



CONCEPT NOTE

Assessment of Montenegro Public Procurement System following MAPS (ID: P180121) Montenegro(EUROPE AND CENTRAL ASIA)

**BASIC INFORMATION****Activity Information**

Project ID	Product Line
P180121	Advisory Services & Analytics
Short Name	Full Name
Montenegro MAPS assessment	Assessment of Montenegro Public Procurement System following MAPS
Project Status	Completion Fiscal Year
Active	2024

Processing

Is this a Reimbursable Advisory Service (RAS)?

No

What kind of task description is needed?

Concept Note with a Review (Track 2, including Programmatic and Core/Extended core)

Is this a Programmatic activity?

No

Is this a joint Bank-IFC activity?

No

Accountability

Region	Country, Regional or World
EUROPE AND CENTRAL ASIA	Montenegro
Requesting Unit	Team Leader
ECCWB(7001)	Tanvir Hossain, Orjana Ibrahim
Responsible Unit	
EECRU(9295)	
Practice Area (Lead)	Contributing Practice Areas
Governance	Macroeconomics, Trade and Investment





CONTEXT : STATEMENT OF PROBLEM

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I. Context (Brief description of context)

Country context

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 population is about 622,000 and is aging and shrinking. Nearly 25 percent of the population live in the capital, Podgorica, while 40 percent live in rural areas. In 2021, Montenegro's gross domestic product (GDP) per capita was US\$9,367, while its GDP per capita in purchasing power standards was 47 percent of the EU average.

Economic overview

During 2015-2019 Montenegro's economy grew strongly, primarily supported by robust investment in infrastructure, tourism, and energy. Between 2015 and 2019, the GDP grew at an average annual rate of 4 percent, reaching 5.1 percent growth in 2018, the strongest in a decade. 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. Supported by booming tourism, increased lending, and buoyant labor market conditions, private consumption has grown significantly, averaging 4.6 percent annual growth over the period of 2015-2019. Montenegro's employment rate increased from 44 percent in 2015 to a record high of 49 percent of the working-age population in 2019. The unemployment rate declined to a record low of 15.1 percent in 2019 and youth unemployment fell for the first time to 25 percent. As a result, the poverty rate, measured as income per capita below US\$5.50 per day in revised 2011 PPP, fell from 20 percent in 2013 to 14.7 percent in 2019. Rural and low-income households were also able to benefit from this boom period. The income of the poorest 40 percent of the population grew by an annualized average of 4.7 percent between 2013 and 2017, higher than the income growth of 3 percent for the whole population

The strong economic growth between 2015-2019 was reversed by the COVID-19 crisis, which has exposed and exacerbated Montenegro's vulnerability to shocks. Montenegro was among the hardest hit countries by COVID-19 in the world. This health crisis affected emerging markets through multiple channels including underutilization of human and physical capital, lower commodity prices, a drop in tourism, capital outflows, credit rationing, and high uncertainty. Montenegro was particularly affected by the sharp decline in tourism, a critical driver of growth, with tourism receipts accounting for a quarter of GDP. At the same time, lack of monetary policy, limited fiscal buffers, and high public debt amplify the country's vulnerability to external shocks.

While still recovering from the pandemic, the economy is facing renewed headwinds. Growth remains very strong, estimated at 6.9 percent in 2022, led by private consumption and a tourism recovery. Inflation surged to new highs, but its adverse impact on the cost of living was largely mitigated by an increase in real disposable income. In the first eight months of 2022, inflation averaged 11 percent, peaking in August at 15 percent. The fiscal deficit is estimated to widen to 4.9 percent of GDP in 2022, due to the forgone revenues of the recent tax reform and increased social spending. The labor market shows continuous improvement with a 30 percent increase in employment in Q2 2022. The activity rate rose to 59.5 percent in Q2 from 46.8 percent a year ago, while in the same period the unemployment rate fell to 14.6 percent from 17.1 percent in Q2 2021. Growth is expected to moderate to 3.4 percent in 2023 and further to 3.1 percent in 2024, as private consumption growth slows. The fiscal deficit is projected at 4 percent of GDP in 2023 and 2.7 percent of GDP in 2024, unless additional



measures compensate for the decline in revenues as a share of GDP. As a result, public debt is expected to stay high at 73 percent of GDP.

Governance

Governance and institutional weaknesses more broadly continue to hinder the necessary reform policies to reduce the Montenegro's vulnerabilities. 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. Yet, translating the new framework laws into effective implementation is lagging. This continues to be a challenge due to the instability of the government - the government collapsed twice in 2022, the second one in August. 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. Moreover, the political environment is characterized by high polarization which makes it more difficult to reach consensus and build more inclusive institutions.

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". 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.

Montenegro's constitutional and legal framework is designed to ensure independence of the State Audit Institution (SAI), in line with the INTOSAI standards. The SAI's first performance audit was published at the end of 2014. The SAI has improved its institutional capacity in terms of management and auditing staff and is implementing its 2018-2022 strategic development plan. Most of its auditors are certified and have access to internal and international training, including quality control and assurance, ethics and integrity, according to an adopted training catalogue. The rulebook on the procedures for taking the exam of state auditor was amended in September 2020 and the manuals for preparing the exam were updated. In 2020, the SAI adopted a human resources management strategy and an action plan for the period 2021-2025. On the impact of audit work, SAI reports are public and its cooperation with media and nongovernmental organizations is improving. However, the implementation of its recommendations needs to improve. The Government set up a formal mechanism to follow up on external audit recommendations, but it lacks transparency, and no time limits are in place for addressing weaknesses. Parliament's capacity to ensure effective scrutiny over the whole budgetary process, including SAI audit reports and recommendations, needs to be improved.

Internal audit is governed by the Public Internal Financial Control (PIFC) Law, in line with the international standards. Montenegro's strategic framework for PIFC is partially in place. Reforms for governance and internal controls are embedded in the public financial management (PFM) and public administration reform (PAR) strategies, with new strategies elaborated for the period 2022-2026, but still pending adoption. The legislative and operational framework for internal control and internal audit is in place, covering also local government entities and state-owned enterprises. The government adopts annual reports on the implementation of the PFM and PAR strategies, as well as annual consolidated reports on governance and internal controls in the public sector of



Montenegro. Internal audit rules, standards and practice are in line with international standards. A vast majority of institutions at central and local level have established an internal audit unit. Those who have no separate internal audit unit, in accordance with the Law on governance and internal controls in the public sector, benefit from supervision by other units, so that full budget coverage is ensured. The 2014 law on budget and fiscal responsibility provides for a centralized budget inspection function to act on reports or suspicions of fraud and corruption in financial management. However, the positions in the budget inspectorate have been vacant to date.

Public Procurement Framework in Montenegro

Procurement reforms: The Public Procurement Law (PPL) was adopted on 17 December 2019 and its implementation began on 7 July 2020. It was adopted with the aim of further harmonization with the EU Directives within the accession negotiation process between Montenegro and the EU, in particular with Directives 24 and 25, which were significantly amended in 2014. However, up until 2019, public procurement reform process in Montenegro have been a continuous process of back and forth, with no major breakthrough. Amendments to the Public Procurement Law adopted in 2015 made a good bases for enhancing reforms (as assessed by the European Commission, SIGMA and domestic civil society), but those made in 2017 reversed the process completely, while constituting severe backsliding in terms of transparency and competitiveness. These amendments, among other, introduced insufficiently regulated emergency procedures and absolute discretion with regard to low-value procurement (below 20.000 EUR for goods and services and 40.000 EUR for goods).

The 2013 public procurement spending records the lowest value (€ 277,001,460) while 2019 public procurement spending (€608,224,346.95) remains the highest marked in Montenegro since 2007 (when the country became independent), with the lowest competition (2.01 bids per tender). One quarter of procurement value was allocated without competition (single-bid tenders).

Public procurement reforms in Montenegro as assessed by the European Commission¹ - after marking “good progress” in 2015, the Commission assessed Chapter 5 with “limited progress” in 2016, “backsliding” in 2018, then again “limited progress” in 2019 and 2020. Only for the last two years this assessment improved again with “good progress” marked in Chapter 5.

Institutional framework. The Directorate for Public Procurement Policy of Montenegro (DPPP) under the Ministry of Finance is responsible for procurement legal framework and policies in Montenegro.

DPPP is also in charge with the administration of the newly established e-procurement system as well as with implementing training programs and the examination process of public procurement officials. Procurement is monitored by contracting authorities, the Ministry of Finance (through DPPP) and the State Audit Institution. The Administration for Inspection Affairs is performing inspection control, whereas the Commission for Protection of Rights in Public Procurement Procedures is in charge with solving complaints on public procurement procedures. An administrative dispute may be initiated against a decision of the Commission, however this does not have suspensive rights. Although an Anti-corruption Agency is in place which is also in charge with assessing the conflict of interest situations in public procurement, their role is quite limited to notifying other competent bodies of the judicial system.

¹ <https://institut-alternativa.org/en/the-european-commission-report-political-instability-and-tensions-halt-reforms/>



The public procurement system in Montenegro is decentralized and contracting authorities conduct the procurement processes in line with the provisions of the procurement legislation through the e-procurement system. One centralized procurement is established within the Administration for Cadastre and State Property and is in charge with centralized procurement of specific goods and services for the central administration.

Legislation and strategy. Several enhancements to the Public Procurement system in Montenegro have been made over the past couple of years. In July 2020, the government adopted a new Procurement Law with several bylaws, which is well-aligned aligned with the EU acquis (European Directives for public procurement). 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. 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; 3) life-cycle cost.

The Directorate for Public Procurement Policy of Montenegro is currently in the process of adopting amendments to the procurement law in order to further harmonize the legal system with EU Directives. These amendments are expected to be adopted by the Parliament by the end of 2022.

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 e-procurement system, which includes 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.

E-procurement and data. A major element of this reform was the implementation of the e-Procurement system which was funded by the European Commission via IPA funds and is currently managed by DPPP. It has been operational since January 1st, 2021 and covers all processes of procurement except direct agreements (below EUR 5000) and all main stages of the procurement process i.e. planning, publishing of SPDs, amendments to SPD, submitting bids electronically, publication of award. The system also serves as a monitoring tool and has already started producing some data. The system has some modules for contract performance, as Contracting Authorities need to provide information regarding when the contract is finished or amendments are done (value or other legal aspect of the contract), but this functionality needs further improvement.

By June 2022, all 662 contracting authorities and 3,687 economic operators were registered in the new e-procurement system. According to the DPPP report based on the e-procurement data, the total public procurement spending managed by the contracting authorities in 2021 amounts to EUR 182,720,939.72 (without direct agreement) as follows: goods - EUR 105,748,013.4, services – EUR 31,609,982.77, works – 45,362,943.57. The total number of awarded contracts is 4,523 contracts. Direct agreements in 2021 amounted to EUR 36,959,173.62 which means almost 17% of the overall public procurement spending. It should be noted that 2021 was an atypical year as the budget was approved very late (mid-2021) and Covid pandemic was still ongoing.

Regarding centralization, Montenegro increased efficiency in public procurement through centralization of 10



commonly used goods and services for all government agencies, however, the share of contracts awarded through centralized purchasing was only around 2% of the overall procurement spending in 2021. The objective in the Strategy is to increase this share to 5% by 2025. The Strategy also aims at creating standards for women-owned business and women-led business so that the e-procurement system can distinguish which firms are women-owned.

Public Procurement shortfalls in Montenegro

The latest report from the European Commission, issued in October 2022, includes an assessment of the requirements of Chapter V – Public Procurement, and under which, the EC judged that Montenegro is “moderately prepared” on Public Procurement, but that overall, good progress was achieved in 2021. The priorities identified by the report refer to the need to further improve the functionality of the e-procurement system and its interoperability with state administration registers, such as the electronic registers of the Ministry of Justice and the Revenue and Customs Administration, and to ensure that EU public procurement rules are observed in all cases. The report also highlights the fact that the high number of contracting authorities remains an obstacle to the overall efficiency of the procurement system and that there is a need to strengthen the capacity of smaller municipalities to conduct larger and more complex public procurement procedures, including under EU-financed projects.

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 undermine level playing field.² 45 percent of the contracts awarded through the e-procurement portal in 2021 only received one bid. While receiving a single bid could be attributed to insufficient number of bidders acting on the Montenegrin market, it could also indicate 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, which may indicate a lack of transparency in the bidding procedure and should be subject for further analysis.

Competitively negotiated contracts without prior publication accounted for 13 percent of the total value of public procurement in 2021. Key data on Montenegrin public procurement in 2021 is captured in the below table.

Type of procurement procedure (Figure A) ³	Percent of the published contracts	Percent of the total value of awarded contracts	Average contract value
Simple procurement (contracts with low	63 percent	20%	9,947 Euros

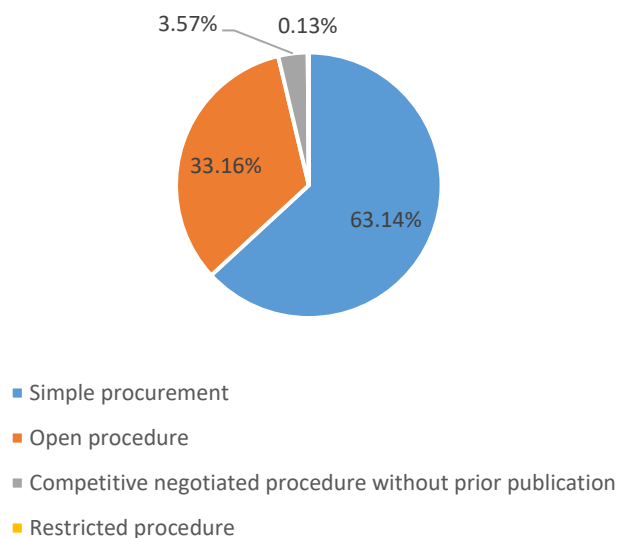
² The indicators for non-competitive procurement practices, such as single bidder, short advertising period, and number of bids won by a single firm are based on the work of Fazekas and King (2019). These indicators that can signal lack of access to public procurement market and undermine competition.

³ 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.



value, below the thresholds regulated by the procurement law)			
Open tender	33 percent	66% (two thirds)	71,358 Euros
Restricted tender	0.1 percent (5 contracts)	0.2%	40,301 Euros
Competitive negotiation without prior publication	3.6 percent	13%	130,392 Euros

Figure A. Type of procurement, 2021 (UPDATED)



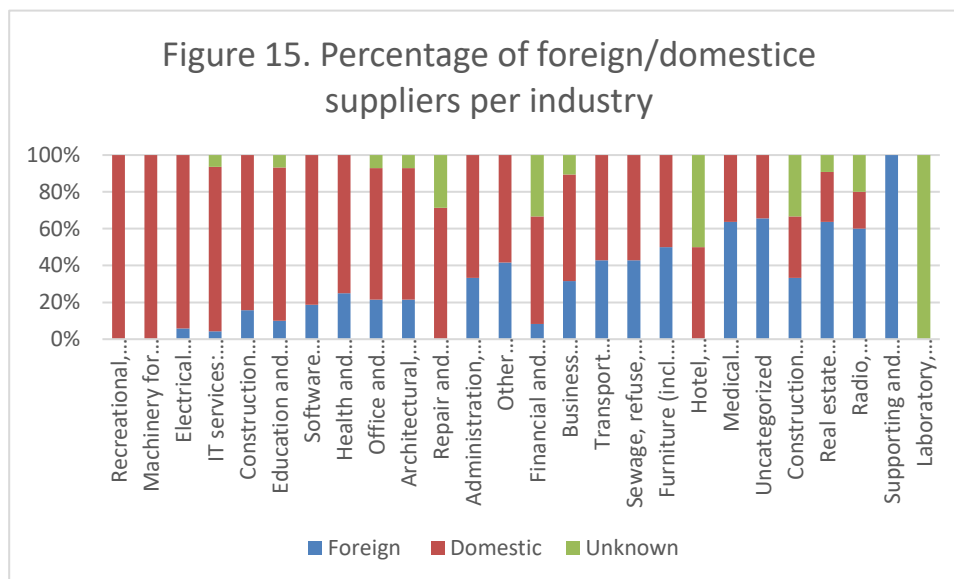
Source: E-procurement registry and WBG staff calculations

Even for a relatively small country such as Montenegro, a very large share of contracts are awarded to the same companies overtime, pointing to lack of competition in public procurement. Having the same firm winning all the contracts of a given procurement entity also indicates rigged competition and signals corruption and cartelization of markets between a few operators. 59.47 percent of the firms were awarded only one contract, whereas 40.53 percent of the contracts were recurrently awarded to the same company. That is, 34.30 percent of firms won under 10 procurement contracts, and 6.24 percent were awarded between 10 and 65 contracts.



Some procurement markets exhibit low level of openness and foreign competition. Overall, 397 out of 598 ProACT contracts⁴ (or 65 percent) were awarded to domestic suppliers.⁵ Industries, such as supporting and auxiliary transport services; travel agencies services; medical equipment, pharmaceuticals, and personal care products; and radio, television, communication, and telecommunication appear to be largely foreign, with 100, 64, 64, and 60 percent of the contracts going to foreign suppliers, respectively (Figure 15). However, other industries are largely domestic (e.g. recreational, cultural, and sporting services; machinery for mining, quarrying, construction equipment; electrical machinery, apparatus, equipment and consumable, lighting; IT services, consulting, software development, Internet and support; and construction work). While this could potentially indicate low level of openness, it could, on the other hand, be simply attributed to the fact that products these markets are less attractive for foreign bidders. The largest foreign supplier country is Northern Macedonia with 48 contracts, amounting to 8 percent of total contracts.

Figure 15. Percentage of foreign/domestic suppliers per industry



DEVELOPMENT OBJECTIVE

The Development Objective is to assist the Government of Montenegro to develop a reform plan for building a sustainable, effective and efficient public procurement system. The analytical work will assess strengths, weakness and gaps in the system, benchmark it with international practices using the second version of the MAPS tool and provide recommendations for improvement that will also assist to meet the EU requirements.

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;

⁴ Procurement Anticorruption and Transparency platform (ProACT) offers access to 613 large procurement contracts in Montenegro that are financed by the World Bank between 2003 and 2018.

⁵ The geographical information is missing for 15 contracts.



2. Identify the strengths and weaknesses of the public procurement system using MAPS core module and suggest appropriate mitigation measures;
3. Assess Montenegro's electronic procurement system using MAPS electronic procurement supplementary module to identify key issues and its further development ensuring self-sustainability.
4. Propose performance and red flags indicators to support the monitoring and supervision of the public procurement system.

ACTIVITY TYPE

Is this mainly an analytical or an advisory activity?

Analytical

Does this task produce analytics of the following type?

Fiduciary Assessment - MAPS

ACTIVITY SUMMARY

Montenegro's public procurement system will be assessed following the latest harmonized methodology for assessing the procurement system (MAPS core + e-procurement). Assessment will be conducted on all four pillars of MAPS - (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency. In addition, special emphasis will be given to assessing Montenegro's e-procurement system. It will be assessed following the supplementary e-procurement module of MAPS.

The assessment is expected to cover the following activities:

1. Inform all stakeholders about the study to build consensus on the methodology for the study;
2. Conduct this assessment jointly with other development partners actively involved in Montenegro.
2. Hire a team of experts (STCs) to coordinate the study;
3. Finalize the concept note and detailed methodology of the study;
4. Conduct an initial desk review of procurement laws, secondary legislation, and procedures;
5. Distribute pre-assessment questionnaires to the key contacts covering all stakeholders;
6. Conduct a detailed field-level assessment of the public procurement system covering key sectoral organizations;
7. Analyze the field-level data;
8. Draft the assessment report, including a summary of identified risks and issues under the MAPS pillars along with a risk mitigation action plan (as applicable);
9. Share the draft report with the government counterpart for comments;



10. Organize a workshop to discuss the draft report;
11. Finalize the report in consultation with the government;
12. Obtain necessary approval on the report;
13. Publish and disseminate the report.



DETAILED ACTIVITY DESCRIPTION

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I. Need for a comprehensive, up-to-date assessment

While various procurement reform initiatives were undertaken over the last decade, such as the PEFA 2019⁶, the IMF PIMA 2022⁷ or the annual EC reports⁸ which include the assessment of the requirements of Chapter V – Public Procurement, there has not been any comprehensive, up-to-date assessment of the public procurement system carried out so far for grounding the procurement reform efforts in a strategic manner. It is necessary to take stock of the progress made to date, assess the completeness and effectiveness of the public procurement system in a holistic manner (including the perspective from the private sector), identify any remaining gaps that may be impeding the public procurement system from delivering the desired outcomes, and provide prioritized recommendations for improvement to guide the Directorate for Public Procurement Policy in systematically strengthening the public procurement going forward for better procurement outcomes. During the process, the key priorities formulated by the European Commission in the 2022 country report will also be considered, respectively:

- further improve the functionality of the e-procurement system and its interoperability with state administration registers;
- fully respect the EU public procurement rules in all relevant cases, such as when awarding the concession to operate Airports of Montenegro.

The assessment will be conducted using the Methodology for Assessing Procurement Systems (MAPS) (<https://mapsinitiative.org>). MAPS 2018 is a universal tool and gold standard for assessing public procurement systems. The analytical framework of the core methodology is based on four pillars: i) the existing legal and policy framework regulating procurement in the country; ii) the institutional framework and management capacity; iii) the operation of the system and competitiveness of the national market; and iv) the accountability, integrity and transparency of the procurement system. The MAPS assessment reflects leading international procurement practice that serves as a guide towards sustainable and inclusive public procurement reform. Through this endeavor, the government aims to identify opportunities for, and challenges to, the country's procurement system, which will provide guidance in the identification of gaps based on a detailed set of qualitative and quantitative criteria for enhancing the current procurement framework and processes to make it more responsive to the needs of the government.

In addition to the core assessment, supplementary modules have also been developed that complement the core assessment methodology. One of the supplementary modules that has recently been developed is the module on Electronic Public Procurement, defined as "(...) the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process."⁹ As such, this supplementary module also follows the four thematic pillars of the MAPS core assessment with 13 additional indicators specifically targeted at e-Procurement. While not intended to assess the performance or security levels of the system, the indicators will help identify the strengths and weaknesses of the e-procurement system of a country based on rules, institutions, standards, and conditions that enable and regulate the e-Procurement ecosystem. Since Montenegro and Mauritius are the first two countries participating in the pilot assessment, this assessment will also suggest further improvement/inclusion/ deletion of appropriate indicators/ sub-indicators.

As part of the overall e-Procurement supplementary module assessment, the Assessment team will also assess the e-GP system to be used for Bank financed procurement, including by other IFIs/donors.

The Directorate for Public Procurement Policy, 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 recently launched and needs an in-depth assessment for the purpose



of further strengthening the system's capacity and operability. This is also in line with the European Commission's recommendations to Montenegro [2022 country report], specifically to further improve the functionality of the e-procurement system. The proposed assessment will take 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.

Therefore, the assessment will consist of: 1) MAPS Core Assessment methodology; and 2) MAPS Electronic Procurement Supplementary module.

II. Tasks to meet the objectives

The assessment will be conducted in three phases as follows:

- **Phase 1 - Planning and Preparing the Assessment:** to appropriately scope and time a demand-driven MAPS assessment, define management arrangements, set up the assessment team, arrange for the collection of the information required and identify stakeholders to be interviewed and/or surveyed. Planning would enable better co-ordination among the various stakeholders involved at the leadership and participation levels and would help reach agreement on critical aspects of the assessment.
- **Phase 2 – Country Analysis and Conducting the Assessment:** The assessment will start with a country context analysis will be carried out using the MAPS II core tool which comprises four Pillars, 14 indicators and 55 sub indicators, which together present the criteria for a “snapshot” of the actual system against the internationally accepted procurement principles and practices. The indicators will be applied both in qualitative and quantitative terms. The assessment will also include the e-Procurement supplementary module, which comprises 13 additional indicators, and 32 sub-indicators, which are structured under each of the four pillars of the MAPS core methodology. The assessment will be carried out based on a 3-step approach to assess each sub-indicator. The Bank task team will also take necessary feedback related EC's to e-GP requirements and check with MAPS e-GP modules requirements.
- **Phase 3 – Reporting:** After conducting the assessment and validating the results, a detailed MAPS II Draft Assessment Report (DAR) will be completed by the international lead consultants and submitted for review. It will be reviewed by the Assessment Steering Committee, the MAPS Secretariat and by the Assessment Technical Advisory Group (ATAG). The Reporting phase also includes the finalization of the Assessment Report after gathering comments of reviewers.

The assessment will be conducted through virtual means, complemented by physical missions to Montenegro.

1. Planning and Preparing for the Assessment Phase which includes:

- **Consultation with DPPP** to: (i) discuss and build consensus around the MAPS methodology application, validation process, data collection; (ii) conduct stakeholders mapping and agree on the composition of the Steering Committee; (iii) make sure that the scope of the MAPS assessment is tailored to the public procurement strategy and development

⁶ <https://www.pefa.org/sites/pefa/files/2020-02/ME-Dec19-PFMPR-Public%20with%20PEFA%20Check.pdf>

⁷ <https://www.imf.org/en/Publications/CR/Issues/2022/06/08/Montenegro-Technical-Assistance-Report-Public-Investment-Management-Assessment-519043>

⁸ https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en#files

⁹ Glossary of the MAPS core methodology.



objectives; and as a result, (iv) finalize the Concept Note for this important task.

- **Establishing a multi-disciplinary team** for carrying out the assessment, having complementary skills in areas of legal, procurement, electronic procurement, supply market assessment, and contract management. It comprises experts, who are WB staff and consultants, and DPPP staff, as well as external partners. DPPP will assist the Team in coordinating with the concerned government agencies and other key stakeholders.

2. Conducting the Assessment Phase, which includes:

- **Desk review** of the documents making up the legal and regulatory frameworks and other relevant policy documents and Public Financial Management and Public Procurement System studies available.
- **Collecting other relevant qualitative data** through interviews and stakeholders' workshops.
- **Collecting hard data as required by MAPS for quantitative indicators in the form of statistical information on public procurement performance**, including from the eGP system and through public and private sector surveys.
 - **Conducting data analysis against the MAPS indicators** based on two years full data in the e-procurement system using the following three-step approach¹⁰:

Steps	Assessment
Step 1	Review of the system applying assessment criteria expressed in qualitative terms. To provide detailed information related to this comparison (actual situation in relation to the assessment criteria). This analysis will enable the assessors to analyze the strengths and weaknesses of the system
Step 2	Review of the system applying a defined set of quantitative indicators defined as per Annex 2 of MAPS 2018 document. Quantitative indicators are not benchmarked against set standards but can be used by the country to define a baseline, set national targets and measure progress over time.
Step 3	Analysis and determination of substantive or material gaps (gap analysis) to identify the areas that show material or substantial gaps and require action to improve the quality and performance of the system Sub-indicators that exhibit a “substantive gap” need to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system In case of identified reasons that are likely to prevent adequate actions to improve the system, “red flags” need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

- **Formulating findings and recommendations** (based on the above three-step analysis) for validation by the Steering

¹⁰ The Methodology for Assessing Procurement System (MAPS) is available at the following website:
<https://www.mapsinitiative.org/>



Committee and Stakeholders. The procurement data analytics report will be annexed to the main report.

3. Reporting Phase which includes:

- **Preparing the Montenegro MAPS Draft Assessment Report (in English)**, including identified gaps, recommendations for system improvement, and an action plan.
- **Sharing of the draft report** with government counterparts, Steering Committee, and other key stakeholders for comments. The draft report will be subject to quality assurance (See Section VIII). After the Draft Assessment Report has been issued, the Bank's Team in collaboration with the DPPP shall organize a validation workshop to discuss and seek input on the main findings of the report. The Workshop shall be attended by all key procurement stakeholders including members of the Steering Committee, procuring entities, private sector, external partners, CSOs and media. The feedback provided at the workshop shall be considered in finalizing the report.
- **Preparing the Final Assessment Report** taking into account the comments received during the quality assurance process and the validation workshop.
- **Follow up:** subsequently, the Government would be liaising with counterparts, as needed, to seek support for the implementation of the action plan and continue monitoring the outcomes.

III. Focus of the assessment

The core assessment will be conducted on the four pillars of MAPS, i.e. (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency. The aim is to apply all recommended quantitative indicators, including survey-based ones, subject to data availability. The assessment will cover all the main stakeholders of the public procurement system and selected contracting authorities (including SOEs). The data available from the eGP system will be used for assessing the quantitative indicators and for providing supportive evidence to the assessment.

As part of the data analytics and diagnostic assessment, the assessment will look into the root causes of the limited competition in order to support formulating appropriate mitigation measures. A combination of stakeholder survey, focused group discussions and data analytics may be considered.

In addition, the supplementary module will allow for a comprehensive assessment of the e-procurement system, which will include an overlook at the regulatory framework and the e-procurement strategy, the funding of the e-procurement system, staff training and capacity regarding the system, the e-procurement ecosystem and its functionalities, the engagement of the private sector with the system, and how the e-procurement system ensures accountability, integrity, and transparency.

Subject to availability of the data, the impact of COVID19 on the country procurement system implementation and the supply chain system in the country may also be explored.

Procurement complaints mechanism is also a crucial part of an efficient procurement system as it helps preserve integrity and transparency of procedures and ensure checks and balances that control contracting authorities and prevent arbitrary decisions. The project will therefore perform an analysis of the functions of the Commission for the control of public procurement procedures, as the key actor in the handling of procurement complaints, but also subsequent judicial review mechanisms. This will also include understanding the roles of agencies having oversight over procurement, such as the Agency for Prevention of Corruption (APC), the State Audit Institution (SAI), the Commission for Prevention of



Conflict of Interest etc. and establish the uniformity of interpretation of the procurement rules and related documents. Particular attention will be given to the e-procurement system as well.

IV. Information sources

Key information sources are listed below:

- **Documents making up the legal and regulatory framework:** laws, regulations, instructions, **issuances**, manuals, bidding documents. Most of the documents are publicly available in DPPP's website (<https://ujn.gov.me/podzakonska-regulativa-zakona-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19/>)
- The Strategy for Development of the Public Procurement System for the period 2021-2025 with the Action Plan for its implementation
- **Other assessments** and studies available on the Montenegro Public Financial Management and Public Procurement Systems from Government, Bank, Development partners and others:
 - European Commission Country reports (the last one from 2022)
 - Public Expenditure and Financial Accountability Performance report (2019)
 - Technical Assistance Report - Public Investment Management Assessment issued by the International Monetary Fund (2022)
- **Court Rulings and Audit Reports:** recent procurement and contract management related rulings and reports, respectively.
- **Statistical information** Procuring Entities and eGP system. From January 01, 2021, all procuring entities are using e-GP system. Hence all the procurement data are available for statistical purposes. DPPP provided all standard statistical reports generated from e-GP system. In addition to that, DPPP will provide full procurement data extracted from the e-GP system
- **Interviews** with the key procuring entities to assess how the procurement system is functioning at the field level. Interviews will also be conducted with other important stakeholders within government, civil society organizations, professional associations and chamber of commerce, academic and research institutions, bidding communities, and other private sector bodies. Overall, the basis for conducting interviews will be the MAPS standard checklist for stakeholders, which will be tailored following the finalization of the stakeholder analysis.
- **Data collection:** The assessment will use the full data available from the e-procurement system and provided by the DPPP. This data will be used to assess quantitative indicators and to provide supportive evidence to the assessment..

