tenders awarded based on a single bid (table 13).

Table 13. Number of Bids per Lot and Single-bid Rate

Type of procedure	Average bids per lot	% of lots with only one bidder
Simple procurement	2	52%
Open procedure	1.5	68%
Restricted procedure	1.6	65%

Source: Data retrieved from EPPS

It should be noted that the single bid rate also increased from 2021 to 2022 (from 60 percent to 71 percent), while the average number of bidders per lot decreased from 1.7 to 1.5. Works contracts have higher participation (around 2 bids per lot) and a lower single bid rate (47 percent).



There are no significant differences between regions in terms of average bids and single bid rate. Central region has a higher single bid rate, i.e., 69 percent and the lowest competition, i.e., 1.5 bids per lot. In terms of categories of procurement, there are some which register very high single bid rates and which would need to be carefully analyzed to look for specifics of the sector, patterns, trends and potential ways to stimulate competition. Preliminary observations on competition levels by sector:

- public utilities – this seems to be a monopolistic market;
- few players in the chemical products, financial & insurances services; collected and purifies water;
- more players in the software package and information systems market (market concentration is low, hence more suppliers), however the competition is low and single bid rate is high; there is even higher diversity in terms of suppliers in the IT services sector and repair & maintenance services, but still very low competition and high single bid rate.

11 percent of the tenders were cancelled during the analyzed period, accounting for 6 percent of the total estimated value. Tenders for goods were cancelled the most (43 percent of the total cancelled tenders). Looking at the type of procurement procedure, 9,33 percent of the open procedures and 12.8 percent of the simple procurements were cancelled during the analyzed period. 2 percent of the tenders received complaints, however it is not evident what type of complaints data is captured by the EPPS.

Procurement procedures and approaches

The analysis of the e-procurement data shows that only 0.3 percent of the launched procurement procedures are restricted, representing 0.4 percent of the estimated budget, and no competitive dialogue, partnership for innovation or competitive negotiations appear in the datasets (table 14).

Table 14. Procurement Structure by Procedure

	Procurement procedures		Contracts	
	%	% of estimated volume	%	% of contracted volume
Simple procurement	59.70%	8.10%	54.10%	12.10%
Open procedure	35.50%	80.80%	39.60%	72.20%
Restricted procedure	0.30%	0.40%	0.30%	0.50%
Negotiation procedure without prior publication	2%	9.10%	3.70%	13.60%

Source: Data retrieved from EPPS

Three contracting authorities organized restricted tenders, Ministry of Defense, JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ (primary school) and Ministry of Internal Affairs. These are shown in table 15 below.

Table 15. Restricted Tenders

Contracting authority	No. of tenders	Estimated value EUR
JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ	1	20,669.41



Ministry of Defense	33	4,849,616.65
Ministry of Internal Affairs	2	230,000.00
Total	36	5,100,286.06

Source: Data retrieved from EPPS

Types of contracts awarded in these restricted tenders are presented in table 16.

Table 16. Types of Contracts Awarded through Restricted Tenders

Type of contract	No. of tenders	Estimated value EUR
Works	4	1,197,871.85
Services	12	1,995,100.17
Goods	20	1,907,314.04
Total	36	5,100,286.06

Source: Data retrieved from EPPS

As mentioned by contracting authorities, trainings on competitive dialogue or partnership for innovation by DPPP are not yet available, which may be one of the reasons for which contracting authorities do not apply these procedures.

In terms of procurement approaches, the data analysis shows that only 5 percent of the launched procurement procedures are framework agreements. Open procedure is the default for procurement above the threshold regulated by the legislation, meaning it is not required by the procurement legislation in force for contracting authorities to justify why they have selected a specific procedure, as long as it is in accordance with the law. 36 percent of the launched procedures (accounting for 81 percent of the estimated budget) are open procedures and 58 percent are simple procurement procedures above 5000 euros (representing only 7 percent of the estimated budget). It should be noted, however, that the value of the simple procurement below 5000 euros (i.e., direct purchases) is high, representing 38 percent in 2021 and 16 percent in 2022 from the total contracted volume at system level.

Quality of the tender documents

Tender documents are generally prepared by the selected contracting authorities following the model adopted by relevant by-law (Rulebook on Forms in Public Procurement Procedures) which is generally considered well designed by the contracting authorities. Sustainability considerations are generally not included in the analyzed contracts with some exceptions which include some general provisions. Analyzed contracts do not include incentive clauses either, but generally include disincentives for poor performance. The approaches differ from one contracting authority to another.

The provided templates may be amended by the contracting authorities under certain conditions, however, in practice, focus is on meeting the mandatory requirements. Templates are for different types



of procurement procedures (one form for the open procedure, one for simple procurement, one for negotiated procedure without publication, and another one common for the other types of procurement). When asked if they expressed interest for a public contract, but then decided not to submit a bid for that tender, the quality of the tender documents is the second obstacle to submit bids mentioned by the economic operators (after competition and fairness). Biased technical specifications and qualifications and requirements that favor certain bidders are the first two main problems experienced by economic operators with the tender documents.

Not knowing the contract conditions when bidding for a contract is listed as one of the main obstacles when working under a government contract by 25 percent of the economic operators (after market instability – 45 percent; the complexity of the administrative processes during contract execution – 40 percent, and the delays in payments – 36 percent). Also, risk allocation is considered unfair (39 percent) and the mechanisms for dispute resolution are perceived as inefficient and unfair (38 percent). Nevertheless, the economic operators appreciate that contracting authorities generally use similar contract conditions for similar projects (85 percent), which may assure a level of predictability for the bidders that are usually working with the same contracting authorities, with a majority of 52 percent of them considering that the contract clauses are clear and cover all the main aspects relevant for contract implementation and that fair payment terms are included (50 percent).

There have been noted differences in the way contracting authorities detail in the tender documents the process for bid submission, receipt and opening or the way the tender guarantee may be presented. This may pose additional burden on economic operators which need to pay particular attention to the formal requirements presented in each tender they intend to participate in. There is no evidence in the analyzed sample of tenders regarding the way the contracting authorities ensure the confidentiality of the tenders, in practice, however, there is no indication of breach of confidentiality or complaints due to this reason.

Award criteria

After the introduction of the mandatory use of the most economically advantageous tender (MEAT) criteria for open procedures with the procurement law from 2019 (applicable since mid-2020), contracting authorities can decide on awarding bids based on a price-quality ratio. Generally, it was noted that price remains the dominant factor for the award (varying between 80-90 points), and rarely a higher number of points is allocated for the quality. Overall, 58 percent of the tenders are awarded based on 100 percent price criteria, 28 percent on around 90 percent price criteria and only 2 percent based on 50 percent price criteria (table 16).

Table 16. Weights of Price and Technical Criteria in Tender Awards

Average financial criteria score (%)	92%
Average technical criteria score (%)	8%
Share of Tenders for which financial scores are greater than 80	87%
Share of Tenders for which financial score is equal to 100.	57%

Source: Data retrieved from EPPS



The situation is better when looking at the open procedures only, however there is room for improvement, too (table 17). The average weight of price criteria in the case of open procedures is 85 percent and 76 percent of the open procedures are awarded based on price criteria above 80 percent. However, significantly less procedures are awarded based on 100 percent price only criterion (i.e., 2 percent).

Table 17. Weight of Price Criteria in Open Procedure Awards

Average financial criteria score (%)	85%
Average technical criteria score (%)	15%
Share of Tenders for which financial scores are greater than 80	76%
Share of Tenders for which financial score is equal to 100.	2%

Source: Data retrieved from EPPS

Evaluation and award

The legal framework on public procurement includes specific legal provisions and detailed guidance with regard to the evaluation process. In accordance with the law, the Minutes on Opening and Evaluation of Bids is not a publicly available document, however, the Decision on Selection of the Most Advantageous Bid, which is publicly available, is a result of the mentioned minutes and most of the information contained therein are derived from the minutes. Overall, the EPPS is considered a welcome improvement which brought simplification and higher level of transparency, however bid evaluation is considered complicated by the interviewed contracting authorities, as, in accordance with the current legislation, the contracting authority has to request the evidence from the relevant authorities to confirm that the bidder meets the qualification requirements. In the past, this was the obligation of the bidder.

The way the evaluation process should be conducted and documented is regulated in the specific bylaws, however, based on the publicly available documents, the decisions of the contracting authorities do not seem always substantiated in respect of rejection of offers or assessment of abnormally low bids. Considering that the Minutes on Opening and Evaluation of Bids are not public, and were not provided for the sample analysis, a comprehensive review of how contracting authorities document their decisions was not possible. The data analysis shows however that 4 percent of the contracts were awarded to abnormally low bids and that 97 percent of the awarded bids had the lowest price.

Processing times

The average duration of all the procurement procedure conducted through the EPPS (from initiation, i.e., publication of the tender notice to the contract signature) is 147 days. Processing times differ from one type of procedure to the other (average duration for main stages in table 18 below). These values are close to the overall EU target of 120 days.²⁹ Restricted procedure generally take longer than the other types of procedures (average duration of restrictive procedure is 134 days compared with open procedure

²⁹ Public Procurement Scoreboard, decision speed indicator - https://single-market-scoreboard.ec.europa.eu/business-framework-conditions/public-procurement_en.



which takes 76 days or simple procurement which takes only 26 days). There are no significant differences between different types of authorities (state body, local units or sectoral contracting authorities).

Table 18. Duration of Contracting Procedures

Type of procedure	Overall duration (i.e., lead time)	Bids submission period	Contract signature (from bid opening)
Simple procurement	26 days	7 days	20 days
Open procedure	76 days	30 days	49 days
Restricted procedure	134 days	48 days	55 days
Negotiation without publication	38 days	7 days	31 days

Source: Data retrieved from EPPS

When looking at the duration of the different stages of the procurement process, 95 percent of the open procedures have a bids submission period between 15 and 30 days or more than 30 days. The remaining 5 percent have a bids submission period of less than 15 days which could be further investigated to identify reasons (urgency, low value even if launched as open procedure, etc.). By contract type, works contracts take longer to be awarded; for open procedure this is 90 days on average, compared with goods which are awarded within 72 days and services, within 80 days. Durations per stage of procurement do not vary significantly either. Looking at the processing times for the five largest procurement categories, there are no significant differences either. It may be noted that construction works take 89 days to be awarded, chemical products 74 days, and medical equipment, transport equipment and sewage, refuse, cleaning and environmental services between 62 and 71 days.

Contract management

Contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the e-procurement data, the reviewed public documentation and the information received from the interviewed authorities. As of mid-2020, procuring entities are obliged to report on the implementation of the public procurement contract and the report is published in the EPPS. During the sample analysis it was observed that some contracting authorities published the report whilst others did not.

The data analysis shows that during the analyzed period, 8 percent of the contracts were modified and only 1 percent were cancelled. In terms of the extent to which goods, works or services, including consulting services, procured are delivered according to the contract agreement in terms of time, quality and cost, contracting authorities do not report major issues, which suggests that contract terms are generally observed, contracts are rarely amended, and the number of terminated contracts is very low. Economic operators also generally consider that contracts are implemented in timely manner (68 percent) and that they comply with the existing regulation on the time limits for payments (61 percent). Considering that contracting authorities prepare their own contract conditions within the limits of the legislation, different practices are observed in the way they regulate aspects related to inspection, quality control, supervision of work and final acceptance.



Once contracts are published, civil society has the possibility to monitor their implementation and, in case additional data is needed, these could be requested on the basis of the specific legislation regarding the access to information. As indicated by the interviewed NGOs, this process takes a long time, and documents, information and data are not always provided in an easily accessible format (usually, these are scanned copies).

Contracting authorities prepare annual reports with summaries of procedures and contracts, including some statistics which are sent to DPPP and are available in the EPPS. However, these are generally statistical reports published for transparency purposes and not necessarily to measure and improve procurement practices. Views of economic operators related to the availability of data and information on public procurement that would enable to monitor the performance and integrity of public procurement are split: 34 percent of the respondents consider there is sufficient public information, 32 percent disagree with this statement.

Several documents from the procurement file are publicly available in the EPPS, but several are not (such as, minutes from opening and evaluation of the bids, contract information data such as invoices, data on payments, evidence of submitted/received goods/service/works). In practice, the contract implementation file is kept by the beneficiary unit whilst the procurement procedure file is kept by the procurement unit. A review of the way documentation is kept for the selected contracts could not be conducted.

Control of procurement procedures

The Administration for Inspection Affairs has the role of verifying the legal compliance of public procurement procedures. In 2022, the inspection carried out a total of 333 inspections, revealing 234 irregularities for which fines were applied in total of 36.200,00 euros (representing 0.008 percent of the procurement volume awarded in 2022). According to the report provided by the Inspection, the most frequent irregularities are captured in table 19 below.

Table 19. Common Procurement Irregularities

Area of irregularity	Number of irregularities	% of total number of investigations
Keeping the records and documentation on public procurement exceptions	64	30%
Fulfilment of the requirements for public procurement officer and the commission for the implementation of the public procurement procedure	34	14%
Implementation of simple procurement below threshold (including the division of procurements to avoid the appropriate procedures)	31	8%
Control of the public procurement contracts performance reports	60	46%

Source: Report of Administration for Inspection Affairs

As noted in Pillar II, the way the results of the investigations are used to improve procurement practices and how they translate into guidance for contracting authorities is not evident.



- Gaps

Substantive gaps

Procurement planning: market analysis, procurement procedures and tender documents

There are cases in which the estimated procurement budget is adjusted during the course of the year with more than 50 percent than the initial plan. Data at system level is not available in order to establish the percent of contracting authorities that modified the estimated budget with more than 50 percent and conclude if this is a recurrent system issue, or an isolated matter. This may indicate that either the planning process is insufficiently documented or there are reasons outside the contracting authority control which do not allow planning for higher budgets from the very beginning. The latter could relate to the budgetary process in Montenegro.

Market research and market consultations are rarely carried out, being conducted in case of new or complex procurements which are not known to the contracting authority. Contracting authorities are generally focused on meeting the mandatory requirements of the law and rarely make use of their right to apply the different tools provided by the legislation to document and substantiate their decisions. The economic operators consider that contracting authorities do not do enough market consultations (71 percent) although this instrument is widely considered useful to improve the quality of the tender documents (80 percent) and to reduce the likelihood of complaints from firms during the procurement process (79 percent).

Although tender documents are publicly available and include the essential documentation to enable the preparation and submission of the bids, the lack of predictability of in terms of applicable contract conditions, and the high percentage of respondents who decide not to apply due to problems with the tender documents, as mentioned above, are issues which need to be further investigated by the Montenegrin Government and which may explain the low competition levels in Montenegro. The quality of the tender documents is the second obstacle to submitting bids highlighted by the economic operators, which may be explained by insufficient guidance on how to prepare tender documents or a lack of capacity. The absence of a standard contract model for the different types of contract results in the application of different practices by different contracting authorities (and even within the same). Ensuring the predictability of the applicable conditions may address the issue of trust in the functioning of the procurement system and at the same time, improve competition levels.

Although the legal framework covers sustainability provisions, there is limited information available with regard to the established targets and their level of fulfilment by the contracting authorities. Also, there is no evidence of the progress or impact of the measures proposed within the strategy's action plan. At the same time, sustainability considerations are generally not included in the contract conditions. Also, no incentive clauses were identified in the analyzed contracts which generally include disincentives for poor performance only. Considering that the approaches differ from one contracting authority to another, economic operators may experience different situation from one contract to the other or from one authority to another. Not knowing the contract conditions before submitting the bid (40 percent), the too complex administrative processes during contract execution (36 percent) and the delays in payments (25 percent) are three of the main obstacles identified by economic operators when working under a governmental contract. Too strict criteria for applying penalties to suppliers is also listed as one of the obstacles by 11 percent of the economic operators. All these create an additional burden for the economic



operators who need to get familiarized with the specifics of each contract and navigate the contract requirements every time a new contract is awarded.

Use of multi-stage procedures and framework agreements are limited in Montenegro. The law regulates other types of procurement procedures, however there may be a lack of knowledge of the benefits of using them, in particular in the case of complex tenders. As seen in other countries, possible reasons of not using restrictive procedure could be its longer implementation period or the fact that contracting authorities do not know the market well enough to be confident that there are many suppliers available. At the same time, the reluctance to apply other procedures may also be due to the practices of the ex-post controls and audits which often question decisions which are not the rule, even when these are documented.

Even if the use of MEAT criteria for open procedures has become mandatory with the procurement law from 2019 (applicable since mid-2020), the analysis shows that price remains the dominant factor for the award of open procedures and rarely a higher number of points is allocated for the quality. Secondly, technical criteria used to assess the quality of the technical offer rarely include criteria focused on the merits of the proposed solution or sustainability.

Lack of adequate planning of the procurement processes has a high risk in ensuring the expected benefits and value for money as it involves multiple stakeholders, both internal and external, and requires strong understanding of the market dynamics.

Efficiency of the public procurement system

The level of competition in Montenegro is generally very low. Despite slight increase in competition at tender level, the single bid rate also increased from 2021 to 2022 (from 60 percent to 71 percent) while the average number of bidders per lot decreased from 1.7 to 1.5. At system level, there are a few contracting authorities which registered higher competition levels, but these manage smaller procurement budgets. The analysis of the data from the EPPS shows that 11 percent of the tenders were cancelled during the analyzed period, however reasons for cancellation have not been identified in the dataset. The analysis of the ESSP data for 2021 and 2022 also indicates a high value of purchases (simple procurement) below 5000 euros.

In terms of obstacles for submission of bids, the biggest one identified by the economic operators (even if interested in the tender) refers to concerns related to the competition and fairness towards bidders (37 percent). At the same time, only 48 percent of the economic operators believe that the EPPS fosters competition. This also may be connected with the fact that the main problem experienced with tender documents relates to biased technical specifications or biased qualification/requirements to favor certain bidders.

The economic operators were invited to specify the main reasons that would explain the low competition levels in Montenegro and the first two reasons refer to the fact that the qualification criteria and/or requirements are designed to favor certain firms, followed by unfair competition by some groups of firms (e.g., politically connected firms, SOEs, larger firms). Insufficient budget allocation for the contract is the third reason mentioned by 32 percent of the economic operators.

In terms of perceptions related to the functioning of the public procurement system as a whole, only 16 percent of the economic operators consider there is no collusion in public procurement (i.e., illegal



agreement between bidders in order to distort competition, such as bid rigging) and only 26 percent believe that the conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes. At the same time, only 28 percent believe that contracting authorities strive to obtain the best value for money in public procurement.