The e-procurement data does not include extensive data on the contract execution stage. In addition, since the e-procurement roll-out started in 2021, the e-procurement data cannot not capture the full procurement cycle for large value contracts and works contract spanning multiple years. For these reasons, the assessment will also rely on additional data collected from procuring entities. The sample for this exercise is expected to include approximately 100 contracts with an appropriate mix of goods, works, consultancy projects. The sample selection shall follow the guidance at 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. Specifically, the sample will include 60 contracts selected from the e-procurement data signed after 2020 and completed by October 2022, and 40 large-value contracts¹¹ signed before the e-procurement

¹¹ Contracts above 500,000 EUR for works, and above 300,000 - 400,000 EUR for goods and services.



system roll-out.¹² As discussed and agreed upon with DPPP during the kick-off mission, DPPP will organize the data collection process based on templates provided by the Bank. The entities considered for this process, which were agreed upon with DPPP, are: Administration for Public Works; Administration for Transport; Montenegrin Electric Enterprise; Public Company Roads of Podgorica; Capital City of Podgorica; Ministry of Public Administration, Digital Society and the Media; Ministry of Health.

- **Private sector/Civil Society Organization surveys** to assess the private sector participation and perception of the public procurement environment and role of CSOs.

Furthermore a questionnaire shall be prepared for a private sector survey (like electronic SurveyMonkey/Microsoft tool) and for Civil Society Organizations active in public procurement and governance in Montenegro to cover input required for sub-indicators under MAPS Methodology. This survey will be based on a standard template already used for similar MAPS and shall be adapted for Montenegro with input from DPPP.

V. Leadership and Assessment Team

A. Leadership

A multidisciplinary and cross-departmental Assessment Steering Committee (ASC) is set to ensure an efficient, high-standard and participatory implementation of the Assessment. It will provide leadership and guidance to the Assessment Team throughout this project. It will review the draft outputs of the Assessment Team before embarking on the quality review by peer reviewers in the Bank and then by MAPS Secretariat and the and the MAPS Assessment Technical Advisory Group (ATAG). It will be established under the Directorate for Public Procurement Policy of Montenegro, Ministry of Finance and will include officials from other key government agencies involved in public procurement, private sector, civil society, and WB. Members of the ASC representing the Government will be acting as experts and will actively take part in the implementation process, collaborating on data and case study gathering, facilitating access to documentation upon need, and facilitating dialogue among stakeholders.

B. The Assessment Team:

The Assessment Team will carry out the assessment in consultation with the Assessment Steering Committee. The Assessment Team comprises of World Bank staff including Task Team Leader and Co-Task Team Leader, Procurement, Governance and Financial Management specialists, Economist, and WB Consultants for Procurement and e-Procurement. In addition to those, four development partners are part of the assessment team. They are (i) European Commission (EC), (ii) European Bank of Reconstruction and Development (EBRD), (iii) European Investment Bank (EIB), and (iv) Council of Europe Development Bank (CEB). All these four external partners will be actively involved in the assessment and report finalization. In addition to general input, EBRD will provide specific input on Pillar 1, and CEB will provide particular input on Pillars 3 and 4. However, the World Bank has the overall responsibility for this assessment and report finalization, taking input from all external partners.

The Government will designate the focal point officials in DPPP to assist the Assessment Team in coordinating the Assessment and to work on a dedicated basis as an integral part of assessment team.

¹² The exact criteria for the sample selection will be finalized once the Bank team will receive the eGP full data and the list of large-value contracts signed before eGP roll-out from selected procuring entities. The criteria for sample selection will ensure representativeness of the final sample.



The assessment will be conducted with the World Bank providing the leadership role, working closely with DPPP, with the support of specialized consultants. The entire task shall be led and coordinated by a Task Team Leader of the World Bank supported by a co-TTL from the World Bank. The World Bank Team will also comprise two other procurement specialists from ECA-EFI Procurement team. Finally, a Senior Financial Management Specialist, an Economist from Montenegro, and a Senior Governance Specialist will also be involved to provide guidance and input in their respective areas of expertise. Each pillar of the MAPS assessment will have a thematic lead from the World Bank team, who will be responsible for drafting the assessment and recommendation in close coordination with the International PP consultant and the local consultant.

In addition, there will be four main consultants hired by the Bank (3 international and 1 national) contracted for the assignment who will work jointly with the Government of Montenegro as follows:

- The Lead international Consultants will include one lead public procurement expert, and one e-Procurement expert: The Lead Consultant is responsible for providing technical leadership and guidance in the conduct of the assessment in accordance with the MAPS II methodology. She would also oversee the adequate application of the methodology, the timely collection of information and data, and the quality assurance of data analysis and recommendations, and of writing and presenting the assessment report. The e-Procurement expert will focus on the e-Procurement supplementary module as well as any e-Procurement indicators under the core assessment and ensure their integration in the overall report.
- A research assistant will also be selected to support the data analytics under the project. This consultant will be responsible for cleaning administrative and primary datasets and create all indicators required for analysis, write well-documented, reproducible code for data cleaning, descriptive statistics, regression analysis, data visualization, and any other analysis as per project need, manage databases and integrating various data sources as necessary, and produce data analysis outputs for the MAPS Assessment report (eg graphs, tables).
- The National Consultant with specialized knowledge and experience in the following fields: data collection and data analytics. The National Consultant will be responsible for gathering and analyzing data on public procurement in the country, disseminate the survey and collect responses, participate to the country analysis, conducting interviews, facilitating public consultations, consolidating preliminary findings, contributing to the report production, and ensuring consistency in the overall process.

All Consultants (national and international) are in charge of supporting the assessment by participating and guiding the data collection and analysis, the review of selected procurement cases, the formulation of recommendations and documenting the detailed assessment results in accordance with the methodology.

The Consultants will work in close cooperation with the Assessment Steering Committee, to timely access necessary information and data and review of procurement cases' samples.

The Government will provide timely access to necessary information and data and will facilitate meetings with public and private stakeholders (e.g., private sector organizations, civil society) and facilitate the review of the sample of procurement cases by making the files available for review, preferably in a central location.

VI. Stakeholders

In order for the MAPS II to reach its objectives and build the foundation for informed and evidence-based reform priorities, the process involves **national stakeholders** to take part by providing evidence and data, answering survey



questionnaires and being interviewed. Stakeholder engagement can be a complex process, but it is of extreme importance for the success of the MAPS assessment. Therefore, the team will aim to create a solid stakeholder analysis, considering stakeholder interests, influence and expectations in an optimal way to ensure the public procurement framework is credible and viable, drawing on support and identified (government and private sector/civil society) champions who are critical to success. There will be a need for balancing competing stakeholder interests continually affected by the political economy, state of procurement markets and access to legislators.

Following the identification of stakeholders, the team will use a matrix to map each indicator and sub-indicator to the different stakeholders, taking into account their level of influence, the role they play in the procurement system, and the impact that the indicators have on them.

The below is an overview of the main stakeholders in procurement in Montenegro:

- *The Key counterpart for MAPS Assessment:* Directorate for Public Procurement Policy of Montenegro (DPPP) under MoF is the key counterpart agency. DPPP is keen in engaging and leading the Montenegro MAPS assessment Steering Committee, under the overall leadership of Ministry of Finance¹³.
- *National and Local Procuring Entities:* The team will consult with public administrations and institutions at the central level, including existing central purchasing bodies, but also with municipalities and other local level procuring entities.
- *The key oversight agencies to be consulted as stakeholders are:* (i) Agency for Prevention of Corruption (APC)¹⁴; (ii) the State Audit Institution (SAI)¹⁵; (iii) the Commission for Protection of Rights in Public Procurement Procedures¹⁶; (iv) and Administration for Inspection Affairs.
- *Development partners:* As part of the stakeholders' consultations, the Assessment Team will co-ordinate any eventual technical inputs of the other development partners, such as EU, WB, EBRD, EIB and COE. Although the OECD will not participate in the assessment *per se*, the assessment team will seek guidance from the OECD regarding quality assurance of the initial findings, as well as throughout the assessment and invite representatives to participate to some missions for advice. OECD is also part of ATAG.
- *CSOs and private sector:* Civil Society Organizations (CSOs) involved in public procurement are amongst the stakeholders that will be consulted together with the private sector and business associations (contractors, suppliers, consultants), associations of engineers and architects, academia, and media. There is a need to locate CSOs active in governance, procurement, and service delivery.
- *Other agencies to be consulted:* Agency for the Protection of Competition, Human Resources Administration of Montenegro, Agency for Investment of Montenegro, etc.
- *Other organizations to be consulted:* Chamber of Commerce of Montenegro¹⁷, Montenegrin Employers Federation, Union of Municipalities, etc.

¹³ [Ministry of Finance | Directorate for Public Procurement Policy of Montenegro](https://www.mof.me/dppp/)

¹⁴ <https://www.antikorupcija.me/en/>

¹⁵ <http://www.dri.co.me/1/index.php?lang=en>

¹⁶ <http://www.kontrola-nabavki.me/1/index.php?lang=en>

¹⁷ <http://www.pkcg.org/>



VII. Validation of assessment results

In terms of process and sequencing, the initial results of assessment shall be shared with DPPP at the stage of preparation of the draft report and their input sought. In addition, the Assessment Team shall seek input from key stakeholders, including the private sector, at the draft report stage through virtual or face-to-face interaction as may be permissible at the time.

To ensure that the assessment findings are valid and credible, a joint validation workshop shall be arranged in collaboration with DPPP involving all stakeholders and external partners to agree on: (i) findings of the assessment, (ii) reform priorities, and (iii) a shared strategy for addressing key weaknesses in the public procurement system.

A robust quality-assurance approach shall be followed to review compliance with the assessment process and assessment report as per the MAPS methodology, including quality review of assessment results by the peer reviewers within the World Bank, and by OECD. After addressing comments, and obtaining clearance from the Bank Management, the review by a MAPS Assessment Technical Advisory Group (ATAG), assembled by the MAPS Secretariat, as final quality assurance process, shall be sought for external certification of MAPS assessments and their comments incorporated in the final report. The role of ATAG is a substantive review to ensure that the assessment is comprehensive and well-written, all in accordance with the MAPS methodology.

DELIVERABLES

Group By: Pillar

Name	Lead	Completion Date	Processing Type
Pillar: Not Categorized			
* A report of Public Procurement System of Montenegro following MAPS (Core + e-Procurement)	Tanvir Hossain	29-Dec-2023(P)	DR Required
* - Primary Deliverable		P - Planned A - Actual DR - Decision Review	

EXPECTED RESULTS AND OUTCOMES

The main output of this activity will be a report assessing the adequacy of the current Public Procurement System in Montenegro using the MAPS 2018 tool to identify strengths and gaps/weaknesses and provide recommendations for further improvement. This will form the basis for the Government to devise a strategic plan for prioritizing future



procurement reform efforts, setting revised targets, and making necessary adjustments in procurement policy and implementation modalities. The Assessment team will work with the Government to establish the strategic action plan to operationalize the recommendations identified. The Assessment working arrangements and timetables are summarized below:

Output	Responsible	Cooperation with	Target Time Frame
Concept Note	Assessment Team	Internal and External partners, Government	October 2022
Concept Note submitted for TAG review and for WB Concept Review	Assessment Team	Internal and External partners	October 2022
Organizational and logistical arrangements (including the selection of experts/ consultants and ensuring that required information and data is available)	Assessment Team	Steering Committee	October 2022 to early November 2022
Establishment of the Steering Committee	Ministry of Finance	Assessment Team	November 2022
Analysis of Country Context	Assessment Team	Steering Committee	November – December 2022-
Assessment of the Public Procurement System <ul style="list-style-type: none"> Develop and regularly update assessment schedule Collect data (qualitative and quantitative data) Apply the MAPS indicators using the three-step approach	Assessment Team	Steering Committee	January 2023 – May 2023
Developing Recommendations for Prioritized Reform	Assessment Team	Steering Committee	June 2023



Validation of Findings – Stakeholder workshop	Government, facilitated by Assessment Team	Stakeholders External partner Peer Reviewers	July 2023
Assessment Report <ul style="list-style-type: none"> Draft Review/Comments Final report 	Assessment Team	Assessment Steering Committee MAPS Secretariat/ Assessment Technical Advisory Group	Draft Report: September 2023 Comments: October 2023 Final Report: November 2023
Publication of MAPS Assessment Report	Government/ MAPS Secretariat / World Bank		December 2023

The following table provides a general overview of the succession of the different activities.

Task / Month	22-Oct	22-Nov	22-Dec	23-Jan	23-Feb	23-Mar	23-Apr	23-May	23-Jun	23-Jul	23-Aug
1. Concept Note, Logistics											
2. Analysis of Country Context											
3. Assessment: Data Collection											
4. Assessment: Analysis (3-steps)											
5. Recommendations											
6. Validation											
7. Report Writing											
8. MAPS Quality Assurance											



9. Final Report,
Publication

Do you want to track result indicators for this activity?

No

RISKS

Please describe the risks related to this activity and how they can be managed.

The key risks are as follows:

1. The allocated budget may not be adequate
2. Tight timelines to complete the task
3. Incomplete and/or unreliable data available

Proposed mitigation measures:

1. Closely manage the tasks from budgetary point of view. Try to get additional fund from contingency fund.
2. A clear time-bound action plan will be prepared in consultation with key stakeholders, and it will be monitored closely. Each month there will follow-up /coordination meeting with DPPP and appropriate measures to address implementation issues.
3. Discuss data availability & quality, including access to, during the inception period and identify alternatives in case of missing key data.



DISSEMINATION and OUTREACH STRATEGY

Preparation of the assessment report will involve **extensive consultations** with a wide range of stakeholders from the Government, development partners, private sector, and civil society, for which a number of meetings and workshops will be arranged.

During the assessment, the **Steering Committee** will hold quarterly meetings (at a minimum) with the Assessment Team to discuss the progress and provide assistance in overcoming any obstacles and/or bottlenecks that may occur during the assessment period.

The assessment report will be presented to higher government levels and subsequently shared with other key stakeholders in line with the dissemination plan agreed between the World Bank and the Government.

The Assessment Team shall seek expertise from communication specialists of the World Bank to highlight the key recommendations and to differentiate between the substantial procurement recommendations and the more strategic areas of assessments and reforms. The aim is to foster support for strategic reforms from decision-makers at the policy level of the executive and legislative branches of the government. The final report will be published, with the consent of the MoF of Montenegro, and the Bank team will ensure that it is accessible to all relevant stakeholders.

Following the publication of the assessment, the Bank team will also cooperate with DPPP in exploring ways and means of implementing the public procurement system improvement action plan included in the Assessment Report.

MILESTONES

Schedule

Name	Original	Revised	Actual
AIN Sign-off			07-Oct-2022
Management Approval of Concept	21-Oct-2022	27-Oct-2022	
Completion Summary	30-Jun-2023	29-Dec-2023	

BUDGET

Budget Plan vs Actual (USD)

Source of Fund	Cumulative Budget			Current FY (2023)			
	Activity Plan	Actual Expenditure to Date	Actual vs Plan (%)	Activity Plan	WPA Plan	Expenditure (YTD)	WPA Burn Rate (%)



The World Bank

Assessment of Montenegro Public Procurement System following MAPS(P180121)

Bank Trust Fund	100,000	32,728	32.73	0	100,000	32,728	32.73
Bank Budget	0	1,400		0	0	1,400	0

Budget Plan (USD)

Do you want to plan the budget by FY?

No

Source of Fund

Cumulative Budget

Grand Total

Grand Total Cost 100,000

Bank Trust Fund 100,000

Clients or Audience

Does this activity have a client?

Yes

Organizations & Contacts

Directorate for Public Procurement Policy of Montenegro
Line Ministry/Ministerial Department, Activity Leadership/Oversight
Montenegro

Contacts

Jelena Jovetic
General Director
jelena.jovetic@mif.gov.me
Survey Participation: Yes

TEAM

Project Team

Name	Role	Title	Unit
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Tanvir Hossain	Team Leader (ADM Responsible)	Senior Procurement Specialist	EECRU
Orjana Ibrahim	Team Leader	Procurement Specialist	EECRU
Aleksandar Crnomarkovic	Team Member	Sr Financial Management Specialist	EECG2
Elena Carmen Calin	Team Member	Procurement Specialist	EECRU
Ishtiak Siddique	Peer Reviewer	Senior Procurement Specialist	EAERU
Knut J. Leipold	Peer Reviewer	Lead Procurement Specialist	EAERU
Majed El-Bayya	Peer Reviewer	Lead Procurement Specialist	EGVPF
Manjola Malo	Peer Reviewer	Senior Procurement Specialist	ELCRU
Milan Lakicevic	Team Member	Economist	EECM2
Rajesh Kumar Shakya	Team Member	Consultant	EAERU
Serena Sara Daniela Cocciolo	Team Member	Economist	EGVPA
Zuhra Osmanovic-Pasic	Team Member	Senior Governance Specialist	EECG2

Extended Team

Name	Title	Organization	Location
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INSTITUTIONAL DATA

Does this activity contribute towards design and implementation of financing projects and/or development of SCDs and CPFs?

No

Does this activity address climate change adaptation, mitigation or both?

No

Is this activity an Impact Evaluation (IE) or does it include IE deliverable(s)?.

IE is the study of causal relations between a program, policy or project intervention and outcomes of interest. IE employs counterfactual analysis to evaluate program, policy or project interventions that are either Bank-financed or financed by other governments and institutions.

No

Is this activity a response to COVID-19?

No



ANNEX A. DELIVERABLES DETAILS

Not Categorized

Deliverable Name	Decision Review Required?	Status
A report of Public Procurement System of Montenegro following MAPS (Core + e-Procurement)	Yes	Planned
	Planned date	Actual date
Deliverable Creation	--	07-Oct-2022
Decision Review approval	15-Dec-2023	
Deliverable Completion	29-Dec-2023	
Lead		
Tanvir Hossain		
Deliverable document(s) will be disclosed		
Yes		
Provide a brief description of the deliverable		
A detailed report on the Public Procurement System of Montenegro following MAPS (Core + e-Procurement).		
The report will cover all four pillars of MAPS - (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency.		
In addition, it will cover a detailed assessment of Montenegro's e-procurement system, key considerations and way forward to have a robust and self-sustainable e-procurement system.		



ADDITIONAL INFORMATION

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ASSESSMENT TEAM

The Assessment Team comprised of World Bank staff including Task Team Leader and Co-Task Team Leader, Procurement, Governance and Financial Management specialists, Economist, and WB Consultants for Procurement and e-Procurement.

Tanvir Hossain	Task Team Leader	Senior Procurement Specialist
Orjana Ibrahim	Co- Team Leader	Senior Procurement Specialist
Aleksandar Crnomarkovic	Team Member	Sr Financial Management Specialist
Elena Carmen Calin	Team Member	Procurement Specialist
Yolanda Tayler	Team Member	Consultant
Rajesh Kumar Shakya	Team Member	Consultant
Zuhra Osmanovic-Pasic	Team Member	Senior Governance Specialist
Tamara Travar	Team member	Procurement Specialist
Ana Durnic	Team Member	Consultant

Development Partners contribution

Development partners, including European Bank of Reconstruction and Development (EBRD), European Investment Bank (EIB), and Council of Europe Development Bank (CEB) were part of the assessment team. EBRD and EIB provided specific input on Pillar 1 and 2 and CEB will provide particular input on Pillars 3 and 4.

Evgeny Smirnov	EBRD	Director, Procurement Policy Adviser, Legal
Stana Maric	EBRD	Associate Director, Procurement Policy Adviser, Legal
Rafael Torrente	EBRD	Procurement Specialist
Andreja NERAL LAMZA	EIB	Senior Procurement Specialist
Constantino Longares Barrio	CoEB	Deputy Head of Procurement Division



Montenegro
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Ref. no: 01-10-430/22-1699/

Podgorica, 19 October 2022

TO: WORLD BANK

SUBJECT: LETTER OF SUPPORT

Dear Sir or Madam,

I am writing on behalf of Ministry of Finance of Montenegro - Directorate for Public Procurement Policy to confirm our support as an institution for the proposed project of the World Bank "The MAPS Project in Montenegro", which is a methodology for assessing procurement systems. The said Project will be beneficial to our institution and, overall, the entire public procurement area in Montenegro, and I hereby express our full support.

I would like to stress out that the Directorate for Public Procurement Policy is committed to fully support the implementation of the Project on long term. Also, we will delegate the personnel, if necessary, during the Project length, in order to facilitate the successful implementation of the Project activities.

As previously discussed with the representatives of the World Bank, we are expecting this Project to have major impact in several areas of great importance for us, such as:

- Analysis of the entire public procurement system, in terms of its strengths and weaknesses;
- A special focus will be put on detailed review of electronic public procurement system;
- Performance indicators and incorporating red flags.

In closing, we are pleased to inform you that we are eager to start our cooperation in implementation of this Project.

Sincerely,

MINISTER

Aleksandar Damjanović, MSc





MAPS

Methodology for Assessing
Procurement Systems

Indicator Matrix

MAPS ASSESSMENT FOR MONTENEGRO

Volume II

April 2024

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Pillar I. Legal, Regulatory and Policy Framework

Pillar I. Legal, Regulatory, and Policy Framework

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

Sub-indicator 1(a) Scope of application and coverage of the legal and regulatory framework

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

Assessment criterion 1(a)(a):

Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The Constitution of the Republic Montenegro is the supreme law proclaimed on October 22, 2007 (amended in 2013) by the National Assembly of the Republic of Montenegro. The Constitution¹ indicates that (i) the ratified and published international agreements shall make an integral part of the internal legal order, (ii) shall have the supremacy over the national legislation and (iii) shall be directly applicable when they regulate the relations differently from the internal legislation. In addition, the Constitution² indicates that the Parliament (assigned with legislative power) adopts laws and other regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations). The Government³ (composed of Prime Minister and Ministers) is entitled to adopt decrees, decisions and other acts for the enforcement of laws.

EU membership of the country remains the top priority and has been driving the reform process which are focuses on strengthening the rule of law and judiciary reform, combating corruption and organized crime; implementing economic reforms to ensure sustainable economic growth and competitiveness; implementing social reforms including education and health; improving and strengthening its public administration and increasing investments projects in transport, energy and environmental to enhance connectivity and sustainability. Montenegro officially applied to join the EU on 15 December 2008, and membership negotiations began on 29 June 2012. At present only 3 chapters are provisionally closed while the reaming 3 chapters are all open to negotiations, including Chapter 5 "Public Procurement".

Montenegro has been working to align its legislation and institutional setup with EU standards. The legal framework on public procurement is well aligned with the EU acquis and integrate the three main EU Procurement Directives and the Remedies Directives.

The key primary legislation on public procurement is the Public Procurement Law (herewith: PPL) as amended and published on the Official Gazette of Montenegro No 074/2019 of 30-Dec-2019, 03/2023 of 10 January 2023. Public Procurement Law, which was adopted on 17 December 2019, entered into force on 7 January 2020. It became applicable 7 July 2020, and it was lastly amended in January 2023. The PPL covers public procurement in the public and utilities sectors for contracts above specified thresholds, and it covers all the procurement procedures envisaged in EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25.

As regulated by the EU Concessions Directive, concessions are covered by the Law on Public-Private Partnerships (herewith: the PPP Law) adopted on 17 December 2019 and applicable as of 4 July 2020. The PPP

¹ Article 9 "Legal Order"

² Article 82 "Responsibilities of the Parliament"

³ Article 100 "Responsibilities of the Government of Montenegro"

Pillar I. Legal, Regulatory and Policy Framework

Law defines the PPP concept and regulates the procedures for PPP project approval and the selection of private partners. In the awarding of works or service concessions, PPL provisions are applied along with the additional specific rules of the PPP Law.

Procurement in defense and security is covered by the PPL but details concerning relevant contract procedures are defined in the regulation adopted by the Government.

The legislation on the right to appeal is broadly in line with the EU *acquis* and is integrated in the PPL provisions.

In addition to the main PPL, comprehensive set of accompanying key secondary legislation and by-laws have been adopted, such as Decrees issued by the Government of Montenegro, Rulebooks issued by the Minister of Finance in charge of the public procurement system, and Manuals and Guidelines issued by the DPPP.⁴

PPL⁵ stipulates that relevant provisions of the law governing obligation relations shall apply *mutatis mutandis* in relation to the public procurement contracts.

The legal and regulatory set of norms regarding public procurement is adequately recorded and organized hierarchically and precedence of norms is clearly established.

Gap analysis: The assessment has not identified any gap.

Recommendations: None.

Assessment criterion 1(a)(b):

It covers goods, works and services, including consulting services for all procurement using public funds.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 3 PPL defines “public procurement” as a process of obtaining goods, works, consultancy or other services by contracting authorities, for which the funds have been provided, regardless of whether they have a public purpose. Articles 75-77 PPL define the subjects of public procurement as per three categories: goods, services and works and listed eligible types of activities under each of them. Consulting services are included under the services category. The PPL applies to all public bodies including local self-government unit and entities as indicated in Article 2 PPL whereby differentiation is made between Public Contracting Authorities⁶ and Sectoral Contracting Authorities⁷.

However, there are numerous exclusions from the PPL (Articles 13-24 PPL) which include:

(1) procurement of goods, services and works conducted under international agreements.

⁴ Article 44 PPL lists the tasks of the Ministry in the public procurement area: e.g. monitoring, providing guidance on the application of the PPL, etc.

⁵ Art. 149 stipulate that provisions of the law governing obligation relations shall apply *mutatis mutandis* to execution and responsibility of contractual parties for meeting the obligations from the public procurement contract.

⁶ State body; local self-government unit; public service, that is, an undertaking which fulfils all of the following conditions: 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 nor commercial character, and in which the state and/or local self-government unit owns more than 50% of the shares or interest, or which receive more than 50% 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; association founded by two or more contracting authorities

⁷ A public contracting authority pursuing one of the sectoral activities; 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 basis of special or exclusive rights assigned to them by a competent state body or a competent body of a local self-government unit.

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- (2) procurement of service contracts including land acquisition, acquisition of construction facilities and other real estates, audio and visual media services, radio and tv broadcasting services, arbitration or amicable settlement of disputes, various legal services, etc.;
- (3) procurement of postal services;
- (4) procurement in the field of electronic communications;
- (5) procurement of services based on an exclusive right;
- (6) procurement in the public sector;
- (7) procurements between public contracting authorities;
- (8) procurements for the pursuit of sectoral activity for purpose of resale or lease;
- (9) procurement of water, energy or fuel to produce energy;
- (10) procurements in the field of defense or security;
- (11) simple procurements.

Compared to the Directive 2014/24/EU on public procurement to make a uniformed judgement of the suitability of the great number of exclusions in Montenegro PPL, it can be concluded that the exclusions provided by the PPL of Montenegro are almost identical in number and type of exclusions. However, some exclusions are not in line with the Directive 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.

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 regulated in the PPL (Articles 174-178) which indicate that procurement in the field of defense and security will be conducted based on the Decree on the List of Military Equipment and Products, the Procedure and Manner of Public Procurement in the Defense and Security Area⁸. The Degree covers military equipment, including all its parts, components or subassemblies; security-sensitive equipment, including all its parts, components or subassemblies; goods, services and works that are directly related to the equipment referred to in items 1 and 2, during any period or entire life cycle of such equipment; services and works exclusively for military purposes; security-sensitive services.

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 also to simple procurement for the goods, services and works with an annual estimated value up to 8,000.00 euro; 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. Simple procurement is regulated by the Rulebook on Conducting Simple Procurement.⁹

Private Public Partnerships and Concessions are not regulated by PPL but are subject to separate laws. For more detail refer to assessment criteria 1 (a)(c).

Gap analysis:

Considering the list of exceptions described in the qualitative analysis, the PPL doesn't cover all procurement using public funds. Each category of these exclusions includes sub-categories, which ultimately implies a large number of exclusions overall. Many of these exclusions are regulated by other sector laws and by-laws (decrees, rulebooks) other than PPL legal framework which makes it hard to identify the limitation of PPL application to

⁸ Official Gazette of Montenegro, No 76/2020 of 28 July 2020

⁹ Official Gazette of Montenegro, No 16/2023 of 10 February 2023, 20/2023 of 22 February 2023, 36/2023 of 29 March 2023

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all procurement using public funds.

The PPL exclusion due to the use of simple procurement below 8,000 Euro, results in a high rate of the total procured budget. The data analysis captured by the EPPS indicates that the total value of simple procurement below 5,000 euros (the 2019 PPL threshold) represents 37% of total procured amount in 2021 and 16% in 2022 at system level. It is noted that the total value of budget (or percentage) that can be procured within a budgetary year by a Contracting Authority under simple procurements is not limited by the procurement legal framework.

Recommendations:

The legal framework should ensure that the list of exceptions is in full accordance with the EU Directive 2014/24/EU.

Additionally, the legal framework should include provisions to limit the level of budget that a Contract Authority can launch using simple procurement below 8,000 Euro within a budgetary year.

Assessment criterion 1(a)(c):

PPPs, including concessions, are regulated.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Considering that PPPs and concessions are out of the scope of a detailed assessment since they are regulated outside the PPL, the analysis by the assessment team have been limited to confirm that the PPP and Concessions legal frameworks: comprise a framework that sets out clear policy objectives to prepare, choose and implement PPP projects or concession; facilitate the identification, selection, prioritization, evaluation, structuring, market sounding, procurement, negotiation, financing, and delivery of PPP projects; assign clear roles and responsibilities for each entity involved in PPP project delivery or concession granting.

PPPs and concessions are regulated by two separate laws. The Law on PPPs published on the Official Gazette of Montenegro no. 073/19 dated 27 December 2019 regulates Public Private Partnerships, whereas the Law on Concessions published on the Official Gazette of Montenegro no. 008/09 dated 4th February 2009, 073/19, of 27 December 2019 regulates concessions. DPPP is also in charge of policy development for both PPPs and concessions. Respective secondary legislation for PPP law is in force and publicly available¹⁰ and for concession is in force and publicly available¹¹.

According to the PPP Law, a public-private partnership is based on the principles of protection of the public interest, free management which ensures a high degree of quality, safety, affordability, transparency, nondiscrimination, proportionality, protection of competition, and protection of the environment. The law covers contractual and institutional public-private partnerships and elaborates in detail on the procedure for concluding a public-private partnership contract, which regulates the public and private partners' respective rights and obligations with respect to the public-private project. The PPP Law recognized 2 types of PPPs Contractual Public-private partnerships where, the mutual relations between the public partner and the private partner are regulated by a public-private partnership contract and Institutionalized public-private partnership based on the establishment of a company held jointly by the private and the public partner, which provides public services, executes public works along with maintenance of public facilities that are the subject matter of works, or builds, reconstructs, manages or maintains public infrastructure, in order to implement the public-private partnership project. Article 13 in the PPP Law has identified what can be a subject matter of the PPPs and among those construction and management of roads, railways, airports and ports are considered to be of strategic interest to Montenegro. While there is also a list of exemptions in Article 14 that don't apply the

¹⁰ The texts are available in the Official Gazette No. 58/20 and 59/20.

¹¹ The texts are available in the Official Gazette Nos. 47/09, 67/09, 32/15, 37/11, 40/16.

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PPP law such as projects that are implemented under international rules, related to protection and rescue of natural disasters and emergency, procurement of weapons and other defense and security, exploration and production of hydrocarbons, civil protection interventions, works goods and services that are procured under the PPL.

The PPP Law describes from Article 27 to 36 the preparatory phases of an PPP starting from the identification of a potential PPP either by the Contracting Authority itself or by an interested party. The entity filing the initiative shall participate in the public-private partnership contract award procedure on equal terms with other bidders and shall not be afforded preferential treatment.

The PPP law also 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. The provisions of the law governing public procurement are also applicable to the public-private partnership contract award and also for those aspects that are not regulated from the PPP Law itself. The PPP Law recognizes the most economically advantageous bid as the award criteria to select the most advantageous bid. The decision to award a PPP contract published in the Official Gazette of Montenegro is required for the final award decision.

Inspection control over the implementation of the PPP law is carried out by the administration authority responsible for inspection affairs. In the public-private partnership contract award procedure, the protection of rights in the procedure shall be provided by the Commission for Protection of Rights in Public Procurement Procedures in accordance with this Law and the law governing public procurement.

The PPP Law regulates also the PPP contract implementation, its amendment including its transfer to another private partner and further the termination conditions. Dispute settlements can be done before a national or international arbitration according to the Montenegrin law. Unless otherwise foreseen in the PPP contract, the disputes will be settled by the competent court of Montenegro.

The right to use natural wealth, goods in general use and other goods of general interest that are in state property, with the payment of concession fees or providing financial compensation are regulated by the Law on Concession. The scope of coverage of a concession is in Article 6 of Concession Law, while the Law requires that it is granted based on an annual concession plan. The Law establishes the Commission on Concession which has the right to review appeals against the decision to award the concession. The decision to initiate the procedure for granting a concession is made by the competent authority, which submits to the Government (or municipal authority) the concession act. Before such an act is submitted, a public hearing is organized. Methods for granting concession include public tendering in an open procedure; public tendering in a two-stage procedure; public tendering in a summary procedure. However, Article 20 of the concession law indicates that public tendering is not conducted for specific circumstances which may include national defense and security, realization of the concession carried out on the basis of an international treaty etc.

Public announcement for the call is made after the approval of the concession act in the Official Gazette of Montenegro. The competent authority prepared the tender documentation which contains public announcement, instructions to bidders for drafting and submitting bids, criteria for the selection of the most favorable bid, draft contract with all related annexes and forms, form of bank guarantee of the bid, conditions that must be met by bidders, documentation or other evidence of fulfillment of the conditions determined by the public announcement and tender documentation depending on the subject of the concession, which the bidder is obliged to submit. The bids received are evaluated by an ad hoc commission taking into consideration main criteria such as the period for which the concession is requested; the amount of concession fee offered;

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the price offered, i.e., the provision of services tariff; references of bidders (technical and/or financial conditions, previous experience in performing concession activities and other); quality of service; the degree of public interest; the degree of use of natural wealth; the effects on employment, infrastructure and economic development; environmental program and measures to improve energy efficiency.

The two-stage procedure is carried out in cases granting concessions for projects that are complex from a technical, technical-technological, legal, financial, or other point of view, or when a large number of bidders are expected. The two-step process includes public advertising for prequalification followed by prequalification procedure, where the tender commission evaluates applications for prequalification and accepts or rejects applications based on predetermined pre-qualification criteria. Only qualified bidders can purchase the tender documentation and submit bids which are evaluated and ranked as in an open procedure.

Concession for a period up to three years are granted using summary procedure which implies that the concession act doesn't undertake a public hearing, whereas the deadlines to submit a tender and conduct evaluation are reduced compared to the normal open procedure.

The Law regulates the preparation of Concession Agreement, transfer of contract, its termination, and in particular the mechanisms to set up the concession fee.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(a)(d):

Current laws, regulations and policies are published and easily accessible to the public at no cost.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

The Law on Publishing Legislation and other Acts regulates the procedure for making legislation available to the public via the Official Gazette of Montenegro¹². All primary and secondary legislation – as originally adopted – is available free of charge on the publicly accessible online database of the Official Gazette. In case there are amendments to the legislation, these are also available free of charge on the database. However, the obligation to publish consolidated versions of legislation has not yet been established, and the consolidated versions are available online only through a paid service (offered by private service providers, as well as by the Official Gazette).

Primary and secondary legislation in relation to public procurement is published in the Official Gazette of the Republic of Montenegro (*Službeni List Crne Gore*)(sluzbenilist.me), while bylaws adopted by the Minister of Finance and DPPP, such as Rulebooks and Manuals relating to procedures are published on the DPPP's website (<https://ujn.gov.me>). DPPP's website also contains copies of procurement laws and regulations (in either pdf or word format), including unofficial English translations of some legislation (including PPL). DPPP publishes both original acts and their respective amendments, followed in several instances by a self-prepared consolidated version. These can be consulted free of charge. Furthermore, the DPPP website also contains

¹² The Law on the publishing of regulations and other acts" (Zakon o objavljivanju propisa i drugih akata) was published in the "Official Gazette of Montenegro, no. 5/08", entered into force on 30 January 2008. and is the legal basis for the publication of laws, other regulations and acts.

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unofficial Word versions of publications in the Official Gazette which would raise concerns as to their validity and whether third parties can rely on these texts.

Gap analysis:

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 to 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.

Recommendations:

DPPP should ensure to keep laws, regulations and procedures governing public procurement up to date and preferably on a single, freely accessible online portal. In order to ensure wider access to economic operators, a link or reference to this portal is provided at the e-procurement portal for ease of reference.

Sub-indicator 1(b)

Procurement methods

The legal framework meets the following conditions:

Assessment criterion 1(b)(a):

Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.

Conclusion: No gap

Red flag: No

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Qualitative analysis:

Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used. The PPL indicates the threshold of works, goods and services for which the procurement methods apply. For contracts below the thresholds, classified as simplified procurement, these methods are not applicable, and the Ministry of Finance has elaborated the Rulebook on Conducting Simple Procurement.

The following procurement methods are envisaged and described under the PPL:

- 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.

Articles 68-72 in the PPL describe the special methods to conduct public procurement which include:

- Framework Agreement
- Dynamic purchasing system
- Electronic auction
- Electronic catalogue

Procurement methods applicable as per provisions of PPL and forms of conducting public procurement are fully transposing the EU Procurement Directive 2014/24/EU.

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Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(b)(b):

The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

The PPL provides a range of procurement methods including from the competitive (open procedure) to less competitive (negotiated procedure with prior publication of a contract notice). The PPL sets out conditions for use of procedures which are generally linked to the nature, complexity and specific conditions involved in the contract. 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 and information regarding the decision to award the contract.

Gap analysis:

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 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.

Recommendations:

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

Assessment criterion 1(b)(c):

Fractioning of contracts to limit competition is prohibited.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Article 27 PPL sets out that Contracting Authorities shall not fraction items to be procured with the aim to circumvent the application of the PPL and consequently limit competition. Also, fractioning of items to be procured is recognized by Article 211 PPL as a serious offense, and the responsible oversight body may impose an administrative fine from 5,000 to 20,000 EUR to the Contracting Authority. In addition, a pecuniary penalty in the amount ranging from 250.00 to 2,000.00 EUR shall also be imposed on the person that is found responsible for the offence in the Contracting Authority.

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On the other hand, Article 80 PPL recognizes that procurement procedures by default should be organized in LOTs. When the Contracting Authorities have not divided the subject of procurement into lots, they shall provide an indication of their reasons for doing so in the tender documentation.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(b)(d):

Appropriate standards for competitive procedures are specified.

Conclusion: No gap

Red flag: No

Qualitative analysis:

A Contracting Authority can choose the public procurement procedure 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.

Appropriate standards for competitive procedures are specified through Articles 54-63. Further details on the procedures are set out in the various standard documents issued by the Ministry of Finance. These include comprehensive provisions aimed at guiding the work of the Contracting Authorities, defining the contents of the documents to be used, and facilitating the recording of the various steps to be performed.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(c)

Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criterion 1(c)(a):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

The electronic public procurement system ("EPPS") (*Crnogorske Elektronske Javne Nabavke, CeJN*)¹³ was introduced in Montenegro in January 2021. In the EPPS, all public procurement opportunities in Montenegro are posted. The portal is easily and freely accessible. In accordance with Article 45 PPL, the Montenegrin EPPS enables, amongst others, the publication of tender documentation and dispatching of public procurement notices above the thresholds identified in Article 26 PPL to the Publications Office of the EU for further publication in the Official Journal of the EU.

¹³ See website: <https://cejn.gov.me>.

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Only when using the negotiated procedure without prior publication of a contract notice (Articles 59, 60, 65 PPL), are no opportunities published. The use of such a method must always be justified and the Contracting Authority shall obtain the opinion of the Ministry, before the initiation of such type of negotiation procedure (Article 65 PPL). The Ministry shall provide their opinion based on the submitted justification, within eight days of the receipt of the proper documentation. Only when for reasons of extreme urgency brought about in exceptional circumstances by events unforeseeable by the contracting authority and not depending or attributable to that contracting authority, the opinion of the Ministry is not requested.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(c)(b):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

According to Article 115 PPL the time between publication of the invitation for prequalification applications, or for an open procedure and the submission of proposals, depends on the complexity of the procurement and the level of competition expected.

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.

In the event of interruption of operation or technical limitations in operation of EPPS, the time limits in the public procurement procedure shall be extended for a period of duration of interruption, and at least 24 hours from putting the ESJN (EPPS) system back into operation, or for the remaining part of the time limit if the interruption of operation or technical limitations in operation of EPPS lasted longer than the remaining part of the time limit.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None

Assessment criterion 1(c)(c):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

Publication of open procedures is mandated on EPPS where all public procurement opportunities are posted. Publication is made in EPPS also for **simple** procurement above 8,000 Euro and they are available at no cost. For more details see criterion 1 (c)(a). The procurement notices are accessible at no cost through EPPS.

Gap analysis:

The assessment has not identified any gap

Recommendations:

None.

Assessment criterion 1(c)(d):

The content published includes enough information to allow potential bidders to determine whether they can submit a bid and are interested in submitting one.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 53 PPL requires that public procurement procedure shall commence 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 call shall contain 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.

Furthermore, Article 86 requires that tender documents are prepared in a clear, precise and logical manner as they must contain all the information that will enable the bidder to be aware of all costs that may be encountered in relation to public procurement. More relevant information on the type of information that the tender document may indicate is provided in the Rulebook on Forms of Conducting Public Procurement. As explained in assessment criterion 2(c)(c) contract conditions are not included in the tender document and the potential bidders don't have information on the expected contractual clauses in advance.

Gap analysis:

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 lack of contract conditions on the procurement documents creates uncertainties regarding the main conditions and obligations for the parties to the contract.

Recommendations:

Forms for conducting public procurement should include as part of the sample tender documents model contract clauses that should be used as a minimum to several types of contracts for works, services and goods.

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Sub-indicator 1(d) Rules on participation
The legal framework meets the following conditions:
Assessment criterion 1(d)(a): It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions
Conclusion: No gap
Red flag: No
Qualitative analysis: The PPL mandates in different articles the right of economic operator to participate in public procurement procedures. Articles 8 and 10 lay down the principles of public procurement by guaranteeing fair and equal access to all prospective bidders as follows: <ul style="list-style-type: none"> - Principle of ensuring competition under the article 8 provides that “Contracting authorities may not restrict or prevent competition among economic operators, and they may not prevent any economic operator from taking part in a public procurement procedure by way of unjustified application of the negotiated procedure or by using discriminatory conditions and criteria or measures favoring individual economic operators.” - Principle of equality, freedom and prohibition of discrimination under the article 10 provides that “Contracting authorities shall ensure that all economic operators in a public procurement procedure enjoy equal treatment. Contracting authorities shall not establish the conditions which would constitute national or territorial, subject-matter or other kind of discrimination against economic operators, or discrimination which would arise from the classification of business activity carried out by an economic operator...” <p>According to Art. 28 of PPL, an Economic Operator may participate in a public procurement procedure independently or jointly with one or more economic operators. Conditions for participating in a public procurement procedure and grounds for exclusion are elaborated in Articles 99 (listing the mandatory conditions), Articles 101-106 (requesting fulfillment of qualification requirement being of professional nature, economic and financial standing, and technical and professional ability), and Articles 108-110 (listing exclusions from public procurement procedures).</p> <p>In March 2022, Montenegro aligned with the EU’s foreign and security policy, including EU restrictive measures following Russia’s unprovoked aggression against Ukraine, as well as for international law and a rules-based international order. Montenegro supported the Joint Statement on aggression by the Russian Federation against Ukraine with the support of Belarus which among others refer to sanctions “to acting against the people and entities who facilitate the war in Ukraine and the harmful activities of the Russian government. Specifically, to taking measures to limit the sale of citizenship—so called golden passports—that let wealthy Russians connected to the Russian government become citizens of our countries and gain access to our financial systems”¹⁴. The above restrictions implies that citizens from Russia and Belarus are not allowed to participate in government financed activities including procurement procedures.</p>
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(d)(b): It ensures that there are no barriers to participation in the public procurement market.

¹⁴Quoted from [file:///C:/Users/wb548753/Downloads/Joint Statement on further restrictive economic measures.pdf](file:///C:/Users/wb548753/Downloads/Joint%20Statement%20on%20further%20restrictive%20economic%20measures.pdf)

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Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis:

Article 10 of PPL on principle of equality, freedom and prohibition of discrimination clearly provides that Contracting Authorities shall ensure that all economic operators in a public procurement procedure enjoy equal treatment. Contracting authorities shall not establish the conditions which would constitute national or territorial, subject-matter or other kind of discrimination against economic operators, or discrimination which would arise from the classification of business activity carried out by an economic operator. Domestic preference or price preference for domestic firms have not been identified.

Clauses introducing conditionalities to foreign economic operators (bidders) have not been identified either in PPL, or subsequent by-laws regulating exclusions from application of the PPL or bid forms. However, it appears that there exists an underlying barrier which is the requirement of national licensing for providing certain types of services and/or works. Article 102 of PPL entitles the CAs to request in the tender documents that economic operators must prove that they possess a valid authorization (permit, license, approval or other act) in accordance with law. Similarly, the EU Directive 2014/24/EU provides that economic operators shall demonstrate the suitability to pursue the professional activity and contracting authorities may require their enrollment in one of the professional or trade registers kept in the country of establishment.

Albeit this requirement can be easily fulfilled by the local economic operators, for international ones might pose a barrier to participation. As a general practice, interested bidders are required to comply with Montenegrin law in respect to sectoral legal framework such as the Law on Spatial Planning and Construction of Structures, Law on state surveying and cadaster of immovable property, Law on Safety and Health at Work among others. Only certified companies can provide these services which are to be complied with the aforementioned laws. 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. At times, the process for obtaining or validating similar international certifications in Montenegro is a lengthy and costly process that benefits mostly to local participants and involves a barrier to fair and equal competition. It is noted that DPPP does not get involved in the matter and delegates the licensing requirements to each competent authority.

Domestic preference or price preference for domestic firms have not been identified either. Registration to EPPS is not a barrier to participation in a procurement process and based on the number of international firms (economic Operators) registered to date¹⁵ 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. Also, the form for Self-declaration submitted by economic operators¹⁶ based on Article 111 of the PPL doesn't present any additional barrier to those explained above regarding professional capacities to participate in public procurement procedures in the country.

Gap analysis:

Although the PPL itself doesn't impose any barrier for firms (mainly international) 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

¹⁵ A total of 1,212 foreign bidders are registered in EPPS, out of which 637 have participated at least in one bid. 349 foreign firms have been awarded at least one contract.

¹⁶ The Form of the Statement Of The Business Entity is published on Official Gazette 071/20, dated 16.07.2020

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also to professionals who compose 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 to local participants and involves a barrier to fair and equal competition. It is noted that DPPP does not get involved in the matter and delegates the licensing requirements to each relevant authority.

Recommendations:

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 this information to widely accessible portals.

Assessment criterion 1(d)(c):

It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

Article 99 PPL details that only those economic operators may participate in a public procurement procedure who:

1) have not been convicted, or whose executive director has not been convicted of a criminal offence with the following elements:

- criminal association;
- creation of a criminal organization;
- giving a bribe;
- receiving a bribe;
- giving a bribe in business operations;
- receiving a bribe in business operations;
- evasion of taxes and contributions;
- fraud;
- terrorism;
- terrorist financing;
- terrorist association;
- participation in foreign armed formations;
- money laundering;
- human trafficking;
- trafficking minors for adoption;
- slavery and transport of enslaved people.

2) have settled all due obligations resulting from taxes and healthcare and pension insurance contributions, the records of which are kept with the state administration authority in charge for collection of tax revenues, or the competent state authority of the country of registered office of the economic operator.

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Article 110 PPL recognize that a Contracting Authority may exclude and economic operator from participation in a procurement procedure if;

- in a period of three years preceding the lapse of the deadline for submitting applications or bids, the EO has terminated a public procurement contract, public-private partnership contract, or concession contract with that or another contracting authority or for which a contract financial security instrument was called, damage or another sanction in accordance with the law compensated, due to significant and permanent shortcomings during implementation of key requirements from a prior public procurement contract, a public-private partnership or a concession contract;
- in a period of three years preceding the lapse of the deadline for submitting applications or bids in prior public procurement procedures, the EO provided to that contracting authority untrue data needed to verify compliance with the requirements for participating in the procedure, or lack of grounds from exclusion from the procedure, or failed to submit required proof.

Although the legal framework recognizes the mandatory exclusions, it doesn't elaborate the process for reaching decisions on administrative debarment including the process related to any possible appeals. From the above article 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 CA.

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.

Gap analysis:

PPL does not provide the procedures that lead to the debarment procedure for Economic Operators. Additionally, there isn't a unified list of debarred EO which raises the risk of firms with unprofessional and offence behavior being awarded contracts from public funds. The PPL doesn't provide grounds to reject tenderers due to other legitimate exclusions such as those in adherence to UN Security Council sanctions or any other international agreements that limit participation to members of the agreements. The request to verify with supplementary documents the EOs self-declaration 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.

Recommendations:

The legal framework should include a process for reaching decisions on administrative debarment as well as other legitimate exclusions such as adherence to the UN Security Council or other obligations deriving from existing international agreements.

Normative/Regulatory body should be tasked with the role of finalizing the administrative debarment process and publishing the list of debarred economic operators in EPPS. The right to appeal against 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.

The legal framework may include provisions to recognize the legal effects of supporting documents submitted by the same bidder within a specific timeframe.

Assessment criterion 1(d)(d):

It establishes rules for the participation of state-owned enterprises that promote fair competition.

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Conclusion: No gap
Red flag: No
Qualitative analysis: <p>There are no provisions on establishing rules for the participation of state-owned enterprises that promote fair competition. The same participation conditions that apply for privately owned are relevant also for state-owned economic operators, which is compliant with the requirement of the Procurement Directive 2014/24/EU.</p> <p>Article 18 indicates that the PPL does not apply in case of procurements of goods, services and works awarded by a public contracting authority to another economic operator with majority state ownership, where:</p> <ul style="list-style-type: none">- the contracting authority, independently or jointly with other public contracting authority, exercises control oversight over such economic operator;- such economic operator carries out more than 80% of its the economic activities in the performance of tasks entrusted to it by one or more public contracting authorities or an economic operator controlled by such public contracting authorities; and- there is no direct participation of the private capital in the legal person, except for participation of private capital in accordance with the law and founding agreement of that legal person, and which does not have a significant influence in controlling and the right of limiting and which does not exercise a decisive influence on that legal person.
Gap analysis: <p>The assessment has not identified any gap.</p>
Recommendations: <p>None.</p>
Assessment criterion 1(d)(e): <p>It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis: <p>Article 101 PPL details the requirements used to verify a bidder's ability to perform under a specific contract. The article provides that Contracting Authorities may, in accordance with subject matter of the public procurement require in the tender documentation from economic operators to comply with the following conditions:</p> <ul style="list-style-type: none">- capability to pursue the professional activity,- economic and financial standing and/or- technical and professional ability. <p>The conditions to pursue the professional activity are further detailed in art. 102 stating what type of evidentiary documentation is required for proving the condition (excerpt from the Central Registry of Economic Operators or other appropriate register, in the country in which the economic operators are seated; and/or, a valid authorization (permit, license, approval or other act). Financial and economic capacities are determined in Article 104 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 between of assets and due liabilities; and/or other financial parameters. Technical and professional parameters are described in Art. 106 and are related to a specific experience with high-quality and successful execution of same or similar</p>

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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; an environmental protection system in place.

In terms of eligibility to participate as indicated in criterion 1 (d)(c), the PPL determines the eligibility requirements and Article 111 indicate the procedure that the Economic Operators need to follow in order to confirm that they meet the requirements by submitting a self-declaration.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(e)

Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criterion 1(e)(a):

It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 86 requires that tender documents 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 way 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.

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 in use.

Gap analysis:

The legal framework mandate that the minimum information must contain, however it appears a gap in the secondary legislation regarding the standardized forms for contract conditions which is an area that Article 86 requires to be covered in procurement documents. Contracting Authorities include different contract models which don't cover main contract clauses in a consistent manner.

Recommendations:

The legal framework should ensure that the preparation of procurement documents is based on a harmonized standard procurement document which covers the whole procurement cycle, including contract management. EPPS should support a library of sample procurement documents and contracts models for different types of procurements.

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Assessment criterion 1(e)(b):

It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Article 87 on setting out the rules for drafting technical specifications provides that Technical Specifications of the procurement subject 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. This provision is to a great extent compliant with article 42 on technical specifications in the Directive 2014/24/EU on public procurement.

Gap analysis:

The assessment has not identified any gap

Recommendations:

None.

Assessment criterion 1(e)(c):

It requires recognition of standards that are equivalent, when neutral specifications are not available.

Conclusion: No gap

Red flag: No

Qualitative analysis:

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

Gap analysis:

The assessment has not identified any gap

Recommendations:

None.

Assessment criterion 1(e)(d):

Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing).

Conclusion: No gap

Red flag: No

Qualitative analysis:

Article 95 provides that Economic Operators shall have the right to request the Contracting Authorities in writing to clarify the tender documentation or amendments thereof, within the time set for the submission of

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qualification applications or bids, and no later than 10 days before the deadline for the submission of qualification applications or bids. Contracting Authorities shall, depending on the type of public procurement procedure, publish or supply clarification of the tender documentation via EPPS with no delay and at the latest within five days as of the day of receipt of the request.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

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

Assessment criterion 1(f)(a):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

The evaluation criteria are determined depending on the type of procurement subject and in accordance with requirements of the PPL and based on the Rulebook on the methodology of evaluation of bids.

Art. 117 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.

Art. 135 reaffirms that each member of the Commission carrying out procurement procedures shall separately (individually) evaluate regular bids based on the criteria established in the tender documentation.

Gap analysis:

The assessment has not identified any gap

Recommendations:

None

Assessment criterion 1(f)(b):

The legal framework allows the use of price and non-price attributes and/or the consideration of life cycle cost as appropriate to ensure objective and value-for-money decisions.

Conclusion: No gap

Red flag: No

Qualitative analysis:

To ensure objective and value-for-money decisions, the PPL (Article 117) envisages selection of the most advantageous bid in a public procurement procedure applying the principle of cost-effectiveness, on basis of the following criteria:

- offered price
- best price-quality ratio, or
- life-cycle cost.

PPL articles 118 and 119 further detail price-quality ratio and life cycle costing. These criteria are reflected in the Rulebook on forms in public procurement procedure.

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Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(f)(c):

The legal framework mandates that quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

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 matter 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 PPL.

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 listed under Art.117 apply also for consulting service including the Price-quality ratio criterion. Although Article 118 PPL provides for the parameters to be considered while determining the price-quality ratio there is a lack of forms (including evaluation process) to provide guidance on the methodology on evaluating the technical capacity in consulting services.

Gap analysis:

The Rulebook on the methodology for assessment of bids does not provide a clear methodology on evaluating technical capacity for consulting services.

Recommendations:

The secondary legislation should provide for a methodology for evaluating technical capacity for consulting services.

Assessment criterion 1(f)(d):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

According to Article 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 on, 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

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determined in such a manner that the number of points given based on price may not exceed 90% of the total determined maximum number of points.

Value for money is the leading principle of this Rulebook prescribing evaluation criteria which normally combine cost and non-cost attributes and thus providing optimal combination of various criteria to meet the requirements set by contracting authority. The Rulebook establishes three different evaluation methods: absolute, relative (proportional) and combined.

By applying the absolute method, bids are evaluated in such a way that for a certain amount, that is, the price/s or the amount of a certain value that represents the quality of the procurement object or a certain amount of life cycle cost determines a certain number of points, which is applied to the amounts given in the bids.

By applying the relative method, bids are evaluated in such a way that the bid with the lowest amount offered, that is, by the price amounts or the amount of the best offered value that represents the quality of the item or the lowest assigns the maximum number of points to the offered life cycle cost of the item, and other offers are valued in such a way that the lowest offered amount, that is, the amount of the price, the amount of the best offered value which represents the quality of the public procurement item or the lowest offered cost of the public procurement item's life cycle divide by the offered amount, that is, the price amounts, by the amount of the offered value, which represents the quality of the public procurement item or the offered life cycle cost of the public procurement item and the result obtained multiply by the predicted maximum number of points. By applying the combined method, bids are evaluated in such a way that, where possible, a certain part or parts of the public procurement subject are evaluated according to the absolute method, and a certain part, that is, parts of the public procurement subject are evaluated according to the relative (proportional) method, and the points thus obtained are added to the final number of points.

Gap analysis:

Although the legal framework sets the element required by the criterion itself, the assessment team considers that the ratio between price and non-price factors is set at high levels to ensure that value for money in public procurement is promoted. Further analysis on this is made on assessment criteria 3 (a)(d)

Recommendations:

Guidance notes should be provided to Contracting Authorities by DPPP 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.

Assessment criterion 1(f)(e):

The legal framework mandates that during the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

PPL Article 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. Previous PPL had a clear statement regarding non-disclosure of information during bid assessment but was removed in the 2023 PPL.

Gap analysis:

The current PPL doesn't have a clear provision stating that the information on the review of bids shall be confidential until contract award.

Recommendations:

The legal framework should clearly indicate non-disclosure of information during bid evaluation for all parties outside the evaluation process.

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<p align="center">Sub-indicator 1(g) Submission, receipt, and opening of tenders The legal framework provides for the following provisions:</p>
<p>Assessment criterion 1(g)(a): Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis: Opening of tenders is regulated by the Article 129 and it is done in the Electronic Public Procurement System (EPPS) at the moment of lapse of the time limit for tender submission, without the presence of the authorized representatives of the bidders. Article 131 further defines that the EPPS shall automatically create Minutes of opening of bids immediately after opening of bids has been completed and shall forward it to all bidders, jointly or individually, depending on the type of the public procurement procedure.</p>
<p>Gap analysis: The assessment has not identified any gap.</p>
<p>Recommendations: None.</p>
<p>Assessment criterion 1(g)(b): Records of proceedings for bid openings are retained and available for review.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis: Article 131 PPL defines that the EPPS shall automatically create Minutes of opening of bids immediately after opening of bids has been completed and shall forward it to all bidders, jointly or individually, depending on the type of the public procurement procedure. Also Art. 181 regulates the obligation of retaining complete documentation from public procurement procedures conducted in accordance with the same law 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 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 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.</p>
<p>Gap analysis: The assessment has not identified any gap.</p>
<p>Recommendations: None.</p>
<p>Assessment criterion 1(g)(c): Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.</p>

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Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>There is no article in the PPL regulating 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. Instead, Article 45 provides 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. Additionally, Art. 32 states that 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, whereas Art. 30 provides that a contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential.</p>
Gap analysis: <p>Apart from Article 30 on Data protection, the 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. The provisions of the PPL do not clearly indicate that disclosure of information may be done by law enforcement institutions.</p>
Recommendations: <p>The legal framework needs to expressly mandate that security and confidentiality of bids shall be maintained prior to bid opening and until after the award of contracts. The legal framework should clearly mandate that disclosure of information during procurement procedures can be allowed upon request of law enforcement agencies.</p>
Assessment criterion 1(g)(d): <p>The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis: <p>The disclosure of specific sensitive information is prohibited, as regulated in the legal framework, i.e. as provided by the Article 30 stating that a contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential. Contracting authorities shall not reveal to other candidates and bidders in a negotiated procedure without prior publication of a contract notice, a competitive procedure with negotiation, a competitive dialogue, an innovation partnership or a negotiated procedure with prior publication of a contract notice the data or designs communicated to them by the candidate or the bidder participating in negotiations or a dialogue, without their written consent.</p>
Gap analysis: <p>The assessment has not identified any gap.</p>
Recommendations: <p>None.</p>
Assessment criterion 1(g)(e): <p>The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.</p>

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Conclusion: No gap
Red flag: No
Qualitative analysis: <p>Art. 122 describes the modality of tender submission; tenders shall be submitted in electronic form to a contracting authority via EPPS. An economic operator declaration and a bid guarantee shall be submitted in electronic form via 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 ESJN (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 EPPS.</p>
Gap analysis: <p>The assessment has not identified any gap.</p>
Recommendations: <p>None.</p>
<p style="text-align: center;">Sub-indicator 1(h) Right to challenge and appeal The legal framework provides for the following:</p>
<p>Assessment criterion 1(h)(a): Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>The legal framework provides for the right of a participant to challenge decisions or actions by a procuring entity. Section XI in the PPL is dedicated to the protection of rights in public procurement procedures. Article 183 provides that "Protection of rights of participants in a public procurement procedure, in accordance with this Law and a regulation governing public procurement in area of defense and security shall be exercised before Commission for Protection of Rights in Public Procurement Procedures (hereinafter: Commission for Protection of Rights).</p>
Gap analysis: <p>No gaps are identified for the specific criterion if considered the scope of coverage of PPL and the terminology used to refer only to participant in procurement procedures. However, the legal framework doesn't foresee the right of a party who might have an interest in the procurement procedures. Decisions of contracting authorities to select a non-open competitive method (including negotiation without publication of prior notice) cannot be challenged.</p> <p>However, the assessment team considers that the right to challenge an award decision should be granted for simple procurement as well. The Rulebook on Conducting Simple procurement don't envisage the right of the bidders to challenge the decision of Contracting Authorities</p>
Recommendations:

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

Assessment criterion 1(h)(b):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

Article 185 provides that the procedure for protection of the right is initiated by an appeal which is filed with the Commission for Protection of Rights through the contracting authority. Upon receipt of an appeal, Cas publish appeals at EPPS and suspend the procurement procedure. Cas notify the Commission 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 Commission through EPPS. However, this requires an action by a CA in the system. Organization and status of the Commission is provided in the PPL articles 198-208. Specifically, Article 198 PPL provides that the Commission shall be an authority responsible for the protection of rights in public procurement procedures and the procedures for awarding contracts on public-private partnership. The Commission shall be autonomous and independent in performing its functions.