The inefficient procurement practices have a high risk as they often lead to limited competition, high cancellation rate of procurement procedures, perceptions of collusion and that contracting authorities do not focus on value for money, etc.

Record keeping

Public online records (in EPPS or elsewhere) do not contain bids, minutes from opening and evaluation of the bids, contract information data, such as invoices, data on payments, and evidence of submitted/received goods/service/works. A review of the way documentation is kept for the selected contracts could not be conducted as access to the files was not provided.

Although it is presumed that physical documentation on all procurement procedures is kept by the contracting authorities, the fact that this could not be verified triggers a medium risk considering the importance of keeping adequate records for transparency purposes.

Monitoring and improvement of procurement practices

Statistical reports are published for reporting and transparency purposes, however there is no indications on their use to measure and improve procurement practices. Opportunities for direct involvement of relevant external stakeholders in public procurement do not exist. This is not forbidden by law, however there is no evidence of contracting authorities inviting civil society to participate in procurement processes.

The provided statistics of the Administration for Inspection Affairs do not include information on the characteristics of the investigated procedures, such as the number and value of contracts, frequency of irregularities (within the same group of contracting authorities, if recurrent or not), etc. to assess the impact of the irregularities at system, sector or contracting authority's level. Possibly, this information exists and could provide further insights into the sectors or contracting authorities where most of the irregularities are identified and which could help with the identification of the appropriate measures to improve performance.

The lack of system in place to measure and improve procurement practices has a medium risk as it does not affect the way the procurement system operated in practice. No red flag is assigned since the definition of a monitoring mechanism can be done within the procurement system and can be an integral part of the EPPS.

Substantive gaps and recommendations for this indicator are summarized in table 20.

Other gaps

Selection and award: Although the assessment did not identify any breaches of confidentiality, 21 percent of the economic operators that responded to the survey seem to question the security, integrity, and



confidentiality of the data exchange over the electronic public procurement portal. This is an area which should be further investigated.

Contract management: Reports on contract implementation are not always published in accordance with the procurement legislation. As such, there seems to be a lack of transparency regarding the results of contract implementation, and specifically to which extent the contracting authority got the expected outcomes within the intended timeframe. At the same time, the efficiency and effectiveness of contract management processes at the level of contracting authorities is difficult to assess. Economic operators believe that contract modifications are used to circumvent public procurement rules, which may need further investigation as according to the data analysis, only 5 percent of the contracts were modified. Also, 38 percent of the respondents also believe that there are not efficient and fair processes to resolve disputes promptly during the performance of the contract. This issue is closely related to the need to develop standard contract conditions. According to the survey results, 63 percent of the economic operators believe that contracting authorities typically carry out inspection, quality control, supervision of work and final acceptance of products. As noted above, provisions differ from one contracting authority to the other, but how these are applied in practice cannot be confirmed. At the same time, a conclusion on how the contracting authorities comply with the time limits for payments or if payments are processed as stipulated in the contract, cannot be drawn in the absence of the relevant documentation.

- **Recommendations**

Increasing competition levels in public procurement should be a priority for the Montenegrin Government. This is essential to ensure that public authorities achieve better value for money and cost savings. Better competition will also facilitate the implementation of the sustainability objectives and foster innovation. The data at system level show that this issue may be beyond the powers of public authorities and that the Government should support public authorities by developing national, regional or sectoral programs to increase trust in the public sector and attract the private sector. A comprehensive review of the legislative requirements, norms and standards should be conducted to identify the blockages beyond public procurement and measures should be taken in order to increase trust levels in the state authorities.

Studies and analyses conducted in other countries show that larger packages, more time allowed for bid preparation and more competitive procedures attract more bidders. The potential for aggregation of procurement demand should be analyzed to enhance competitiveness and achieve economies of scale. Public authorities implementing large procurement volumes or complex projects should work towards improving their attractiveness. Market engagement is key to ensuring that private sector is adequately informed and is consulted about planned investments. Lists of approved economic operators (i.e., prequalified) in key sectors may also contribute to increased competition levels.

Monitoring and oversight

Development of a system of performance indicators could contribute to a systematic and comprehensive practical approach to assessing the overall performance of the public procurement system. This could focus on the following main areas: market size and characteristics, intensity of competition, economic activity, efficiency of public procurement, and irregular behavior. The publication of annual reports on the efficiency of the public procurement system is seen as a good practice.



Regular high-quality reporting of system performance is an important step, which also needs a strong, strategic overview that focuses on evidence of what is being achieved through public procurement and what scope there is to achieve more. This could provide the basis to decide on evidence-based interventions in the public procurement system and remedial actions where necessary to improve the effectiveness of public procurement at national and subnational levels. The development of the monitoring mechanism and interconnection of data sources will strengthen DPPP's monitoring function.

The application of tools specific for conducting procurement portfolio planning at country level, sector level or at the level of key contracting authorities (such as supply positioning matrix, combined with supplier preferencing matrix) may provide insights into the opportunities for aggregation of demand, reviewing the existing resources and capacities and establishing the procurement approach.

Risk indicators could be envisaged at different transactions and stages of the procurement processes and trigger the flag to alert the relevant authority about the integrity breaches for timely mitigating the issues. Risk indicators could also be established and integrated into the e-procurement system to guide control authorities in establishing the investigation plan and focusing their efforts where the impact of irregularities at system level is the highest.

A thorough review of the different practices at system level, in specific sectors or authorities would provide insights into potential ways to increase efficiency. An analysis at system level of the modification of the total procurement budget of the procurement plan (actual vs. initial) would be necessary to understand the reasons for which procurement budgets are significantly increased during the course of the year. At the same time, this could show if this is an isolated matter or a systemic issue. Reasons may range from poor planning capacity at the level of contracting authorities, to the budgetary process in Montenegro. Although overall duration to award a contract in Montenegro seems reasonable by comparison with EU target, options for improvement in time efficiency of different procurement procedures could include a review of the practices used by different contracting authorities and in different sectors in order to identify the major bottlenecks in the internal processes and in the implementation of procurement legislation. Such lessons learnt could offer useful insights that might be replicated to other similar procurements or in the same area of activity and which could be further translated into guidance. A careful analysis of the reasons for cancellation of procurement procedure and identifying the appropriate measures to improve performance should also be envisaged at system level. This could identify procurement categories, sectors or authorities where targeted measures are necessary. A review of the reasons for contract amendment should be conducted to assess if these have been done in accordance with the legal provisions. Making publicly available the information on contract amendment and publishing regular reports and statistics on the number, value and scope of contract amendment, could address the issue of trust the private sector seems to have. All relevant documents and reports pertaining to a procurement procedure should be recorded in a single place, preferably in the EPPS, and access should be ensured for authorities in charge with monitoring and control attributions.

Monitoring by civil society should also be facilitated. The procurement file, which includes all relevant documentation from the initiation of the procedure to the contract award, including the evaluation report which substantiates the decisions taken during the process, is a public document in many countries, except the information which is indicated as confidential by bidders. Training programs dedicated to the civil society could raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists and journalists to monitor procurement procedures. Regional



seminars and roundtables bringing together the civil society and the local government could explore the practical issues faced by local authorities when conducting public procurement. The main objective would be to help improve transparency and integrity of public procurement, encouraging citizens to be more engaged in the decision-making process, increasing accountability in public procurement and promoting constructive collaboration between civil society and public authorities, in particular at local level. The World Bank has delivered such programs in several countries in the region which could be used as example.

Montenegrin Government and public authorities could also offer timely, comprehensive and accurate data on procurement in an open-data and reader-friendly format on all aspects of the procurement process, including contract implementation, while paying attention to ensuring data privacy and the confidentiality provisions. The monitoring capacity of NGOs and the media would be positively impacted by these measures and would increase trust in the public authorities. Basic pro-active analysis using graphic tools and reader-friendly formats would make the procurement information more accessible for the general public lacking technical knowledge regarding procurement.

Access to public procurement and procurement planning

Considering the low competition in Montenegro, the Government should consider a wider review of the barriers which prevent economic operators from accessing the procurement market. This analysis should go beyond public procurement and look at the different other legislative frameworks applicable to all economic operators or in a specific sector. Also, a thorough market analysis in different priority sectors may also indicate which are most appropriate procurement approaches that should be considered.

A better understanding of the authority's priorities for investment and reasoning could increase the trust in the decisions taken by authorities and in the public procurement system as a whole. Defining clear objectives and actively informing and engaging the civil society and citizens in the definition of the investment plans, as well as during their implementation and monitoring, would secure their buy-in and support further on. Besides the already published procurement plans, contracting authorities in key sectors could develop outcome-oriented procurement strategies which would increase the transparency of the procurement activity and facilitate the understanding of interested parties, including the civil society and the economic operators, on the procurement approaches foreseen by the authority. Public authorities could use their own websites to communicate to a wider range of stakeholders, including the general public and the non-governmental sector.

When used appropriately, market consultations are proved to enhance value for money, promote professionalism, support innovation, increase competition and reduce the risk of complaints and corruption. Organizing meetings with potential bidders in the pre-bidding phase to discuss possible improvements in the procurement process is a good practice used in many European countries, such as Belgium, Germany, United Kingdom and Ireland. A thorough analysis of the procurement portfolio by using appropriate instruments, such as the supply positioning matrix, might provide a good image of the procurements where market consultations are most relevant.

Besides the already prepared procurement plan, preparation of an annual public procurement strategy by contracting authorities managing high capital expenditure budgets is one way to increase the transparency of the procurement activity and facilitate the understanding of interested parties, including the civil society and the economic operators, of the procurement approaches foreseen by the authority.



A better understanding of the authority's priorities and reasoning could also increase the trust in the decisions taken by authorities and in the public procurement system as a whole.

Market engagement at government level (for example, between line ministries and private sector) could help with identifying the specific issues the market is facing in problematic sectors, with very low competition levels, and the measures the government may be able to take in order to stimulate key business sectors. Market engagement may also increase trust levels in the functioning of the public procurement system, including of the EPPS. At the same time, the experience of other countries shows that involvement of various stakeholders, both public and private sectors, in the promotion of the process could lead to innovations and development of new markets and products. An example is the Scottish "Meet the Buyer" events to discuss strategic sourcing, explain tendering processes, and provide advice on structuring bids, as part of the **Supplier Development Programme**, which provides tools and guidance to businesses interested in selling to the public sector.

Guidance, guidelines and capacity development programs

Contracting authorities should be encouraged to conduct market research in all cases, and market consultations in specific complex cases, not only to document the price estimates, but to ensure that the specifications are clear and that the market is able to respond to the procurement initiative. The DPPP could consider the development of guidance and tools to conduct market research and consultations, to explain what each would entail and to present their benefits and best practices in addressing the market. Constant communication of the existing guidance and tools supplemented by examples of practical application of the market consultations might help contracting authorities to better understand and apply them in the procurement activity.

Elaboration of detailed guidance on the contents of the tender documents and/or the development of standard tender documents, including a set of minimum contract clauses or standard contract conditions, for each type of contract (as a starting point) to ensure the predictability of applicable terms and conditions may increase the attractiveness level of the public buyers. These could include guidelines and instructions on how to prepare tender documents, in particular on setting the qualification and selection criteria, award criteria, technical specifications etc., minimum set of contract conditions, and different templates to be filled in by the bidders (the technical and financial offer as a minimum). Additional sets of standard tender documents could be developed for the most frequently purchased items. Using standard tender documents will also help procurement professionals to focus their attention on results-oriented practices and less on formal aspects. This also contributes to a more uniform application of the law provisions and shorten the period for bid preparation, including a simplified process for the economic operators who become familiarized with the general requirements of the contracting authorities.

Ensuring the predictability of the applicable contract conditions is key to raising the trust of the economic operators in the public procurement system. Requesting that the draft contract is obligatory part of the tender documents by modifying the Rulebook on Forms in Public Procurement Procedures or using standard contract conditions that contain clear and uniform clauses to disincentivize poor performance would be desirable to enable economic operators to focus more on performance and less on the formalities of the contract. Standard contract conditions also ensure a balanced approach in the allocation of rights and obligations between the parties and avoid disputes during contract implementation in key areas of activity. Development and application of standard contract conditions would address part of the issues highlighted by the economic operators. These should include clear mechanisms for dispute



resolution, payment terms in line with national provisions, and when and how contract amendments should be made (even if the procurement law already includes such provisions).

The DPPP should promote the use of the different types of procurement procedures, their advantages and disadvantages, as well as practical examples to encourage authorities to be more open to their use, as part of guidance notes or training sessions. Implementation of pilot projects in complex sectors or procurements may provide the necessary insights into how the different types of procurement procedures could work in the Montenegrin environment. In particular in the case of innovative procurements, the competitive dialogue, the competitive negotiation or the partnership for innovation, which are very much based on a regular engagement with the market, could result on increased competition levels in the long term.

Montenegrin authorities may wish to review/amend/supplement the guidance on establishing the estimated value of the procurement process, including in relation to the artificial split of contracts, which may help with reducing the total value of direct purchases.

Moving away from the lowest-price basis is important to ensure contracts are awarded based on the overall public value. Contracting authorities should be encouraged to focus on identifying qualitative criteria that will genuinely help them focus on the merits of the technical offer and the intended benefits (and not just on the price). The DPPP should monitor the trend in using qualitative criteria over time and work towards improving their levels. Development of guidance and training may be needed to help contracting authorities. Life-cycle costing is one of the factors which may be considered by contracting authorities during determining the lowest cost and which can be used to promote sustainable procurement.³⁰ Taking into account the proven benefits of the life-cycle costing method in other countries (Czech Republic, Great Britain and Germany, Australia, etc.) and the EU policies for encouraging its use, further promotion of the method in Montenegro should be envisaged. This could involve different mechanisms, including but not limited to guidance, trainings, developing methodologies for its application for different sectors/ items, gathering and analyzing of reliable data.

Sustainability in public procurement

Public procurement is acknowledged as a strategic tool for achieving policy objectives and has an important role in the promotion of innovation, social responsibility and environmental protection, while balancing cost and quality, thus ensuring the sustainability of its results.³¹ This requires detailed methodological guidance, extensive training and promotion of the approach among contracting authorities combined with the development of key performance indicators and corresponding functionalities of the EPPS to track progress and measure success of the respective policies. The European Commission published a great number of guidelines and practice examples which could be used for developing additional guidance for the Montenegrin authorities, in particular around the following topics:

- Green public procurement;
- Social inclusion of people with disabilities and promotion of enterprises for social economy;
- Energy efficiency in procurement.

³⁰ https://green-business.ec.europa.eu/green-public-procurement/life-cycle-costing_en.

³¹ https://single-market-economy.ec.europa.eu/single-market/public-procurement/strategic-procurement_en.



For complex procurement, the contracting authorities could engage with the private sector to assess to which extent the market can respond to the envisaged sustainability requirements, or there is a need to adapt their offer in order to be able to respond to the new requirements.

Development of policy documents and guidance on sustainable procurement should be accompanied by dissemination and communication plans which should be considered by DPPP, in collaboration with other institutions in accordance with their specific attributions. The DPPP should also include sustainability considerations in the standard contract conditions and monitor their application over time.

Contract implementation

The EU Directives on public procurement from 2014 set the basis for better managed procurement that is focused on efficiency and sustainability. This requires a change of perspective, from an administrative approach to a strategic one focused on needs, which in turn implies a change of attention from the way the procurement procedure is carried out to a more thorough assessment of the needs, based on research and analysis as well as risk and stakeholder management, and complemented by a more structured contract management and performance evaluation. The definition of uniform provisions that would be applicable to all contracting authorities, but would be flexible enough to adapt to specific contexts will enable both economic operators and contracting authorities to focus on the substance and less on procedural aspects as provisions would be predictable.

Additional guidance on measurement of results based on quality, time and price, stakeholders management, risk management and remedial actions could be made available to contracting authorities to improve internal processes. Contracting authorities should be advised to evaluate and plan their internal resources so that appropriate expertise is ensured for contract supervision and performance evaluation of the contractor.

In order to identify any systemic issues and the associated measures to improve contract implementation processes, capturing all the relevant information in the EPPS or the interconnection of the system with any existing databases or systems, should be envisaged by the Montenegrin authorities in the long term. The publication of summarized reports that would show the efficiency and effectiveness of the public procurement system as a whole, on the entire procurement cycle, leads to increased transparency and trust.

Guidance for contracting authorities on how to conduct the evaluation of performance at procurement portfolio level and its benefits would provide the contracting authorities with the necessary tools to document lessons learnt and define measures for improvement.

Record keeping

All relevant documents and reports pertaining to a procurement procedure should be recorded in a single place, preferably in the e-procurement system, and access should be ensured for authorities in charge with monitoring and control attributions. The procurement file, which includes all relevant documentation from the initiation of the procedure to the contract award, including the evaluation report which substantiates the decisions taken during the process, is a public document in many countries, except the information which is indicated as confidential by bidders. The EPPS could be further developed to serve this purpose as well.



Other recommendations

Contract implementation

The template report on contract implementation should further be developed to include aspects which would allow to appreciate the effectiveness of the contract management on all main contract provisions: quality, quantity, price, place, and time.

EPPS

Considering that 21 percent of the economic operators that responded to the survey seem to question the security, integrity, and confidentiality of the data exchange over the electronic public procurement portal, the DPPP should further investigate this area and promote the main features and benefits of the EPPS.

Table 20. Summary of Substantive Gaps and Recommendations for Indicator 9

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 9(a) Planning		
9 (a) (a) Limited needs analysis and market research	Medium and not a red flag	Develop guidance and tools to conduct market research and consultations; Develop guidance on establishing the estimated value;
9 (a) (b) Perceived issues with tender documents and contract conditions not published with the tender documents	High and not a red flag	Conduct market consultations for complex projects; Ensure the predictability of the applicable contract conditions;
9 (a) (c) Missing sustainability criteria within the tender documents	Medium and no red flag	Develop methodological guidance, extensive training on sustainability in public procurement; develop KPIs and corresponding functionalities of the EPPS to track progress and measure success of the respective policies; Organize dissemination and prepare communication plans;

Sub-indicator 9(b) Selection and contracting



9(b)(a) Limited use of multi-stage procedures	Medium and no red flag	Promote the use of the different types of procurement procedures, including guidance and training;
9(b)(b) Incomplete tender documents and missing contract conditions within the published tender documents;	High and no red flag	Develop detailed guidance on the contents of the tender documents or standard tender documents, including a minimum set of contract clauses or standard contract conditions;
9(b)(f) Use of criteria focused on the merits of the proposed solution or sustainability	High and no red flag	Promote use of qualitative criteria; Develop guidance and training on how to identify qualitative criteria;
9(b)(h) Sustainability considerations are not included in the contract clauses	Medium and no red flag	Include sustainability considerations in the standard contract conditions and monitor their application over time;
9(b)(i) Contract clauses do not provide incentives; different practices in defining the disincentives for poor performance	Medium and no red flag	Develop a minimum set of contract clauses or standard contract conditions for each type of contract;
9(b)(j) Limited competition; high single bid rate; high cancellation rate; perceptions of collusion and that contracting authorities do not focus on value for money	High and no red flag	Perform wider review of the barriers which prevent economic operators from accessing the procurement market; Conduct portfolio analysis and develop outcome-oriented procurement strategies; organize market consultations for major and / or complex projects; prepare annual public procurement strategy by contracting authorities managing high capital expenditure budgets; Conduct market engagement at government level;

Sub-indicator 9(c) Contract management

9(c)(e) No system in place to measure and improve procurement practices	Medium and no red flag	Develop a system of performance indicators and monitoring mechanism and interconnection of data sources; Identify opportunities for aggregation of demand; Thorough review of the different practices at system level, in
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		specific sectors or authorities to identify potential ways to increase efficiency; Guidance on measurement of results based on quality, time and price, stakeholders management, risk management and remedial actions; Capture all the relevant information in the EPPSs or the interconnection of the system with any existing databases or systems;
		Conduct the evaluation of performance at procurement portfolio level
9(c)(f): civil society is not involved in public procurement; access to procurement data and information by civil society is difficult	Medium and no red flag	Training programs, regional seminars and roundtables dedicated to the civil society; Offer timely, comprehensive and accurate data on procurement in an open-data and reader-friendly format on all aspects of the procurement process, including contract implementation;
9(c)(g): except for what is publicly available in EPPS, procurement records could not be verified as access was not provided.	Medium and no red flag	Contracting authorities to ensure adequate records on the procurement process. The EPPS to be further developed to capture all records on the public procurement process.

Source: Assessment team.

Indicator 10. The public procurement market is fully functional

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

• Synthesis of the indicator

As outlined above, competition levels in Montenegro are low with high rates of single bids. Access to public procurement market seems to be inhibited by both procurement related aspects, such as bureaucratic requirements or lack of capacity to access procurement opportunities, but also by the



developments and conditions applicable to the wider environment, as well as by the general lack of trust in the functioning of the system.

There is evidence of dialogue between the government and the private sector organizations, but this seems driven by evolving crises (such as the recent price increase).

There is no evidence of existing measures or strategies in specific sectors to improve the participation in public procurement, although the EPPS generates a lot of useful data which could highlight priorities and inform decision making.

- **Findings**

Dialogue and partnerships between public and private sectors

In terms of existing forums for dialogue between the government and the private sector, both formal and informal mechanisms are in place. The representatives of the business sector and civil society are involved in the negotiation of the EU Chapter 5 on public procurement as well as during the drafting of the procurement law. A working group was established by Government decision which includes representatives of local municipalities, NGOs, Chamber of Commerce, etc. to discuss public procurement matters.

The economic operators that responded to the survey generally believe that the existing processes for making changes to the public system do not work that well. Only 33 percent of the respondents consider that there is a transparent and consultative process followed when formulating changes to the public procurement legislation. Also, only 28 percent of the respondents believe that there is appropriate time for civil society and the private sector to provide input, comments and feedback and even fewer consider that their comments and feedback are taken into account (16 percent).

The public procurement strategy includes specific measures to promote SME access to public procurement, with a focus on the increased participation of businesses run by women or owned by women in public procurement. Trainings are foreseen to be organized by the Ministry of Finance in cooperation with the Chamber of Commerce for state employees and also for private sector. Since the introduction of the EPPS, about 100 training sessions were organized for the private sector on the use of the EPPS.

According to the report on the implementation of the public procurement strategy for 2021 and 2022, promotion of SME participation in public procurement is one of the strategic objectives. The development and delivery of a training program with the aim of providing incentives for participation in public procurement procedures was envisaged, however there is no indication of the progress to date in terms of participants.

Promotion of SMEs in public procurement procedures, with special emphasis on increasing the participation of women-led businesses in public procurement and public procurement contracts is still one of the main objectives of the 2023 action plan which foresees the delivery of an educational program dedicated to SMEs. There is no indication of the target group.

Private sector's organization and access to the public procurement market



Access to public procurement is regulated by the public procurement legislation which is aligned with the EU Directives and which foresees equal treatment for all potential bidders, national or international, or SOEs, by the application of the same requirements irrespective of the bidders' type.

About 4000 economic operators are registered in the public procurement system during the analyzed period.

Table 21. Economic Operators in EPPS

	Firms		
	Overall	Local	Foreign
Registered firms	4,158	2,946	1,212
Firms that submitted at least 1 bid (% of registered firms)	2,542 (61%)	1904 (46%)	637 (15%)
Firms that were awarded at least 1 contract (% of registered firms) [% of firms that submitted a bid]	1,589 (38%) [60%]	1240 (30%) [65%]	349 (8%) [55%]

Source: Data retrieved from EPPS

Registered firms (table 21) represent 9.1 percent of the total active suppliers in Montenegro (i.e., 45,675 in 2022³²).

Only 7 percent of the contracts are awarded to international companies, representing 9 percent of the total contracted value over the analyzed period (table 22). There are no specific procurement requirements applicable to foreign companies, however specific licenses and certifications may be needed at the opening stage of the procurement which may prevent some foreign companies from entering the market. Language may also be an issue.

Table 22. Contract Awards to Domestic and Foreign Companies

Firms	Contracts		Contract amounts	
	Number	% of total	EUR	% of total
Local	11507	93%	598,688,447	91%
Foreign	814	7%	55,856,576	9%

Source: Data retrieved from EPPS

Out of 43 bidders that are registered in the EPPS both as contracting authorities and economic operators, 28 participated in procurement procedures and 22 were awarded with a contract. They were awarded 2.2 percent of all contracts, representing 0.8 percent of total contracted amount.

³² <https://monstat.org/uploads/files/publikacije/registri/Number%20and%20structure%20of%20enterprises%2022.pdf>.



In terms of market share at country level, it may be noted that the top 10 suppliers account for 33,6 percent of the total contracted amount during the analyzed period (only one supplier, acting in the medical sector, accounts for 14 percent of the total contracted amount; the next biggest supplier has 3.3 percent market share).

The access of businesses to information on public procurement is facilitated by the publication of regulations and guidance on the webpage of the Ministry of Finance, through DPPP. Procurement opportunities are published in the EPPS, however only 48 percent of the economic operators consider that the EPPS fosters competition.

Representatives of DPPP and contracting authorities appreciate that there are no evident barriers within the public procurement framework, however, these may be linked with other laws (such as the Construction Law). Contracting authorities generally find that the provisions of the PPL are clear with respect to their submission at the bidding stage, however they suggest that requirements for licenses and certificates set by other pieces of legislation regulating the specific areas of business, such as construction, may pose an issue. Some of the systemic constraints mentioned by economic operators that would inhibit private sector's capacity to access the procurement market refer to lack of predictability of planned investments, overall general increase in prices, limited information on contract implementation data, red tape, licenses, certifications and accreditation requirements that may be excessive for certain sectors.

At the same time, economic operators consider that main reasons to explain the low competition are related to the qualification criteria and/or requirements are designed to favor certain firms followed by unfair competition by some groups of firms (e.g., politically connected firms, SOEs, larger firms). In terms of obstacles to submission of bids, the biggest one identified by the economic operators (even if interested in the tender) refers to concerns related to the competition and fairness towards bidders (37 percent). At the same time, only 48 percent of the economic operators believe that the EPPS fosters competition. This also may be connected with the fact that the main problem experienced with tender documents relates to biased technical specification or biased qualification/requirements to favor certain bidders.

Key sectors and sector strategies

DPPP does not conduct sectoral analysis to inform procurement decisions in a specific sector. This should be driven by line ministries, however there is no indication of any existing sector strategies. The analysis of the e-procurement data shows that there is great potential to conduct sector analyses to inform sector strategies.

The top 10 procurement categories by contracted amount account for about 70 percent of the procurement spend in Montenegro over the analyzed period. These include construction works, medical equipment, chemical products, transport equipment, sewage, refuse, cleaning and environmental services, repair and maintenance services, etc.

The data analysis provides further insights into the most procured items and average contract value. Also, it should be noted that at country level 7 contracting authorities control 50 percent of the procurement volume and 31 contracting authorities control 80 percent of total procurement volume suggesting a great number of smaller CAs. There may be scope for demand aggregation in some areas (where average contract values may seem small and there are a lot of contracting authorities procuring those items, for example, laboratory reagents) or areas where a strategic partnership with existing suppliers may be



beneficial (the average contract value is high and limited number of contracts, such as in the case of public lighting installations).

Substantive gaps

Access to public procurement market

As showed above, competition levels are low in Montenegro. It is not clear however if this is due to the capacity of economic operators to respond to procurement requirements or to the fact that there are high barriers to entry. Meeting specific technical requirements, licenses and standards seem to create issues for economic operators in Montenegro, but also for foreign bidders. The private sector seems not willing to participate in public procurement contracts. In terms of perceptions related to the functioning of the public procurement system as a whole, only 16 percent of the economic operators consider there is no collusion in public procurement (i.e. illegal agreement between bidders in order to distort competition, such as bid rigging)³³ and only 26 percent believe that the conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes.³⁴ When asked why they expressed interest for a public contract, but then decided not to submit a bid for that tender, competition and fairness is the first obstacle mentioned by the economic operators. Lack of capacity of economic operators to prepare the bid is the sixth reasons indicated by the economic operators that would explain the general low competition in Montenegro.

Public procurement seems insufficiently promoted in Montenegro despite publications in the EPPS. 42 percent of the economic operators consider that business opportunities in the public procurement market are not predictable. Several obstacles have been indicated by the economic operators during interviews or as part of the survey, as presented above. All these should be further investigated.

Ensuring the adequate access to public procurement is essential to get the expected value for money and therefore this is rated as a high risk.

Sectoral performance assessment

DPPP does not conduct sectoral analysis to inform procurement decisions in a specific sector. This could be driven by line ministries, however there is no evidence of any existing sector strategies. The analysis of the e-procurement data shows that there is however great potential to conduct sector analysis to inform procurement and sector strategies. There is no evidence regarding the assessment of risk and opportunities to influence sector markets. The engagement with the private sectors seems driven by management of evolving crises.

Sectoral analyses, including risks assessments, are important to ensure that the adequate strategies are established for meeting the defined needs and expected benefits and, therefore, this has a high risk. No red flag is assigned as they can be initiated within the procurement system by using the data gathered within the EPPS.

³³ 28% responded don't know, and 5% preferred not to answer to this question.

³⁴ 19% responded don't know and 2% preferred not to answer to this question.



Substantive gaps and recommendations for this indicator are summarized in table 23.

- **Other Gaps**

Dialogue with the private sector

Although there are some formal and informal processes to ensure dialogue between the Government and the private sector, the perception of the economic operators is that these processes do not work that well.

Although there are some programs in place to stimulate the participation of different types of economic operators in public procurement, these need to be implemented and their impact assessed. Considering the low competition levels, additional measures would need to be taken into account.

- **Recommendations**

Access to the public procurement market

An assessment of the existing specific legislation, standards and other requirements which impact the competition in public procurement is highly recommended. At the same time, improved dialogue between economic operators and line ministries would provide better insights into the specifics of the issues which prevent economic operators from taking part in public procurement processes. Working toward the change of perceptions regarding collusion and perceived lack of transparency and open procedures that foster competition is essential to increase the attractiveness of the investments put forward by the public authorities.

In addition to the procurement plan, publication of the procurement strategies envisaged by the public authorities managing high capital expenditure budgets, early in the planning process, better portfolio planning which limits the number of modifications throughout the year, including market engagement, are ways to increase the transparency of the procurement activity and facilitate the understanding of interested parties, including the civil society and the economic operators, of the procurement approaches foreseen by the authority. A better understanding of the authority's priorities and reasoning could also increase the trust in the decisions taken by authorities and in the public procurement system as a whole.

Tailored training programs in key sectors could be drawn based on a needs assessment with the view of increasing the participation in public procurement. This could be part of a wider training strategy plan that would target all stakeholders of the public procurement system, according to the mandate and needs.

Sectoral performance assessment

A review of the procurement categories at system level could help define priorities at system level (for example, centralization) and determine the appropriate strategy for different procurement categories, including highlight the sectors where procurement risks are the highest and for which a collaborative approach between the private and the public sector should be ensured. Authorities could consider development of strategies for centralization, as well as conducting further in-depth analysis based on the results of this analysis. This might provide a good image of the procurements where market consultations are most relevant (in particular in the case of bottleneck items or strategic items). Constant communication of the existing guidance and tools supplemented by examples of practical application of the market consultations might help contracting authorities to better understand and apply them in the procurement activity. This type of assessment also helps identify the available and required capacity (both



procurement and technical) within the government and local authorities and the required additional resources necessary to procure those categories.

Table 23. Summary of Substantive Gaps and Recommendations for Indicator 10

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 10(b) Private sector's organisation and access to the public procurement market		
10(b) (a), (b): Limited competition; general lack of trust in the public procurement system	High and not a red flag	Conduct an assessment of the existing specific legislation, standards and other requirements which impact the competition in public procurement; Improved dialogue between economic operators and line ministries, including market engagement; Publication of the procurement strategies envisaged by the public authorities managing high capital expenditure budgets and better portfolio planning; Tailored training programs for economic operators in key sectors;
Sub-indicator 10© Key sectors and sector strategies		
10(c) (a), (b): No sector analysis or risk assessment conducted to improve performance in different priority sectors	High and not a red flag	Conduct a review of the procurement categories at system level to determine the appropriate strategy for different procurement categories, including highlighting the sectors where procurement risks are the highest; Develop strategies for centralization.

Source: Assessment team.

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

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 examines aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.



The country partially complies with indicators under this pillar. While the legal, regulatory, and institutional frameworks are generally in place, implementation is lagging. The Electronic Public Procurement System (EPPS) and legal provisions on CSOs engagement provide for some transparency of the public procurement system. Legislative and regulatory improvements have established a comprehensive framework for internal controls, internal and external audit, and the appeals system. However, legal gaps and underdeveloped CSOs sector undermine much needed transparency improvements. No written standards and procedures specifically designed for procurement audits are in place, no specialized procurement audits are conducted, and effective parliamentary oversight is lacking. There are several bureaucratic or capacity related reasons that are keeping the Appeals Body (CPRRR) from reaching its full potential, resulting in delayed resolution of appeals in practice. Appeals mechanism for simplified procurement is not in place. There are no clear definitions of fraud, corruption, and other prohibited practices in procurement, and the enforcement of anti-corruption measures is overall poor. Negative perceptions in the private sector of the appeals system and anti-corruption measures erode trust to the government in public procurement.

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 fair, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: i) disclosure of information and ii) direct engagement of civil society through participation, monitoring and oversight.

There is some transparency of the public procurement system, established through the EPPS e-procurement portal. Civil society has the possibility to comment on policy changes by providing input to laws and strategies, and this input is considered by the government. However, there are no legal provisions and no practice of CSOs' participation in actual procurement, or in developing bylaws. Furthermore, available information is not presented in a way that facilitates societal oversight. Finally, legal gaps hamper free access to information by the public country wide.

- **Findings**

Enabling environment for public consultation and monitoring

There is a practice of consulting the public when formulating changes to the public procurement system. In line with the Law on Public Administration³⁵ and the Decree on the Selection of NGOs' Representatives in the Government's Working Bodies and Conducting Public Consultations in Developing Laws and Strategies,³⁶ the Directorate for Public Procurement Policy (DPPP) invites NGOs to participate in the processes of drafting laws and strategies. CSOs' representatives also participate in the design of the procurement system as members of the government's working group on Chapter 5 of the EU *acquis*. Furthermore, DPPP conducts consultations with CSOs on as needed basis in different forms, although

³⁵ Official Gazette no. 78/2018, 70/2021, 52/2022.

³⁶ Official Gazette no. 041/18.



these initiatives sometimes fail due to limited availability of CSOs specialized in this area (see also sub-indicator 14(e)). In addition, CSOs participate in public consultations on individual procurements related to large investment projects.

The DPPP also conducts consultations with private sector on public procurement issues, performance, and challenges. DPPP has established an operational helpdesk for communication with the private sector. In addition, private sector can benefit from training, guidelines and instructions organized and provided by the DPPP.

The Government acknowledges and responds to inputs and feedback provided by the civil society and the private sector as part of the process of drafting public procurement strategies and legislation. There are examples of proposals from the private sector and civil society being accepted by the government as part of designing changes to the public procurement system. For example, based on the initiative of the Chamber of Commerce, changes to the PPL were introduced to enable contract price adjustment in response to inflation and the methodology for price calculation was developed.

Adequate and timely access to information by the public

The PPL³⁷ defines transparency as one of the of public procurement principles and requires CAs to publish on EPPS all documentation necessary for conducting public procurement, including for international contracts for joint procurements.³⁸

Direct engagement of civil society

The legal and regulatory framework provides a requirement for public participation in drafting laws and strategies, including those related to public procurement (see sub-indicator 11(a)). The Law on Public Administration³⁹ sets a requirement for ministries to conduct public consultations when developing laws and strategies. The Government's decree regulates i) the CSOs participation in the government's working groups engaged in legislative drafting, and ii) public consultations process in developing and adopting laws and strategies. The decree prescribes a requirement for a public body to include a CSOs' representative to such working groups based on a public call. To be eligible to apply, CSOs need to be active in the relevant field, and their representatives need to have relevant experience. Citizens and CSOs are consulted both at initial stage of legislative drafting process and on draft legal and strategic documents. Public bodies are required to prepare and publish reports on such consultations. The interviewed CAs reported their adherence to these regulations.

- **Gaps**

Consultations

Legal requirements and practice of public consultations are limited to laws and strategies. There is no legal requirement and no practice of consulting the public when formulating bylaws. Similarly, in absence of legal requirements, CAs do not consult with or engage CSOs in carrying out individual procurement.

³⁷ PPL, Article 9.

³⁸ PPL, Article 13.

³⁹ Official Gazette no. 78/2018, 70/2021, 52/2022.



There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. Consultations with private sector are conducted on as-needed basis and are mainly initiated by the private sector. Examples of proposals from the private sector and civil society being accepted by the government when developing changes to the public procurement system are relatively rare and there is little evidence of civil society and private sector proposals being incorporated into legislation.⁴⁰ Furthermore, there is no evidence of stakeholders' feedback related to individual procurements being provided, considered, or accepted.