PPL grants also the right for judicial review; Art. 197 provides that administrative proceedings may be initiated against a decision of the Commissions. The complaint filed against a decision of the Commission for Protection of Rights shall have no suspensive character for the conclusion of a public procurement contract. The Commission for Protection of Rights 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 recognize also 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 Laws on Administrative Procedures¹⁷ and on Administrative Disputes¹⁸.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(h)(c):

Rules establish the matters that are subject to review.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The PPL establishes clearly which are the matters subject to review and those are in accordance with the subject

¹⁷ Published in the Official Gazette of Montenegro 056/14 of 24 December 2014, 020/15, of 24 April 2015, 040/16 of 30 June 2016, 037/17 of 14 June 2017

¹⁸ Published on Official Gazette of the RMN", No. 60/03, 28.10.2003

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matters of the Remedies Directive¹⁹. Article 185 PPL provides that an appeal with the Commission for Protection of Rights 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 same article elaborates in detail on each of the above-listed items which serve as a basis for an appeal.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(h)(d):

Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.

Conclusion: No gap

Red flag: No

Qualitative analysis:

PPL establishes time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.

PPL article 186 elaborates in detail the right to appeal to the Commission for Protection of Rights through the contracting authority, considering the matter which is appealed:

- within 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
- 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.

Art. 193 foresees the deadlines for decision-making by the Commission for the Protection of Rights, which shall be obliged to:

- adopt the resolution to suspend the appeal within eight days as of the day of receipt of notification on withdrawal of the appellant;
- adopt the resolution referred to rejection for administrative noncompliance of the complaint within eight days as of the day of submission of the appeal and complete case files;
- Adopt the resolution referred to rejection or acceptance based on a detailed review, within 30 days as of the day of submission of the appeal and complete case files. This deadline may be extended for a maximum of 10 days in the event of the need to engage an expert witness, to obtain the opinion of the competent authorities and the volume of the documentation in the public procurement procedure, of which the appellant and the contracting authority shall be notified.

Gap analysis:

The assessment has not identified any gap.

¹⁹ DIRECTIVE 2007/66/EC

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Recommendations: None.
Assessment criterion 1(h)(e): Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.
Conclusion: No gap
Red flag: No
Qualitative analysis: Art. 189 provides that the Contracting Authority shall be obliged to publish on the EPPS, within three days following the day the appeal is lodged, a notification that the appeal was lodged and that further actions in the public procurement procedure have been suspended until the resolution on the appeal is rendered. Also, Art. 197 provides that the Commission for Protection of Rights shall publish on its website and the EPPS the notification concerning the commencement of administrative proceedings before the courts and the resulting decision. Decision of the courts are publicly available at Administrative Court of Montenegro website ²⁰ .
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(h)(f): Decisions by the independent appeals body can be subject to higher-level review (judicial review).
Conclusion: No gap
Red flag: No
Qualitative analysis: Article 197 PPL provides that administrative proceedings may be initiated against a decision of the Commission for Protection of Rights. Any company/person who suffered damages resulting from a violation of the PPL, has the possibility to request compensation before the administrative courts. Due to the non-suspension character of the court suits in procurement ambit, there are no other remedies available such as returning the parties to their original positions (i.e being awarded the contract).
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Sub-indicator 1(i) Contract management The legal framework provides for the following:
Assessment criterion 1(i)(a): Functions for undertaking contract management are defined and responsibilities are clearly assigned.

²⁰ <https://www.sudovi.me/sdvi/odluke>

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Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

Art. 152 requires that the Contracting authorities 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. As such the main responsibility for contract management is with the Contracting Authorities. However, in this provision or others, the responsibilities to be undertaken by the assigned person(s) to follow up on contract implementation have not been defined.

Gap analysis:

Contract management in its full range is not defined either in PPL or subsequent by-laws. 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. Also, the contract implementation reports prepared by CA don'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.

Recommendations:

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.

Assessment criterion 1(i)(b):

Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Conditions for contract amendments are defined in the PPL under article 151. This article considers 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% 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% 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% of the original contract; when a need to modify the contract resulted from circumstance the contracting authority could have not 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.

Gap analysis:

The PPL and the secondary legislation don't ensure that there are control mechanisms in place to ensure that contract amendments ensure economy.

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Recommendations:

Legal framework should include provisions to ensure that Contracting Authorities perform internal control mechanisms to ensure contract amendment procedures are adequately followed to ensure economy and efficient use of resources.

Assessment criterion 1(i)(c):

There are efficient and fair processes to resolve disputes promptly during the performance of the contract.

Conclusion: No gap

Red flag: No

Qualitative analysis:

PPL provisions don't directly regulate the process of dispute resolution during the performance of a public procurement contract. Article 149 PPL 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. Based on a review of sample contracts from selected Contracting Authorities, the clauses of the contract envisage that disputes during performance of contract can be resolved amicably or by initiating a litigation procedure at the competent court as defined in special conditions of contract. In practice, such litigations may take years to conclude due to complex international contracts, and the cost may be prohibitive. To avoid long delays in resolving disputes, the country has made the policy to accept alternative dispute resolution (ADR).

The Law on alternative dispute resolution was published in the Official Gazette no. 77/2020 of 29.7.2020 and entered into force on 6.8.2020. It regulates the alternative resolution of disputes in civil law proceedings (hereinafter: alternative resolution of disputes) by 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 Law stipulates that if the parties have agreed to submit a dispute to arbitration, and the matter is brought before the court instead, the court shall, upon a party's objection, declare its lack of jurisdiction. International arbitration decision that are taken outside Montenegro are recognized and enforced by the competent civil court in line with the NY Convention on enforcement of international arbitral award to which Montenegro is member since 2015.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(i)(d):

The final outcome of a dispute resolution process is enforceable.

Conclusion: No gap

Red flag: No

Qualitative analysis:

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

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For dispute resolution under the ADR mechanism, Article 23 of the Law on alternative dispute resolution provides that the settlement concluded before the mediator is binding on the parties who concluded it. The parties are obliged to fulfil the obligations of the settlement within the period determined by the settlement.

Also, based on the Arbitration Law, an arbitral award made 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. As indicated in the assessment criterion 1(i)(c), the Arbitration Law recognizes the legal effects for the arbitration decision and that only court's decision may set aside an arbitral award subject to conditions that are listed in the articles 47 and 48 of the Arbitration Law. International arbitration decision that are taken outside Montenegro are recognized and enforced by the competent civil court in line with the NY Convention on enforcement of international arbitral award to which Montenegro is member since 2015.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

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

Assessment criterion 1(j)(a):

The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

The legal framework mandates e-Procurement solutions covering the public procurement cycle partially. Based on PPL article 45 on EPPS which provides the full range of actions that the system enables covering a complete public procurement cycle, the Rulebook on manner of operation and use of Electronic Public Procurement System (EPPS) was put into force in 2021. In practice, contract implementation documents are not registered in the system. Only the report on contract completion is published, but not the progress report, billing and payments, etc.

Gap analysis:

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.

Recommendations:

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

Assessment criterion 1(j)(b):

The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

Conclusion: No gap

Red flag: No

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Qualitative analysis:

Article 32 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, Article 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.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(j)(c):

The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

Conclusion: No gap

Red flag: No

Qualitative analysis:

PPL clearly defines that the whole public procurement process will be managed electronically. Art. 122 provides that a tender shall be submitted in electronic form via EPPS. An economic operator declaration and a bid guarantee shall 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 ESJN (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 regulates the whole submission process and communication between contracting authorities and participants in public procurement process.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(k)

Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criterion 1(k)(a):

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

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 181 PPL describes that Contracting Authority shall store the complete documentation from public procurement procedures conducted in accordance with the PPL, at least four years after the day of execution

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of the public procurement contract. 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.

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 Commission for the Protection of Rights in the public procurement procedure and the competent inspection body.

The Rulebook on Methods for conducting Simple Procurement 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.

Gap analysis:

Access to procurement records for public inspection is limited. The inspection as a control authority does not have automatic access to what is being safekept in the e-procurement system 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.

Recommendations:

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

Assessment criterion 1(k)(b):

There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.

Conclusion: No gap

Red flag: No

Qualitative analysis:

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, 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. This timeline appears to be in general in line with audit cycle (maximum every 3 years), but not with the statute limitation for fraud and corruption offences (which may vary from 5-10 years) depending on the offence severity.

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,

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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.
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(k)(c): There are established security protocols to protect records (physical and/or electronic).
Conclusion: Substantive gap
Red flag: No
Qualitative analysis: Neither PPL nor the subsequent by-law on EPPS requires or defines the establishment of security protocols for records management. The Rulebook on form of records for public procurement procedures identified the type of information and documents which should be recorded by Contracting Authorities. However, it fails to describe the protocols for how physical records are kept within institutions. 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.
Gap analysis: Neither PPL nor the subsequent by-law on EPPS requires or defines the establishment of security protocols for records management. However, the keeping of physical records is regulated by other laws and by-laws outside the scope of legal framework governing public procurement but they apply generally to all public administration bodies which covers procurement records as well.
Recommendations: The legal framework on public procurement should establish security protocols for procurement related documents.
Sub-indicator 1(l) Public procurement principles in specialized legislation The legal and regulatory body of norms complies with the following conditions:
Assessment criterion 1(l)(a): Public procurement principles and/or the legal framework apply in any specialized legislation that governs procurement by entities operating in specific sectors, as appropriate.
Conclusion: No gap
Red flag: No
Qualitative analysis: 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 Articles 158-166 of the PPL. Also, the procurement procedures that are to be followed in sectorial contracts is elaborated throughout Article 167-183 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;

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

PPL articles 175 and 176 define list of equipment and specialized procurements in the field of defense and security which are excluded from the application of PPL and is 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. There is only one provision in this Decree that defines application of public procurement principles and that is a principle of economy. The said provision provides that "The contracting authority is obliged to ensure economical use when carrying out the procurement referred to in Article 1 of this regulation of 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. The principle of transparency is limited in defense and security procurement due to its sensitive nature.

Gap analysis:

No gaps are identified. Even though these are specialized procurements and therefore excluded from application of PPL and regulated by specialized legislation, public procurement principles promoting transparency, fairness, competitiveness, value for money decisions are generally applied across the entire spectrum of public service delivery with due consideration to specificities of different sectors such as defense.

Recommendations:

None.

Assessment criterion 1(l)(b):

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

Conclusion: No gap

Red flag: No

Qualitative analysis:

Selection and contracting of PPPs is regulated by the specialized legislation which is the Law on public-private partnership. According to the article 7 of PPP Law principles of protection of the public interest; security and affordability; transparency; non-discrimination; **proportionality**; protection of competition; environmental protection applies 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 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. Article 3 of the Law on concessions provides that granting concessions is based on the principles of transparency, non-discrimination and competitiveness.

For more details on the legal framework on PPP and Concession see criterion 1 (a)(c).

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(l)(c):

Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.

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Conclusion: No gap
Red flag: No
Qualitative analysis: <p>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.</p> <p>Its role is to promote and monitor the realization of public-private partnerships and investments. In addition, the Agency and the Ministry of Finance and Social Welfare give an opinion on public-private project proposals. At the same time, all public-private partnership contracts shall be registered on the Contracts Register of the Agency and published on its web page.</p> <p>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 and its organizational structure and responsibilities are clearly defined by the law.</p>
Gap analysis: <p>The assessment has not identified any gap.</p>
Recommendations: <p>None.</p>

Indicator 2. Implementing regulations and tools support the legal framework

Sub-indicator 2(a) Implementing regulations to define processes and procedures
Assessment criterion 2(a)(a): <p>There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>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; a 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 website²¹ and are accessible to public.</p> <p>The following areas are regulated by:</p> <ol style="list-style-type: none"> <i>Decrees</i> <ol style="list-style-type: none"> on the List of Military Equipment and Products, Procedure and Method of Conducting Public Procurements in the Fields of Defense and Security ²²; on the Method of Planning and Conducting Centralized Public Procurement ²³

²¹ <https://ujn.gov.me/podzakonska-regulativa-zakona-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19/>

²² Official Gazette of Montenegro, No 76/2020 of 28 July 2020

²³ Official Gazette of Montenegro, No 69/2020 of 11 July 2020, 105/2020 of 29 October 2020

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(iii) on the Method of Procurement for Diplomatic and Consular representation of Montenegro abroad²⁴.

2. Rulebooks

- (i) on simple procurement
- (ii) on forms of public procurement procedures
- (iii) on the form of public procurement plans
- (iv) on the content of the bids
- (v) on the use of e-procurement system
- (vi) on the form of records of registered bidders in the electronic public procurement system
- (vii) on the list of works and jobs that may be the subject of public procurement
- (viii) methodology of assessment of offers in public procurement procedure
- (ix) on the methodology for evaluating the public procurement value
- (x) on the program and method of passing the professional examination for public procurement

3. Manuals and guidelines

- (i) Manual on simple procurement
- (ii) Manual on publishing simple procurement
- (iii) Manual on preparation of public procurement plans
- (iv) Registration form for contracting Authorities
- (v) Manual for bidders
- (vi) Bidders' registration form
- (vii) Manual for evaluation of bids

The content of the regulations is in line with the PPL and from the review it was not noted any contradiction with the PPL.

Gap analysis:

The reviewed regulation appears to cover majority of PPL provisions and provide details on their implementation. However, it is noted that a specific area promoted by PPPL such as sustainable procurement is not prepared and available. PPL requires a more comprehensive regulation on specific areas such as sustainable procurement that is not covered in the set of regulations. Contracting Authorities are not furnished with adequate operational tools to implement the article 11 of the PPL.

Recommendations:

Elaborate a specific regulation to cover the application of sustainable public procurement including social, environmental and innovations in public procurement.

Assessment criterion 2(a)(b):

The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

As listed in the criterion 2 (a)(a) there is a numerous list of regulations and rulebooks which is set in different level of legal hierarchy. It is noted that for separate process within procurement cycle there are separate regulations which might create confusion for Contracting Authorities. As such the Rulebooks for the elaboration of 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 reflect only the instructions of conducting the referenced process in the Electronic Public procurement System rather than providing guidance from the procedural contexts.

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Gap analysis:

Numerous regulations are issued with no systematic coherence among procurement steps to enable easy reference and application by Contracting Authorities.

There is lack of a consolidated set of regulation to summaries in one single act the full cycle of the procurement procedures. DPPP may further consider harmonizing the existing set of implementation rules into more unified acts.

Recommendations

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 for specific processes.

Assessment criterion 2(a)(c):

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

Conclusion: No gap

Red flag: No

Qualitative analysis

Based on the provisions of the PPL (Art 26, Art 27, Art 38 etc) the Ministry of Finance (MoF) that have the responsibility to further define rules that are issues in accordance with the PPL. In addition, Art 44.2 requires the MoF to provide technical guidance on the implementation of the PPL. The MoF performs these tasks through the DPPP as stated in the Rulebook and Job systematization of the Ministry of Finance, by assigning the DPPP with the function of preparing draft regulations in the field of public procurement. 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 since February 2023 after the 2023 amendments on the PPL.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Sub-indicator 2(b)

Model procurement documents for goods, works and services

Assessment criterion 2(b)(a):

There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

The Rulebook on forms for conducting public procurement procedures approved by the Ministry of Finance include the template 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.

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The abovementioned 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.

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 from bidders to facilitate preparation of bids.

Gap analysis:

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 in advance, in particular the standard contract conditions.

Recommendations

Elaborate model standard procurement document for different type 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 type of procurement.

Assessment criterion 2(b)(b):

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

Conclusion: No gap

Red flag: No

Qualitative analysis

The forms on conducting procurement procedures generally include clauses that reflect the provisions of the PPL and Rulebook linked to public procurement. 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:
- The whole, by the parties,
- 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 election,
- The term of validity of the offer
- Guarantee

As noted in assessment criteria 2 (b) (a) the template doesn't include the standard contract conditions nor a set of critical and mandatory contractual provisions is part of the forms on conducting procurement procedures.

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Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 2(b)(c): The documents are kept up to date, with responsibility for preparation and updating clearly assigned.
Conclusion: No gap
Red flag: No
Qualitative analysis The MoF through DPPP has the responsibility to keep the documents up to date. See assessment criteria 2 (a) (c). The most recent update of the Rulebook containing the model tender documents is done in February 2023 after the changes in the PPL.
Gap analysis The assessment has not identified any gap
Recommendations None.
Sub-indicator 2(c) Standard contract conditions used
Assessment criterion 2(c)(a): There are standard contract conditions for the most common types of contracts, and their use is mandatory.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis 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.
Gap analysis Article 149 paragraph 2 of the PPL indicate 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 type of contracts.
Recommendations Forms on conducting procurement procedures should be supplemented with model contract conditions for works, goods and services.
Assessment criterion 2(c)(b): The content of the standard contract conditions is generally consistent with internationally accepted practice.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis See assessment criteria 2 (c) (a).

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<p>Gap analysis</p> <p>Since there are no standard contract conditions the assessment could not cover this criterion.</p>
<p>Recommendations</p> <p>Develop standard contract conditions as part of the forms on conducting procurement procedures.</p>
<p>Assessment criterion 2(c)(c):</p> <p>Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>From the review of sample contracts to inform the assessment of indicators under Pillar 3, it is noted that the procurement documents that are made available to bidders before 2019 PPL amendment there is the form of the contract prepared by the Contracting Authority. For the sample contracts of 2020-2023 the form of the contract is not part of the procurement documents.</p>
<p>Gap analysis</p> <p>Contracting Authority don't include the form of the contract as part of the procurement documents issued to bidders those creating uncertainty to potential bidders on the contractual conditions. Also there is risk of unconformity in the practice followed by different Contracting Authorities.</p>
<p>Recommendations</p> <p>Include the model contract conditions based on different types of contracts, as part of procurement documents.</p>
<p style="text-align: center;">Sub-indicator 2(d) User's guide or manual for procuring entities</p>
<p>Assessment criterion 2(d)(a):</p> <p>There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>DPPP has issued different manuals for Contracting Authorities (CA) and Economic Operators (EO). They mainly refer to use of the E-PS for the different steps covered by each manual.</p> <p>For CA the following manuals are prepared and published:</p> <ul style="list-style-type: none"> - Registration form for Contracting Authority - On Simple procurement - On Public procurement plan preparation - On evaluation of Bids - On data entry in E-PS <p>For the EO the following manuals are made available:</p> <ul style="list-style-type: none"> - Bidder registration form - Manual for Bidders.
<p>Gap analysis</p> <p>There is 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 E-Procurement System rather than being focused on functional details of the procurement processes.</p>
<p>Recommendations</p>

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Consolidate the existing guidance with additional missing links into a comprehensive public procurement manual to allow for a synchronized instruction covering all steps of procurement cycle from Contracting Authority and Economic Operator perspective.
Assessment criterion 2(d)(b): Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.
Conclusion: No gap
Red flag: No
Qualitative analysis Based on Art 44. 2 the MoF has the responsibility to provide technical guidance for implementation of the PPL and this role is executed through the DPPP, which is entitled to prepare the draft regulations and guidance regarding public procurement. This function of the DPPP is also indicated in the Rulebook and Job Systematization of Ministry of Finance.
Gap analysis The assessment has not identified any gap
Recommendations None.

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

Sub-indicator 3(a) Sustainable Public Procurement (SPP)
Assessment criterion 3(a)(a): The country has a policy/strategy in place to implement SPP in support of broader national policy objectives
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Government have approved a broader Sustainable Development Strategy ²⁵ until 2030, but there is no reference to objectives related to public procurement. 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. Although the Action Plan for implementing the Procurement Strategy stress out 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 the focus remains only at professionalization enhancement in the area of Sustainable Procurement.
Gap analysis The country doesn't have a strategy in place to implement SPP albeit in the Public Procurement Strategy it is stated the objective to promote green and sustainable procurement from the optic of increasing practitioners' capacities only. There are lack of operational tools available for Contracting Authorities to support implementation of SPP.
Recommendations Develop SPP strategy as part of the Public Procurement Action Plan for 2023-2025.
Assessment criterion 3(a)(b): The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.

²⁵ <https://wapi.gov.me/download-preview/6852d215-af43-4671-b940-cbd0525896c1?version=1.0>

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Conclusion: Substantive gap

Red flag: No

Qualitative analysis

See 3 (a) (a)

Gap analysis

There is not a 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 out 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. The annual action plan for 2022 included measures related to the promotion of sustainable procurement, including green public procurement, however activities are delayed according to the report on the implementation of the strategy. It is stated that workshops were held which concluded that it would be needed a higher level of promotion of environmental and social criteria in the process of awarding public procurement contracts including measuring the results. This is planned to be achieved through educational programs and promoting the use of sustainable criteria in the procuring processes. One of the strategic objectives of the 2023 annual action plan refers to encouraging the implementation of framework agreements, centralized public procurement, green and sustainable procurement, mainly focused on the increase of the percentage of framework agreements, centralized procurement, sustainable criteria etc. Training program on sustainable procurement were conducted by the Ministry of Finance and Chamber of Commerce of Montenegro during 2023

Recommendations

See recommendation 3 (a) (a)

Assessment criterion 3(a)(c):

The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.

Conclusion: No gap

Red flag: No

Qualitative analysis

The PPL allow for sustainability in all stages of procurement cycle.

Article 11 requires that 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.

Article 25 allow for reserved procurement 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% of the employees, whereupon all participants of the joint bid and all subcontractors belong to the said group.

Article 87 include that technical specifications may include requirements concerning the environmental protection, energy efficiency, social care and/or protection and transfer of intellectual property rights.

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Article 106 foresees that Contracting Authorities may include as part of technical and professional ability required in the tender document that an environmental protection system in place.

Article 117 foresees that a Contracting Authority shall 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.

Article 114 requires that 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.

Gap analysis

The assessment has not identified any gap

Recommendations

None.

Assessment criterion 3(a)(d):

The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 118 of 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% 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 % to 80% for price and 10 % to 20% for quality.

Gap analysis

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 doesn't provide for a mandatory application of sustainability criteria as such the legal provision doesn't ensure by default a well-balanced application of sustainability criteria.

Recommendations

Guidance notes can be provided to 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.

Sub-indicator 3(b)

Obligations deriving from international agreements

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

Assessment criterion 3(b)(a):

Clearly established

Conclusion: No gap

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Red flag: No

Qualitative analysis

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

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 the Secretariat's working bodies.

Obligations arising from Montenegro's membership from 2007 in the Free Trade Agreement for Southeast European Countries – 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 the North Atlantic Treaty Organization - NATO on 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.

Stabilization and Association Agreement between EU and Montenegro is concluded on March 2010 and establish a free trade area between the EU and the country, identify common political and economic objectives and encourage 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.

Gap analysis

The assessment has not identified any gap

Recommendations

None.

Assessment criterion 3(b)(b):

Consistently adopted in laws and regulations and reflected in procurement policies.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 13 of the PPL indicates clearly 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:

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- 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. In such case if the contract is co-financed by more than 50% 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.

Gap analysis

The assessment has not identified any gap

Recommendations

None

Pillar II. Institutional Framework and Management Capacity

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

Sub-indicator 4(a) Procurement planning and the budget cycle
The legal and regulatory framework, financial procedures and systems provide for the following:
Assessment criterion 4(a)(a): Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Article 84 of 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. Publication procurement plan 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 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 analyzed on a rolling basis. There are also concerns with the accuracy of available data on such commitments and the resulting liabilities.
Gap analysis 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 analyzed on a rolling basis. There are also concerns with the accuracy of available data on such commitments and the resulting liabilities.
Recommendations Effective system of controls should be instituted and applied in practice which ensures that multi-annual

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commitments stay within medium-term expenditure ceilings and are properly recorded. Commitment controls and approvals should be automated and interfaced with EPPS.

Assessment criterion 4(a)(b):

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

Conclusion: Minor gap

Red flag: No

Qualitative analysis

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 midterm 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.

Gap analysis

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.

Recommendations

Medium-term plans and budgets should be strengthened to provide more robust and binding allocation of funds for multi-annual contracts.

Assessment criterion 4(a)(c):

A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

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Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>Article 182 of the PPL asks for semiannual and annual Report to be prepared by each Contracting Authority which should contain information of the public procurement procedures conducted and concluded contracts for simple procurements. Based on the provision of the same PPL, the Ministry of Finance 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.</p> <p>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.</p> <p>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.</p> <p>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 GoM 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 GoM.</p>
<p>Gap analysis</p> <p>Contract implementation data is fragmented, however overall reports on budget execution which include also major contracts, is timely and reliable.</p>
<p>Recommendations</p> <p>Include in contract implementation reports prepared by the Contracting Authorities information on the financial progress of the contracts.</p>
<p style="text-align: center;">Sub-indicator 4(b)</p> <p style="text-align: center;">Financial procedures and the procurement cycle</p> <p style="text-align: center;">The legal and regulatory framework, financial procedures and systems should ensure that:</p>
<p>Assessment criterion 4(b)(a):</p> <p>No solicitation of tenders/proposals takes place without certification of the availability of funds.</p>

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Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>Article 83 of the 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. Article 2 on 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.</p> <p>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.</p> <p>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 FMIS. 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.</p>
Gap analysis <p>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.</p>
Recommendations <p>Automate the certification for availability of funds through government financial management systems and its interface with EPPS.</p>
Assessment criterion 4(b)(b): <p>The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>The national regulation and procedures 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 request 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</p>

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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.

Payment to contractors is made in Euro that is the official currency of Montenegro. In addition the PPL mandate that the currency used in procurement procedure is Euro, applying also to international contractors.

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):

- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).

Source: PFM systems.

There are not data available to support the analysis. The information on payment execution is not captured in real time by the financial system. Also the team could not collect all invoices processed under sample contracts that were reviewed as part of the Pillar 3 assessment.

Gap analysis

The procedures set for processing the invoices are clear and transparent, however lack of data generated from Financial management System to show if the payment procedures are conducted timely, indicate that the system is not transparent and that financial information is not available to all.

Recommendations

EPPS should ensure interface with Financial Management System.

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

Sub-indicator 5(a)

Status and legal basis of the normative/regulatory institution function

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

Assessment criterion 5(a)(a):

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

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The PPL provides a clear description of the institutions that are involved in the domain of public procurement. Article 2 of the PPL indicate 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 being responsible for public procurement can be found only on the Regulation for the Organization of the State Administration.²⁶ The overarching responsibility stays within the Ministry of Finance which executes all responsibilities listed in the PPL through the Department for Public Procurement

²⁶ Published on Official Gazette of Montenegro", no. 049/22 from 06.05.2022, 052/22 from 13.05.2022, 056/22 from 27.05.2022.

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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 attribute 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 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.

Protection of rights of economic operators is assigned to Commission for protection of rights.

Supreme Audit institution 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 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 entire procurement process, including implementation of procurement legislation and contract implementation. There is an operational Internal Audit function²⁷, positioned as an organizationally and functionally independent advisory function to the top management of each institution

Gap analysis

The article 209 of the PPL foresee two type of oversight. (i) The Ministry shall carry out oversight over the implementation of the PPL and regulations adopted pursuant to it. (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 PLL 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 oversighting the implementation of the PPL. From the interview with DPPP staff was emphasize that the DPPP monitors the overall public procurement with the objective to ensure its enhancement and improvement, while to role of inspection is more compliance driven and is focused on identifying misdemeanors of CA/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 submit to the Ministry. 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. 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. The Administration of Inspections in Public Procurement don't provide for a summary of most identified irregularities in procurement procedures review, or how these findings were taken into consideration by DPPP to issue any instruction or guidance to the Contracting Authorities in avoiding the same systematic issues.

Recommendations

²⁷ 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.

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

Sub-indicator 5(b)

Responsibilities of the normative/regulatory function

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

Assessment criterion 5(b)(a):

providing advice to procuring entities

Conclusion: No gap

Red flag: No

Qualitative analysis

Based on Article 44/5 the Ministry of Finance responsible to provide advisory assistance to Contracting Authorities and economic operators upon their request.

Gap analysis

The assessment has not identified any gap.

Recommendations

None.

Assessment criterion 5(b)(b):

drafting procurement policies

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no clear reference to the role of drafting procurement policies in the Article 44. The PPL refer only to function of providing technical guidance to the implementation of the PPL. Although this function is not explicitly mentioned in the PPL it is however regulated by the Decree on organization of state administration under the Ministry of Finance.

Gap analysis

The assessment has not identified any gap.

Recommendations

None.

Assessment criterion 5(b)(c):

proposing changes/drafting amendments to the legal and regulatory framework

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no clear reference to this role in the Article 44. However, this role is implied in the provisions of PPL and also is mentioned under the responsibility of the DPPP in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance. Although this function is not explicitly mentioned in the PPL it is however regulated by Rulebook on Internal Organization and Job Classification of the Ministry of Finance. Considering the hierarchy of legal acts, the PPL should refer to this function in order for the sublegal acts to be based to the provisions of the PPL.