These gaps are substantiated by the Bank's survey. Private sector perceives the system as relatively non-inclusive – only 33 percent of surveyed businesses agree that a transparent and consultative process is followed when formulating changes to the public procurement legislation, 28 percent agree that there is appropriate time to provide feedback, and only 16 percent agrees that the government does consider the input provided.

Access to public procurement information

Legal gaps hamper CSOs' free access to information in general. Hence, the current Law on Free Access to Information enables public institutions to restrict CSOs' access to important policy decision by classifying this information as confidential.⁴¹ Access to procurement related information is further hampered by limited EPPS search options (for example, searching by bidder is not possible) and lack of aggregate information for multiple procurements or contracts. Furthermore, there is no legal requirement (and subsequently no practice) for publishing reports on implementation of CAs' public procurement plans. Finally, there is no systematic access to information on small value procurements, as these are not part of the EPPS.

Direct participation by citizens

Given the limited number of CSOs actively engaged in monitoring the public procurement system, there is limited evidence of CSOs participating in legislative drafting processes and monitoring of public procurement.

Substantive gaps

Direct participation by citizens

The PPL does not address or envisages participation of citizens or CSOs in the procurement system or in any part of the procurement process. Lack of such provisions may have created a non-conducive environment for CSOs and subsequently the lack of their involvement in procurement.

Lack of legal provisions on participation of citizens in public procurement system or in public procurement process presents a high risk in terms of achieving transparency and improving quality of outputs through public consultations. These aspects can be addressed through the procurement system, hence no red flag is warranted.

Substantive gaps and recommendations for this indicator are summarized in table 24.

⁴⁰ Report on Public Consultations on Public Procurement Law, May 2023, DPPP.

⁴¹ Official Gazette no. 44/12, 30/17.



- **Recommendations**

The country's Law on Free Access to Information should be revised to enable unrestricted access to relevant public information, in line with the EU *acquis*. The DPPP should strive to ensure that a transparent and consultative process is followed when formulating changes to any part of the public procurement system by any public body that issues such changes. Consultations with key stakeholders (representatives of NGOs and private sector) should be organized around key bylaws. A more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement should also be developed. Finally, the DPPP should identify the reasons why there is a perception among private sector that the legislative drafting process is insufficiently inclusive and that the private sector feedback is not considered.

Functionalities of the EPPS should be improved to enable better search options and producing consolidated reports. A requirement could also be introduced to publish via the EPPS the reports on implementation of public procurement plans and the information on small value procurements.

Table 24. Summary of Substantive Gaps and Recommendations for Indicator 11.

Substantive gap	Risk classification and red flags	Recommendations
Sub-indicator 11(c) Direct engagement of civil society		
11 (c) (a) Legal gaps hamper citizen engagement in public procurement procedures	High and not a red flag	The country's Law on Free Access to Information should be revised to enable unrestricted access to relevant public information, in line with the EU <i>acquis</i> . The DPPP should strive to ensure that a transparent and consultative process is followed when formulating changes to any part of the public procurement system by any public body that issues such changes. Consultations with key stakeholders (representatives of NGOs and private sector) should be organized around key bylaws. A more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement should also be developed.

Source: Assessment team.

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.

Recent reforms have introduced legislative and regulatory improvements that establish a comprehensive framework for internal controls and internal and external audit. There are mechanisms in place to ensure a follow-up on internal and external audit findings, clear reporting lines to relevant oversight bodies, arrangements to follow up on implementation of audit findings, and a capacity building program to ensure professionalization of auditors. While these are all positive improvements, findings suggest that implementation could be improved. Internal control systems do not effectively prevent CAs from incurring commitments in excess of funds warranted to them, while the lack of delegation in decision making potentially hampers operational efficiencies. No written standards and procedures specifically designed for procurement audits are in place and no specialized procurement audits are conducted. Limited frequency of parliamentary hearings and poor quality of parliamentary conclusions present a risk to effective parliamentary oversight. Finally, implementation of external audit recommendations could be improved.

- **Findings**

Legal framework, organization and procedures of the control system

The legislation⁴² sets principal requirements for a comprehensive internal control framework, including for managerial accountability and management and coordination of internal control system.⁴³ The definition of the purpose of management and internal control is aligned with relevant international standards. The Ministry of Finance (MoF) Central Harmonization Directorate (CHD) has overall responsibility for formulation, coordination, and monitoring of public internal control framework policy. Heads of public bodies are accountable for implementation of the internal control framework to ensure cost-effective and proportionate internal controls that enable compliance and achievement of institutional goals. Independent decentralized internal audit function reviews the functioning of internal control arrangements in line with the International Professional Practices Framework.

Legislation also provides for a comprehensive control framework for external audit. Supreme Audit Institution (SAI) has financial, functional, and organizational independence from the executive, which is observed in practice, in line with the Constitution and the Law on SAI. SAI is organized on a collegiate model and led by a five-member Senate. The President of the Senate is elected from those five members by the Parliament for a nine-year, non-renewable term. Other members of the Senate are elected for an indefinite term. SAI's budget is approved directly by the Parliament. SAI's main function is to ensure independent, professional, and objective control of the use of public funds and management of public assets in public bodies at both national and subnational level.

Internal control/audit mechanisms and functions ensure oversight of public procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations. The procurement function and decision-making structure within the individual CAs are organized in a manner that provides internal control and checks and balances. Hence, procurement can only be carried out if envisaged by a CA's annual procurement plan and subject to availability of funding. Procurement plans

⁴² Law on Management and Internal Controls in Public Sector, Official Gazette 75/18.

⁴³ World Bank, Public Expenditure and Financial Accountability (PEFA) assessment, 2019, PI-25.



and any changes thereto are approved by MoF (for the state bodies), or by a responsible body/management board (for local self-government units and public companies). Procurement decisions are proposed by procurement commissions which are appointed by the CA's authorized person (normally, head of CA) for each individual procurement. The CA's authorized person, who is not a member of the procurement commission, endorses procurement decisions and responses to complaints. Budget management system ensures that payments can only be made when approved by the CA's authorized person or his/her delegate. Funds can only be reserved based on authorization and verification by the MoF Treasury Department. Payments are executed by the MoF only after being matched to reservations. There is an operational Internal Audit function,⁴⁴ positioned as an organizationally and functionally independent advisory function to the top management of each institution.

Internal control mechanisms ensure some balance between timely and efficient decision-making and adequate risk mitigation. The PPL provides authorizations for procurement decision to the head of a CA and defines tasks to be carried out by procurement officer. Such tasks are mainly administrative.⁴⁵ In practice, head of CA exercises the authorities assigned to him/her by formally endorsing procurement documents, contracts, and responses to appeals at first instance.

Independent external audits conducted by SAI ensure oversight of the procurement function. The SAI is mandated to carry out compliance, financial, and performance audits of entities that manage public funds or property, as well as of entities founded or majority-owned by the state. This includes entities at central and local level, as well as state-owned enterprises (SOEs). Financial and compliance audits cover public procurement, focusing on entire procurement process, including implementation of procurement legislation and contract implementation. SAI also conducts Information Technology (IT) audits, audits of political parties, follow-up (control) audits, and annual audits of the Government's budget. SAI conducts audits based on its internal audit plan written procedures and informs head of an audited institution on audit results through an audit report.

Rules and procedures are in place to provide for review of SAI audit reports and determination of appropriate actions by the legislature. In line with the Law on SAI, SAI submits to the Parliament and the Government the annual: i) Audit Report on the Final Account, and ii) Activity Report with highlights and recommendations from individual audits. SAI also reports to relevant parliamentary committees on implementation of audit recommendations. These reports are formally acknowledged by the Parliament and scrutinized by the Parliamentary Committee on Economy, Budget, and Finance (CEBF). CEBF is mandated to carry out consultative and control hearings and issue statements and recommendations for the plenary. The implementation of the Parliament's conclusions on audit recommendations is binding. The Government is required to develop and submit an action plan on how it plans to address the recommendations, and to report quarterly on the implementation of the recommendations.

There are clear mechanisms to ensure there is a follow-up on both, internal and external audit findings. Internal Audit reports are submitted to head of public body. Management responses are documented in central registries of internal audit recommendations, which are maintained by individual Internal Audit

⁴⁴ In line with Article 49 of the Management and Control Law, the Internal Audit function can be organized through (i) establishment of an Internal Audit Unit in the spending unit, (ii) agreement on sourcing of the Internal Audit function from another spending unit with MoF approval, or (iii) provision of the Internal Audit function from another sector-linked spending unit.

⁴⁵ PPL, Article 47.



Units. Each Internal Audit Unit monitors the implementation and annually reports on it to the CHD. This information is aggregated into a publicly available Consolidated Public Internal Financial Control (PIFC) Report. SAI is responsible for following up on implementation of its recommendations by the audited public bodies. According to SAI's internal guidelines, audited bodies are required to submit to SAI their implementation plan and the first implementation report within 30 days and 6 months from receiving the audit report, respectively. SAI may decide to conduct a field visit to obtain additional evidence, and based on the results of the visit, conduct a control audit. SAI follows-up with audited bodies through control audits until all recommendations have been implemented. SAI produces reports on the implementation of its recommendations, publishes the status of the implementation of recommendations, and reports to the Parliament on the implementation of recommendations from the annual Audit Report on the Final Account, and to the CEBF on the implementation of recommendations from individual audits.

Coordination of controls and audits of public procurement

There are written procedures defining requirements for internal controls. Implementing modalities for internal control and audit are elaborated in several bylaws, methodologies and manuals issued by the MoF/CHD. This framework has been progressively refined over the past years in line with international best practices. Internal Audit Manual defines mandatory guidelines and procedures, and general approach for conducting internal control and audit. Additional guidelines and procedures are defined in several methodologies, such as on i) the manner of establishment and improvement of management and control, ii) the work of internal audit, iii) delegating financial management and internal control tasks, iv) analyzing quality of internal audit, v) content of internal audit reports and the manner of reporting, and vi) continuous professional development of internal auditors. Public bodies develop own internal control frameworks based on their plans for improvements to management and control. Heads of IAUs are required to develop and implement a quality assurance and improvement program for their units, and there is progress in preparation of internal quality assessments.

Written standards and procedures for conducting procurement audits are in place to facilitate a coordinated and mutually reinforcing auditing. SAI developed written standards and procedures for conducting: i) financial and compliance audits⁴⁶ (these also cover audit of public procurement), and ii) performance audit.⁴⁷ Furthermore, SAI's manual used as a textbook in external auditor examination program provides guidelines on public procurement audit.⁴⁸ Additional guidelines in place are: (i) Guidelines for Assessing the Application of Fiscal Responsibility Criteria (2017), (ii) Guidelines for Audit of Annual Financial Statements of Political Parties (2018), and (iii) Guidelines for Auditing the Final Account of the State (2018). The internal audit procedure, which also applies to audit of public procurement, is described in the Internal Audit Manual.

Internal or external audits are carried out at least annually and the established written standards are complied with. External audits are conducted in line with International Organization of Supreme Audit Institutions (INTOSAI) standards and SAI's annual audit plan. Auditees are selected based on criteria defined by the SAI's Guidelines on Selection of Financial and Compliance Audits, which include the budget execution size, previous audit conducted, risk and policy assessment, and strategic priorities. In 2022 SAI

⁴⁶ Methodology for Conducting Financial Audit and Compliance Audit, Official Gazette no. 7/15.

⁴⁷ Ibid.

⁴⁸ Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.



conducted a total of 35 audits, of which 25 were financial/compliance audit. Internal audit function must follow the International Professional Practices Framework (IPPF) issued by the Institute of Internal Auditors. There is evidence that internal audits are conducted throughout the public sector. Internal Audit Units (IAUs) carry out risk-based strategic, annual, and audit engagement planning. Audit reports are delivered to the head of the audited body and are available upon request to external auditors and to the CHD.⁴⁹

There are clear and reliable reporting lines to relevant oversight bodies. SAI submits to the Parliament its annual Activity Report with highlights and recommendations from individual audits, while the Parliamentary CEBF is responsible for closely reviewing the report and undertaking follow-up actions. Internal audit reports are normally submitted to the head of the public body. IAU monitors the implementation and annually reports to the CHD (see sub-indicator 12(a)).

Enforcement and follow-up on findings and recommendations

Audit recommendations are largely responded to and implemented within the time frames established by the law. Deadlines for responding to recommendations from SAI audits are defined by SAI in line with its internal guidelines and authorizations provided by the Law on SAI. Public bodies in principle accept all recommendations related to public procurement and implement most of them. Of the 23 recommendations that SAI provided in 2020, 17 recommendations (74 percent) were implemented by the audited institutions.

There are multiple arrangements in place to follow up on the implementation and enforcement of audit recommendations. SAI follows up with public bodies through their implementation reports and SAI's field visits and control audits. To further strengthen the implementation monitoring, SAI established an online registry of audit recommendations in 2023, which enables audited bodies to enter and access data on implementation progress. SAI plans to make this registry accessible to the public. In case of allegations of criminal activity, SAI informs the legal enforcement bodies. The Parliament through CEBF follows up on the implementation of recommendations from both the Final Account Audit and individual audits. Follow-up measures to internal audit recommendations are planned and agreed as part of individual audits. These measures can include written feedback from auditees, separate follow-up audits, or follow-up as a part of a subsequent audit. Each IAU monitors and annually reports on the implementation status to the CHD.

Qualification and training to conduct procurement audits

There is a continuous professional development program for external and internal auditors to ensure that they are qualified to conduct high-quality procurement audits. SAI organizes annual training on public procurement for all its employees. Additional trainings on public procurement are also provided to selected auditors (19 auditors are authorized EPPS supervisors) by the Human Resources Management Agency (HRMA) and international organizations such as SIGMA. All external auditors were trained in public procurement. Two such training courses were conducted in 2022, 7 in 2021, and 4 in 2020.

The CHD manages a comprehensive in-class and on-the-job training program for internal auditors, in cooperation with the HRMA. Candidates who successfully complete the program are certified and subject to further continuous professional development requirements. Furthermore, public procurement is part of the national legislation training module and obtaining the internal audit certificate requires passing a

⁴⁹ PEFA 2019.



mandatory exam on public procurement. Therefore, all internal auditors are trained in public procurement. The selection of external auditors requires that they have adequate knowledge on the subject as a condition for carrying out procurement audits. Obtaining the external audit certificate requires passing a mandatory exam for external auditors and public procurement topic is covered by this exam. Furthermore, written public procurement exams are often conducted as part of the selection process.

Both internal and external auditors are selected in a fair and transparent way and are fully independent. The selection follows an open competitive procedure in accordance with the HR recruitment procedure. According to the Law on SAI, the Parliament appoints the SAI Senate members based on nominations received from the CEBF. The Senate members enjoy immunity from criminal persecution in discharging their duties.

- **Gaps**

Legal framework, organization and procedures of the control system

There are no effective controls in place to ensure that all commitments are systematically captured in the Integrated Financial Management Information System (IFMIS). The CAs may delay entering a budget commitment and filing a payment request until they have sufficient funds available. Therefore, the system does not effectively prevent CAs from incurring commitments in excess of funds warranted to them, thus possibly contributing to arrears.⁵⁰

Delegation of decision-making authority by the CA's authorized person to procurement or other staff is limited or non-existent as reported by the interviewed CAs. While this is a sound risk mitigation measure it could come at the expense of efficiency and timeliness in decision making, especially when it concerns procurement of lower value.

Coordination of controls and audits of public procurement

No specialized procurement audits are conducted. SAI conducted only one performance audit focusing on public procurement and this was in 2017.

Enforcement and follow-up on findings and recommendations

Most of the SAI's systemic recommendations resulting from its annual audit of Final Account (related to various areas, including public procurement) are not responded to as envisaged by the Government's Action Plan. Of the 74 such recommendations provided in 2020, only 29 (39 percent) were implemented. This points to overall poor implementation of SAI recommendations by the executive. Weak parliamentary oversight hampers effective enforcement (see sub-indicator 12(a)).

Substantive gaps

Frequency of parliamentary hearings is limited. While there was a strong performance in 2016, no control hearings with respect to audit reports were held in subsequent years.⁵¹ Furthermore, parliamentary recommendations are largely formal and provide little substantive value. The statements and recommendations provided by the CEBF in different years ranged from calling upon the government to

⁵⁰ World Bank, PEFA 2019.

⁵¹ Ibid.



implement SAI recommendation to summarizing/reiterating the main ones.⁵² Several high-profile recommendations from the SAI have been repeating over the years. There is also no documented link between the hearings conducted and the recommendations issued by the Parliament.⁵³

Limited frequency and quality of parliamentary hearings presents a risk to effective parliamentary oversight. This hampers effective implementation of audit recommendations and the overall accountability of the public procurement system. These aspects require engagement of stakeholders beyond the public procurement system and hence warrant a red flag.

Substantive gaps and recommendations are summarized in table 25.

• **Recommendations**

To ensure more effective control of procurement process, IFMIS and relevant procedures should be improved to ensure that CAs are prevented from incurring commitments in excess of funds warranted to them. Delegation of authority to procurement or other staff could be explored for some procurement decisions under the current legal framework, to ensure a proper balance between timely decision making and risk mitigation.

SAI should start conducting specialized procurement audits and performance audits focused on public procurement. Continuity of such audits should be ensured to enable effective implementation of audit recommendations.

Regular control and consultative hearings on SAI reports should be ensured. Based on the outcome of such hearings, more substantive parliamentary conclusions in relation to the implementation of SAI recommendations should be developed.

To strengthen enforcement and follow-up on findings and recommendations, the CAs should strive to fully implement all recommendations provided by SAI. The DPPP and SAI could work on identifying ways to support CAs in this process, such as through capacity building.

Table 25. Summary of Substantive Gaps and Recommendations for Indicator 12

Substantive gap	Risk and red Flags	Recommendations
Sub-indicator 12(a) Legal framework, organization and procedures of the control system		
12(a) Poor parliamentary oversight hampers implementation of audit recommendations and accountability of public procurement system	High and a red flag	Regular control and consultative hearings on SAI reports should be ensured. Based on the outcome of such hearings, more substantive parliamentary conclusions in relation to the implementation of SAI recommendations should be developed.

⁵² Ibid.

⁵³ Ibid.



Indicator 13. Procurement appeals mechanisms are effective and efficient

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

Montenegro partially complies with this indicator. The legal and regulatory framework has been mostly adequately established and implemented in practice. Appeals procedures are clearly defined and publicly available, and data on appeals is systematically managed and published. The timeframes specified in law do not unduly delay the procurement process or make an appeal unrealistic. Fees, although levied, are refunded in case the appeal is upheld. An independent Appeals Body exercises its legal authority to suspend procurement proceedings and impose remedies based. While there are no major delays in appeal resolution, there seems to be several bureaucratic or capacity related reasons that are keeping the Appeals Body from reaching its full potential and achieving greater efficiencies in resolution of appeals. Overall negative perceptions of the private sector of the appeals system erode trust in the appeals system. Appeals mechanism for simplified procurement (from 8,000 euros to 40,000 euros) is not in place as these are exempted from the application of the PPL.

- **Findings**

Process for challenges and appeals

The procedures for submission and resolution of appeals are clearly defined and publicly available in the PPL and the Public Procurement Manual prepared by the DPPP⁵⁴ and is generally aligned with EU requirements.⁵⁵ Candidates submit an appeal to the Commission for Protection of Rights in Public Procurement Procedures (CPRPPP, the Appeals Body) through a CA via the EPPS.⁵⁶ The decision on appeal is made by the CA's authorized person based on proposal prepared by the internal committee established for the particular public procurement.⁵⁷ Appeals not adopted by CAs in part or in whole are automatically passed by CAs to the Appeals Body through EPPS. CAs notify the Appeals Body on all appeals received, including those adopted in whole, along with evidence of publishing their decisions.

Decisions on appeals are rendered based on available evidence submitted by the appeal parties. The PPL prescribes that appellant must submit evidence as part of the appeal⁵⁸ and prove the existence of facts on which the appeal is based.⁵⁹ General administrative procedures further prescribe that decisions must include a description of factual circumstances based on which the decision was made.⁶⁰ The Appeals Body may engage an expert witness to help resolve a case or seek advice from a responsible public body or

⁵⁴ Public Procurement Manual, DPPA, <https://ujn.gov.me/wp-content/uploads/2021/12/Priruc%CC%8Cnik-javne-nabavke.pdf>.

⁵⁵ European Commission Country Report on Montenegro, 2023.

⁵⁶ PPL, Article 185.

⁵⁷ PPL, Article 48.

⁵⁸ PPL, Article 188.

⁵⁹ PPL, Article 194.

⁶⁰ General Administrative Procedure Act, Official Gazette 56/14, 20/15, 40/16 and 37/17.



organization.⁶¹ According to the interviews and the review of five sample cases as part of the assessment, the decisions of the Appeals Body are rendered based on evidence submitted by the parties, verification of such evidence by the Appeals Body (such as through insights into relevant databases and documents), and information obtained from expert witnesses or other public bodies.

A lawsuit against the decision of the Appeals Body can be initiated by a bidder, the CA, or other interested party at the Administrative Court of the third instance. This implies that the decision of the Appeals Body is final and enforceable if no further appeal is submitted to the Administrative Court. The CA is required to enforce the decision of the Appeals Body and inform the Appeals Body on the enforcement. Penalties are prescribed for non-compliance with these requirements. The Appeals Body is required to notify the DPPP and the State Inspectorate in case of non-enforcement.⁶² The Appeals Body's caseload was on decline from 2020-2022 but increased by 83 percent by November 28, 2023, compared to the same period in 2022. While the number of the appeals decisions issued by the Appeals Body decreased from 242 in 2020 to 169 in 2022,⁶³ most of the relevant decisions were enforced (97 percent in 2022 and 100 percent in the previous two years).

The initiation of a lawsuit at the Administrative Court does not suspend the procurement procedure and the CA can award a public procurement contract with the selected bidder before the deadline for the submission of the lawsuit expires.⁶⁴ The Administrative Court may issue a restraining order (injunction) based on the appellant's proposal, but this rarely happens in practice. If the Administrative Court decides in favor of the appellant after the public procurement contract has been signed, the appellant may seek compensation of damage through a new procedure at first instance court.

The timeframes specified in the PPL for the submission and review of appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic. Timeframes for submission of challenges and appeals to the Appeals Body through the CA vary depending on subject of the appeal.⁶⁵ Appeals related to the tender document or changes thereto can be submitted within 20, 10, or half of the number of days from the date of publishing/providing the tender document or changes thereto, if the deadline for submission of bids/qualification statements is 30, 15 or less than 15 days, respectively, from the date of publishing/providing the tender document or changes thereto. Appeals related to debarment from procurement procedures can be submitted within 10 days from the date of submission of the decision on debarment. Appeals related to the selection of most favorable bid or annulment of procurement procedure can be submitted within 10 days from the date of publishing of the decision on the selection of most favorable bid or the annulment of procurement procedure.

A CA is required to i) publish the appeal at EPPS and suspend the procurement procedure within 3 days from the appeal, ii) reject an appeal that it finds unallowed, untimely, submitted by an unauthorized person, or incomplete within 8 days from the appeal, publish such decision on the EPPS/submit it to the appellant within 3 days, and inform the Appeals Body of such decision within 3 days from the date of publishing/informing the appellant, iii) inform the Appeals Body on an appeal that it otherwise rejects in part or in whole within 8 days from the appeal, and iv) adopt an appeal in whole, and subsequently annul

⁶¹ Ibid.

⁶² PPL, Article 192.

⁶³ The Appeals Body documents provided to the Bank team, March 2023. The numbers also include decisions on appeals received in previous years.

⁶⁴ The public procurement contract can be signed 10 days after the Appeals Body has published its decision rejecting the appeal, while a lawsuit against the Appeals Body's decision can be filed within 20 days from the date of publishing.

⁶⁵ PPL, Article 186.



the decision appealed on, issue another decision, change or amend the tender document, or annul the procurement procedure, within 30 days from the appeal.⁶⁶

The Appeals Body is required to reject the appeal as unfounded, or to adopt it in part or in whole and annul the CA's decision, procedure or act it found unlawful within 30 days from receiving the appeal and related documents.⁶⁷ This deadline can be extended by up to 10 days if the Appeals Body determines that it needs to engage an expert witness or obtain opinions from relevant public bodies, or that the documents to be reviewed are extensive. The Appeals Body is required, within 8 days, to reject an appeal that it finds unallowed, untimely, submitted by an unauthorized person, incomplete, or not in order; and terminate the appeal procedure in case the appellant withdraws the appeal. The Appeals Body is required to publish its decision on the EPPS within 3 days.

Independence and capacity of the Appeals Body

The Appeals Body is not involved in any capacity in procurement transactions or in the process leading to contract award decisions. The Appeals Body is independent and professional in performing its duties. Its mandate, composition and organization are defined by the PPL⁶⁸ and operationalized in its internal Book of Rules. It comprises six members and president who acts as a head. The President and the members are appointed by the Parliament based on proposal from the responsible parliamentary committee for a five-year term, with possibility of reappointment, and based on public vacancy. The PPL also prescribes that the president and the members of the Appeals Body cannot perform other public functions, or functions in political parties, and that they cannot participate in an appeal process if there are reasons that bring into question their independence.

To initiate the appeal procedure, an appellant must pay a fee to the Appeals Body's bank account amounting to 1 percent of the estimated value of public procurement and not exceeding EUR 20,000 and provide a proof of payment prior to expiration of the appeals deadline. If the Appeals Body decides in favor of the appellant, the amount paid must be returned to the appellant within 15 days from the date the appeals decision becomes legally valid.

The Appeals Body exercises its legal authority to suspend procurement proceedings and impose remedies. The PPL provides that, within 3 days from the receipt of an appeal, the CA shall publish the notice of receipt of an appeal, and that notification automatically suspends further action by the CA until the appeal has been resolved.⁶⁹ The PPL⁷⁰ defines the remedies which may be imposed by the Appeals Body. Unless the Appeals Body terminates the appeal procedure due to withdrawal of the appeal by the appellant, it has the authority to render one of the following decisions: i) reject an appeal as unallowed (appeal is related to CA's decision or action which cannot be appealed), ii) reject an appeal as untimely (appeal is not submitted within the legal deadline), iii) reject an appeal as submitted by an unauthorized person, or by a bidder who did not provide a valid bid guarantee, iv) reject an appeal as incomplete (no proof of payment of fee is provided), v) reject an appeal as not being in order (if the appellant does not resolve the deficiency which prevents taking action on the appeal), vi) reject an appeal as unfounded (appeal statements are unfounded), or vii) adopt an appeal in whole or in part and annul an unlawful decision, procedure or act of the CA.

⁶⁶ PPL, Article 189.

⁶⁷ PPL, Article 193.

⁶⁸ PPL, Article 198-208.

⁶⁹ PPL, Article 189.

⁷⁰ PPL, Article 192.



The PPL envisages adequate resources for the Appeals Body, including through budget allocations. Administrative support to the Appeals Body is provided by its Secretariat whose head is selected through a public vacancy based on merit.⁷¹ The Appeals Body in principle receives requested operational budget allocations from the government to perform its duties. The members of the Appeals Body and its Secretariat regularly participate in training and local and regional workshops organized by the HRMA, the DPPP, international organizations (such as OECD/SIGMA) and CSOs on topics such as public procurement, e-procurement, state property registration, internal controls and accountability, fraud and corruption, etc. The results of the Appeals Body's internal training needs assessment are used to inform the HRMA's annual training plan. One member of the Appeals Body is the member of the state Working Group on EU Accession Negotiations for Chapter 5 – Public Procurement.

The annual reports of the Appeal Body provide minimal information about the remedy system and could benefit from more data analytics that could serve the process of improving the procurement system.

Decisions of the Appeals Body

The PPL prescribes that the CA must provide to the Appeals Body the appeal and all its annexes, the documentation related to the public procurement procedure, appellant's qualification application, and all bids received. If the CA fails to do this, the Appeals Body will remind it to do so, with a warning that otherwise it will adopt the appeal and annul the procedure.⁷² Interviews with the Appeals Body and the actual review of the five sample cases (see sub-indicator 13(a)) show that the Appeals Body cited evidence reviewed and considered in reaching decisions.

The Appeals Body has legal authority to impose remedies, including prohibit the CA from acting or deciding unlawfully and annul in whole or in part, an unlawful decision, procedure, or act by a CA (see sub-indicator 13 (b)). The Appeals Body in most of cases decided in favor of the appellant (74 percent in 2020, 72 percent in 2021, and 76 percent in 2022). On average 4 percent of the appeals were withdrawn by appellants on annual basis. The number of lawsuits filed to the Administrative Court varied from 32 in 2021 (on 12 percent of the appeals decisions) to 29 in 2021 (on 14 percent of the appeals decisions) and 30 in 2022 (on 16 percent of the appeals decisions). The Administrative Court passed 145 judgments and 14 decisions from January 1, 2020 to December 5, 2023, with annual average slightly declining.⁷³

Requirements for publishing appeal decision are provided by legislation and implemented in practice. However it is noted that decisions of the Appeals Body are published on the website but without the possibility to use any search engines, which limits the accessibility and usability of this important information. CAs are obliged to publish on EPPS a notice of an appeal and a suspension of any further action in procurement process within 3 days from the date of receipt of an appeal, and its decision on the rejection of the appeal, within 3 days from passing the decision.⁷⁴ If the Appeals Body annuls the public procurement procedure, the CA is obliged to publish notice of annulment on EPPS within 5 days from the date of the Appeals Body's decision.⁷⁵ The Appeals Body is obliged to publish its decisions on EPPS and on its website within 3 days from the date of adoption.⁷⁶ The Appeals Body is also obliged to publish notice

⁷¹ PPL, Article 208.

⁷² Article 191.

⁷³ Source: Appeals Body.

⁷⁴ Article 189.

⁷⁵ Article 192.

⁷⁶ Article 193.



on administrative lawsuit filed and the court's decision on its website and on EPPS.⁷⁷ Before the EPPS was established in 2021, the Appeals Body's decisions were published on the Government's public procurement portal. The Appeals Body reports that 100 percent of its decisions are published. It is also supported by evidence that the CAs' decisions are published on the EPPS and that the procurement procedure is suspended in case of appeal.

- **Gaps**

Process for challenges and appeals

To notify the Appeals Body on appeals it rejected in part or in whole, a CA needs to take action in the EPPS. A lack of timely action or no action by the CA may create process delays and impact the appellant's right to appeal. Cases were reported when the Appeals Body learnt about the appeals adopted by the CAs based on appellants' requests for reimbursement of appeals fee.

Independence, capacity and decisions of the Appeals Body

Submission of an appeal is conditioned by payment of fee, and the amount paid is returned to the appellant in case the appeal is upheld. While this practice may discourage frivolous appeals and provide ground for more operational efficiencies, it may also inhibit access for financially unfortunate parties participating in high value procurements.

Available procedures and guidelines on the appeals procedure appear to be insufficient, as evidenced by frequent clarifications and expert opinions provided by the DPPP and the Appeals Body in response to various requests of CAs and private sector.

Substantive gaps

A moderate number of the Appeals Body's decisions are not resolved within the legal timeframe and the resolution of appeals has slowed over the years. The Appeals Body reported resolving 68 percent of appeals within the 30-day legal deadline in 2022, down from 85 percent of appeals in 2021 and 92 percent of appeals in 2020. In parallel, the average resolution time increased from 18 days in 2020 to 23 days in 2021 and 28 days in 2022. Results of a review of sample of 15 Appeal Body's decisions conducted by the team aligns with these results.⁷⁸

Despite an increasing number of appeals being resolved in favor of the appellant, survey results point out that the private sector does not see the appeals system as fair and trustworthy or consistent. Only 20 percent of the respondents who submitted at least one complaint to the Appeals Body agree that the Appeals Body's decisions are consistent, unbiased, and well-informed, while 40 percent disagree with this

⁷⁷ Article 197.

⁷⁸ The results of the review should be taken with caution because the average time between the date of appeal and the date of appeal decision was observed. According to PPL, resolution time runs from the date of submission of complete documentation by the appellant, which is often after the appeals date.



statement.⁷⁹ Similarly, only 24 percent of those respondents find the decision of the Appeals Body to be correct/necessary while 36 percent disagrees with this statement. The respondents had more positive views of the Appeals Body than of the CAs or Administrative Court. Survey results should however be taken with caution as the sample may not be representative.

The survey respondents also perceive the decision-making timeframe on appeals as too long. Only 31 percent of respondents who submitted at least one complaint to the Appeals Body agreed that the decisions of the Appeals Body are taken within a reasonable timeframe. The respondents' perceptions on the decisions of CAs and the Administrative Court were similar (38 percent and 12 percent agreed with this statement on CA's and the Court's decisions, respectively). During the interviews the private sector representatives suggested improving the capacities of both the Appeals Body and CAs to deal with appeals in a credible manner.

There seems to be several bureaucratic or capacity related reasons that are keeping the Appeals Body from reaching its full potential. The Appeals Body operated at limited capacity during 2021-2022 due to the expiration of mandate of its president and resignation of one of its members. Of the 19 positions planned for the Secretariat, 14 are filled. This is because of the retirement of some staff and the Secretariat's inability to recruit new staff until it completes the necessary changes to its internal rulebook and aligns it with the new civil service legislation. Although expert witnesses are engaged in only about 5 percent of the cases, their engagement creates delays because of i) mandatory application of civil procedure rules according to which the expert's opinion is reviewed and commented on by parties through several iterations, and ii) limited availability and access to qualified experts in specific areas. The impact of Covid-19, and technical issues such as a cyber-attack on the Government's IT system also contributed to delayed appeal resolution.

Persistent trends in delayed resolution of appeals paired with substantial caseload increase in 2023 as well as negative perceptions of the private sector pose a risk to the appeals' system effectiveness and efficiency. Given the probability and impact, the risk is estimated as medium, no red flag is warranted.

- **Recommendations**

Process for challenges and appeals

An appeal mechanism for simplified procurements should be designed and implemented.

An adequate control mechanism should be established to ensure that the Appeals Body is automatically informed on appeals rejected in part or in whole by CAs, without having the CA take action in the system.

Produce a commentary on the PPL to enable CAs and private sector better understand the procurement procedures, including on the appeals system.

Independence, capacity and decisions of the Appeals Body

⁷⁹ 43% of surveyed firms submitted at least one complaint related to public procurement to the Appeals Body through the contracting authority. 9% of firms submitted at least one appeal to the Administrative Court against the decision taken by the Complaints Commission.



A comprehensive functional review of the Appeals Body operations should be conducted to determine organizational and capacity gaps and identify measures to improve its performance. Capacity and transparency of work of the Appeals Body should be improved, so that the Appeals Body can be in position to achieve a 100 percent resolution of cases within the legal timeframes. The Appeals Body's internal capacities should be particularly strengthened in areas where the volume of appeals is the largest, as this would reduce the need for engagement of expert witnesses. The private sector should be sensitized to the Appeals Body work such as through public communication and outreach. Gaps and recommendations for this indicator are summarized in table 26.

Table 26. Summary of Substantive Gaps and Recommendations for Indicator 13

Substantive gap	Risk and red flags	Recommendations
Sub-indicator 13(c) Decisions of the appeals body		
13(c)(b) Slow resolution of appeals and overall negative perceptions of the private sector of the appeals system erodes effectiveness and trust in the appeals system.	Medium and not a red flag	A comprehensive functional review of the Appeals Body operations should be conducted to determine organizational and capacity gaps and identify measures to improve its performance. Capacity and transparency of work of the Appeals Body should be improved, and the private sector should be sensitized to the work of the Appeals Body. The Appeals Body should strive to achieve a 100 percent resolution of cases within the legal timeframes.

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.

The country has a relatively sound legal and institutional framework for fighting corruption. Prohibited practices in public procurement, accountabilities and penalties for government employees and private firms, and general definitions and provisions on conflict of interest are in place. Provisions on prohibited practices are also defined in procurement documents and adhered to in practice. The Agency for Prevention of Corruption (APC) has a sufficient legal mandate to investigate corruption, while the Prosecutors' Office and courts are responsible for enforcement. There are accessible and secure channels for reporting corruption and unethical behavior, and a regulatory framework to follow up on disclosures. However, several substantive risks outweigh these strengths, suggesting that the system is not effectively applied in practice. The main ones are the absence of clear definitions of fraud, corruption, and other



prohibited practices in procurement, poor enforcement of laws on corruption, fraud, and other prohibited practices, limited institutional capacities to tackle corruption, absence of special measures to detect and prevent corruption in public procurement or a dedicated training program on integrity in public procurement, lack of established procedure or practice to capture information on beneficial ownership, and lack of systematic use of data on conflict of interest and financial disclosures for decision making. These risks hamper the overall accountability of the country's procurement system and warrant a red flag.