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Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(d): monitoring public procurement
Conclusion: No gap
Red flag: No
Qualitative analysis Article 44/1 of PPL foresee that monitoring public procurement is under the responsibility of the Ministry of Finance.
Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(e): providing procurement information
Conclusion: No gap
Red flag: No
Qualitative analysis Based on Article 44/10 the 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.
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 5(b)(f): managing statistical databases
Conclusion: No gap
Red flag: No
Qualitative analysis Article 44 foresees <i>inter alia</i> that the Ministry of Finance is responsible for: 9) establishing and maintaining records on registered bidders in the EPPS; 12) preparing, publishing and updating the list of contracting authorities, which are registered in the ESJN (EPPS), and the list of public procurement officers. 17) preparing and submitting to the Government reports which contain statistical data captured from the EPPS.
Gap analysis

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The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(g): preparing reports on procurement to other parts of government
Conclusion: No gap
Red flag: No
Qualitative analysis Article 44/17 foresees that the Ministry of Finance has the role of preparing and submitting reports to the Government (Council of Ministers headed by the Prime Minister and composed by Ministers as member of the Cabinet). As per Article 182 the reports refer 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.
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 5(b)(h): developing and supporting implementation of initiatives for improvements of the public procurement system
Conclusion: No gap
Red flag: No
Qualitative analysis There is no clear reference to this role in the Article 44 of the PPL, however the role, even if not explicit, it is embedded in the other functions spelled out this article.
Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(i): providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement
Conclusion: No gap
Red flag: No
Qualitative analysis Based on Article 44/6 the Ministry of Finance 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.
Gap analysis The assessment has not identified any gap.

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Recommendations None	
Assessment criterion 5(b)(j): supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	
Conclusion: No gap	
Red flag: No	
Qualitative analysis Based on article 44/7 the Ministry of Finance 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.	
Gap analysis The assessment has not identified any gap.	
Recommendations None.	
Assessment criterion 5(b)(k): designing and managing centralised online platforms and other e-Procurement systems, as appropriate	
Conclusion: No gap	
Red flag: No	
Qualitative analysis Article 44/8 attributes to the Ministry of Finance the role of establishing, maintaining, and managing the E-PS and monitoring its use.	
Gap analysis The assessment has not identified any gap.	
Recommendations None.	
Sub-indicator 5(c) Organisation, funding, staffing, and level of independence and authority	
Assessment criterion 5(c)(a): The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	
Conclusion: No gap	
Red flag: No	
Qualitative analysis Article 2 of the PPL indicate 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 on the degree for organizing the state administration. In the later the Ministry of Finance is mandated as the regulatory institution in the domain of public procurement. The functions and responsibilities of Ministry listed in the article 44 of the PPL are executed through the Department for Public Procurement Policy (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.	

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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 assess that the Director has adequate mechanism to influence policy enhancement through the Minister of Finance.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 5(c)(b):

Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Since the regulatory functions is performed by a department within the structure of the Ministry of Finance the required budget of the DPPP is planned and executed as part of the main budget of the Ministry of Finance.

Gap analysis

Financing is not secured by the legal/regulatory framework; however, it is implied that the Ministry of Finance execute its function under the public procurement through the overall assigned budget for the Ministry. During the assessment time it 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.

Recommendations

Ensure that the Ministry budget include sufficient budget to allow DPPP functioning including, additional staff and EPPS maintenance and/or upgrade.

Assessment criterion 5(c)(c):

The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The organization of DPPP is reflected in the Rulebook on Internal Organization and Job Classification²⁸ 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 number of 23 staff :

- (i) The Directorate for Normative – Legal Affairs and Monitoring in Public Procurement (9 staff)
- (ii) The Directorate for Vocational Training, Training and Passing the Professional Examination in the Field of Public Procurement (5 staff)

²⁸ Publicly available at <https://ujn.gov.me/>

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- (iii) Directorate for monitoring the public procurement system and management of electronic public procurement (5 staff)
- (iv) The 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 continues support through capacity building.

The EPPS requires more additional IT staff to allow for smooth operation.

Gap analysis

Considering the function assigned to the DPPP, the current human resources is 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 EPPS.

Recommendations

Conduct yearly workload analysis and its findings should guide the revision of the rulebook and post systematization applicable to DPPP.

Sub-indicator 5(d) Avoiding conflict of interest

Assessment criterion 5(d)(a):

The normative/regulatory institution has a system in place to avoid conflicts of interest.*

Conclusion: Minor gap

Red flag: No

The PPL foresee different articles regarding the conflict of interest (Art. 38 to Art 43) which include responsibilities of parties involved in procurement procedure to identify, report and avoid a conflict-of-interest situation. As such these articles elaborate around the responsibilities of Contracting Authorities representatives and economic operators participating in procurement processes. No specific reference to the establishing a system to avoid conflict of interest within the DPPP is mentioned in the PPL. The PPL provide specific tasks to the DPPP 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 his role in core procurement procedure is minimal, the DPPP don'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.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):

- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses).

Source: Survey.

Following the survey to private sector on the question if the normative/regulatory institution enables that the conflict of interest is identified and avoided, resulted that:

- 39 % of respondents²⁹ believe that the normative/regulatory enables that the conflict of interest is identified and avoided.
- 18% believe that regardless of executing the normative and regulatory function, the institution that carries it out is unable to identify and address CoI.
- 27% don't have a clear opinion and 19 % of respondents have not preferred to answer (DK and RA).

²⁹ Total number of responses to this question is 261

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Gap analysis

Although the PPL refer to the parties involved in the procurement process while describing the Col 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 Col.

Recommendations

A separate system to identify and avoid conflict of interest during execution of DPPP functions should be established.

Indicator 6. Procuring entities and their mandates are clearly defined

Sub-indicator 6(a)

Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criterion 6(a)(a):

Procuring entities are clearly defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 2 of the PPL defines the procuring entities (Contracting Authorities as defined in the PPL) which may be wither a public contracting authority or a sectoral contracting authority.

A. Public contracting authorities include the following:

- state body;
- local self-government unit;
- public service, that is, an undertaking which fulfils all of the following conditions:
 - a. it has a capacity of a legal person;
 - b. it was founded with an aim of meeting the needs of public interest and does not perform an activity of an industrial nor commercial character, and
 - c. in which the state and/or local self-government unit owns more than 50% of the shares or interest, or which receive more than 50% 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;
- association founded by two or more contracting authorities.

B. Sectoral contracting authorities are the following:

- a public contracting authority 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 basis of special or exclusive rights assigned to them by a competent state body or a competent body of a local self-government unit.

In addition, Article 4 of the PPL provides for definition of terms used such as state body, local self-government unit, public service.

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Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 6(a)(b): Responsibilities and competencies of procuring entities are clearly defined.
Conclusion: No gap
Red flag: No
Qualitative analysis 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. Art. 38 list the responsibilities of Contracting Authorities in identifying and addressing conflict of interest. Art.51-67 provide for the responsibilities of Contracting Authorities 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 competences are listed in Art. 84 for preparing procurement plans; Art. 85 to conduct market analysis; Art. 86-87 to prepare tender documents and draft technical specifications; Art 95 to issue clarification for tender documents; Art. 134-135 for evaluation bids received; art 141-144 on the approval of the decisions after the evaluation process is completed; Art 149-151 on concluding the contract, amending it or terminating; Art 152 on monitoring and reporting on execution of contracts.
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 6(a)(c): establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*
Conclusion: Minor gap
Red flag: No
Qualitative analysis Article 47 of the PPL require that every Contracting Authority 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 Contracting Authority. Also, the PPL provides for the functions and responsibilities of the public procurement officer which include take part in preparing public procurement plans; supply interested persons with the part of the tender documentation containing confidential data in accordance with law; keep records of public procurements; draft reports on conducted public procurement; carry out administrative tasks in the course of a public procurement procedure and perform other tasks in accordance with this Law and secondary legislation.

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Based on the size of the Contracting Authority 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 size Contracting Authorities have a separate unit for public procurement.

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):

- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).

Source: Normative/regulatory function.

100% of Contracting Authorities have at least one procurement officer who have passed the exam appointed. In total there are 675 Contracting Authority registered in the EPPS and by end of 2022 the total number of registered public procurement officers have passed the exam is 811³⁰. These numbers indicate that there are at least adequate number of procurement officers to perform the function for all Contracting Authorities that have been registered in Montenegro.

Gap analysis

The limited knowledge of procurement legislation among the Line management of contracting authorities is an issue that can undermines 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.

Recommendations

Training modules dedicated to line management should be introduced by DPPP.

Assessment criterion 6(a)(d):

Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 48 of 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 employs 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.

Gap analysis

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.

Recommendations

Procurement implementing regulations should elaborate delegation of decision-making to the lowest competent level based on risks assessment and estimated procurement value.

³⁰ Source of data, 2022 Annual Report of DPPP published at <https://ujn.gov.me/wp-content/uploads/2023/06/Izvjestaj-o-javnim-nabavkama-za-2022.godinu.pdf>

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<p>Assessment criterion 6(a)(e): Accountability for decisions is precisely defined.</p> <p>Conclusion: No gap</p> <p>Red flag: No</p> <p>Qualitative analysis Article 48 provides the responsibilities for which the Commission on conducting public procurement is accountable for. This include 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.</p> <p>Also Article 47 provides for the responsibility of the procurement officer, making this position accountable to take part in preparing public procurement plans; supply interested persons with the part of the tender documentation containing confidential data in accordance with law; keep records of public procurements; draft reports on conducted public procurement; carry out administrative tasks in the course of a public procurement procedure and perform other tasks in accordance with the PPL and secondary legislation.</p> <p>Gap analysis The assessment has not identified any gap.</p> <p>Recommendations None.</p>
<p style="text-align: center;">Sub-indicator 6(b) Centralized procurement body</p> <p>Assessment criterion 6(b)(a): The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.</p> <p>Conclusion: Substantive gap</p> <p>Red flag: No</p> <p>Qualitative analysis Art. 74 of the PPL foresee 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 ³¹ provides for a description of roles, responsibilities, and scope of application of centralized procurement at central/national level.</p> <p>Centralized public procurement is applicable for the following categories:</p> <ul style="list-style-type: none"> • 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.

³¹ "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

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Article 4 of the above-mentioned 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 Agency of Cadaster and State Property.

Gap analysis

The list of procurement activities that is covered under centralized procurement was recently reduced, by excluding defense procurement activities, IT and several activities of 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 procurement under centralize procurement.

From data analytics covering E-Procurement data from January 2021- March 2023, the procurement launched refers only to 13 CPVs and the total contractual amounts for the Cadaster Agency is 5,521,022 Euro and this amount corresponded to 63 contracts. Additionally, the contractual amount of Cadaster Agency covers 0.84% of total contractual volume. While as share of procurement procedures during the same period only 4% of the total number of procedures³² are centralized procurement.

In addition, consider the high rate of the use of simple procurement below 8,000 Euro appears clear that CAs are not adequately considered the benefits of centralized procurement nor the appropriate use of Framework Agreements as tools to increase efficiency and economy of scale.

Recommendations

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.

Ministry of Finance many consider in 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. of activities under centralized procurement in order to enhance the efficiency of centralized purchasing.

Assessment criterion 6(b)(b):

In case a centralised procurement body exists, the legal and regulatory framework provides for the following:

- Legal status, funding, responsibilities and decision-making powers are clearly defined.
- Accountability for decisions is precisely defined.
- The body and the head of the body have a high-level and authoritative standing in government.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Regulation on the Manner of Planning and Implementing Centralized Public Procurement indicates that the administrative body responsible for state property management (namely the Administration for Cadaster and State Property) is assigned as Centralized Procurement Body along with other responsibilities it has under the sector of state property registry. The regulation outlines generally the responsibilities of the Administration in conducting centralized procurement however it lacks 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 self-local government, which based on the PPL the function of the centralized procurement is executed by a different body appointed by the administration of self-local government.

³²The total number of procurement packages is 12'523 packages and out those 540 packages with mapped at EPPS as Centralized Procurement

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Gap analysis 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 regulated the functioning of Public Administration ³³ . Article 21 of the Regulation indicates the Administration as an administrative body.
Recommendations Reflect the legal status of the administrative body responsible for state property management in the legal framework for centralized procurement.
Assessment criterion 6(b)(c): The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Administration for Cadaster and State Property covers different responsibilities ³⁴ among which also centralized procurement for central government institutions. During the assessment is recorded that the number of staff assigned to cover the centralized procurement was 3 and the number of Contracting Authorities for which they operated only in 2022 was 40 including only central level institution.
Gap analysis 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.
Recommendations 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.

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

Sub-indicator 7(a) Publication of public procurement information supported by information technology The country has a system that meets the following requirements:
Assessment criterion 7(a)(a): Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Art. 45 of the PPL mandate the use of an Electronic Public Procurement System (EPPS) to enable: 1) drawing up and publishing of tender documentation and other acts related to public procurement; 2) dispatching public procurement notices

³³Regulation of Public Administration available at <https://metrologija.me/wp-content/uploads/zakonodavstvo/ostalo/Uredba-o-organizaciji-i-nacinu-rada-drzavne-uprave.pdf>

³⁴ The responsibilities are listed in Article 25 of the above Regulation.

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- 3) free access, search, review and download of the published tender documentation and other acts related to conducting of public procurement procedures;
- 4) drawing up, submission, receipt, assessment and evaluation of qualification applications, bids, plans, projects and solutions, free of charge;
- 5) registration and keeping records on economic operators;
- 6) the competent state authorities to access the database of the EPPS.

The information obtained through ESSP 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 are not evidence of using the data by stakeholders for analysis, measuring, monitoring and evaluating procurement performances

Gap analysis

The in-depth data for specific procurement procedures, sectors or type of institutions are not easily obtained.

Recommendations

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 e-Procurement system, and provide access to the tool to the stakeholders with appropriate level of licenses.

Assessment criterion 7(a)(b):

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

Conclusion: No gap

Red flag: No

Qualitative analysis

The legal and regulatory framework mandates all procuring entities to use e-Procurement System. The PPL specifies that the electronic means to be used for public procurement procedures shall be the Electronic Public Procurement System (EPPS) which is a web-based platform that allows contracting authorities to publish tender notices, receive bids, and award contracts electronically.

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 procurements that are:

- Simple procurement (although data should be entered after the process is conducted)
- For security-sensitive goods or service
- 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 cost and system maintenance is funded through the government budget. The system is operated by Contracting Authorities that are registered and Economic Operator that are registered. Third party can access also the information related to completed tender procedure and also those in process. The EPPS is operating since January 2021 and until the date of the assessment counts for 675 Contracting Authorities register and overall 4128 firms registered as Economic Operators. The volume of procurement during 2021 results 435,343,271 Euro , while during 2022 results 650,817,678 Euro.

In total 4,599 contracts have been awarded during 2021 for a total amount of 164,248,424 Euro. In 2022 the number of contracts awarded is 6,879 for a total amount of 430,431,992 Euro.

The following tables represents information of Tenders, contracts and volumes (absolute) by CAs type.

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Type of Contracting Authorities	Tenders		Contracts	
	#	Estimated volume	#	Contracted volume
State body	2,425	176,156,977	2,505	91,318,993
Local self-government unit	2,190	147,078,564	1,903	104,368,079
Public service	5,179	568,751,536	5,551	323,277,965
Association founded by two or more contracting authorities	1	15,000	NA	NA
Sectoral contracting authorities	2,727	343,587,552	2,362	135,579,986

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 7(a)(c):

The information system provides for the publication of: *

- procurement plans
- information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions
- linkages to rules and regulations and other information relevant for promoting competition and transparency.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The EPPS provide 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 don't cover contract management processes. The ESPP reflects the appeals submitted for a procurement decision however the appeal decision is not recorded in the EPPS.

Quantitative analysis

// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):

- procurement plans published (in % of total number of required procurement plans)
- key procurement information published along the procurement cycle (in % of total number of contracts) :
- invitation to bid (in % of total number of contracts)
- contract awards (purpose, supplier, value, variations/amendments)
- details related to contract implementation (milestones, completion and payment).

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- *annual procurement statistics*
- *appeals decisions posted within the time frames specified in the law (in %).*

Based on the information from EPPS January 2021- March 2023

- 100% of procurement plans are published by CA. Also procurement plans revisions are published.
- 100% of Tender documents published
- 100% of invitation to bids published
- 100% of contracts have published contract monitoring tables with information on milestone and completion of contract. Details on payment are not captured in EPPS.
- Annual procurement statistics are part of the Annual procurement Report prepared by DPPP and are not shared in the ESPP.
- During 2021-2022 100% of the appeals decision are published within the timeframe of PPL but only of Commission website and not in EPPS.

Source: Centralised online portal.

Gap analysis

The EPPS don't reflect the payments conducted for the signed contracts nor the appeal decision issued by the commission on protection of rights. 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.

Recommendations

Upgrade the functionalities of EPPS to capture payment and appeal decision, and provide for interfaces with other systems that promote transparency such as the Agency for preventing Corruption.

Assessment criterion 7(a)(d):

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

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The information published on the online portal include 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.

Gap analysis

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

Recommendations

Enhance the functionalities of EPPS to support publication of Evaluation Reports and Contract implementation data.

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<p>Assessment criterion 7(a)(e): Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis 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. This lack of support for OCDS makes it difficult to access and analyze procurement data, and it also limits the transparency of the public procurement process.</p>
<p>Quantitative analysis There are no data to support this analysis since the EPPS don't provide for open data formats.</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e):</i> - Share of procurement information and data published in open data formats (in %). Source: Centralised online portal.</p>
<p>Gap analysis The system is not based on open data format.</p>
<p>Recommendations 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.</p>
<p>Assessment criterion 7(a)(f): Responsibility for the management and operation of the system is clearly defined.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Art 44/8 of the PPL assigns the Ministry of Finance with the responsibility of regulating and setting the standards for the operation, implementation and continues improvement of the EPPS. Such responsibilities are further delegated to the DPPP in the Rulebook for the Systematization of Ministry of Finance.</p>
<p>Gap analysis The assessment has not identified any gap.</p>
<p>Recommendations None</p>
<p>Sub-indicator 7(b) Use of e-Procurement</p>
<p>Assessment criterion 7(b)(a): E-procurement is widely used or progressively implemented in the country at all levels of government.*</p>
<p>Conclusion: Minor gap</p>

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Red flag: No

Qualitative analysis

Based on the PPL 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 (see criterion 6 (a) (a)) use EPPS. Also the EPSS is used to simple procurement above 8,000 Euro.

Quantitative analysis

*// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):*

uptake of e-Procurement

- number of e-Procurement procedures in % of total number of procedures*
- value of e-Procurement procedures in % of total value of procedures*

Based on data from EPPS during 2022:

- Due to the high number of invoices processed the % of procurement procedures results low therefore the assessment refers to the % in value for ensuring a correct assessment. 5,512 procurement procedures including simple procurement above 5,000 Euro where conducted within EPPS while 154,262 invoices constitute the level of simple procurement below 5,000 Euro (increase to 8,000 after the 2023 PPL revisions).
- 87.5 % of the total procurement value have been procurement through EPPS. Value of procurement conducted in the EPP in 2022 was 430,431,992 Euro while the simple procurement below 5,000 Euro was 63,117,015 Euro.

Source: e-Procurement system.

Gap analysis

There is a numerous number of simple procurement transactions (in number and in value³⁵) pertaining to the simple procurement below 5,000 Euro 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 Euro the total value of such expenditure category is expected to be higher that actual amount reported in 2022.

Recommendations

Establish a threshold for the yearly budget amount that Contracting Authorities can use simple procurement below 8,000 Euro (as amendment by the 2023 PPL from 5,000 Euro to 8,000 Euro).

Assessment criterion 7(b)(b):

Government officials have the capacity to plan, develop and manage e-Procurement systems.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

DPPP is the ultimate responsible institution tasked with the responsibility to plan, develop and manage EPPS. The current structure of the DPPP don't foresee a dedicated team for the EPPS (as is a good practice seen in

³⁵ Information on simple procurement below 5,000 Euro is captured in the 2022 Annual report of DPPP. In total during 2022 a total of 154,262 invoices was processed for a total of 63,117,015 Euro.

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other countries in the region) and hence the capacities at the time of the assessment are limited and current human resources stretched to adhere with these associated tasks. Presently the only financial source to support the EPPS remain budget funds.

Gap analysis

Financial recourses are limited to further develop the EPPS and optimize possible system interface with different operation governmental systems.

Also human resources at DPPP appear to be limited in managing day to day operation of the system and plan for its future improvement.

Recommendations

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

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.

Assessment criterion 7(b)(c):

Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

There are trainings organized by DPPP and Administration for Human Resources on e-procurement system functioning, for all users. DPPP performs routine evaluation and periodic adjustment of training programs on the e-Procurement systems based on feedback and need. In addition, DPPP has prepared EPPS user manuals that facilitate the use of the EPPS.

Gap analysis

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.

Recommendations

Set a mandatory training requirement for the new recruitments and regular refresher trainings on the operational (functions and features and their proper use, security, communication, e-Procurement challenges) as well as technical areas in a regular basis for all the staff in e-Procurement operation and support to develop the capacity to address the challenges.

Assessment criterion 7(b)(d):

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

Conclusion: Minor gap

Red flag: No

Qualitative analysis

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

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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 show 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 support this finding. The results of the survey with private sector reveal that overall there is a positive view on the EPPS but less on the ability of the system to foster competition (only 48% of responses confirm that EPPS foster competition). As elaborated in assessment criteria 9 (a) (b) in Pillar 3 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% simple procurement, 65% restricted procedure, 68% open procedure). It should be noted that the single bid rate also increased from 2021 to 2022 (from 60% to 71%) while the average number of bidders per lot decreased from 1.7 to 1.5.

Quantitative analysis

** Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):*

- bids submitted online (in %)
- bids submitted online by micro, small and medium-sized enterprises (in %)
- 100% bids submitted online for the procedures published on EPPS (excluding simple procurement below 8,000 Euro)
- The EPPS don't provide data on the type of Economic Operators being MSMEs or not. Therefore, such analysis is not possible based on available data.

Source: e-Procurement system.

Gap analysis

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

Recommendations

Ensure that EPPS allow for interface with government systems to attest supplier economic, financial stand towards fulfilling selection and qualification criteria in public procurement procedures.

Assessment criterion 7(b)(e):

If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

Conclusion: No gap

Red flag: No

Qualitative analysis

Since 2021 the EPPS is in place and operational, therefore this assessment criterion don't apply.

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Gap analysis N/A
Recommendations: N/A
<p style="text-align: center;">Sub-indicator 7(c) Strategies to manage procurement data</p>
Assessment criterion 7(c)(a): A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The EPPS have a particular Module on reporting 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 don't offer for data analytics tools.
Gap analysis The EPPS don'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.
Recommendations Enhance data analytical feature for the EPPS.
Assessment criterion 7(c)(b): The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis See assessment criteria 7 (c)(a). 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 don't allow for 2 envelope system as well.
Gap analysis 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,

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the system does not have contract management with electronic invoicing modules. The system doesn't allow for 2 envelope system as well. The EPPS don'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.

Recommendations

Enhance data analytical feature for the EPPS along with other features included in the gap analysis.

Assessment criterion 7(c)(c):

The reliability of the information is high (verified by audits).

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The adequacy of the data entered in EPPS is responsibility of the Contracting Authorities. As such reliability of data can be ensured only through audits conducted at CA level. A general audit for the EPPS has not been conducted.

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.

Gap analysis

No audits are performed tailored at national level to ensure the reliability of data.

Recommendations

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.

Assessment criterion 7(c)(d):

Analysis of information is routinely carried out, published and fed back into the system. *

Conclusion: Minor gap

Red flag: No

Qualitative analysis

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 Euro).

Quantitative analysis

// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):

- total number and value of contracts
- public procurement as a share of government expenditure and as share of GDP
- total value of contracts awarded through competitive methods in the most recent fiscal year.

Based on EPPS data for 2022 the required indicators results as follow:

- 6,879 contracts signed with a value of 430,431,992 Euro
- Public procurement constitutes 8,74 % of GDP.
- 39,6% of the signed contracts (2724 contracts are awarded through competitive methods (open

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procedure) representing 72,2 % of contracted volume 310,771,898 Euro.
Source: Normative/regulatory function/E-Procurement system.

Gap analysis

The information retrieved from procurement data are not fed back in the system but are captured only in the annual DPPP reports.

Recommendations

EPPS should foresee a statistical module that is freely accessible.

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

Sub-indicator 8(a)

Training, advice and assistance

There are systems in place that provide for:

Assessment criterion 8(a)(a):

Substantive permanent training programmes of suitable quality and content for the needs of the system.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 50 of 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 Ministry also for economic operators and other persons.

During the assessment DPPP informed that there are two main types of trainings organized by the Ministry - on legislative framework and the use of e-procurement system. In cooperation with the Human Resource Directorate the Ministry of has adopted the Training calendar for the year 2022³⁶. There were 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 Directorate for Public Procurement Policy – 8 trainings. The training duration varies from 1 to 2 days.

Gap analysis

Although training activities are conducted frequently, DPPP lack an annual training program which will make the training process more systematic and allow for tracking also different level of training modules. A training curriculum for different levels is also not consolidated.

Recommendations

Develop an annual training program based on levels of procurement competencies which should be delivered based on a structured training curriculum.

Assessment criterion 8(a)(b):

Routine evaluation and periodic adjustment of training programmes based on feedback and need.

Conclusion: Substantive gap

³⁶ Published at the [TRAINING CALENDAR \(ujn.gov.me\)](https://ujn.gov.me)

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Red flag: No
Qualitative analysis During the assessment the DPPP has not provided documents to show how the systematic evaluation of trainings is conducted.
Gap analysis There are no evidence to demonstrate that there are mechanisms or documents to show how the systematic evaluation of trainings is conducted.
Recommendations 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.
Assessment criterion 8(a)(c): Advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.
Conclusion: No gap
Red flag: No
DPPP offers such support through help desk and advisory support provided to Contracting Authorities 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 (PPP).
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 8(a)(d): A strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The Procurement Strategy for improving public procurement addresses the issue of professionalization and education through all its strategic and operational objectives. Several activities are included to achieve the objective: <ul style="list-style-type: none"> - 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 CEJN - Promotion of green and sustainable procurement with a focus on ENP criteria

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<p>However, there aren't specific parts on the Procurement Strategy to ensure that there is a well-defined and continual training strategy.</p>
<p>Gap analysis</p> <p>The Procurement Strategy for improving public procurement addresses the issue of professionalization however there aren't specific parts to ensure that there is a training strategy in place prepared by DPPP.</p>
<p>Recommendations</p> <p>Elaborate as part of the Procurement Strategy a well-defined strategy for the continues training program to be provided to procurement practitioners based on different level of proficiency</p>
<p style="text-align: center;">Sub-indicator 8(b) Recognition of procurement as a profession The country's public service recognises procurement as a profession:</p>
<p>Assessment criterion 8(b)(a):</p> <p>Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis</p> <p>Procurement is recognized as a specific function 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.</p> <p>Procurement professionalization is not supported however by different professionals' level in public procurement. Professionals level are linked with the years of work in public administration but not the level of expertise gained in public procurement.</p>
<p>Gap analysis</p> <p>Professional levels of public procurement officers are not applicable in the job classification.</p>
<p>Recommendations</p> <p>Establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.</p> <p>Review of the legal framework on Civil Servants and State Employees to recognize procurement as a profession.</p>
<p>Assessment criterion 8(b)(b):</p> <p>Appointments and promotion are competitive and based on qualifications and professional certification.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>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.</p>
<p>Gap analysis</p> <p>Although appointments take into consideration the certification in public procurement, there was no evidence that promotions are competitive and are based on level of experience in public procurement.</p>

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<p>Recommendations</p> <p>Enforce the application of PPL in conjunction with public administration rules for staff appointments and promotion.</p>
<p>Assessment criterion 8(b)(c):</p> <p>Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Staff performance is based on public administration human resource management. Such performance is evaluated on yearly basis. Human Resources Management Authority issues the performance evaluation methodology based on which each administration performs the assessment.</p>
<p>Gap analysis</p> <p>There was no evidence of a systematic methodology on how the DPPP being in charge for providing continues capacity building in the area of public procurement, collects from all institutions operating under the public procurement system staff needs based on performance evaluation.</p>
<p>Recommendations</p> <p>Create coordination mechanism with CA to receive on regular basis a list of staff that needs capacity enhancement based on the outcome of staff performance evaluation.</p>
<p style="text-align: center;">Sub-indicator 8(c) Monitoring performance to improve the system</p>
<p>Assessment criterion 8(c)(a):</p> <p>The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Government of Montenegro has adopted a Strategy for improving the policy of public procurement and public-private partnership for the period 2021- and the Action Plan for the implementation of the Strategy 2021-2022.</p> <p>The Strategy provides outcome and performance indicator to monitor achievement of strategy objectives and results which are aimed to improve the system.</p> <p>DPPP has established a separate department which is responsible to monitor 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 undertake changes in procurement system and improve performance of Contracting Authorities.</p> <p>However, there 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.</p>
<p>Gap analysis</p> <p>The Action Plan for implementing the Strategy for 2023-2025 was not prepared until the assessment period. There are no evidence how the DPPP uses the findings and recommendations for 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.</p>

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Recommendations

An Action plan for 2023-2025 for implementation of PP Strategy should be prepared.

A comprehensive data capture and performance measurement system Integrating the KPIs into the procurement measurement system. should be established and integrated with the e-procurement system to be introduced. Furthermore DPPP should established a systematic mechanism to ensure elaboration of reports from inspection and take measures to improve procurement performance based on the findings.

Assessment criterion 8(c)(b):

The information is used to support strategic policy making on procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

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 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.

A 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 strategic and operational objectives' meeting 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.

Gap analysis

There is no evidence to support the assessment of this criterion. The Strategy and its implementing Action Plan capture only some key development objectives to improve public procurement system.

Recommendations See recommendation in 8 (c)(a)

Assessment criterion 8(c)(c):

Strategic plans, including results frameworks, are in place and used to improve the system.

Conclusion: Minor gap

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Red flag: No
Qualitative analysis See 8 (c) (a). Strategic Plans are embedded into the Strategy for PP, however there are no results framework prepared to be monitored at the level of CAs and DPPP.
Gap analysis The strategic plans don't include results frameworks that are used to improve the system
Recommendations See recommendation in 8 (c)(a)
Assessment criterion 8(c)(d): Responsibilities are clearly defined.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The action plan prepared to support implementation of the Strategy to improve procurement system, envisage which are the responsible bodies for undertaking the actions foreseen to achieve the objectives of the Strategy. The lack of results framework makes it ambiguous the role of institutions in monitoring performance.
Gap analysis The lack of results framework makes it ambiguous the role of institutions in monitoring performance.
Recommendations While establishing the performance monitoring system, the roles and responsibilities at the level of CAs and DPPP should be elaborated.

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The text under the Qualitative analysis summarizes the assessment on each sub-indicator following the interviews conducted with several institutions during the missions from November 2022 and January 2023 as well as the documentation reviewed. Results of the data analysis and firm survey are also used to inform the analysis. The list of institutions that are part of the sample and the documents reviewed are presented in annex 8.

Indicator 9. Public procurement practices achieve stated objectives

Sub-indicator 9(a) Planning
Assessment criterion 9(a)(a): Needs analysis and market research guide a proactive identification of optimal procurement strategies.
Conclusion: Substantive gap
Red flag: No

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Qualitative analysis

Contracting authorities in Montenegro apply the public procurement legislative framework currently in force, including the different by-laws which include forms and templates, to which they are obliged to abide. As clarified by the DPPP, the contracting authorities do not have the possibility to adopt their own internal acts or procedures in the part that has been precisely regulated by the legislation. The assessment could not establish to which extent the contracting authorities have internal procedures to complement the provisions of the procurement legislation.

Regarding the planning stage and the steps, the contracting authorities apply for establishing the procurement approach for major procurement in particular as well as the type of analysis they conduct and how they engage with the market during the preparation stage, the following may be noted.

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. As general practical steps explained by the different contracting authorities interviewed, the needs are provided by each unit of the contracting authority and are centralized by the procurement unit by the end of January. In certain cases, the consolidated plan is prepared together with the financial and accounting departments. 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. Budgets are estimated in September which provides an image of the planned investments for the next year. Public procurement unit/department is generally involved in consultations, so interviewed persons appreciate time is sufficient to complete the process. The procurement plan is published in the e-procurement system after it is approved by the responsible body. Ministry of Finance is in charge with the approval for the central authorities (about 30% of the contracting authorities). Different arrangements are in place for the local authorities.

In practice, as showed by the sample analysis, estimated procurement budget is adjusted during the course of the year, which sometimes is more than 50% than the initial plan [some data from 2022: 104% Capital City Podgorica, 15% APW, 4% Traffic Administration, 52% Public Company Roads of Podgorica]. Data at system level is not available in order to establish the % of contracting authorities that modified the estimated budget with more than 50%, however, this may indicate that either the planning process is insufficiently documented or there are reasons outside the contracting authority control which does not allow planning for higher budgets from the very beginning. The latter could relate to the budgetary process in Montenegro.

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.

The **Administration of Public Works (APW)** is acting as a centralized purchasing unit, although it is not formally organized as such, which manages the procurement of public works for the central government. In line with the law provisions, all investments managed by the entity are planned for the year and procurement planning is directly linked with the capital budget. The needs analysis is conducted by the beneficiary of the investment, who also prepares the terms of reference. A commission established by the APW is verifying the terms of reference and develops the tender documents, including the terms and conditions. APW conducts rarely market research as they consider that there is extensive knowledge in-house on the market having in view the similarities between the procurement processes they organize. However, the contracting authority also reported cases of failed tenders due to estimated prices which were no longer valid, which may have been

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avoided if prior market research had been organized. As explained by the entity, price adjustment formula was included in the contract in line with the new law amendments to avoid such cases in the future, which is a suitable measure to address unforeseen price increases during the contract implementation and cannot justify the lack of proper planning. Similar to the APW, in the case of the **Traffic Administration**, an implementing agency in charge with the maintenance and reconstruction of capital roads, the program for capital investment is the basis for conducting public procurement.

In contrast, the **Montenegrin Electric Enterprise AD Niksic (EPCG)**, an SOE acting in the energy sector, conducted informal market research in the past, by directly engaging with the private sector, which was considered a useful process to improve the technical specifications; also improvements in the competition level was also observed. As explained by the contracting authority this is however not frequently done, but was considered in the past for major and complex investments. The entity representatives stated that they are working on an internal procedure for conducting market research and consultations, however relevant documentation was not sent arguing that documents are confidential as per internal rules.

Similarly, the **Ministry of Public Administration** is following the budget law for the preparation of the procurement plan which includes the estimated budget for each investment and is based on the needs received from all the units within the entity. The procurement unit consolidates the needs into the procurement plan with the support from the finance and accounting unit. The process for the collection of needs and estimates starts in September of each year and therefore the entity has already an image of the planned investments for the next year.

Public Company Roads of Podgorica uses their prior experience in terms of value and quantities as well as the anticipated needs when planning for the next year. Being a public local company, the budget for the entity is approved by the local parliament and about half represents public procurement, mainly regular maintenance and construction works on the territory of Podgorica. Market research is generally conducted in-house for more complex procurement (such as purchase of a new plant for asphalt paving) or to verify if prices for specific materials have fluctuated.

Health Insurance Fund conducted centralized procurement of medical supplies, medicines and equipment for the health sector until 2021 when the procurement function was decentralized and transferred to the main beneficiaries, i.e. hospitals and health clinics. This development looks in contradiction with the trend at EU level which looks more towards the centralization of the procurement of items for the health system (mainly, medicines and supplies).

Agency for Cadaster conducts centralized procurement of specific goods and services³⁷ such as insurance services, furniture, disinfection etc. for about 40 public institutions. The specific legislation for centralized procurement has been recently modified [on March 16, 2023], therefore an assessment of the practices in accordance with the current provisions could be done after a couple of years. Centralization of needs and preparation of the procurement plan is done in accordance with the deadlines set by the legislation with no major issues being faced in practice. No regular market analysis is done for the items under their portfolio except for the stage of initiating the procedure when they have a review of the market prices to assess the level of savings or the potential for procurement of bigger quantities. Procurement of IT equipment and telecommunication has been recently removed from its scope of work³⁸ due to difficulties for the suppliers to

³⁷ Current list as per 2023 amendments to the Decree on centralized procurement include: Office and other consumable material; Motor vehicles and other means of transport, other than vehicles for special purposes; Fuel and motor oils; Office furniture; Disinfection, disinsection, and deratisation; Insurance of property at the disposal of Montenegro (movable and immovable assets); Insurance of civil servants and state employees.

³⁸ Previous list also included: Computer devices and equipment; Communication equipment; Mobile telephony; Fixed-line telephony; Electronic communications – internet.

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meet the delivery deadlines and the need to spend the budget within the same year. This is currently done by each contracting authority. Impossibility to ensure a sufficient level of standardization of specifications due to resistance of beneficiaries could be another reason. These may be temporary issues due to the small market or the fact that the contracting authority may not be an attractive client; framework agreements with multiple suppliers may be an answer to this issue.

Capital City Podgorica conducts centralized procurement on behalf of the 32 different units and organizations under its coordination. The procurement planning is done in accordance with the law, similar to the other entities. The needs estimates are collected from all units in September for the following year in order to prepare the budget and ensure its approval by the local parliament by the end of the year. The detailed budget is also sent to the Ministry of Finance. Each unit sends its detailed annual public procurement plan to the centralized procurement unit which are consolidated into a single plan. Market research was conducted in the past by the procurement department within the City of Podgorica which led to important savings as stated by the contracting authority, however this is not done on regular basis without a specific reason being provided.

Gap analysis

As noted during the sample analysis, there are cases in which the estimated procurement budget is adjusted during the course of the year with more than 50% than the initial plan. Data at system level is not available in order to establish the % of contracting authorities that modified the estimated budget with more than 50% 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 does not allow planning for higher budgets from the very beginning. The latter could relate to the budgetary process in Montenegro.

The estimated procurement value is generally built based on previous experience and is linked to the capital budget and procurement methods are based on the thresholds established by law. It may be concluded that contracting authorities are generally focused to meeting the mandatory requirements of the law and rarely make use of their right to apply more innovative approaches to document and substantiate their decisions. This may be due to insufficient guidance with regard to the benefits of conducting market research and market consultations and lack of tools which can be applied to substantiate both the estimated value and selection of a different procurement approach. Lack of market research and consultation could also explain the general low competition in public procurement or the limited use of procurement procedures other than open procedure and simple procurement.

As noted during the assessment and conversation with the selected contracting authorities, 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. This is confirmed by the results of the survey with economic operators, which shows that only 6% have been frequently invited to market consultations and 28% appreciated this happened rarely. The majority of the respondents consider that contracting authorities do not do enough market consultations (71%) although this instrument is widely considered useful to improve the quality of the tender documents (80%) and to reduce the likelihood of complaints from firms during the procurement process (79%). Only 18% of the economic operators appreciate 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%).

Recommendations:

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 if it is a systemic issue. Reasons may range from poor planning capacity at the level of contracting authorities, to the budgetary process followed in Montenegro.

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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.

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. 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 authorities could also envisage the introduction of obligatory market consultations for complex innovative procurements above certain threshold with control to be done by the state audit. 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.

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. 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 [<https://www.sdpScotland.co.uk/events-mtb/>], part of the “Supplier Development Programme”, which provides tools and guidance to businesses interested in selling to the public sector.

Assessment criterion 9(a)(b):

The requirements and desired outcomes of contracts are clearly defined.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Based on the review of the tender documents from selected contracting authorities, it may be noted that they include the technical specifications, terms of reference and the bill of quantities, as appropriate, depending on the contract type and contract object. 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 with 25%]. This aspect is further detailed below at indicator 9 (b)(b).

Issues with the tender documentation is one of the reasons why economic operators decide not to submit a bid for a tender (28% appreciate that this happened always or frequently and 46% rarely). The main problem experienced with tender documents relates to biased technical specification (23%) or biased qualifications /requirements to favor certain bidders (23%). Nevertheless, only 4% consider that the tender documents are not sufficiently accurate, informative or up-to-date.

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The sample analysis showed that requiring clarifications of the provisions of the tender documents are a general practice and that clarification requests often lead to improvements of the tender documents. According to the data analysis, at system level, 36% of the tenders were modified during the procurement process.

The selected contracting authorities had approximately the same results, 33% of the tenders being modified. In the case of **APW**, between two to five amendments were issued to clarify or correct the technical requirements. In one case, tender documents were modified to remove one of the licenses which was not mandatory by law. Clarifications also referred to the bill of quantities, terms of reference requirements and in some cases the award criteria (from lowest price to price / quality ratio). In other cases, APW did not agree to modify the tender documents despite a tenderer pointing out to very specific features (i.e. dimensions). APW also cancelled a procurement procedure before deadline following a complaint challenging the introduction of MEAT and the contract conditions. For 6 out of 10 procedures of **HIF**, interested bidders required clarifications regarding the qualification requirements, such as licenses, and technical specifications. 9 of the 10 procedures of the **Traffic Administration** analyzed also required the clarification of the technical specifications and were followed by their amendment. The **Ministry of Public Administration** had significantly fewer tender modifications and clarifications requests. In only one procedure modifications were made upon bidders' request, while another three were amended proactively by the Ministry. The e-procurement data analyzed does not contain information regarding the average number of clarification requests or tender modification to assess to which extent there is an issue with the quality of tender documents that would prevent economic operators to prepare their bids.

Gap analysis

Despite the fact that interested economic operators make use of their right to request clarifications, which are generally addressed by the contracting authorities (according to the sample review), the competition levels are still very low, with 3.5 bids at tender level and between 1.5 to 2 bids at lot level. The single bidder rate is also very high, irrespective of the procurement procedure (52% simple procurement procedures, 68% open procedure) which may raise questions around the quality of the tender documents.

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 Montenegrin. 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.

Recommendations

The Montenegrin Government should consider developing detailed guidance on the contents of the tender documents and/or development of standard tender documents, including standard contract conditions, for each type of contract (as a starting point), which could include pre-defined text, instructions, examples and templates. Market engagement in the key sectors is other measure may also be relevant to ensure that the requirements and desired outcomes of contracts are clearly defined. These could be part of a governmental program focused on the improvement of the competition levels which may go beyond public procurement.

Assessment criterion 9(a)(c):

Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.

Conclusion: Substantive gap

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Red flag: No

Qualitative analysis

Sustainable criteria are generally not used by the contracting authorities which were subject to the assessment. Sustainability in public procurement in an early stage of development in Montenegro with some provisions being included in the law as principles for the contracting authorities [articles 7 to 12] and in the public procurement strategy which foresees 6 operational goals, one specific to sustainable public procurement.

The annual action plan for 2022 included measures related to the promotion of sustainable procurement, including green public procurement, however activities are delayed according to the report on the implementation of the strategy. It is stated that workshops were held which concluded that it would be needed a higher level of promotion of environmental and social criteria in the process of awarding public procurement contracts including measuring the results. This is planned to be achieved through educational programs and promoting the use of sustainable criteria in the procuring processes. One of the strategic objectives of the 2023 annual action plan refers to encouraging the implementation of framework agreements, centralized public procurement, green and sustainable procurement, mainly focused on the increase of the percentage of framework agreements, centralized procurement, sustainable criteria etc. Development and delivery of a training program on sustainable procurement is planned to be conducted by the Ministry of Finance and Chamber of Commerce of Montenegro in 2023. At the moment, the e-procurement system does not capture the sustainable public procurement and it is difficult to estimate its level. DPPP is considering developing guidance to provide more insights to the contracting authorities that would allow them to include such criteria in the tenders.

Some contracting authorities use some green criteria in their tenders, however quite timidly. For example, **Agency for Cadaster** used such criteria for purchase of tonners or vehicles and **EPCG** used some sustainability criteria in some of the complex procurements. Examples of criteria include workplace safety measures and waste management provisions. Three analyzed procedures from the **Traffic Administration** include the environmental protection and quality control system as sub-criteria for the assessment of the quality of the offer for which 10 points are allocated, however, considering that price accounts for 90 points, their impact over the result is close to null.

Gap analysis

Sustainability in public procurement in an early stage of regulation in Montenegro. Although the legal framework is in place, 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. Some authorities use some sustainability criteria in their tenders (green criteria, safety measures etc.), however, these are isolated cases.

Recommendations

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 results³⁹. 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 e-Procurement system 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;

³⁹ https://single-market-economy.ec.europa.eu/single-market/public-procurement/strategic-procurement_en

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

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. To further promote the sustainable aspects in procurement, the authorities may introduce obligatory use of the ecological aspect in tenders for certain categories of goods.

Sub-indicator 9(b) Selection and contracting

Assessment criterion 9(b)(a):

Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

As noted during the sample analysis, open procedure is the rule irrespective of the complexity and estimated value of the procurement, competition levels or market availability, etc. The selected sample for the analysis included open procedures and simple procurements only as no other types of procurement procedures have been identified in the statistical reports of the contracting authorities selected for the assessment (with the exception of one emergency procurement). As it is usually the practice, the evaluation process for the open procedure requires the analysis of the qualification criteria and subsequently of the technical proposals for the compliant tenders only. Use of other types of procurement procedures, including multi-stage, is limited, even if the law regulates other types of procurement procedures as well. The data analysis conducted on the e-procurement data shows that only 1% of the launched tenders are restricted tender, representing 0.5% of the estimated budget⁴⁰, and no competitive dialogue, partnership for innovation or competitive negotiations appear in the data. Three contracting authorities organized restricted tenders, Ministry of Defense, JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ (primary school) and Ministry of Internal Affairs. These are showed in the table below:

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

In terms of type of contract, these refer to:

Type of contract	No. of tenders	Estimated value EUR
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⁴⁰ According to the data analysis conducted based on e-procurement data: Publication dates of tenders - from 02/Feb/2021 to 14/Mar/2023; Contracts signed - From 24/Jan/2021 to 04/Apr/2023

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Works	4	1,197,871.85
Services	12	1,995,100.17
Goods	20	1,907,314.04
Total	36	5,100,286.06

JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ (primary school) organized only one procedure for a service contract for travel agency services (15 proposals received). Ministry of Defense seems to be the most experienced in conducting restricted procedures, for specific items, such as army specific goods and services and IT services. The number of proposals received ranges from 1 (Procurement of works on the reconstruction of the gas station in the "Milovan Šaranović" Barracks in Danilovgrad) to 28 (Procurement of ballistic equipment and equipment for declared forces). Goods contracts tend to receive more proposals and works. Service contracts received between 2 and 15 proposals.

Considering that the competition levels are comparable between the different types of procurement procedures, it cannot be concluded based on the sample review that applying a different type of procedure would have resulted in a different outcome. As mentioned by contracting authorities, trainings on competitive dialogue or partnership for innovation partnership by DPPP are not yet available, which may be one of the reasons for which contracting authorities do not apply these procedures. However, the impact of such measures on the competition levels is difficult to establish.

It should be noted that, at country level, the single bidder rate is very high irrespective of the procurement procedure (52% simple procurement, 68% open procedure) supports this conclusion. Also, 13.6% of the contracted volume is represented by negotiated procedure without publication (9% of the estimated budget). This results in a very high percentage of tenders awarded based on a single bid.

Gap analysis

Use of multi-stage procedures is limited in Montenegro with only 1% of restricted procedures and no other multi-stage procedures registered in the e-procurement system during the past 2 years. The law regulates other types of procurement procedures, however there may be a lack of knowledge of the benefits of using other types of procurement procedures, 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.

Recommendations

The DPPP could 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. DPPP could also consider developing standard tender documents for competitive dialogue, competitive negotiation or partnership for innovation. 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. Making use of the existing experience

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which the Ministry of Defense seems to have would be desirable to show the application of the restrictive tender process within the Montenegrin context.

Assessment criterion 9(b)(b):

Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

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. New templates for tender documents are published whenever there is a modification of the procurement law were published. 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). The form applicable for open procedure refers to the sections (with limited guidance or instructions) that need to be filled in by the contracting authority, such as:

- information on the contracting authority and data on the procedure and subject of public procurement;
- grounds for exclusion;
- tender guarantee;
- award criteria;
- information on preparation and submission of offer;
- data on confidentiality;
- requests for clarification and modification of tender documents;
- statement regarding the absence of conflict of interest;
- information regarding the submission of complaints;
- information on contract signature and amendment;
- Information on the conclusion of framework agreement or centralized procurement.

In other countries, the above sections together are usually referred to as instructions to tenderers. The same template also includes a section on technical specifications, however without too many details; basically, bidders are informed that this should be an element of the offer. The templates do not include other forms which are usually part of a standard tender documentation, such as general and special contract conditions, template for terms of reference, specific forms to be filled in by the bidder, such as technical and financial proposal or statements for meeting different criteria or requirements etc.

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 to favor certain bidders are the first two main problems experienced with the tender documents by the respondents to the survey.

Until the 2019 public procurement law, which entered into force mid-2020, a model of the contract was part of the model for the tender documents (separate versions for works, goods and services) and was published as a mandatory part for each tender. The version in force since mid-2020 does not require the contract model as a compulsory part of the tender documents. While it does not contain a contract model as such, a chapter in tender documents defines the basic contract elements and conditions. As of mid-2020, the tender documents

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include a section on the “Methods of concluding and amending the contract” in accordance with the Rulebook on forms for public procurement procedure, which contains standard tender document. However, aspects such as termination of the contract or contractual penalties are referred to as an option for the contracting authorities.

Nevertheless, the economic operators appreciate that contracting authorities generally use similar contract conditions for similar projects (85%), which may assure a level of predictability for the bidders that are usually working with the same contracting authorities, with a majority of 52% 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%). However, the economic operators consider that allocation of risks associated with the performance of the contract are unfairly distributed between the contracting authority and contractors (39%) and that the mechanisms for dispute resolution are inefficient and unfair (38%). It should be however noted that a high number of “don’t know” answers, 24% and respectively 37%, which could be interpreted in different ways (either did not want to provide an answer or did not experience such a situation).

In most cases analyzed, the signed contract corresponds to the conditions published as part of tender documents. Contract conditions are drafted by the legal department of the contracting authority and are generally aligned with the tender documents with some exceptions noted during the sample analysis. Some contracting authorities chose to include in their contracts non-mandatory provisions. For example, **HIF** also covered the obligations of the parties, ownership, contract termination, contract amendment. Similarly, the Traffic Administration and the Ministry of Public Administration. It was noted that contract provisions for complex works, such as design-built contract used by **APW**, are very basic, no sustainability considerations, no obligations of the contracting parties. The method of payment is not in accordance with the type of contract (Design-built): interim payment certificates vs. progress payment.

It was also noted in the case of **APW** that qualification requirements are generally the same throughout the sample analyzed and refer to national licenses for the required services/works and personnel capacity, and later, the previous similar experience or economic capacity. The sample assessment revealed that while during 2018-2020 requirements for personnel capacity were not always clearly defined, leaving the bidders to prove adequate personnel capacity without defining what adequate levels would be, with the introduction of the new legal provisions the list of required personnel is precisely defined. This led to several clarification requests which required also the extension of the deadline for submission of offers. This is no longer the case for the 2021 and 2022 procurement procedures analyzed.

Gap analysis

Contracting authorities generally do not publish the draft contract together 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% of the economic operators (after market instability – 45%; the complexity of the administrative processes during contract execution – 40% and the delays in payments – 36%). Also, risk allocation is considered unfair (39%) and the mechanisms for dispute resolution are perceived as inefficient and unfair (38%). The quality of the tender documents is the second obstacle to submit 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). Whilst the contracting authority should have the possibility to amend the contract model based on the specifics of the procurement, having a set of (general and specific) contract conditions would benefit both the contracting authority and the bidders as it creates predictability and reduces risks during contract implementation.

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Recommendations

The DPPP should ensure that the draft contract is obligatory part of the tender documents by modifying the Rulebook on forms in public procurement procedures. As noted at other sub-indicators, the DPPP should consider developing standard tender documents for the different types of contracts – services, works, goods – as a priority and/or 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 clauses, and different templates to be filled in by the bidders (the technical and financial offer as a minimum). The DPPP's standard contract models could serve as a guide and should address the issues pointed out by the economic operator:

- fair risk allocation between the parties e.g. price indexation in case of market instability,
- efficient dispute resolution mechanism.
- sustainability considerations.

Additional sets of standard tender documents could be developed for the most frequently purchased items. An analysis of the procurements conducted at country level, including their volume, may provide insights into the priority list and also may indicate where the opportunities for consolidation of demand are.

Assessment criterion 9(b)(c):

Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As noted above, open procedure is the default procurement procedure 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. Considering that 36% of the launched procedures (81% of the estimated budget)⁴¹ are open procedures and 58% simple procurement procedures (representing only 7% of the estimated budget), the rule was applied. About 2% of the procedures were negotiations without publication (9.3% of the estimated value). The analyzed data and information did indicate that generally contracting authorities follow the rule of the law without making use of the alternatives mentioned within the legal framework.

Justification is required for emergency procedure which was regulated by the law in force before the 2019 amendment (i.e. during the period 2017-mid-2020). The current law excludes this option. Under the sample analysis, one urgent procurement was selected for review to look at how the legal provisions are applied in practice. This was conducted by the **Ministry of Public Administration** for purchasing telecommunication links (in 2019). The review showed that no tender documents were published, as the procedure was launched by issuing the decision to initiate urgent procedure. The urgency was justified by the importance of the procurement to the state service delivery and the fact that the previous tender had failed. The lowest price was the award criterion which was common for the procedures launched before the new law adopted in 2019.

The e-procurement system also captures data on the **total value of simple procurement below 5000 euros** (i.e. direct purchase), representing 37% in 2021 and 16% in 2022 at system level.

	2021	2022
# of contracts signed	4,599	6,879
Procurement volume (EUR)	164,248,424	430,431,992

⁴¹ According to the data analysis conducted based on e-procurement data: Publication dates of tenders - from 02/Feb/2021 to 14/Mar/2023; Contracts signed - From 24/Jan/2021 to 04/Apr/2023

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# of exclusions (i.e. below 5000 euros)	130,636	155,370
Procurement Volume (EUR)	62,012,866	69,399,983
Total	226,261,290	499,831,975

The sample analysis conducted for the selected contracting authorities shows some differences between authorities which may be worth further investigating to identify any patterns at system level. **APW** spent about 155,000 euros on direct purchase in 2021 and 208,000 euros in 2022, **Capital City Podgorica** spent 455,000 euros in 2021 and 331,000 euros in 2022, the **Traffic Administration** spent 72,000 euros in 2021 and 116,000 in 2022, whereas the **Ministry of Administration** spent 110,000 euros in 2021 and almost 2,700,000 in 2022 (this represents about 45% of the overall procurement budget in 2022 which may be linked with the cyber-security attack).

In terms of other procurement approaches the data analysis shows that only 5% of the procurement procedures are represented by framework agreements.

Gap analysis

The analysis of the sample contracts shows that the contracting authorities applied the provisions of the procurement law which does not require to justify the choice of procurement procedure if the rule is observed. However, as noted above, the competition levels are very low even if contracting authorities chose the open procedure which raises the question if better value for money would have been obtained if other procurement procedures would have been applied. Such conclusion cannot be however drawn based on the available data and information.

Nevertheless, the analysis of the e-procurement data for 2021 and 2022 shows that a high value of purchases below 5000 euros and the fact that framework agreements are rarely used.

Recommendations

Considering the low competition in Montenegro, the Government should consider a wider review of the barriers which prevent economic operators to access the procurement market. This analysis should go beyond public procurement and look at the different other legislative framework 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.

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.

Also, Montenegrin authorities may wish to review 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.

Besides the already prepared procurement plan, preparation of an annual public procurement 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, on 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.

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Assessment criterion 9(b)(d):

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The sample analysis showed that, in general, contracting authorities comply with the provisions of the legislation and clearly describe in the tender documents the procedures for bid submission, and opening. In general, the procedures for bid submission, receipt and opening are described in the tender documents in accordance with the templates adopted by by-law. Before the launch of the e-procurement system, all the bids were submitted in closed envelope with the statement “do not open before public opening of the bids”. The bid and samples were required by the tender documentation to be submitted in a closed envelope or package in such a way that when opening the bid, it can be determined with certainty that it is opened for the first time. Since the launch of the e-procurement system in January 2021, the bids are submitted electronically in accordance with the published tender documents and following the instructions provided by the e-procurement system. Bid submission deadline follows the provisions of the legislation. In specific cases, the contracting authority can justify a shorter deadline for urgency reasons which cannot be attributable to the contracting authority. In some cases, the justification does not seem in line with the provisions (for example, **APW** provided the start of the touristic season as reason for urgency).

The bank guarantee is either attached to the bid in the e-procurement system (scanned version) or may be submitted in hard copy to the registration office, however a scanned copy must be attached to the bid in e-procurement system as well. If submitted in hard copy, the contracting authority should ensure that the envelope is not open before the opening in the e-procurement system and confidentiality is observed. The sample analysis shows that contracting authorities approach the application of these provisions slightly different. **HIF** included details of submission of the bid guarantee in the tender documents, whereas **Traffic Administration** and **Ministry of Public Administration** did not.

Bidders were allowed to take part in the bid opening when procedures were conducted offline (article 98 of the 2017 law only mentions participation of the bidders’ representatives and not general public, citizens or the media). There is no evidence with regard to allowing civil society to monitor bid submission, receipt and opening prior to the introduction of the e-procurement system, however in practice there seems to have been cases in which media representatives attended and reported on some bid openings. Since the introduction of the e-procurement system, this option is technically not possible as all stages are conducted in the online environment and the protection of data needs to be ensured.

Gap analysis

There have been noted differences in the way contracting authorities detail in the tender documents the procedure 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.

Recommendations

In this case as well, the development of standard tender documents may ensure a more uniform application of the law provisions and shorten the period for bid preparation, including a simplified process for the economic operators by becoming familiarized with the general requirements of the contracting authorities.

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Assessment criterion 9(b)(e):

Throughout the bid evaluation and award process, confidentiality is ensured.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The law provisions provides that the bids are submitted thorough the electronic system and may not be disclosed, thus ensuring data protection. The contracting authority is obliged to ensure the confidentiality of the offers and that they are accessible by authorized persons only. An evaluation committee is established in accordance with the Rulebook on Method of Establishing the Commission for Opening and Evaluation of Bids and includes a procurement expert. Members of the evaluation committee are required to sign a declaration of confidentiality and need to observe the specific rules provided for by the procurement legislation, specifically the Rulebook on the Evaluation of Bids. No other guidance except what is included in the law or by-laws is provided to the members of the evaluation committee.

Tender documents include some reference to the confidentiality requirements which point out to the applicable legislation. There is no evidence in the analyzed sample of tenders regarding the way the contracting authority ensures the confidentiality of the tenders in practice. However, 21% of the economic operators that responded to the survey seem not to trust the security, integrity, and confidentiality of the data exchange over the electronic public procurement portal. Nevertheless, there is no indication of breach of confidentiality and of any complaints due to this reason either.

Gap analysis

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. Nevertheless, 21% 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.

Recommendations

The Montenegrin Government should work towards increasing the trust levels into the e-procurement system by further engaging with the private sector to understand the reasons for the lack of trust.

Assessment criterion 9(b)(f):

Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In terms of award criteria, prior to mid-2020 bids are generally awarded based on the lowest price criterion even if the law allowed the application of the most economically advantageous bid (MEAT). An exception is worth mentioning, however. **EPCG's** analyzed sample of procurement documents from 2018 and 2019 shows that the entity used MEAT in 7 procedures out of the 9 analyzed during this period, even if MEAT was not

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mandatory at the time. All other contracting authorities that are part of the sample analysis used price criterion in all the procedures analyzed for the years 2018 and 2019.

After the introduction of the mandatory use of 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. Some examples are provided below.

EPCG generally uses 70% price – 30% quality or 80% price – 20% quality for works; for consultancy services 50% price -50% quality and for goods 90% price – 10% quality. Examples of technical criteria which are generally used include: delivery time, experience or capabilities and expertise of the staff, or references. For consultancy services, example of quality criteria includes the experience of the experts and references of prior experience.

APW used in the case of design services 20-25 points for references for the lead team and 75-80 points for price, for supervision services 30 points team references and 70 points for the price, and in the case of goods, 10 points for the warranty period and 90 points for the price. In the case of works, for tenders launched before 2019 amendments, it was noted 20/30 points for company references and 70/80 points for price; 10 points for warranty and 90 points for price were used in works tenders analyzed from 2021 and 2022.

HIF, the **Traffic Administration** and **Ministry of Public Administration** used the 80/20 ratio in the majority of the procedures analyzed under the sample. Examples of technical criteria used include: professional references for the lead team (i.e. previous similar experience) or of the project leader (**Ministry of Public Administration**). **Traffic Administration's** procedures from 2021 and 2022 introduced environmental protection system and quality control system as sub-criteria under quality criteria. Delivery date is another technical criterion used by the **Ministry of Public Administration**.

The results of the data analysis at country level confirm the above conclusion that price is still a dominant factor. Overall, 58% of the tenders are awarded based on 100% price criteria, 28% around 90% price criteria and only 2% based on 50% price criteria.

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%

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

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%

Gap analysis

Even if the use of MEAT criteria for open procedures has become mandatory with the procurement law from

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2019 (applicable since mid-2020), the analysis shows that price remains the dominant factor for the award of open procedures (76% of open procedures are awarded based on a price criteria above 80 points) 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.

Recommendations

Moving away from a 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.

Secondly, 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 procurement⁴². Taking into account the proven benefits of the lifecycle 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.

Assessment criterion 9(b)(g):

Contract awards are announced as prescribed

Conclusion: No gap

Red flag: No

Qualitative analysis

According to the law, it is not mandatory to publish the contract award notice, however, the integral signed contracts are published in the e-procurement system (www.cejn.gov.me) as of 2021 and in Public procurement Portal (www.portalujn.gov.me) for contracts before 2021. All the selected and analyzed contracts could be identified in one of the two systems.