- **Findings**

Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties

Responsibilities of government employees and consequences

The PPL requires CAs to undertake measures to prevent and remove consequences of corrupt practices, specifically to: i) debar from public procurement procedure entities found to have indirectly or directly provided benefits to individuals involved in conducting the public procurement with the purpose of obtaining confidential information or impacting actions, ii) record any such instances and report to DPPP and to relevant state bodies, and iii) conduct risk analysis and control in public procurement.⁸⁰ The PPL sets penalties for offences under these provisions for both the CAs and the responsible persons⁸¹ in form of fines. The Criminal Law envisages imprisonment of individuals who terminate employment contracts to government employees who reported corruption based on a justified suspicion. The Law on Civil Servants and Employees establishes disciplinary liability for public employees and defines disciplinary measures, including suspension from work.⁸²

Responsibilities of private firms and consequences

The PPL prevents from participating in public procurement of works bidders or persons who were involved in drafting inputs for technical specifications, or who participated in technical consultations with CA on the subject procurement.⁸³ Bidders are required to provide a signed statement confirming their authorized person is not in conflict of interest due to the ownership of, or personal relationships or previous engagement with the CA.⁸⁴ CAs are required to debar from public procurement procedure a bidder that attempted to exercise undue influence, that is in a conflict of interest, or that was criminally indicted for bribery or fraud.⁸⁵ The PPL further states that the contract concluded in violation of "anticorruption rule" is null and void, referring to this as the "anticorruption clause."

Conflict of interest and cooling off period for public officials

The Law on Prevention of Corruption provides general definitions and provisions on conflict of interest in performing public duties. The PPL defines that conflict of interest between the CA and a business operator exists if the CA's representative involved in procurement has direct or indirect financial, economic, or other interest that can impact his/her impartiality and independence, providing a detailed description of

⁸⁰ Article 38.

⁸¹ Articles 211 and 212.

⁸² Official Gazette 39/2011, Article 111.

⁸³ Article 42.

⁸⁴ Article 43.

⁸⁵ Article 108.



such cases.⁸⁶ A CA is required to take adequate measures to efficiently prevent, identify and remove conflict of interest in relation to public procurement.⁸⁷ A CA's authorized person, procurement officer, member of a procurement committee, and employees participating in preparation of tender documents and in procurement planning are required to either sign a statement declaring no conflict of interest or inform the CA's authorized person about the existence of conflict of interest prior to beginning of the procurement procedure, and to immediately submit a request for exclusion if the conflict of interest appears during the procurement procedure.⁸⁸ A CA is required to internally record such requests and immediately notify the DPPP and the Agency for Prevention of Corruption (APC).

The Law on Prevention of Corruption⁸⁹ provides for a two-year cooling-off period for former public officials. During this period the official cannot represent the public body in which he/she performed the public function, be in an employment or business relationship with that body, or use the information obtained when performing the public function.

Provisions on prohibited practices in procurement documents

The PPL specifies prohibited practices to be observed by both public officials and business entities. Bidders and qualification applicants are required to submit a self-declaration confirming their compliance with conditions for participating in public procurement and absence of any grounds for their debarment, as defined by the tender document.⁹⁰ The PPL prevents CAs and their authorized persons who were convicted of crime such as fraud, bribery, and corrupt practices, from participating in public procurement.⁹¹ This requirement extends to subcontractors.⁹² The self-declaration form is prescribed by a bylaw⁹³ and contains clear instructions to business entities regarding the provision of data to confirm their adherence to these legal provisions.

Analysis of publicly available sample procurement documents and contracts from EPPS confirms that they include provisions on fraud, corruption and other prohibited practices as specified by the PPL and relevant bylaws. These are reflected in calls for public procurement (under eligibility requirements), tender documents (information on debarment, instructions for completing of the self-declaration form, and anticorruption clause with clear instructions and/or references to relevant PPL provisions), and contracts (an anti-corruption clause). Signed self-declaration statements are also available.

Effective sanctions and enforcement systems

To ensure proactivity in corruption prevention and detection, the PPL requires the DPPP to prescribe the manner of keeping records on conflict of interest and violation of anticorruption rules, the contents of those records, and the methodology for risk analysis in public procurement control.⁹⁴ In line with this

⁸⁶ Article 41.

⁸⁷ Article 40.

⁸⁸ Article 43.

⁸⁹ Article 15.

⁹⁰ Article 111.

⁹¹ Article 99.

⁹² Article 128.

⁹³ Rulebook on Business Entity's Self-Declaration Form, Official Gazette 74/19, 3/23.

⁹⁴ Article 38 of PPL



requirement, the Rulebook⁹⁵ defines in more detail the content and templates for recording violation of conflict of interest, i.e., anticorruption rule, as well as the methodology for risk analysis. CAs are required to report annually to DPPA on any conflict of interest and violation of anticorruption rules. CA's employees who have information about corruption in public procurement are required to immediately notify the CA's authorized person, DPPP, APC, or Prosecutors Office, depending on the case.⁹⁶

The PPL prescribes debarment for bidders who attempt to make an undue influence, are in the conflict of interest, were criminally convicted for offences specified in the law, or did not provide mandatory documents as part of the procurement process.⁹⁷ In addition, CAs may prescribe debarment based on special grounds such as professional misconduct or provision of false data.⁹⁸ Decision on debarment is made by the CA's authorized person based on recommendation from the Procurement Committee and submitted to the bidder via the EPPS. The decision can be appealed on.

Anti-corruption framework and integrity training

The country has in place an adequate institutional framework for detecting and fighting corruption. The APC is a key institution mandated to prevent corruption and promote integrity. It is responsible for establishing the existence of conflict of interest and corrupt practices, undertaking prevention measures, and protecting whistleblowers. The law enforcement responsibility is placed in the Prosecutors' Office (prosecution and overseeing of investigation) and police (investigation). APC acts based on reported cases of corruption as well as ex-officio. If it determines the existence of corruption with elements of criminal acts, it forwards the case to the Prosecutor's Office, and the Prosecutor's Office informs APC on its decision. APC's decisions are final and can be appealed through an administrative procedure. The APC's Council, appointed by the Parliament for a four-year term in office, consists of five-members and is responsible for APC's decisions and the appointment of its director.

To create awareness and fight corruption at national level, APC monitors and supports the development and implementation of institutional integrity plans, proposes legislative changes to prevent corruption, advises on alignment of regulation with international anti-corruption standards, provides training, and cooperates with civil society. As part of this work, APC proposed specific changes to the PPL during the process of its revision. APC plans to work on preparation of the Government's new anti-corruption strategy and on linking the institution's electronic database of cases with the EPPS.

Several mechanisms are in place to detect and mitigate corruption risks in the public procurement cycle:

- Internal control systems are adequate, and the procurement organizational structure provides segregation of roles and responsibilities (see sub-indicator 12(a)).
- Public bodies are required to analyze and mitigate risks in procurement cycle based on the prescribed methodology, which identifies conflict of interest as a risk area and defines mitigation measures to be applied.⁹⁹ Complementary guidance on these aspects have also been developed by the DPPP. Furthermore, public bodies are mandated to maintain records of corruption and report on them (see sub-indicator 14(c)).

⁹⁵Rulebook on Recording and Methodology for Risk Analysis in Conducting Public Procurement Control, Official Gazette 055/20.

⁹⁶ Article 39 of PPL

⁹⁷ Article 108 of PPL

⁹⁸ Article 110 of PPL

⁹⁹ Rulebook on Recording and on Methodology for Risk Analysis in Conducting Public Procurement Control..



- In line with legal requirements and the methodology prescribed by APC, each public body adopted and published its integrity plan, which outlines measures to prevent and detect corruption identified based on the public body's self-assessment of its exposure to corruption and conflict of interest risks. Public bodies report on integrity plans annually.
- APC provides training to public bodies on topics related to corruption and conflict of interest (17 trainings attended by 197 participants were delivered in 2021, and 29 trainings attended by 362 participants were delivered in 2022). Furthermore, the APC staff received training on public procurement.

Annual reports of the APC and the Prosecutor's Office are published and contain comprehensive and detailed statistics on the number, type and outcome of cases processed. The Prosecutor's Office reports provide detailed statistics on the number of criminal charges, investigation orders, investigations, verdicts, indictments, and court verdicts by category of criminal act and by specific Prosecutor's Office (location). These are also available for high-profile corruption, which is defined as a category of criminal act. While there is no category of procurement related corruption defined by the Montenegrin legislation, such corruption is normally processed under the category called "abuse of official power."

The APC provides dedicated support on integrity training. Also, the APC engages in providing anti-corruption awareness raising to citizens and to public bodies, as needed.

Stakeholder support to strengthen integrity in procurement

In general, the country's civil society organizations sector is relatively well developed. Capacities and interest of CSOs vary and many formal and informal coalitions between CSOs and other stakeholders have been established. The environment for the operation of CSOs is relatively conducive, and the role of civil society is generally recognized and promoted. The country's legal and institutional framework provides for effective and meaningful engagement of civil society (see sub-indicator 11(a)). Funding rules for CSOs are also in place, providing the framework for the Government's support.

There are few CSOs that are working on public procurement in Montenegro. Institute Alternativa is active in working on government accountability and transparency, including in public procurement. Its representative also acts as a member of the Government's working group on Chapter 5 of the *acquis*. Network for Affirmation of NGO Sector (MANS) is active in working on corruption issues across sectors, including those related to public procurement. Both these NGOs actively participated in drafting changes to the PPL. Furthermore, MANS established own IT system that enables improved search of procurement data based on the EPPS and submitted over 1,500 information requests to CAs since 2015.

All business entities registered in Montenegro are members of the country's Chamber of Commerce. As such they are required to adhere to the Chamber's Code of Ethics, which sets principles and requirements of ethical behavior with the aim of ensuring transparency and integrity in operations. Compliance of business entities in public procurement is ensured through relevant legal and regulatory framework on financial management, internal control mechanisms and external audit. Over 82 percent of surveyed businesses have internal rules and compliance measures on public procurement in place.

Secure mechanism for reporting prohibited practices or unethical behavior

There are secure, accessible, and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior. The information regarding the suspected



fraud/corruption/prohibited practices cases can be reported to a public body suspected, or directly to APC, in writing, verbally, via mail or electronically. The APC can also initiate the procedure to establish the existence of fraud/corruption/prohibited practices *ex-officio*. The information is kept confidential and anonymous unless the person reporting requests the information to be publicly available.

The Law on Prevention of Corruption provides for protection of whistleblowers' identities and rights.¹⁰⁰ The APC is obliged to protect a whistleblower, and a whistleblower is entitled to protection in cases he/she was or could be harmed because of reporting on corruption. A whistleblower can request protection in writing or verbally. The APC decides on the request based on review of the information provided and notifies the whistleblower within 15 days. If the APC determines that a whistleblower has been or could be harmed, it provides recommendations to a relevant public body. The APC is also required to provide technical support to a whistleblower in case he/she has been harmed and has decided to initiate a court procedure. Finally, a whistleblower has a right to court protection, as well as to a reward in case his/her reporting on corruption has contributed to generating public revenue.

There is an adequate legal and regulatory framework for follow up on disclosures, which is functioning in practice. A public body to which the information is reported by a whistleblower is required to check the accuracy of information, take appropriate action, and inform the whistleblower of the action taken within 45 days. If the public body does not provide feedback or the whistleblower is not satisfied with the feedback provided, the whistleblower can opt to report to the APC. In such a case the APC is required to provide its opinion and in case it determines the existence of fraud/corruption/prohibited practices, recommendations on actions that the public body should take. The public body is required to report to the APC on the actions taken within the deadline specified by the APC. If it fails to do so, the APC will inform the inspectorate or a relevant supervisory body, submit a special report to the Parliament, and inform the public. The public body and the APC are both required to inform the Prosecutors' Office in case the corrupt practices involve allegations of criminal acts, or another relevant institution, depending on the case. These institutions are in turn required to report back to APC on the outcome of the procedure.

Codes of conduct/codes of ethics and financial disclosure rules

The Government's Code of Ethics for Civil Servants and Employees¹⁰¹ prescribes general codes of conduct in areas such as respectful treatment of colleagues and clients, public appearance, data management, etc. A head of a public institution is required to inform the employees about the code and employees are required to report to their supervisors on potential violations of the code. The Law on Government and the Law on State Administration define accountability for decision making and human resources and financial management for ministers and heads of public bodies.

The Law on Prevention of Corruption obliges public officials to report to the APC on their revenues and property,¹⁰² though no such requirement is in place for other officials involved in public procurement. The APC maintains the registry of revenues and property of public officials and discloses the data from the registry on its website, except for sensitive personal data. The APC also maintains the registries on conflict of interest and financial disclosure, which are accessible at APC website. A failure to comply with relevant accountability and financial disclosure provisions results in administrative or criminal penalties.

¹⁰⁰ Articles 58-68.

¹⁰¹ Official Gazette no. 050/18.

¹⁰² Articles 23-27.



The APC has a dedicated department with four employees responsible for research, design and delivery of training to public bodies in coordination with the HRMA (see sub-indicator 14(d)). The training is based on annual training plans and training needs. Public bodies show most interest in training in areas of financial disclosure, conflict of interest, whistleblowers' protection, and integrity.

- **Gaps**

Legal definition of prohibited practices, conflict of interest, responsibilities, and penalties

While the definitions of individual responsibilities, accountability and penalties for the relevant stakeholders are in place, there are no definition of “anticorruption clause” and “anticorruption rule” referred to in legal documents. The definitions of these two terms appear to have been defined previously and to have been removed as part of the recent PPL amendments.

Amounts of fines to responsible government employees who fail to undertake measures to prevent and remove consequences of corrupt practices range from EUR 2,000 to EUR 20,000, which appears to be low relative to potential impact of the offenses.

Provisions on prohibited practices in procurement documents

Definitions of prohibited practices in public procurement for which criminal offences are envisaged, such as fraud, bribery, and corrupt practices, are not provided in legislation. Furthermore, other relevant prohibited practices such as collusive practices, coercive practices, and obstructive practices, are left out from the legislation.

Effective sanctions and enforcement systems

Coverage and treatment of fraud and corruption matters throughout the procurement documentation is incomplete and inconsistent. Regulations on keeping records and reporting on corrupt practices do not provide sufficient explanation of corrupt practices or sufficient guidance and information on the reporting process. For example, the Rulebook on Recording and Methodology of Risk Analysis in Public Procurement prescribes a template for the record of violation of anticorruption rules but provides no guidance on the reporting process. The template contains summary data on the number of notes of violation submitted, the number and type of procurement procedures in which the anticorruption rule was violated and how it was violated, the data on bidders and their employees and CA's employees involved in such procedures, and whether the employee who submitted the note of violation was subject to pressure to prevent reporting on it and how. Furthermore, the template does not include the information on whether the case was reported to relevant institutions and which ones.

There is no system in place for managing suspensions and debarments. There are no lists of debarred persons or similar lists, and no mechanism for automatic debarment of ineligible bidders. Apart from increasing the risk of corrupt practices, this creates operational inefficiencies as CAs are required to check eligibility of all interested bidders under each single procurement procedure.

Anti-corruption framework



While the Prosecutor's Office prepares and publishes compiled statistic on legal proceedings and convictions related to high-profile corruption and abuse of official power, such data is not available specifically for procurement-related corruption, as such corruption is not treated as a distinct criminal act.

Stakeholder support to integrity

Very few CSOs exercise effective social audit and control in public procurement. This can largely be attributed to limited capacities of the CSOs sector. Furthermore, in absence of adequate financial support from the Government, CSOs tend to focus on areas of work that increase their likelihood of obtaining financial support from international donors, and these areas normally do not include public procurement. The procurement environment has no procedure to encourage the involvement of CSOs. As a result, there are limited practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.

Private sector perceives CSOs contribution as limited. Only 18 percent of the survey respondents agreed with the statement that CSOs actively provide oversight and social control in public procurement, 6 percent reported some cooperation with CSO, while only 1 percent reported regular and well-established cooperation with CSOs.

Business entities generally lack internal rules, regulations and procedures on various integrity and anti-corruption aspects of their operations, such as on conflict of interest/breach of integrity by employees (41 percent), giving gifts and hospitality (27 percent), and handling corruption reports and protection of whistleblowers (21 percent). Only 31 percent of businesses have anti-corruption or integrity plans in place.

Codes of conduct/codes of ethics and financial disclosure rules

Accountability provisions and requirements for financial disclosure are in place for public officials, but not for all employees directly or indirectly involved in procurement activities or decisions. While the PPL prescribes specific duties of heads of public bodies and procurement staff, it does not clearly define their accountability for decision making.

Since no mandatory code of conduct in areas of public finance management (PFM) or procurement is in place, no relevant penalties for violation of such provisions could be established.

No regular training programs related to code of ethics and no regular training programs for the private sector whatsoever are in place. 92 percent of surveyed businesses reported that they have not attended any training related to anti-corruption or integrity in public procurement. However, the 8 percent of the respondents who did receive such training all found it useful.

Finally, the team could not access any of the registries maintained by the APC at its website or at the website of the agency which previously managed the registry as referred to by the APC's website.¹⁰³

Substantive gaps

Legal definition of prohibited practices

¹⁰³ Internet search at <https://www.antikorupcija.me/me/registri/> from August 10, 2023.



The PPL and relevant bylaws do not provide a clear definition of fraud, corruption, and other prohibited practices in procurement. While the Law on Prevention of Corruption¹⁰⁴ defines corruption as “any abuse of official, business, or social position or influence with the aim of acquiring personal benefit or benefit for the others,” the PPL does not refer to that law or definition. Definition of “corrupt activities” could only be implied from the list of specific measures that CAs are required to undertake to prevent and remove consequences of corrupt practices.¹⁰⁵

Absence of clear definitions of fraud, corruption, and other prohibited practices in procurement, as well as the definition of “anti-corruption rule” and “anti-corruption clause” creates legal ambiguities. This prevents effective compliance and sanctioning, thereby hampering overall accountability of the procurement system. Since this action is not dealt only within procurement system a red flag is warranted.

Effective sanctions and enforcement system

There is little evidence that the system for reporting corruption in procurement is effectively applied. Interviewed CAs find the PPL provisions and available regulations sufficiently clear, and state that they apply them in practice. However, they report no cases of such violation in practice and no single case of corrupt practices was reported to DPPP in 2022. Only 34 percent of private sector respondents agree that the normative/regulatory institutions enable the conflict of interest to be identified and avoided.