For the **Ministry of Public Administration**, three 2022 procurements were not identified in the e-procurement system but they were listed in statistical report with simple procurement, although their value significantly exceeds simple procurement threshold (one goods contract for more than 1,400,000 euros and one service contract for about 500,000 euros). These contracts could not be verified as the information was not provided by the contracting authority possibly due to their sensitivity (these are IT contracts concluded during the period of the cyber-attacks in Montenegro). Other observed contracts and procedures were published both in the Procurement Portal (2018, 2019 and 2020) and e-procurement system (2021 and 2022).

The signed contracts are generally in line with the published tender documents, in the cases where contract model was published as part of the tender documents. After the introduction of the 2019 legal amendments, the signed contract should comply with the conditions from the tender documents. The sample analysis showed that contracts are in line with the tender documents with some exceptions noted in the case of **APW** in 2021 and 2022 in which the signed contract⁴³ was not fully in accordance with the tender documents .

⁴² https://green-business.ec.europa.eu/green-public-procurement/life-cycle-costing_en.

⁴³ 2022 contract ref Design for reconstruction of the existing building of the administrative authorities in Podgorica, estimated value 82 644.63 EUR: while tender documents stipulate the insurance policy of 100K EUR, the contract mentions 200K EUR; warranty period guarantee mentioned in the tender documents is not included in the contract. Negotiations on contract provisions may have caused a delay in signing the contract.

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Gap analysis The assessment has not identified any gaps
Recommendations None
Assessment criterion 9(b)(h): Contract clauses include sustainability considerations, where appropriate
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Sustainability considerations are generally not included in the analyzed contracts with some exceptions which include some general provisions. From the sample analysis, it was noted that Traffic Administration 's contracts contain clauses on construction of waste management and safety of construction site, neighborhood and workers. Also, the bidder is obliged to observe several national laws, including the law on environmental protection, however without further details. As mentioned during the interviews, sustainability considerations were not required by law and guidance is still not available for the contracting authorities. DPPP has started focusing more on this aspect, as mentioned above.
Gap analysis Sustainability is a new area of focus for the Montenegrin authorities. Therefore, sustainability considerations are generally not included in the analyzed contracts with some exceptions which include some general provisions.
Recommendations 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 notes of instructions for compulsory introduction of the sustainability considerations in the contract conditions and monitor their application over time.
Assessment criterion 9(b)(i): Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Analyzed contracts do not include incentive clauses, and generally include disincentives for poor performance only. The approaches differ from one contracting authority to another. In the case of APW , a performance bond of 5% of the contract value is required in almost all contracts in addition to a penalty for delay. HIF applied

2021 contract ref Execution of additional works on the construction of a complex of accommodation facilities SAJ and PJP in Zlatica in Podgorica, estimated value 809 000 EUR: there were elements in the signed contract that the bidder was not aware of, as they were not presented in the tender documentation (chapter on contract conditions), such as penalties for delay of 5%, the role of expert supervision etc.

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in the 2018-2020 contracts 0.5% or 1% of the values of good which were not delivered on time, for each week of delay in delivery, payment of real expense at the account of bidder in case that the bidder does not replace non-conform goods within 30 days, right of the contracting authority to procure goods from another provider at the bidder's cost. One of the contracts includes a penalty of 10% of the total contract price which can be charged in case of non-delivery by the bidder. Contracts from 2021 and 2022 are much simpler and only contain the clause on both sides' right to cancel the contract in case the other side is not fulfilling its obligations. Same as HIF, **Traffic Administration's** and **Ministry of Public Administration's** contracts also only contain disincentives for poor performance, but no incentives. Disincentives amount to a maximum of up to 5% of the total contract value.

Gap analysis

Analyzed contracts do not include incentives for exceeding defined performance levels, and generally include disincentives for poor performance. 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%), the too complex administrative processes during contract execution (36%) and the delays in payments (25%) 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% 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.

Recommendations

Ensuring the predictability of the applicable contract conditions is key to raising the trust of the economic operators in the public procurement system. 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.

Assessment criterion 9(b)(j):

The selection and award process is carried out effectively, efficiently and in a transparent way*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The legal framework on public procurement includes specific legal provisions and detailed guidance with regard to the evaluation process. An evaluation committee is established in accordance with the Rulebook on Method of Establishing the Commission for Opening and Evaluation of Bids. 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.

The e-procurement system is considered a welcomed 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. Some contracting authorities appreciate that information on the winning bid could be made public, without revealing any strategic information.

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Competition. According to the data analysis, the level of competition in Montenegro is generally low (less than 2 bids per lot and about 3.5 bids per tender/procurement procedure) with more competition in works tenders and areas such as business services, architectural & engineering services, installation services (except software). The single bid rate (i.e. only one offer received for a lot) is also very high with 66% at country level over the analyzed period. Surprisingly, simple procurement registers high levels of single bid as well (around 50%). It should be noted that the single bid rate also increased from 2021 to 2022 (from 60% to 71%) 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%).

Looking at the contracting authorities that were considered for the sample analysis, the following may be noted:

- 1144 contracts from the entire population (12,324 contracts i.e. 9.3%) correspond to them and these contracts cover 151,585,621 EUR contracted amount;
- APW registers the highest participation and the lowest single bid rate
- Montenegrin Electrical Enterprise seems to have the highest diversity of suppliers (biggest supplier accounts for about 13% of the procurement budget);
- Health Insurance Fund has the lowest competition levels, the highest single bid rate and the highest market concentration, which may be justified by the specifics of the health sector, however this would need to be further investigated;
- Ministry of Public Administration also registers a high single bid rate; according to the sample analysis, the procurements are IT related; looking closer at the IT market in Montenegro may be necessary to explain the low competition;

At system level, there are a few contracting authorities which registered higher competition levels but these manage smaller procurement budgets. The majority of the contracting authorities receive less than 3 offers per lot.

There are not significant differences between regions in terms of average bids and single bid rate. Central region has a higher single bid rate i.e. 69% and the lowest competition i.e. 1.5 bid 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. A few notes may be drawn from the data analysis:

- 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.

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

Cancelled procurement. The analysis of the data from the e-procurement system shows that 11% of the tenders were cancelled during the analyzed period, accounting for 6% of the total estimated value. Tenders for goods were cancelled the most (43% of the total cancelled tenders). Looking at the type of procurement procedure, 9,33% of the open procedures and 12.8% of the simple procurements were cancelled during the analyzed period.

Some specific information noted during the assessment is presented below which may be further looked into to identify the most common reasons that lead to cancellation:

- Overall, the top 10 contracting authorities in terms of cancelled procurement account for 32.4% of

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the total number of cancelled tender;

- Capital City Podgorica cancelled 101 tenders, representing 6.4% of the total cancelled tenders, followed by AGENCIJA ZA IZGRADNJU I RAZVOJ PODGORICE DOO which cancelled 67 tenders, i.e. 4.3% of the total cancelled tenders.
- **APW** cancelled a procurement procedure due to complaint, the decision being published eight months later explaining that the second-instance body accepted the complaint and instructed the contracting authority to modify certain parts of tender documents.⁴⁴ In another case, the procedure was cancelled as it turned out that there were no available funds for this tender after the rationalization of the budget.⁴⁵

Complaints. As seen in the sample analysis and confirmed by the contracting authorities, the number of submitted complaints compared with the number of tenders launched is low. In the case of the **Ministry of Public Administration**, one complaint was submitted (out of the 7 tenders reviewed). 11 tenders launched by the **Traffic Administration** were reviewed during the sample analysis and no complaint was submitted in any of these cases. The e-procurement data shows that 2% of the tenders received complaints, however it is not evident what type of complaints data is captured by the e-procurement system. 115 tenders received complaints in 2021 (total estimated amount of tenders with complaints, 97,023,988 euros i.e. 22% of the total estimated procurement value) and 153 tenders in 2022 (total estimated amount of tenders with complaints, 97,626,901 euros, i.e. 15% of the estimated procurement value). By type of contract, goods were contested the most (139 tenders) and works the least (49 tenders).

Summarized information on complaints is also published within the annual reports of the Commission for the Protection of Rights in Public Procurement Procedures (CPRPPP). Decisions on complaints are published on the institution's website and therefore, are publicly available. According to the annual report 2021 (the latest report published), there were 217 complaints submitted for review, which represents 4.3% of the number of tenders launched during 2021 (in total 5034 tenders; also noting that some complaints may refer to tenders launched during the previous year), most of them referring to the result of the procedure, i.e. 63%. This is confirmed by the results of the survey which identifies as main reasons for submission of complaint the fact that the bidder awarded the contract does not fulfil the tender conditions and requirements (56%), followed by wrong/bias interpretation of own bid leading to a rejection (48%) and disagreement regarding the robustness of the process of evaluation of offers (33%).

21 cases were further referred to the Administrative Court (9.6 of the cases analyzed by the CPRPPP). As noted by the contracting authorities, bidders may not be motivated to go to the Administrative Court as the process

⁴⁴ 2021 procedure ref Main Design for water supply of the first phase of service facilities at the location of the mountain center "Žarski" in Bjelasica, estimated value 24 793,39 EUR. The decision of the second-instance body is available on [O nama \(kontrola-nabavki.me\)](#). Content: The complainant challenged the following aspects of the tender documents:

- classification of tender into category of works instead of services

- using the same condition as the qualification condition and selection criteria, which is not permitted under the PPL. To be qualified to participate, a tenderer had to demonstrate that it engages a civil engineer with at least one similar previous experience (personnel capacity). At the same time, as part of selection criteria, 20 pts was awarded for the references of the lead engineer.

Deliberations: The complaint was found to be justified and the PE was instructed to modify tender documents to address the deficiencies.

Outcome: PE did not act as instructed, i.e. it didn't modify the tender documents, but it cancelled the tender long after the decision had been made.

⁴⁵ 2021 procedure ref Works on the improvement of the riverbed of the Ibar in the inner-city area of Rožaj, phase II, estimated value 495.867.77 EUR.

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takes a long time and involves a cost. The survey results confirm this as 91% of the economic operators mention that they have never submitted a complaint with the Administrative Court.

Still, 65% of the economic operators consider they have never been affected in the procurement process or contract award by complaints submitted by competitors, and 4% affirmed that this had always happened.

Duration of the procurement procedure. The data analysis shows that the average duration of all the procurement procedure conducted through the e-procurement system (from initiation, i.e. publication of the tender notice to the contract signature) is of 47 days. Average period for submission of bids is 16 days.

Processing times differ from one type of procedure to the other. Restricted procedure generally takes longer than the other types of procedures (average duration of restrictive procedure is 134 days compared with open procedure which takes 76 days or simple procurement which takes only 26 days). There are not significant differences between different types of authorities (state body, local units or sectoral contracting authorities); average duration of procurement procedure for open procedure is around 70-80 days.

When looking at the duration of the different stages of the procurement process, 95% of the open procedures have a bids submission period between 15 and 30 days or more than 30 days. The remaining 5% 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.). Bids submission period for simple procurement is generally below 15 days.

Award stage (from bid opening to contract signature) takes longer (49 days for open procedure) which is usually the case in other countries as well, but opportunities to improve lead times should be explored, at sector level or at the level of authorities that usually register higher durations than the national average.

By contract type, works contracts take longer to be awarded; for open procedure this is 90 days in average, compared with goods which are awarded within 72 days and services, 80 days. Durations per stage of procurement do not vary significantly either.

The contracting entities analyzed during the sample review register overall average duration of procurement procedure close to the national average, APW (Capital Projects Administration), Traffic Administration and EPCG (Montenegrin Electrical Enterprise) register higher average number of days, 147, 99 and respectively 93 days. Average durations are higher in all stages of the public procurement process compared with the national average. This is not surprising considering that these authorities are in charge with high value contracts, mostly works.

Looking at the processing times for the five largest procurement categories, there are not 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.

Substantiation of decisions and abnormally low price. The way the evaluation process should be conducted and documented is regulated in the specific by-laws, such as the minutes of the competitive dialogue, opening session report, minutes of the evaluation process, or decision of award or cancellation which are included in the Rulebook on forms in public procurement procedures. During the sample review it was noticed that **APW** documents the reasons for rejection of offers, however sometimes the decision to reject seems too strict. For example, subcontractor used facsimile signature to authorize the declaration of impartiality, inadequate proofs for personnel capacity, the date of submitted tax certificate was not as requested. It is arguable if these aspects were or could be clarified by the evaluation committee. In other cases, bids were submitted due to the fact that one subcontractor was proposed in two bids or another economic operator acted both as member of consortium and independently. Such situations are usually avoided by clearly pointing out the rules of participation in the tender documents.

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The sample analysis of **APW** contracts showed that abnormally low price tenders are not always documented and details of the content of the justification provided by the winning tender or the analysis performed by the evaluation committee could not be verified (according to article 85 of the law, an abnormally low price would be at least 30% lower than the average of all the valid tenders).

In both cases noted above, considering that the Minutes on Opening and Evaluation of Bids is not a publicly available document, and therefore were not provided for the sample analysis, a comprehensive review of how contracting authorities document their decisions was not possible.

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% of the procurement volume awarded in 2022). According to the report provided by the Inspection, the most frequent irregularities are captured in the table below:

Area of irregularity	Number of irregularities	% from 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%

Quantitative analysis

**Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):*

- average time to procure goods, works and services:

Open procedure:

Goods – 72 days

Services – 80 days

Works – 90 days

- number of days between advertisement/solicitation and contract signature (for each procurement method used)

Simple procurement – 26 days

Open procedure – 76 days

Restricted procedure – 134 days

Negotiation without prior publication – 36 days

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

Simple procurement – 1.7 average of responsive bids per lot; 91% of responsive bids

Open procedure – 1.2 average of responsive bids per lot; 87% of responsive bids

Restricted procedure – 1.5 average of responsive bids per lot; 92% of responsive bids

Negotiation without prior publication – 1.09 average of responsive bids per lot; 89% of responsive bids

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- share of processes that have been conducted in full compliance with publication requirements (in %) – 100%; all tenders are conducted through the e-procurement system without the exceptions from the legislation which are not captured by the system.

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

Total number of processes – 13,732 procurement procedures (without mini call off)

Number and % of cancelled procedures – 1547 procedures; 11% of the total number of procedures

% of cancelled procedures by type of contract: 42% goods, 32% services; 25% works

Number of awarded contracts – 12,324 contracts

Share of contracts awarded to abnormally low bid (30% lower than other bids): 4%

Share of contracts awarded to the bid that didn't have the lowest price: 3%

Source for all: Data analysis (reported period from 02/Feb/2021 to 14/Mar/2023).

Gap analysis

Considering that the Minutes on Opening and Evaluation of Bids is not a publicly available document and therefore were not provided for the sample analysis, a comprehensive review of how contracting authorities conduct the evaluation process in practice and document their decisions was not possible. Therefore, the conclusions are based on the sample analysis of publicly available documentation and the analysis of the e-procurement data (publication dates of tenders: from 02/Feb/2021 to 14/Mar/2023; contracts signed: from 24/Jan/2021 to 04/Apr/2023).

According to the data analysis, the level of competition in Montenegro is generally very low (less than 2 bids per tender) with more competition in works tenders and areas such as business services, architectural & engineering services, installation services (except software). The single bid rate (i.e. only one offer received per lot) is very high, with 66% at country level. The single bid rate also increased from 2021 to 2022 (from 60% to 71%) while the average number of bidders per lot decreased from 1.7 to 1.5. Surprisingly, simple procurement registers high levels of single bid as well (around 50%). Works contracts have higher participation (around 2 bids per lot) and a lower single bid rate (47%). This is a serious issue which needs to be addressed by the Montenegrin Government with priority.

At system level, there are a few contracting authorities which registered higher competition levels but these manage smaller procurement budgets. There are not significant differences between regions in terms of average bids and single bid rate. Central region has a higher single bid rate i.e. 69% and the lowest competition i.e. 1.5 bid 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 to identify potential ways to stimulate competition. A few aspects may be worth mentioning:

- 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 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.

The analysis of the data from the e-procurement system shows that 11% of the tenders were cancelled during the analyzed period, however reasons for cancellation have not been identified in the dataset. Some complaints data is captured by the e-procurement system, however the sufficiency and correctness of data cannot be established. Summarized information is also published within the annual reports of the Commission for the Protection of Rights in Public Procurement Procedures (CPRPPP). During 2021, the complains analyzed by the CPRPPP represent 4.3% of the number of tenders launched and 9.3% of these reach the Administrative

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Court. All economic operators affirmed that they would submit a complaint, if the firm would need to do so (from those that responded to this question).⁴⁶

The average duration of the procurement process (average time to procure) per type of procurement differs. Restricted procedure generally takes longer than the other types of procedures (average duration of restrictive procedure is 134 days compared with open procedure which takes 76 days or simple procurement which takes only 26 days). These values are close to the overall EU target of 120 days.⁴⁷

There are not significant differences between different types of authorities (state body, local units or sectoral contracting authorities) or between categories of procurement. Some authorities, managing larger packages, register higher average number of days compared with the average national, 147, 99 and respectively 93 days. Average durations are higher in all stages of the public procurement process compared with the national average.

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%). At the same time, only 48% of the economic operators believe that the e-procurement system 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.

The economic operators were invited to specify the main reasons that would explain the low competition levels in Montenegro and the first two refers 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% of the economic operators.

In terms of perceptions related to the functioning of the public procurement system as a whole, only 16% 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)⁴⁸ and only 26% believe that the conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes⁴⁹. At the same time, 28% believe that contracting authorities strive to obtain the best value for money in public procurement.

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.

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 shows that this issue may be beyond the powers of public authorities and that the

⁴⁶ 19% responded don't know and 20% preferred not to answer to this question.

⁴⁷ Public Procurement Scoreboard, decision speed indicator - https://single-market-scoreboard.ec.europa.eu/business-framework-conditions/public-procurement_en

⁴⁸ 28% responded don't know and 5% preferred not to answer to this question.

⁴⁹ 19% responded don't know and 2% preferred not to answer to this question.

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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.

It is widely recognized that the bidder turnout is higher when longer times are allowed for bid preparation and submission and administrative burden is reduced. Some steps have been taken in this regard, however their impact is still not evident. Lists of approved economic operators (i.e. prequalified) in key sectors may contribute to increased competition levels.

Although overall processing times seem reasonable by comparison with EU target, a review in specific sectors or authorities would provide insights into potential ways to increase efficiency. 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 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.

Sub-indicator 9(c) Contract management

Assessment criterion 9(c)(a):

Contracts are implemented in a timely manner.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews and the assessment period.

Contract implementation is managed by the beneficiary units with support from the financial department and from the procurement unit, limited to the provisions of the procurement law. The interviewed contracting authorities mentioned that a responsible person is assigned by the technical department to monitor the contract implementation and assess the fulfillment of the contract requirements, in accordance with the law. The law includes provisions related to the contract modification, establishing a maximum percentage for contract increase, in line with the EU Directives.

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 e-procurement system. During the sample analysis it was observed

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that some contracting authorities publish the report (such as the Ministry of Administration or HIF), others did not (for example, the Traffic Administration).

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 appreciated that contract terms are generally observed, contracts are rarely amended and the number of terminated contracts being very low. The data analysis shows that during the analyzed period, 8% of the contracts were modified and only 1% were cancelled.

Also, total price overrun is 0.02% of the total contracted value during the analyzed period (amounting to 123,907 euros). 1% of the contracts had a contract value increase (47% goods contracts, 31% services contracts and 22% works contracts). Further information was provided during the discussions with the contracting authorities that were subject of the sample analysis.

Some information was received from the **Ministry of Administration** and **HIF**, however this is insufficient to conclude on the effectiveness of the contract management processes at the level of the two contracting authorities. For several contracts subject to the sample analysis, detailed delivery reports were shared by the Ministry which confirm that all contract provisions were met and everything has been implemented as contracted and therefore that the final payment can be done. In some cases, these delivery reports do not mention the full contract scope, but since no other information was provided, a conclusion cannot be drawn regarding the extent to which the full scope of work was delivered or not.

Entities rarely conduct performance evaluation to inform future procurement processes, with some exceptions. **Ministry of Public Administration** reported conducting regular reviews and keeping records, however these could not be provided as they were lost or affected during the cyber attack [ask again]. **EPCG** relies on the feedback from contractors, beneficiaries and project managers which is received on a daily basis and issues are addressed timely. When the new public procurement plan is prepared, the entity would review some of the information based on previous experience (for example, the price).

Quantitative analysis

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

Price overrun: 0.02% from total contracted amount i.e. 123,907 euros; average increase of contract value is 20,651 euros

Contract modification: 8% of the total number of contracts

Source: Analysis of the e-procurement data.

Gap analysis

Even if access to documentation specific to contract management stage was limited, some conclusions can be drawn based on the available information and the results of the survey with economic operators.

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.

According to the information from DPPP, the contracting authorities in Montenegro are obliged to respect the public procurement legislation, which means that they cannot adopt own internal procedures on contract

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implementation if these provisions are regulated. However, this should not prevent contracting authorities to complement and clarify the national provisions in order to ensure the efficiency and effectiveness of contract management processes.

Nevertheless, according to the survey results, economic operators generally consider that contracts are implemented in timely manner (68%) and that they comply with the existing regulation on the time limits for payments (61%). However, 54% consider that contract modifications are used to circumvent public procurement rules. Conducting a more in-depth analysis of the scope of contract modifications may provide better insights into this issue.

Also, 38% of the respondents also appreciate that there are not efficient and fair processes to resolve disputes promptly during the performance of the contract⁵⁰. This issue is closely related to the need to develop standard contract conditions.

Recommendations

The public procurement directives 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.

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, when and how contract amendments should be made (even if the procurement law already includes such provisions).

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. At the same time, in order to identify any systemic issues and the associated measures to improve contract implementation processes, capturing all the relevant information in the e-procurement systems 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.

Assessment criterion 9(c)(b):

Inspection, quality control, supervision of work and final acceptance of products is carried out.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As mentioned above, contract implementation information was not provided in order to conduct the sample

⁵⁰ High percentage for "do not know" answer i.e. 37%

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analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews.

Considering that contracting authorities prepare their own contract conditions within the limits of the legislation, different practices are observed in the way they regulate the above aspects. In the case of works external review, professional supervision is mandatory by the law on spatial planning and construction. Such services have to be contracted through a separate public procurement procedure.

The analyzed contracts from **APW** prescribe the method of quality assessment and final acceptance of the procurement object. Only final acceptance of products is regulated in 2018 and 2019 **HIF**'s contracts, whereas contracts from 2021 and 2022 provide for a monthly reporting obligation. All contracts refer to the competent court to resolve all issues considering different interpretation or implementation of the contract.

Traffic Administration's contracts contain clauses which say that the bidder is in charge of ensuring quality of the materials, equipment, machines, products etc., in accordance with regulation in force, tender documentation and the bid and that materials used must be new, non-used, of a proper quality and authorized by competent institutions. The bidder is obliged to provide evidence of the quality of used materials, issued by competent authorities and laboratories at its own cost. Evidence of all examinations and tests of the materials and equipment must be kept in the construction book and the contracting authority must be informed of the results. Safety on work, construction organization study and construction waste management plan must be also prepared by the bidder. Safety measures must be also taken by the bidder for the construction site, workers, neighboring objects, equipment etc. Performance of technical inspection of works is also envisaged by **Traffic Administration**'s contracts and an obligation of the bidder to fix whatever is wrong with finished works. Final acceptance of products, supervision and quality control seems to be regulated only in some of the **Ministry of Public Administration**'s contracts. The contracts from 2020, 2021 and 2022 provide for the setup of a special Commission by the contracting authority which will be entrusted with these tasks, whereas contracts from 2018, 2019 do not include such requirements. Inspection is not mentioned in any of the contracts.

Quantitative analysis

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

Information was not available to be able to construct these indicators.

Source: Sample of procurement cases.

Gap analysis

According to the survey results, 63% of the economic operators appreciate that contracting authorities typically carry out inspection, quality control, supervision of work and final acceptance of products. As noted above, practices differ from one contracting authority to the other. This shows that there are aspects which could be improved.

Recommendations

The fact that practices differ from one contracting authority to the other confirm the need to define uniform provisions that would be applicable to all contracting authorities. This will enable both economic operators and contracting authorities to focus on the substance and less on procedural aspects as provisions would be predictable.

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The template report on contract implementation could be modified to include these aspects. Contracting authorities could also be encouraged to issue final performance certificates for each contract that would confirm that the contract was delivered in line with the contract provisions.

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.

Assessment criterion 9(c)(c):

Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As mentioned above, contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews. **APW** provided access to some payments data which shows that they generally pay invoices within the deadlines stipulated by the contract (in several cases, even on the same day). As mentioned above, partial information and data was also received from the **Ministry of Administration** and **HIF**.

Different practices are observed in the analyzed sample. In the case of **APW**, the method of payment defined in the contract is in accordance with standard practices (30 days from the receipt of the invoice). **Traffic Administration** and **HIF** sometimes include shorter period (i.e. 15 days from receipt of invoice).

The **Traffic Administration** and **HIF** provide for monthly payments in most of the contracts. These are linked with delivery stages. **Traffic Administration**'s contracts also envisage 10% advance payment within 15 days of delivery of advance payment guarantee. 10% are withheld from each monthly payment to cover for potential deficiencies in works performance until the final financial report. Final acceptance has to be issued in order to make the final payment.

According to **EPCG** representatives, in certain cases, reports are submitted by the contractor as basis for issuing and approving the payment request. **EPCG** also uses for large contracts a dynamic planning which entails milestones to monitor contract execution and apply penalties, if the case. No bonus/incentives system is in place, this option is not foreseen by the legislation. The entity mentioned that they keep their own records on payments but they generally relies on the records kept by the contractors which provide detailed information on each invoice, these being considered complete and accurate.

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).

Information was not available to be able to construct these indicators.

Source: Sample of procurement cases.

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Gap analysis

Similar to the above indicators on contract implementation, in the absence of documentation, a general 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.

However, delays in payments is one of the three of the main obstacles identified by economic operators when working under a governmental contract. Nevertheless, 61% of the economic operators appreciate that contracting authorities comply with the existing regulation on the time limits for payments.

Recommendations

Same as above.

Assessment criterion 9(c)(d):

Contract amendments are reviewed, issued and published in a timely manner.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As mentioned above, contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews.

According to the law, contract amendments should be published. During the sample analysis, no amendments were found for the analyzed contracts from **HIF, Traffic Administration** or **Ministry of Public Administration**.

According to the analysis of the data from the e-procurement system, 8% of the contracts were modified, however there is not any information regarding the scope of the amendments. It confirms however, that contract amendments are published, as stipulated by law. However, the perception of the economic operators that responded to the survey is that contract modifications are used to circumvent public procurement rules (only 18% of the respondents said this is not the case).

Quantitative analysis

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

contract amendments (in % of total number of contracts: 8%

average increase of contract value in %: 20,651 euros

Source: e-Procurement data.

Gap analysis

A comprehensive review of the contract amendments could not be conducted due to limited access to data, however the e-procurement data shows that only 8% of the contracts were modified during the analyzed period. Nevertheless, the perception of the economic operators that responded to the survey is that contract modifications are used to circumvent public procurement rules (only 18% of the respondents said this is not the case).

Recommendations

A review of the reasons for contract amendment should be conducted to assess if these have been done in accordance with the legal provisions. The e-procurement system could be further developed to capture the subject of the amendment, initial / modified value, initial / amended duration, if the case.

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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.

Assessment criterion 9(c)(e):

Procurement statistics are available and a system is in place to measure and improve procurement practices.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Contracting authorities prepare annual reports with summaries of procedures and contracts, including some statistics which are sent to DPPP and are available in the e-procurement system. However, these are generally statistical reports published for transparency purposes and not necessarily to measure and improve procurement practices.

However, 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% of the respondents consider there is sufficient public information, 32% disagree with this statement.⁵¹

Gap analysis

Statistical reports are published for transparency purposes and not necessarily to measure and improve procurement practices.

Recommendations

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, 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 level. The development of the monitoring mechanism and interconnection of data sources will strengthen DPPP's monitoring function.

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.

Assessment criterion 9(c)(f):

Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*

Conclusion: Substantive gap

Red flag: No

⁵¹ Also 33% responded "don't know".

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Qualitative analysis

No such opportunity is defined in the analyzed tender documents.

This is not forbidden by law, however there is no evidence of contracting authorities inviting civil society to participate in procurement processes.

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).

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation)

Information was not available to be able to construct these indicators.

Source: Sample of procurement cases.

Gap analysis

No such opportunity is defined in the analyzed tender documents.

This is not forbidden by law, however there is no evidence of contracting authorities inviting civil society to participate in procurement processes.

Recommendations

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 website to communicate to a wider range of stakeholders, including the general public and the non-governmental sector.

At the same time, the Montenegrin authorities could envisage the development of procurement training for external partners to enhance their capacities in monitoring 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.

Assessment criterion 9(c)(g):

The records are complete and accurate, and easily accessible in a single file.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

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Information regarding the procurement process is partially available in e-procurement system, such as the tender notice, tender documents, modifications and clarifications to tender documents, decision on selection of most advantageous bid, the contract and contracts amendments (if any) and contract implementation report. In some cases, the latter was not published by some contracting authorities, such as **Traffic Administration**, although they are obliged to do so by law as of mid-2020. Similar records can be identified in the Public Procurement Portal which keeps procurement data until the introduction of the e-procurement system in 2021. The contract implementation report was not published as it was not mandatory in accordance with the previous law.

Publicly available online records do not contain bids, minutes from opening the bids, contract information data such as invoices, data on payments, evidence of submitted/received goods/service/works (for example, a confirmation of a person who received goods that what was delivered is in accordance with the contract in terms of quality, amounts etc.; or for works selected bidder is obliged, in accordance with reviewed contracts, to keep a construction records/ book from day 1 of contract implementation where all works are recorded day by day, but this is also not available in public part of e-procurement system).

Records could not be verified for the selected contracting authorities as access was not provided.

Quantitative analysis

// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):

- share of contracts with complete and accurate records and databases (in %)

Information was not available to be able to construct these indicators. However, the e-procurement records are publicly accessible.

Source: Sample of procurement cases.

Gap analysis

Several documents from the procurement file are publicly available in the e-procurement system. However, public online records do not contain bids, 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.

Recommendations

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.

Indicator 10. The public procurement market is fully functional

Sub-indicator 10(a)

Dialogue and partnerships between public and private sector

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Assessment criterion 10(a)(a):

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

Conclusion: Minor gap

Red flag: No

Qualitative analysis

In terms of existing forums for dialogue between the government and the private sector, both formal and informal mechanisms are in place. A working group was established by Government decision which includes representatives of local municipalities, NGOs, Chamber of Commerce etc. to discuss public procurement matters.