External reports, including those of the EC, as well as the interviews with CSOs conducted under the assessment, point to poor enforcement of laws on fraud, corruption and other prohibited practices, as well as a lack of a credible criminal justice response, in particular in relation to investigations, prosecutions and final convictions on high-profile corruption. While the available reports of criminal justice and other institutions do not provide data on procurement-related cases of fraud or corruption (see sub-indicator 14(d)), statistics on prosecution and convictions related to cases of “high-profile corruption” and “abuse of official power”, which mainly relate to procurement, point to poor enforcement. As an illustration, in 2020, Prosecutor’s Offices handled 476 criminal charges related to abuse of official power. While this represents a 10 percent increase compared to 2019, it still represents a mere 3 percent of the total Prosecutor’s Offices’ caseload. Only 12 indictments were proposed based on these charges, one indictment was ordered, and one investigation was conducted, while 120 charges remained unresolved in that year. Similarly, courts processed only 40 indictments and passed only 6 convictions, leaving 30 indictments unresolved. Furthermore, courts upheld only 1 of the 6 complaints that Prosecutor’s Offices filed against court decisions. Considering all the above the risk is high and the taking into account that addressing the gap goes beyond the procurement system therefore the red flag is warranted.

Anti-corruption framework

While Montenegro has in place a comprehensive institutional framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to implement their mandate, the system does not appear to be effective when it comes to corruption in public procurement. While the total number of cases of suspected corrupt practices reported to APC (including those related to public procurement) has been increasing over the past three years, the procurement-related cases averaged to only 10 percent of the total cases processed, and APC determined the existence of corrupt practices in only three such cases (1 percent of total cases processed by APC). Though APC performance improved over the past years, its capacity to tackle corruption appears to be limited. APC lacks the technical competence and budget to deliver its mandate

¹⁰⁴ Official Gazette no. 53/14, 42/17.

¹⁰⁵ As described in Article 38.



and only 55 out of 75 of its staff positions are currently filled. Furthermore, the private sector opinion about the effectiveness of anti-corruption framework is unfavorable. Only 20 percent of surveyed businesses perceive anti-corruption measures for public procurement as effective, 30 percent of respondents are neutral, while 51 percent disagree or strongly disagree with the statement that the anti-corruption measures are effective.

Apart from general mechanisms for detecting and preventing corruption risks specified above, there is no special mechanism in place for detecting and preventing corruption in procurement. Similarly, no dedicated and regular integrity training program on public procurement is in place exposing the procurement system to high risks of corruption. Considering the multiple stakeholders engaged the gaps cant be addressed within the procurement system only. As such a red flag is warranted

Codes of conduct/ codes of ethics and financial disclosure rules

There is no legal requirement for CAs to have a mandatory code of conduct in areas of PFM or procurement. While none of the interviewed CAs reported having any codes of ethics, the internet search suggests that some institutions and SOEs do have them, however they do not address the areas of PFM or procurement. Similarly, the Government's Code of Ethics for Civil Servants and Employees does not deal with PFM or procurement. Furthermore, it applies only to central government employees (including PFM and procurement staff) but not to employees in local self-government units or in state-owned enterprises, which also act as CAs.

There is no established procedure or practice to capture information on beneficial ownership. There is no system in place to ensure that the data from APC's registries on conflict of interest and financial disclosure are systematically used by decision makers. As such the impact of this deficiencies on procurement practices is consider to have a high risk and a red flag is warranted due to the fact that I implies legal regulations that are beyond only procurement system.

A summary of substantive gaps and recommendations for this indicator is provided in table 27.

- **Recommendations**

Legal definition of prohibited practices, conflict of interest, responsibilities, and penalties

- Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement into PPL and relevant bylaws (such as procurement manual) ensuring consistency with the definitions provided in the Law on Prevention of Corruption. Related to this, clarify and better define the "anticorruption rule" and "anti-corruption clause."
- Consider adjusting the amounts of penalties for violation of anti-corruption rules so that they more adequately reflect the potential impact of offenses.

Provisions on prohibited practices in procurement documents

- Consider providing a comprehensive list of prohibited practices along with their clear definitions as part of the next PPL revision.

Effective sanctions and enforcement systems



- Ensure an overall, comprehensive, and consistent treatment of fraud and corruption matters throughout the legislation, regulation, and procurement documentation, and ensure that it is applied in practice.
- Improve the regulation on keeping records and reporting corrupt practices to define more clearly types of corrupt practices and the reporting process and to improve the quality of information recorded.
- Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report on cases of corruption and other malpractice and strengthening working relationship among the relevant agencies (DPPP, APC, Prosecutor's Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.
- Develop a system to ensure effective and consistent application of legal provisions on suspension/debarment. This includes developing and regularly updating publicly available lists of debarred entities and introducing procedures and infrastructure to ensure automatic and transparent debarment of entities from relevant lists.
- Systematic action should be taken to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacity and integrity of law enforcement agencies, and raising public awareness and support.

Anti-corruption framework

- Review factors that help preventing corruption and improve them, both in the legal framework and practice. This can include campaigns targeting the youth and the mid-level career officers demonstrating how corruption robs them of the opportunities that other fellow Europeans enjoy, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it.
- Ensure that statistics on corruption related legal proceedings and others are compiled and published.
- Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the EPPS.
- Incorporate public procurement integrity training session in the public financial management training program or as a standalone program delivered on regular basis.

Stakeholder support to strengthen integrity in procurement

- Strengthen capacity of CSOs to exercise social audit and control in procurement through training, coalition building, stronger support from international partners, and stronger collaboration with government and private sector. Improvements need to be made to foster CSOs' participation in drafting bylaws, strengthen cooperation and consultation between the state institutions and civil society, and improve free access to information.
- Strengthen capacity of private sector to improve integrity in public procurement. Chamber of Commerce and DPPP should work together to promote adopting internal compliance measures by business entities to support integrity and ethical behavior in public procurement.

Codes of conduct/codes of ethics and financial disclosure rules

- Consider developing codes of conduct / codes of ethics applicable to staff and officials working in PFM area.



- Ensure provisions on penalties for non-adherence to financial disclosure rules are included in relevant regulation.
- Consider expanding accountability provision to cover all involved in procurement activities and decisions.
- Ensure provision of regular training on ethics. Such training can be jointly organized by APC and HRMA or DPPP. The Chamber of Commerce and DPPP should work together to establish regular training programs on-anticorruption and integrity for business entities.
- Ensure that conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

Table 27. Summary of Substantive Gaps and Recommendations for Indicator 14

Substantive gap		Risk and red flags	Recommendations
Sub-indicator 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties			
14(a)(a)	Absence of clear definitions of fraud, corruption, and other prohibited practices in procurement creates legal ambiguities, thus preventing effective compliance and sanctions.	High and a red flag	Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement to PPL and relevant bylaws (such as procurement manuals) ensuring consistency with the definitions provided in the Law on Prevention of Corruption. Related to this, clarify and better define the “anticorruption rule” and “anti-corruption clause.”
Sub-indicator 14(c) Effective sanctions and enforcement systems			
14(c)(b)	Despite the normative/regulatory framework in place, the system of reporting corruption in public procurement is not effective in practice.	High and a red flag	
14(c)(d)	Available evidence and reports suggest very poor enforcement of laws on corruption, fraud, and	High and a red flag	Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report on cases of corruption and other



other prohibited practices.

malpractice and strengthening working relationship among the relevant agencies (DPPP, APC, Prosecutor's Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.

Sub-indicator 14(d) Anti-corruption framework and integrity training

14(d)(a)	Anti-corruption framework is not effectively implemented and corruption measures for public procurement are perceived as ineffective by the private sector.	High and a red flag	Systematic action should be taken to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacity and integrity of law enforcement agencies, and raising public awareness and support.
14(d)(d)	There is no special mechanism in place for detecting and preventing corruption in procurement.	High and a red flag	Review factors to help preventing corruption and improve them, both in the legal framework and practice. This can include campaigns targeting the youth and the mid-level career officers demonstrating how corruption robs them of the opportunities that other fellow Europeans enjoy, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it. Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system.
14(d)(e)	There is no dedicated and regular training program on integrity in public procurement.	High Red flag	Incorporate integrity training session in the public financial management training program or as a standalone program delivered on regular basis.

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

14(g)(a)	There is no legal requirement of practices of adopting codes of conduct of ethics in the	High and a red flag	Consider developing codes of ethics applicable to staff and officials working in PFM area.
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areas of PFM or procurement.

- | | | | |
|----------|--|-------------------|---|
| 14(g)(e) | There is no established procedure or practice to capture information on beneficial ownership. Data on conflict of interest and financial disclosures is not systematically used for decision making. | High and are flag | Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle. |
|----------|--|-------------------|---|

Source: Assessment team.

4. Consolidated Recommendations

➤ Improve Competition

Carry out an in-depth study of existing specific legislation, licensing, standards, and other requirements which might impact the competition in public procurement. Analyze the introduction of lists of approved economic operators (i.e., prequalified) in key sectors and the potential for aggregation of procurement demand to enhance competitiveness and achieve economies of scale. Analyze the reasons for cancellation to identify the appropriate measures to improve performance at system level and at sectoral or category level.

Improve dialogue between economic operators and line ministries to learn more about the issues which prevent economic operators from taking part in public procurement processes. Develop tailored capacity building programs for economic operators to increase capacity to compete in public procurement.

Publish procurement plans early in the planning process, improve portfolio planning and carry out market engagements to increase transparency of the procurement activities and facilitate the understanding of interested parties, including the civil society and the economic operators.

Directorate for Public Procurement Policy (DPPP) to promote the use of all available procurement procedures, inform about their advantages and disadvantages, as well as provide practical examples to encourage authorities to be more open to their application. Implementation of those procedures in pilot projects of complex sectors or procurements may provide insights into how they could work in the Montenegrin environment and result in increased competition levels in the long term.

➤ Legislation and Strategy

The legal framework should be amended to include: (i) process for reaching decisions on administrative debarment as well as other legitimate exclusions (e.g., prohibition of commercial relations by law, adherence to UN Security Council or international agreements that limit participation to members of the



agreement.)

Public Procurement Law (PPL) should further develop and define functions and responsibilities for managing contracts.

There should be established security protocols to protect records (physical and/or electronic).

The regulations would need to be consolidated as a set of regulations readily available in a single accessible place and the DPPP should elaborate a single users' manual.

The legal framework should allow for challenging award decisions for simple procurement.

Develop a sustainable public procurement (SPP) strategy as part of the Public Procurement Action Plan for 2023-2025.

➤ **Access to Public Procurement and Procurement Planning**

Consider carrying out a wide-ranging review of the barriers that prevent economic operators' access to the procurement market. The analysis shall go beyond public procurement to look at the different other legislative frameworks applicable to all economic operators or in a specific sector. The said analysis would as well help identify the most appropriate procurement approaches to contemplate.

Consider introducing a requirement and provide tools and templates to support needs analysis and market research and define optimal procurement strategy based on the value and complexity of the procurement and define best practices. Contracting authorities (CAs) should be encouraged and supported to conduct market research in all cases and market consultations in specific, complex cases, not only to document price estimates, but to ensure that the specifications are clear and that the market is able to respond to the procurement requirements. When used appropriately, market consultations have proven potential to enhance value for money, promote professionalism, support innovation, increase competition and reduce the risk of complaints and corruption.

Carry out analyses at system level of the modification of the total procurement budget against the procurement plan (actual vs. initial estimate) to understand the reasons for which procurement budgets are significantly increased during the course of the year. Similarly, this might reveal if the same is an isolated matter or if it is a systemic issue.

Review procurement categories at system level to help define priorities (for example, centralization of purchases) and determine the appropriate procurement strategy. This type of assessment should also identify capacity and additional resources required.

Use e-procurement data (i.e., by estimating the supply positioning matrix) to highlight the sectors where procurement risks are the highest, and that would therefore benefit from a collaborative approach between the private and the public sectors. The analysis of the e-procurement data shows that there is great potential to conduct sector analysis to inform procurement and sector strategies. The supply positioning matrix is a useful tool for such analysis as it would inform where market consultations are most relevant.

➤ **Guidelines and Bidding Documents**



Develop standard tender documents, including standard contract conditions, for each type of contract to ensure the predictability of applicable terms and conditions and a balanced approach in the allocation of rights and obligations between the parties. A suitable set of contractual conditions would offer a mechanism for dispute resolution, payment terms in line with national provisions, and instruct when and how contract amendments should be made. The tender documents may be supplemented by technical notes and instructions on how to prepare them, in particular, on setting qualification, selection, and award criteria, technical specifications, minimum set of contractual conditions, and different templates to be filled in by the bidders (technical and financial offer, as a minimum). Additional sets of standard tender documents for the most frequently purchased items are also recommended.

The DPPP is advised to develop guidance and tools to conduct market research and consultations, to explain what each would entail and to present their benefits and best practices in addressing the market.

Promote the use of different modalities of procurement procedures, such as competitive dialogue, competitive negotiation or the partnership for innovation, their advantages, and disadvantages, specifying practical examples that would promote greater openness among authorities and implement pilot projects in complex sectors or procurements.

Review/amend/supplement guidance on establishing the estimated value of the procurement, including the immediate consequences of the artificial split of contracts, which may help reduce the total value of direct purchases.

Consider moving away from the lowest-price method towards inclusion of qualitative criteria to focus on the merits of the technical offer and its intended benefits rather than on the price only. Life-cycle costing is one of the most used factors that may be considered by contracting authorities and that promotes, as well, sustainable procurement. Its implementation would involve issuance of guidance, methodologies, and training in various sectors. DPPP should monitor the trend in using qualitative criteria, over time, and work to augment their application.

➤ **Electronic Procurement System**

Upgrade the functionalities of Electronic Public Procurement System (EPPS) to capture, contract management, payment procedures and contract management data.

Development of an E-procurement Strategy

Enhance the interfaces and interoperability of EPPS with the supporting government services to facilitate the efficiency and consistency of data, particularly with the **central register of companies**, tax, budget/treasury authorities, and banks

Enhance capacities of DPPP to ensure business continuity.

Enhance data analytical feature for the EPPS.

Based on a spending analysis of Contracting Authorities, the Ministry of Finance (MoF) should review the list of activities under centralized procurement to enhance the efficiency of centralized purchasing.

➤ **Sustainable Procurement**

Develop an SPP strategy as part of the Public Procurement Action Plan for 2023-2025. Work with the private sector to ascertain readiness of the market to respond to sustainability requirements. Monitor



bidding documents to inform the development of instructions and methodological guidance combined with key performance indicators (KPIs); implement pilot projects, extensive training, and promotion of the approach among CAs and encourage hands-on activities to illustrate how to establish criteria.

Include sustainability considerations in the standard contract conditions and monitor their application over time, in particular ensuring coverage of green procurement, social inclusion of people with disabilities and promotion of enterprises for social economy and energy efficiency in procurement.

Development of policy documents and guidance on sustainable procurement and adoption of dissemination and communication plans should be considered by DPPP, in collaboration with other institutions in accordance with their specific attributions. The DPPP should include sustainability considerations in the standard contract conditions and monitor their application over time.

➤ **Capacity Building and Professionalization**

The legal framework on civil servants and state employees includes provisions to ensure that procurement is recognized as a specific profession and establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.

Incorporate integrity training session in the public financial management training program or as a standalone program delivered on a regular basis.

Elaborate as part of the training program also the system for evaluation of trainings conducted and analysis of feedback to inform the preparation of training program for the upcoming year.

Tailor training programs in key sectors that could be drawn based on a needs assessment with the view of increasing the participation in public procurement. This could be part of a wider training strategy plan that would target all stakeholders of the public procurement system, according to the mandate and needs.

Perform training programs dedicated to civil society to raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists, and journalists to monitor procurement procedures. Organize regional seminars and roundtables bringing together the civil society and the local government to explore practical issues faced by local authorities when conducting public procurement.

➤ **Strengthen Contract Implementation Function**

Make available additional guidance to contracting authorities on measurement of results based on quality, time and price, stakeholders' management, risk management and remedial actions to improve internal processes. Issue instructions on how to conduct the evaluation of performance at procurement portfolio level, and its benefits, to document lessons learned and define measures for improvement.

Evaluate and plan internal resources of contracting authorities to ensure appropriate expertise for contract supervision and performance evaluation of the contractor.

Develop further the template report on contract implementation to include aspects which would allow evaluation of the effectiveness of contract management of all main contract provisions: quality, quantity, price, place and time.



Capture all relevant information in the e-procurement or the interconnection of the system with any existing databases or structures in order to identify any systemic issues and the associated measures to Improve contract implementation.

Publish, systematically, summarized reports that would show the efficiency and effectiveness of the public procurement system, on the entire procurement cycle, to foster increased transparency and trust.

➤ **Monitoring and Oversight**

Ensure regular control and consultative hearings on State Audit Institution (SAI) reports. Based on the outcome of such hearings, develop more substantive parliamentary conclusions in relation to the implementation of SAI recommendations.

SAI should start conducting specialized procurement audits and performance audits focused on public procurement. Continuity of such audits should be ensured to enable effective implementation of the audit recommendations. Consider developing a procurement audit manual specific to the country.

➤ **Complaint Review Mechanism**

Consider introducing provisions in the PPL and/or Procurement Manual and the Appeals Body's Book of Rules dealing with the basis for the Appeals Body's decision making. Include specific provision in the PPL dealing with binding nature of decision and introduce an appeal mechanism for simplified procurements. Improve the capacity and transparency of work of the Appeals Body and sensitize the private sector.

Define in the law procedures for submission and resolution of complaints, namely request for review procedures, and publish them in an easily accessible manner (i.e., online, for example, on EPPP or DPPP website.)

➤ **Anticorruption and Ethics**

Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement in relevant bylaws, and in procurement manual, ensuring consistency with current definitions provided in the PPL and the Law on Prevention of Corruption.

Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report cases of corruption and other malpractice and strengthening working relationship among the relevant agencies (DPPP, APC, Prosecutor's Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.

Take systematic action to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacity and integrity of law enforcement agencies, and raising public awareness and support.

Review factors to prevent corruption and improve them, both in the legal framework and in practice. This can include campaigns targeting the youth and mid-level career officers displaying how corruption deprives them of opportunities, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it.



Develop an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Several can be embedded in the e-procurement system.

Develop codes of ethics applicable to staff and officials working in public finance management (PFM) area. Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report cases of corruption and other malpractice, and strengthening working relationship among the relevant agencies.

➤ **Transparency**

Ensure that conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

Encourage and support participation of CSOs and their watchdog function as well as citizen's participation. Consider introducing provisions on CSOs' role and participation in the procurement system as part of the next revision of the PPL.

Conduct a review of the reasons for contract amendments and verify if these were made in accordance with the legal provisions. Make public the information on contract amendment and issue regular reports and statistics on the number, value, and scope of contract amendments to help address the issue of trust as described by the private sector. Consider the use of e-procurement system to gather data.

5. Strategic Planning

The set of consolidated recommendations above, which respond to the findings of the assessment and the results at the level of sub-indicators reveals the major areas of strength and weaknesses of the public procurement system in Montenegro. Those recommendations serve as overall guidance for crafting elements of a phased, multiyear strategy to address the strategic planning process. The Table 3 on the overview assessment sets up each of the substantive gaps and red flags per pillar, which shall inform the strategic planning. Pillar I and Pillar II, Legal, Regulatory and Policy Framework and Institutional Framework and Management Capacity, respectively, account for 57% of the substantive gaps of the assessment, while Pillar IV, Accountability, Integrity, and Transparency of the system comprises 25% and Pillar III, Public Procurement Operations and Market Practices constitutes the remaining 18% of those substantive gaps summarized as below:

Pillar I. Legal, Regulatory and Policy Framework

The scope of the PPL excludes simple procurement of goods, services and works with an annual estimated value up to 8,000 euro and goods and services with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 25,000.00 euro; works with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 40,000.00 euro. When added, simple procurement may represent a rather significant value of overall public procurement expenditures, and as such, it merits inclusion within the PPL. Potential use of e-catalogues can be considering for simple procurement.



Likewise, the legal framework should be amended to include a process of reaching decisions on administrative debarment as well as other legitimate exclusions (e.g., prohibition of commercial relations by law, adherence to UN Security Council or international agreements that limit participation to members of the agreement.)

Contract management in its full range is not defined either in the PPL or subsequent by-laws. The existing regulation is insufficient to cover the full contract management cycle including functions and responsibilities for managing contracts, monitoring of contract performance clauses designed to ensure social or environmental standards, or issues associated with management of disputes, inspection, quality control, supervision of work and final acceptance.

There are important gaps as regards model procurement documents, major among them the lack of standard conditions of contract that were compulsory prior to 2019 when PPL amendments eliminated the crucial requirement. Equally important is a comprehensive set of user's guide or manual for procuring entities that would cover operational aspects of the procurement process that is also lacking. And, albeit Public Procurement Strategy aiming to promote green and sustainable procurement, there is no evidence that Montenegro has a sustainable public procurement strategy.

Pillar II. Institutional Framework and Management Capacity

On the topic of Procurement planning and the budget cycle, there are no effective controls to ensure that all commitments are systematically captured in the FMIS and, as a result, CAs may exceed the budget amount if incurring commitments in excess of funds warranted to them. Reliance on centralized procurement should increase and efficiency enhanced under the auspices of a dedicated Central Purchasing Body with diverse core functions and managed independently from public existing institutions.

E-Procurement is fundamental to the efficient and effective functioning of Public Procurement. Functions from support to the development and the review of model procurement documents and standard contract conditions to facilitating contract implementation, such as publication of progress reports, billing and payment information, are all core to a rigorous e-procurement system and should be added. Despite system's benefits, EPPS full reliance on an outsourced firm for all technical issues represents a potential risk. There should be a specific e-procurement strategy, and support to open data standard and data analytics features.

The assessment uncovered substantive gaps under organization, funding, staffing, level of independence and on the capacity of the procurement system to develop and improve. Additionally, procurement is not recognized as a profession and there is no evidence of job categorization and career path or that career development is based on performance. And on the topic of keeping track of execution, there is a lack of a comprehensive data capture and performance measurement system with set indicators that would focus on both qualitative and quantitative aspects integrated with the EPPS and that is followed and reported by each CA.

Pillar III. Public Procurement Operations and Market Practices.

Despite constituting the smallest share of the substantive gaps, it is Pillar III that explicitly assesses whether the PPS furthers competition. To that end, it is important to note, however, that several of the substantive shortcomings under all four pillars (rather than those under Pillar 3 only) are closely associated with barriers to **competition**. The shortcomings include, among others, opaque rules of



participation, evaluation, and award criteria, absence of model procurement documents and standard contract conditions. The single bid rate increased from 60% in 2021 to 71% in 2022 while the average number of bidders per lot decreased from 1.7 to 1.5. Market research and market consultations are rarely carried out, being conducted in case of new or complex procurements which are not known to the contracting authority. Although tender documents are publicly available, their quality and lack of predictability in terms of applicable contract conditions and the high percentage of potential bidders who decide not to apply due to problems with the tender documents are issues which require further investigation by the Montenegrin Government. Additionally, the highly complex administrative process during contract execution and the delays in payments are key obstacles that may explain the low competition levels. Legal gaps hamper citizen engagement in public procurement despite the fact that their engagement would enable a more transparent and consultative process. Under accountability, integrity and transparency, the private sector reported not seeing the appeals system as fair and trustworthy or consistent.

Pillar 4. Accountability, Integrity and Transparency

The PPL and relevant bylaws do not provide a clear definition of fraud, corruption, and other prohibited practices in procurement. There is little evidence that the system for reporting corruption in procurement is effectively applied. There are reports of cases of such violation in practice and no single case of corrupt practices was reported to DPPP in 2022. Reports and feedback from SCO point to poor enforcement of laws on fraud, corruption and other prohibited practices, as well as a lack of a credible criminal justice response, in particular in relation to investigations, prosecutions and final convictions on high-profile corruption.

The institutional framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government does not appear to be effective when it comes to corruption in public procurement. There is no legal requirement for CAs to have a mandatory code of conduct in areas of PFM or procurement and the Government's Code of Ethics for Civil Servants and Employees does not apply to PFM or procurement reporting to central government. There is no established procedure or practice to capture information on beneficial ownership. There is no system in place to ensure that the data from CPA's registries on conflict of interest and financial disclosure are systematically used by decision makers.

Slow resolution of appeals and overall negative perceptions of the private sector of the appeals system erodes effectiveness and trust to the appeals system. A comprehensive functional review of the Appeals Body operations should be conducted to determine organizational and capacity gaps and identify measures to improve its performance. Capacity and transparency of work of the Appeals Body should be improved and the private sector should be sensitized of the Appeals Body work. The Appeals Body should strive to achieve a 100% resolution of cases within the legal timeframes.

The proposed planning process covers a period of 5 years (2024-2029) and considers the prioritization of actions into three levels (i) immediate actions- within 2024 (ii) short term (2025-2026) and (iii) medium to long term (2027-2029).

Prioritization exercise for selected topics that resonate through the findings of the assessment as requiring immediate attention (FY2024), are related to legal, regulatory and policy framework, and strengthening contract management function. and the efficiency and effectiveness of the control bodies.



During the period 2025-2026 the government could tackle enhancement of the e-procurement system, production of User's guide or manual for procuring entities, address simple procurement shortcomings, enhancing the efficiency of centralized purchasing and address competition challenges.

During the medium to long term period capacity development and professionalization in public procurement, and monitoring performance to improve the system, competition challenges and ethics and anticorruption measures can continue to be further addressed.

The identified areas of improvements in respective Pillars have informed a detailed set of actions that contribute to achieving five key Strategic Objective:

Strategic objective #1. Ensure that the public procurement legal framework achieves the agreed principles and complies with applicable obligations.

The legal framework should regulate rules of participation in the public procurement market to serve as a framework that battles any barriers to participation such as national licensing. Excessive bureaucratic requirements that impose constraints for participation of foreign bidders should be examined and streamlined or eliminated entirely. To expedite registration to EPPS, digital certificates should be processed to both national and international potential bidders. Additionally, the Law should spell out the eligibility requirements and exclude bidders with history of criminal or corrupt activities. Issues of confidentiality and exclusions to the scope and application of the law must be properly addressed. The legal framework needs to strengthen contract management, allow appeals for simple procurement and reaching decisions on administrative debarment and other legitimate exclusions or international agreements.

Strategic objective #2. Enhance EPPS capabilities and its impact on public procurement efficiency.

Current challenges of the system can be addressed by prioritizing the interventions required. Most crucial is developing IT expertise within DPPP ranks to lessen dependency on external contracting agency while ensuring the establishment of a business continuity team, followed by enhancing the functionalities of the EPPS to capture payments, and support publication of crucial information, such as, evaluation reports and contract management data. Regular high-quality reporting of system performance is an important step, which also needs a strong, strategic overview that focuses on evidence of what is being achieved through public procurement and what scope there is to achieve more. The development of the monitoring mechanism, based on a system of performance indicators and interconnection of data sources will strengthen DPPP's monitoring function. A thorough review of the different practices at system level, in specific sectors or authorities will provide insights into potential ways to increase efficiency. Conducting spend analysis at country level to identify the most appropriate procurement strategies for different procurement categories will also inform the development of centralized procurement with a focus on revamping its capabilities and efficiency.

Strategic objective #3. Strengthen competition in public procurement by resolving perceptions of collusion, lack of predictability of applicable contract conditions, lack of transparency and openness.

Competition levels are low in Montenegro and addressing anticompetitive practices calls for a set of measures ranging from examination of high entry barriers to determine whether they can be eliminated, fostering a regulatory environment that promotes competition in certain key sectors, for example licenses and standards requirements, and moving from qualification criteria and/or requirements designed to



favor certain firms, as noted by the survey respondents. The analysis of EPPS data indicates that this issue of low competition may be beyond the powers of Contracting Authorities and that the Government of Montenegro should support Contracting Authorities by developing national, regional, or sectoral programs to enhance trust in the public sector, in an effort to foster private sector participation. Additionally, the entire procurement process merits revision and completeness; from the planning process, commencing with the assessment of the needs, the market, the sectors, and the capabilities of those carrying out procurement work to strategies for contracting. Procurement documentation must include all related information that potential bidders would need to be fully informed in advance, including the contract conditions. Contract management practices need to be recorded, monitored and reported consistently.

Strategic objective # 4. Impulse professional development and continuous capacity building of key stakeholders.

Capacity building and professionalization of public procurement requires a broader and more inclusive outlook that would embrace, in addition to civil servants, private sector, non-governmental organizations, and civil society for a more efficient public procurement system and to contribute to improved monitoring of public procurement market. It is essential to professionalize public procurement and recognize it as a specific function, with procurement positions defined at different professional levels and job descriptions with requisite qualifications and competencies specified. Training should be adequate and available to procurement staff and line managers at CAs. Both workload and capabilities of staff must be measured and systematically evaluated.

Strategic objective # 5. Review of the efficiency and effectiveness of the control bodies, actively promote accountability, integrity, and transparency in the procurement process and streamline the control function.

The system of reporting corruption in public procurement as described in the normative and regulatory framework has yet to become fully effective in practice. Clear definitions of fraud, corruption and other prohibited practices in procurement should be inserted in relevant by-laws. There needs to exist a mechanism for detecting and effectively preventing corruption in procurement, because despite current framework, with responsibilities assigned to various government agencies, general private sector opinion about the effectiveness of anti-corruption measures is unfavorable. The legal regime should add a requirement or practice of adopting codes of conduct or ethics in areas of PFM or procurement. Encourage and support participation of CSOs and their watchdog function as well as citizens' participation.

As a first step in the implementation of the reforms in public procurement, the Government of Montenegro may consider the following proposed action to be included as part of the Strategy for Public Procurement and respective Action Plans. based on the priority level the proposed actions are categorized in three groups:

- (i) Immediate action within 2024
- (ii) medium term action within 2025-2026
- (iii) long term actions within 2027-2029.

Table 28: Proposed actions to implement the Strategic Planning of 2024 –2029



Proposed action	Priority Level	Responsible institutions	Timeline
Pillar I.			
The Public Procurement Legal Framework achieves the agreed principles and complies with applicable obligations			
The legal framework to include process for reaching decisions on administrative debarment and respective role of DPPP in conduction administrative debarment process	High	DPPP	2024
The legal framework further develops and define functions and responsibilities for managing contracts.	High	DPPP	2024
The rulebook that regulates simple procurement to ensure the protection of rights of participants in public procurement by including appeals for simple procurement	High	DPPP	2024
Review the current coverage of the procurement regulation and prepare a consolidated set of rules to cover the whole procurement cycle and complement with separate regulations specific processes. Elaborate guidance notes for Contracting Authorities on the use of different ratio of thresholds between price and quality considering the type of contracts and apply a differentiated ratio based on the features of works, goods or services contracts.	Medium	DPPP	2025-2026
Elaborate template of procurement for different types of procurements under works, goods and services and ensure the option of customizing based on different selection methods within this type of procurement documents. Templates would be supplemented with a minimum set of contract clauses or standard contract conditions for works, goods, and services consistent with internationally accepted practices.	Medium	DPPP	2025-2026
Develop a SPP strategy as part of the National Public Procurement Strategy and include relevant actions to implement SPP as part of the Public Procurement Action Plan for 2023-2025	Medium	DPPP	2025-2026
Pillar II. Institutional Framework and Management Capacity			
Conduct data analysis to identify opportunities for aggregation of demand and enhance the efficiency of centralized purchasing. Analyze the benefit of establishing a dedicated Central Purchasing Body outside existing public institutions which have diverse core functions of activities under centralized procurement in order to enhance the efficiency of centralized purchasing.	Medium	Ministry of Finance	2025 - 2026
Develop EPPS strategy to support open data standard and data analytics features, sustainability, capacity building for in-house expertise, communication, and governance frameworks.	High	DPPP	2024
Upgrade the functionalities of the EPPS to support publication of crucial information on the tendering and contract	Medium	DPPP	2025-2029



management processes, capture data on contract management, craft dedicated debarment, complaints and appeal mechanism sections, and enhance efficiency of centralized purchasing based on a spend analysis. Details are provided in the EPPS Module Assessment Report.			
Revision of the legal framework on civil servants and state employees includes provisions to ensure that procurement is recognized as a specific profession and establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.	Low	Ministry of Finance	2027-2029
Perform training programs targeted to private sector and civil society to raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists, and journalists to monitor procurement procedures.	Medium	DPPP	2025-2029
Develop a monitoring mechanism, based on a system of performance indicators and interconnection of data sources.	Medium	DPPP	2025-2026
Pillar III. Public Procurement Operations and Market Practices. Access to public procurement and enhance competition			
Perform wider review of the barriers which prevent economic operators to access the procurement market (survey with economic operators to address the entire market/per sector and an assessment of the existing specific sectoral legislation, standards and other requirements which impact the competition in public procurement.	High	DPPP and Contracting Authorities	2024
Conduct sectoral analysis to review procurement practices and competition levels (key contracting authorities, key procurement categories, etc.) and portfolio analysis and develop outcome-oriented procurement strategies (key contracting authorities).	High	DPPP and Contracting Authorities	2024
Conduct market engagement and market analysis at government level and with specific focus on complex projects.	Medium	DPPP and Contracting Authorities	2025-2026
Pillar IV. Accountability, Integrity and Transparency of PPS			
Conduct a comprehensive review of the Appeals Body to identify organizational and capacity gaps and identify measures to improve its performance.	High	CPRPP	2024
Review of the efficiency and effectiveness of the control bodies and, where needed, streamlining the control function	High	Ministry of Finance	2024
Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement to PPL and relevant bylaws, and a comprehensive list of prohibited practices (including coercive, obstructive and collusive	Medium	DPPP, Agency for Preventing Corruption	2025-2026
Develop an integrated anti-corruption strategy and allow the use of modern technologies in detecting corruption, of which, many can be embedded in the EPPS.	Low	DPPP, Agency for Preventing Corruption	2027-2029
Introduce requirement for Cas to have a mandatory code of conduct in areas of PFM or procurement Ensure that the Government's Code of Ethics for Civil Servants and Employees	Medium	DPPP, Agency for Preventing Corruption,	2025-2026



applies to PFM or procurement reporting to central government along with integrity training.		Contracting Authorities	
Provide training and guidance to staff on how to report on cases of corruption and other malpractice and strengthen working relationship among the relevant agencies (DPPP, CPA, Prosecutors Office, Inspection) including through e-links and incorporate procurement integrity training in the public financial management training program or as a regular standalone program	Medium	DPPP, Agency for Preventing Corruption	2025-2026 2027-2029
Amend Law on Free Access to information to enable unrestricted access to relevant public information, in line with the EU Acquis	Medium	DPPP	2025-2026
Strengthen capacity of CSOs to exercise social audit and control in procurement through training, coalition building, stronger support from international partners, and stronger collaboration with government and private sector.	Medium	DPPP, Agency for Preventing Corruption	2025-2026 2027-2029
Strengthen accountability by introducing periodic specialized procurement audits, ensure effective parliamentary oversight and follow up of SAI's recommendations. Prepare a procurement audit manual.	Medium	SAI	2025-2026 2027-2029

6. Validation

This assessment was launched on November 1, 2022. The fact-finding meetings were conducted on January 23-February 1, 2023. The annexes provide an overview of stakeholders that were interviewed during this mission, as well as a list of the most pertinent source documents consulted as part of the analysis.

Initial recommendations and findings were shared with the Directorate for Public Procurement Policy (DPPP) on November 21, 2023.

A validation workshop for procurement stakeholders was held on November 30, 2023. The organizations represented during the validation workshop included:

1. Directorate for Public Procurement Policy (DPPP)
2. Ministry of Finance
3. State Audit Institution
4. Administration for Inspection Affairs
5. Agency for Prevention of Corruption
6. Commission for the Protection of Rights in Public Procurement Procedures
7. Administration for Cadaster and State Property
8. Chamber of Commerce
9. Administration for Capital Projects
10. Ministry of Public Administration
11. Institute Alternativa (NGO)
12. Montenegrin Electric Distribution System – CEDIS
13. Ministry of Energy and Mining



14. Post Office of MNE
15. Investment and Development Fund
16. Secretariat of Prosecutor Council
17. EBRD
18. EIB

Stakeholders had the opportunity to share their comment during the workshop and in writing. Written comments were received from:

- DPPP
- Commission for the Protection of Rights in Public Procurement Procedures
- State Audit Institution (SAI)
- Administration for Inspection on Public Procurement

All comments were duly integrated in the report or addressed with a written response as specified in the minutes of the Validation Workshop.

The final version of the assessment was prepared in December 2023 and shared with DPPP for endorsement before continuing with the quality review process. DPPP endorsed the revised version of the MAPS report on January 12, 2024.

The report was submitted for MAPS Secretariat endorsement on March 14, 2024 and comments to the report were provided in May 8, 2024. The assessment team has provided a revised report to MAPS Secretariat on August 4, 2024. The revised report was endorsed by ATAG and no objection to publish the report was granted on September 3, 2024.



Annexes

Annex 1. Concept Note

Annex 2. Assessment Team

Annex 3. Letter of Request from the Government of Montenegro

Annex 4. Indicator Matrix

Annex 5. List of Documents Reviewed

Annex 6. Stakeholders Analysis and list of Stakeholders Consulted.

Annex 7. Minutes of the Validation Workshop

Annex 8. Sampling Methodology for Selected Contracts and Results of the Review