Informal dialogue is ensured whenever necessary. This was confirmed by the representatives of the Chamber of Commerce and businesses that participated in the interviews from January 2023.

The Chamber of Commerce is an umbrella association whose activities are governed by law in charge with promoting the cooperation, assessing and being responsive to the needs of the businesses, including on public procurement matters to which particular attention was given during 2022. The Chamber of Commerce mandate includes providing opinions on draft laws with the aim to improve the business environment.

In terms of public procurement, the Chamber of Commerce representatives consider that generally the system functions well, however deficiencies were noted in crisis situations which had negative consequences in particular in the area of public works and constructions. The Chamber of Commerce initiated discussions with the Ministry of Finance and other relevant line ministries to agree on measures to address the issue of increased prices, respectively to increase the contract amount up to 20% due to situation beyond the control of the business community. A working group to review the construction law was also set up reuniting the representatives of the Ministry of Finance, Ministry of Capital Investment, Transport Administration, Chamber of Engineers, Faculty of Civil Engineering. This led to the modification of the procurement legislation from 2020.

AmCham participated in the process of creating the Law on Public Procurement during 2018 and 2019, through an Ad-hoc working group, however they did not participate in the consultations on any of the subsequent amendments stating that their members are generally large companies that did not report any pressing issues in public procurement. AmCham appreciates that they had had an open dialogue and cooperation with representatives of the Ministry of Finance within the Directorate dealing with public procurement, through our Partnership for Better Environment program. AmCham pointed out that their members consider that the legal framework is clear, and that the e-procurement system significantly improved the transparency of the public procurement process and its efficiency by reducing administrative burden. The organization did not organize training and capacity building programs on public procurement or provided support with access to funding, as their members are generally large companies.

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% of the respondents consider that there is a transparent and consultative process followed when formulating changes to the public procurement legislation. Also, only 28% of the respondents believe that there is appropriate time for civil society and the private sector to provide input, comments and feedback and even less consider that their comments and feedback are taken into account (16%).

Quantitative analysis

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

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

33% of the economic operators consider that there is a transparent and consultative process followed when formulating changes to the public procurement legislation

28% of the economic operators believe that there is appropriate time for civil society and the private sector to provide input, comments and feedback

16% of the economic operators consider that their comments and feedback are taken into account

Source: Survey.

Gap analysis

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

Recommendations

The Montenegrin authorities could consider launching surveys with firms whenever the modification of the law is envisaged and in particular when it has a high impact on their access to public procurement. The Montenegrin Chamber of Commerce can support this initiative.

Assessment criterion 10(a)(b):

The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The public procurement strategy includes specific measures to promote SMEs 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 e-procurement system, about 100 trainings sessions were organized for the private sector on the use of the e-procurement system.

According to the report on the implementation of the PP strategy for 2021 and 2022, promotion of SMEs 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 programs dedicated to SMEs. There is no indication of the target group.

Gap analysis

Although there are some programs in place to stimulate the participation of different types of economic operators in public procurement, their impact would need to be assessed after a few years. However, considering the low competition levels, additional measures would need to be taken into account.

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Recommendations

Considering the very low competition levels in public procurement, there is a clear need to assess the wider context which may discourage economic operators to take part in public procurement by looking at the legislations, standards and requirements applicable in different sectors.

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.

Sub-indicator 10(b)

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

Assessment criterion 10(b)(a):

The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

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 quality. 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).

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.

One important topic referred to during the interviews with the contracting authorities referred to the requirements for licenses and certificates. Contracting authorities generally appreciate that the provisions of the procurement law are clear with respect to their submission at the bidding stage, however the specific requirements are set by other pieces of legislation, regulating the specific areas of business, such as construction law. In terms of standards, bidders generally have to comply with the national ones and, in their absence, with the ones established at the level of the European Union. Meeting standards does not seem to be an issue, however licenses seem to create more problems and an assessment of the existing specific legislation which impact the competition in public procurement may be required.

In terms of access to the market for foreign bidders, there are no specific requirements applicable to foreign companies, however there may be language barriers. Specific licenses and certifications may also be needed at the opening stage of the procurement which may also prevent some foreign companies to enter the market. Only 7% of the contracts are awarded to international companies, representing 9% of the total contracted value over the analyzed period.

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% 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)⁵² and only 26% believe that the conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes⁵³. When asked if they

⁵² 28% responded don't know and 5% preferred not to answer to this question.

⁵³ 19% responded don't know and 2% preferred not to answer to this question.

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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.

Quantitative analysis

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

Number of total active suppliers in Montenegro (2022) is **45675**

- number of registered suppliers (take part in procurement procedure) as a share of total number of (active) suppliers in the country (in %) – 9.1%
- number of registered suppliers (conduct simple procurement below 5000 euros) as a share of total number of (active) suppliers in the country (in %) – 23%

- total number and value of contracts awarded to domestic/foreign firms (and in % of total):

4,158 registered firms: 71% national 29% international

93% of the contracts are awarded to national companies and 7% to foreign ones, representing 91% of the overall contracted amount

% of firms that submitted at least one bid (from total registered): 61% (46% national and 15% international)

% of firms that were awarded at least one contract: 38% of the registered firms and 60% of the ones that submitted a bid of which,

- National – 30% of the registered firms and 65% of the ones that submitted a bid
- International - 8% of the registered firms and 55% of the ones that submitted a bid

In terms of SOE participation, of 43 bidders that are registered in the e-procurement system both as contracting authorities and economic operators, 28 attended tender procedures and 22 were awarded with a contract. They were awarded with 275 contracts (2.2% of all contracts) and contractual amount of these contracts equaled EUR 5,421,283 (0.8% of total contractual amount). 64.2% of lots that 28 firms attended were single bidder lots. For the rest of the lots winning rate of firms of interest was 42.2%.

Source: E-Procurement system.

Gap analysis

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 to economic operators in Montenegro but also for foreign bidders.

The private sector seems not willing to participate in public procurement contracts due to perceptions of collusion and lack of transparent and open procedures that foster competition.

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.

Recommendations

An assessment of the existing specific legislation, standard and other requirements which impact the competition in public procurement may be required. 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 to take part in public procurement processes.

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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, on 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.

Further developing tailored capacity building programs for economic operators to increase capacity to access public procurement should also be envisaged.

Assessment criterion 10(b)(b):

There are no major systemic constraints inhibiting private sector access to the public procurement market.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

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. The regulatory framework is generally considered clear and there is guidance on how to prepare quality bids, including in the instructions to tenderers which are part of the tender documents. Procurement opportunities are published in the e-procurement system, however only 48% of the economic operators consider that the e-procurement system fosters competition. In terms of transparency of public procurement, the contracting authorities publish all tenders both in the e-procurement system and some on own website. Purchases below 5000 euros are also reported in the e-procurement system even if this is not mandatory. A statistical report, which is mandatory, is published twice per year.

Public procurement seems insufficiently promoted in Montenegro. 42% of the economic operators consider that business opportunities in the public procurement market are not predictable.

With regard to systemic constraints (e.g. inadequate access to financing, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market, the following issues were highlighted by the Chamber of Commerce and representatives of the private sector interviewed in January 2023:

- Lack of predictability of planned investments – investment plans are prepared annually; it was noted that the overall value of the public procurement contracts decreased over the past 3 years which had an impact on the businesses that generally work with the Government. Planned investments were postponed by some contracting authorities. This led to difficulties for the businesses to estimate and plan their resources. The Covid-19 pandemic and the cyber-attacks in 2022 may have had an impact, however overall the reasons for this decrease is unknown. The question raised is if there were investments made without the application of the public procurement law which otherwise should have followed the procurement legislation
- Overall increase in prices – the procurement law was amended to allow for the price adjustment in 2020

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- Contract implementation data is not available – it would be useful if the e-procurement system is more transparent and includes functionalities to issue reports on contract implementation, including payments, and highlight any performance issues
- Proof of eligibility criteria time consuming to obtain – the process is sometimes cumbersome and time consuming for businesses and is also affecting the duration of the procurement procedure; an initiative to establish a one-stop-shop for businesses by the Chamber of Commerce is planned to be implemented. Setting up a list of approved economic operators could also be considered for certain sectors; this will allow that bidders are pre-screen and procurement process is made more efficient and focused on the qualitative evaluation.
- Licenses, certifications and accreditations requirements may be excessive for certain sectors – this may affect the participation of foreign companies in public procurement.

According to the survey results, the 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 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%). At the same time, only 48% of the economic operators believe that the e-procurement system 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.

Quantitative analysis

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

- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).

The conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes – 26% of the respondents

Source: Survey.

Gap analysis

Public procurement seems insufficiently promoted in Montenegro. 42% 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.

Recommendations

The Montenegrin Government should take measures to address the issues highlighted by the economic operators by analyzing, addressing and/or clarifying them. The dialogue between the public authorities and private sector is key in this regard.

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

Assessment criterion 10(c)(a):

Key sectors associated with the public procurement market are identified by the government.

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Conclusion: Substantive gap
Red flag: No
Qualitative analysis <p>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 however great potential to conduct sector analysis to inform sector strategies. The data shows that 10 procurement categories by contracted amount account for about 70% of the procurement spend in Montenegro over the analyzed period. The data analysis provides further insights into the most procured items and average contract value. 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).</p>
Gap analysis <p>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.</p>
Recommendations <p>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. The supply positioning matrix is a useful tool for such analysis. Authorities could consider development of strategies for centralization, as well as conducting further in-depth analysis based on the results of the 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.</p>
Assessment criterion 10(c)(b): <p>Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>
Conclusion: Substantive gap
Red flag: No
Qualitative analysis <p>There is no evidence regarding such risk assessment. The engagement with the private sectors seems driven by management of evolving crisis. See notes above ref feedback from Chamber of Commerce (criterion 10(b)(b)). Also, there is no evidence of engagement with the market to define procurement policy objectives.</p>
Gap analysis <p>There is no evidence regarding such risk assessment. The engagement with the private sectors seems driven by management of evolving crisis. See notes above ref feedback from Chamber of Commerce (criterion 10(b)(b)). Also, there is no evidence of engagement with the market to define procurement policy objectives.</p>

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Recommendations

The above-mentioned analysis based on e-procurement data (i.e. the supply positioning matrix) could 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.

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

Sub-indicator 11(a) Enabling environment for public consultation and monitoring	
Assessment criterion 11(a)(a):	A transparent and consultative process is followed when formulating changes to the public procurement system.
Conclusion:	Minor gap
Red flag:	No
Qualitative analysis	<p>There is a practice of consulting the public when formulating changes to the public procurement system. In line with the Law on Public Administration⁵⁴ and the Decree on the Selection of NGOs' Representatives in the Government's Working Bodies and Conducting Public Consultations in Developing Laws and Strategies⁵⁵, the Directorate for Public Procurement Policy (DPPP) invites NGOs to participate in processes of drafting laws and strategies. However, there is no legal requirement and no practice of consulting with public when formulating bylaws. CSOs representatives also participate in the design of the procurement system as members of the government's working group on chapter 5 of the Acquis. Furthermore, DPPP conducts consultations with CSOs on as needed basis in different forms, although these initiatives sometimes fail due to limited availability of CSOs specialized in this area.</p> <p>In absence of legal requirements, Contracting Authorities (CAs) do not consult with or engage CSOs in carrying out individual procurement. However, CSOs participate in public consultations related to big investment projects.</p>
Gap analysis	Legal requirements and practice of public consultations are limited to the level of laws and strategies. There is no requirement for mandatory public consultations on bylaws. The CAs do not carry consultations or engage CSOs when carrying out individual procurements. Private sector perceives the legislative drafting process as being insufficiently inclusive and transparent.
Recommendations	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. DPPP should organize consultations with key stakeholders (representatives of NGOs and private sector) around key bylaws. DPPP should, as well, 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.
Assessment criterion 11(a)(b):	Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.
Conclusion:	Minor gap
Red flag:	No

⁵⁴ Official Gazette no. 78/2018, 70/2021, 52/2022.

⁵⁵ Official Gazette no. 041/18.

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<p>Qualitative analysis</p> <p>There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. In addition to the consultations with civil society, the DPPP conducts consultations with the private sector on public procurement issues, performance, challenges etc. These are conducted on as-needed basis and mainly initiated by the private sector. DPPP also has an operational helpdesk for communication with the private sector. Private sector can also benefit from the training, guidelines and instructions organized and provided by the DPPP.</p>
<p>Gap analysis</p> <p>There is no regular and comprehensive capacity building program established to build the capacity of stakeholders.</p>
<p>Recommendations</p> <p>Consider a more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement.</p>
<p>Assessment criterion 11(a)(c):</p> <p>There is ample evidence that the government takes into account the input, comments and feedback received from civil society.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Government acknowledges and responds to inputs and feedback from civil society and private sector provided during the process of drafting public procurement strategies and legislation. There are examples of proposals from the private sector and civil society accepted by the government when developing changes to the public procurement system. For example, at 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. However, such examples are relatively rare and there is little evidence of civil society and private sector proposals being incorporated to legislation⁵⁶. Furthermore, there is no evidence of stakeholders' feedback related to individual procurements being provided, considered or accepted.</p>
<p>Gap analysis</p> <p>Inputs, comments, and feedback from civil society are only provided in relation to legislative and strategic framework, but not to individual procurements. Furthermore, there is little evidence of these input and proposals being accepted by the Government.</p>
<p>Recommendations</p> <p>See 11(c)(a) and 11(a).</p>

<p>Sub-indicator 11(b)</p> <p>Adequate and timely access to information by the public</p>
<p>Assessment criterion 11(b)(a):</p> <p>Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>

⁵⁶ Report on Public Consultations on Public Procurement Law, May 2023, DPPP.

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Qualitative analysis

Legal gaps hamper CSOs' free access to information in general. Hence, the current Law on Free Access to Information⁵⁷ enables public institutions to restrict CSOs' access to important policy decision by classifying this information as confidential.

The PPL (A.9) defines transparency as one of the of public procurement principles and requires CAs to publish on Electronic Public Procurement System (EPPS) all documentation necessary for conducting public procurement procedure. This also applies to international contracts for joint procurements (A.13). While the EPPS provides information as prescribed by the law, access to this information is hampered by limited EPPS search options (for example, search cannot be done by bidder) and lack of aggregate information for multiple procurements or contracts. Transparency is also hampered by a lack of legal requirement (and subsequently the practice) for publishing reports on implementation of CA's public procurement plans. Supreme Audit Institution further points to limited access to information on small value procurements, as these are not processed via the EPPS.

Gap analysis

While the EPPS provides access to key information related to public procurement in line with legal requirements, EPPS limited functionalities hamper effective access to such information. Furthermore, systematic access to information on small value procurement is not ensured, as these are not part of the EPPS.

Recommendations

Consider improving the functionalities of the EPPS to enable better search options and producing consolidated reports. Consider a requirement to publish through EPPS reports on implementation of public procurement plans as well as the information about small value procurements.

Sub-indicator 11(c)

Direct engagement of civil society

Assessment criterion 11(c)(a):

The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:

- the planning phase (consultation)
- bid/proposal opening (observation)
- evaluation and contract award (observation), when appropriate, according to local law
- contract management and completion (monitoring).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The PPL does not address or envisages participation of citizens in the procurement system or in any part of the procurement process.

The legal and regulatory framework provides for the participation of citizens and CSOs in strategic and legislative drafting, including in relation to public procurement (see 11(a)(a)). The Law on Public Administration⁵⁸ provides 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

⁵⁷ Official Gazette no. 44/12, 30/17.

⁵⁸ Official Gazette no. 78/2018, 70/2021, 52/2022.

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their representative 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 consultations. However, the decree applies only to laws and strategies, and does not extend to bylaws or other acts.
Gap analysis While the participation of CSOs in government's legislative drafting processes is prescribed by the law, there are no specific provisions in PPL on CSOs participation in 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.
Recommendations 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.
Assessment criterion 11(c)(b): There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The interviewed CAs reported their adherence to the regulations requiring the CSOs participation in legislative drafting. As described above, there is no legal requirement or practice of involving CSOs in individual procurements. There are few CSOs actively engaged in monitoring the public procurement system (see 14(e)(c)).
Gap analysis There is limited evidence of CSOs participating in legislative drafting processes and monitoring of public procurement.
Recommendations See 11(c)(a).

Indicator 12. The country has effective control audit systems

Sub-indicator 12(a) Legal framework, organisation and procedures of the control system The system in the country provides for:
Assessment criterion 12(a)(a): laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies
Conclusion: No gap
Red flag: No
Qualitative analysis

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The Law on Management and Internal Controls in Public Sector⁵⁹ sets principal requirements for a comprehensive internal control framework, including for managerial accountability and management and coordination of internal control system⁶⁰. The purpose of management and internal control, as defined in the law, is aligned with definitions in the 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 ensure compliance and achievement of institutions' goals. Independent decentralized internal audit function reviews functioning of internal control arrangements in line with International Professional Practices Framework.

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, while 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 local level.

Gap analysis

The assessment has not identified any gaps.

Recommendations

None

Assessment criterion 12(a)(b):

internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The procurement function and decision-making structure in CAs is organized in a manner that provides internal control and checks and balances. The PPL defines that procurement can only be carried out if envisaged by a CA's annual procurement plan and subject to availability of funding. Procurement plans and any changes thereto are approved by MoF (for state bodies), or by a responsible body/management board (for local self-government units and public companies).

Procurement decisions within CAs are proposed by procurement commissions and endorsed by the CA's authorized person. The procurement commission is appointed by the CA's authorized person (normally a head of CA) for each individual procurement and may include a procurement officer. The CA's authorized person, who is not a member of the procurement commission, is also responsible for responding to complaints.

Budget management system ensures that payments can only be made when approved by 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. However,

⁵⁹ Official Gazette 75/18.

⁶⁰ World Bank, Public Expenditure and Financial Accountability (PEFA) assessment, 2019, PI-25.

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there are no effective controls in place to ensure that all commitments are systematically captured in the Financial Management Information System (FMIS). The CAs are therefore not effectively prevented from incurring commitments in excess of funds warranted to them, and they may delay entering a budget commitment and filing their payment requests until they have sufficient warranted funds available, thus possibly contributing to arrears⁶¹.

There is an operational Internal Audit function⁶², positioned as an organizationally and functionally independent advisory function to the top management of each institution.

Gap analysis

Internal control/audit mechanisms are functional and ensure appropriate oversight of procurement. However, the system enables CAs to delay entering a budget commitment and filing payment requests until they have sufficient funds available. This can lead to CAs incurring commitments in excess of funds available to them, and possibly contributing to arrears.

Recommendations

Improve FMIS and relevant procedures to ensure that CAs are prevented from incurring commitments in excess of funds warranted to them.

Assessment criterion 12(a)(c):

internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The PPL provides authorizations for procurement decision to head of CA and defines tasks to be carried out by procurement officer, which are mainly administrative (PPL, A.47). In practice, head of CA exercises these authorities by formally endorsing procurement documents, contracts, and responses to appeals at first instance. Delegation of this authority to procurement or other staff is limited or non-existent as reported by interviewed CA. While this is a sound risk mitigation measure it could come at the expense of timeliness in decision making, especially when it concerns procurement of lower value.

Gap analysis

Authority for decision making is exercised in line with the law by CA's authorized person, though this could impact efficiency in decision making.

Recommendations

Delegation of authority to procurement or other staff could be explored for some procurement decisions within the relevant legal framework, to ensure a proper balance between timely decision making and risk mitigation.

Assessment criterion 12(a)(d):

independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management

Conclusion: Minor gap

⁶¹ PEFA 2019.

⁶² 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.

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Red flag: No
Qualitative analysis <p>The SAI is mandated to carry out compliance, financial, and performance audits of entities that manage public funds or property, as well as entities 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 annual audit of the Government's budget.</p> <p>SAI conducts audits based on its internal annual audit plan. SAI informs heads of audited institutions on audit results through audit reports.</p> <p>The financial and compliance audits cover public procurement, focusing on entire procurement process, including implementation of procurement legislation and contract implementation. No specialized procurement audits are conducted. Also, performance audits, which focus on improving the system-level performance, have not focused on public procurement (only one performance audit focused on procurement of medical equipment was conducted in 2017). As part of regional project funded by the European Court of Auditors, SAI participated in parallel performance audit on public procurement in the Western Balkans, together with other SAIs in Western Balkans countries⁶³. SAI considers conducting procurement-focused performance audits starting from 2024.</p>
Gap analysis <p>Although public procurement is subject to financial and compliance audit, no special public procurement audits or performance audits are conducted.</p>
Recommendations <p>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.</p>
Assessment criterion 12(a)(e): <p>review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)</p>
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis <p>As per the Law on SAI, SAI annually submits to the Parliament and the Government: i) Audit Report on the Final Account, and ii) Activity Report, which contains highlights and recommendations from individual audits carried out in the past 12 months. The Parliament formally acknowledges these reports. In addition, based on the Memorandum of Understanding between SAI and the Parliament, SAI submits to the relevant parliamentary committees the reports of implementation of audit recommendations.</p> <p>The reports are scrutinized by the Parliamentary Committee on Economy, Budget and Finance (CEBF) which is mandated to carry out hearings and issue own statements and recommendations for the plenary. CEBF can carry out consultative and control hearings. While there was a strong performance in 2016, no control hearings</p>

⁶³ European Court of Auditors, 2018, "Public Procurement in Western Balkans Synthesis Report on the Parallel Performance Audit conducted by the Supreme Audit Institutions of Albania Bosnia-Herzegovina the former Yugoslav Republic of Macedonia Kosovo* Montenegro Serbia".

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with respect to audit reports were held in the subsequent years⁶⁴. The statements and recommendations provided by CEBF in different years ranged from calling upon the government to implement SAI recommendation to summarizing/reiterating the main ones⁶⁵. The implementation of the Conclusions of the Parliament on audit recommendations is binding. The Government is required to submit an action plan for addressing the recommendations and to report quarterly on their implementation. In practice, the Parliament exercises a largely formal role limited to reiterating SAI's recommendations. 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 parliament⁶⁶.

Gap analysis

While the rules and procedures are in place to ensure adequate parliamentary oversight and follow-up on SAI's recommendations, frequency of hearing is limited, and parliamentary recommendations provide little substantive value.

Recommendations

Ensure regular control and consultative hearings on SAI reports. Based on the outcome of such hearings, develop more substantive Parliamentary conclusions in relation to the implementation of SAI recommendations.

Assessment criterion 12(a)(f):

clear mechanisms to ensure that there is follow-up on the respective findings.

Conclusion: No gap

Red flag: No

Qualitative analysis

There are clear mechanisms to ensure there is a follow-up on both, internal and external audit findings.

External audit: SAI is responsible for follow-up on the implementation of its recommendations by audited public bodies. According to SAI's internal guidelines, audited public bodies are required to provide SAI with the plan for implementation of recommendations within 30 days from receiving the audit report and to submit the first report on implementation of recommendations within 6 months. SAI may decide to conduct field visit to obtain additional evidence of implementation, and based on the results of the visit, it may decide to conduct control audit. SAI provides audited bodies with additional deadline to implement the pending recommendations and follows-up with them until all the recommendations have been implemented. In some cases, this may involve up to four control audits. SAI produces reports on implementation of recommendations and publishes the status of their implementation on its website. SAI also reports to the Parliament about the implementation of recommendations from the annual Audit Report on the Final Account, and to CEBF on implementation of recommendations from individual audits of public bodies.

Internal audit: Internal Audit reports are 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. Each Internal Audit Unit monitors the implementation and annually reports on the implementation status to the CHD. This information is aggregated into the publicly available Consolidated PIFC Report.

Gap analysis

The assessment has not identified any gaps

Recommendations

None

⁶⁴ Source: PEFA 2019

⁶⁵ Source: PEFA 2019.

⁶⁶ Source: PEFA 2019.

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Sub-indicator 12(b) Coordination of controls and audits of public procurement	
Assessment criterion 12(b)(a): There are written procedures that state requirements for internal controls, ideally in an internal control manual.	
Conclusion: No gap	
Red flag: No	
Qualitative analysis <p>Implementing modalities for internal control and audit are elaborated in several by-laws, 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 for 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.</p> <p>Public bodies develop own internal control framework based on the Plan for Improving Management and Control.</p> <p>All Heads of IAUs are required to develop and implement a Quality Assurance and Improvement Program for their IAUs and there is progress in preparations of internal quality assessments.</p>	
Gap analysis The assessment has not identified any gaps	
Recommendations None	
Assessment criterion 12(b)(b): There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.	
Conclusion: No gap	
Red flag: No	
Qualitative analysis <p>Written audit standards and procedures also covering procurement audits are in place. SAI developed written standards and procedures for conducting: i) financial and compliance audits⁶⁷ (which also cover audit of public procurement segment), and ii) performance audit⁶⁸. The former prescribes types of audit procedures and audit process. In the preparatory phase checklists are prepared covering specific issues to be audited, including in relation to public procurement. Based on the checklists and supporting documents, SAI's Collegium adopts an audit plan which among other sets a detailed list of tasks for auditors. Furthermore, SAI's manual which is used as a textbook for external auditor examination provides guidelines on public procurement audit⁶⁹. Additional</p>	

⁶⁷ Methodology for Conducting Financial Audit and Compliance Audit, Official Gazette no. 7/15.

⁶⁸ Methodology for Conducting Financial Audit and Compliance Audit, SAI, 2019.

⁶⁹ Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.

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guidelines in place include: (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 procedure for internal audit is described in Internal Audit Manual and is also applicable to audit of public procurement.

Gap analysis

The assessment has not identified any gaps

Recommendations None

Assessment criterion 12(b)(c):

There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

External audits are conducted in line with INTOSAO standards and based on SAI's annual audit plan. Auditees are selected based on criteria defined in SAI's Guidelines on Selection of Financial and Compliance Audits, which include budget execution size, previous audit conducted, risk and policy assessment, and strategic priorities. As noted above, no specialized procurement audits are carried out.

Internal audit function is required to follow the International Professional Practices Framework (IPPF) issued by the Institute of Internal Auditors (IIA). There is evidence that internal audits are conducted through the public sector. IAUs carry out risk-based strategic, annual, and audit engagement planning. Audit reports are delivered to the head of the audited spending unit and are available upon request to the external auditors and the CHD⁷⁰.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):

- number of specialised procurement audits carried out compared to total number of audits (in %).
- share of procurement performance audits carried out (in % of total number of procurement audits).

Source: Ministry of Finance/Supreme Audit Institution.

External audit type	2021-22	2020-21	2019-20
Total	35	37	20
Financial /compliance	25	26	16
Specialize procurement	0	0	0
Procurement performance	0	0	0

Gap analysis

While external and internal audits are conducted regularly and in line with established written standards, no specialized procurement audits or performance procurement audits are carried out.

Recommendations

See 12(a)(d).

Assessment criterion 12(b)(d):

Clear and reliable reporting lines to relevant oversight bodies exist.

⁷⁰ Source: PEFA 2019.

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Conclusion: No gap	
Red flag: No	
Qualitative analysis	
As per the Law on SAI, SAI submits to the Parliament its annual Activity Report, which contains highlights and recommendations from all individual audits carried out in the past year. The Parliamentary CEBF is responsible for closely reviewing the report and undertaking follow-up action. See also 12(a)(e). Internal audit reports are normally submitted to head of the public body. IAU monitors the implementation and annually reports to the CHD. See also 12(a)(f).	
Gap analysis	
The assessment has not identified any gaps	
Recommendations	
None	
Sub-indicator 12(c)	
Enforcement and follow-up on findings and Recommendations	
Assessment criterion 12(c)(a):	
Recommendations are responded to and implemented within the time frames established in the law.*	
Conclusion: Minor gap	
Red flag: No	
Qualitative analysis	
Deadlines for responding to recommendations from individual SAI audits are decided by the SAI Collegium in line with SAI’s internal guidelines and authorizations provided by the Law on SAI. The evidence suggests that public bodies in general accept all recommendations provided related to public procurement and implement most of them. However, most of the SAI’s systemic recommendations resulting from the annual audit of Final Account (related to various areas, including public procurement) are not responded to as envisaged by the Government’s Action Plan.	
Quantitative analysis	
<i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):</i>	
<i>- Share of internal and external audit Recommendations implemented within the time frames established in the law (in %).</i>	
<i>Source: Ministry of Finance/Supreme Audit Institution.</i>	
SAI ⁷¹ recommendations	2020
A. From individual audits	23
Implemented (partially implemented)	17 (74%)
B. From Final Account audit	74
Implemented (partially implemented)	29 (39%)
Gap analysis	
While the recommendations related to public procurement are generally implemented by public bodies, there is still room for improvement. Limited implementation of recommendations from Final Account audit points to overall poor implementation of SAI recommendations by public bodies in general.	

⁷¹ Source: SAI Activity Report for 2022. The recommendations from Final Account audit relate to various areas, including public procurement.

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<p>Recommendations</p> <p>CAs should strive to achieve a hundred percent implementation of SAI recommendations. DPPP and SAI could work on identifying ways to support CAs in this process, such as through capacity building.</p>
<p>Assessment criterion 12(c)(b):</p> <p>There are systems in place to follow up on the implementation/enforcement of the audit Recommendations.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>There are multiple arrangements in place to follow-up on the implementation and enforcement of audit recommendations. In 2021 SAI adopted Guidelines for developing, monitoring and control of implementation of recommendations. SAI follows-up with public bodies through the public bodies' implementation reports, and SAI's field visits and control audits. In 2023 SAI established an online registry of audit recommendations to support the implementation monitoring process. The registry enables the audited bodies to enter data on implementation progress. SAI plans to make the registry accessible to the public. SAI reports to law enforcement bodies if the findings imply criminal activity. The Parliament through CEBF follows-up on the implementation of recommendations from both the Final Account audit and from individual audits. However parliamentary control and consultative hearings are not conducted regularly in practice (see 12(a)(e)).</p> <p><u>Internal audit:</u> Follow-up measures to IA recommendations are planned and agreed as part of each internal audit. These measures can take the form of written feedback from auditees, separate follow-up audits, or follow-up as a part of a subsequent audit. Each Internal Audit Unit monitors implementation and annually reports on the implementation status to the CHD.</p>
<p>Gap analysis</p> <p>Lack of parliamentary control and consultative hearings hampers effective implementation of audit recommendations (see also 12(a)(e)).</p>
<p>Recommendations</p> <p>See 12(a)(e).</p>
<p>Sub-indicator 12(d)</p> <p>Qualification and training to conduct procurement audits</p>
<p>Assessment criterion 12(d)(a):</p> <p>There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>There is a continuous professional development program for external auditors. 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 Resource Management Agency (HRMA) and by international organizations such as SIGMA.</p> <p>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. Public procurement is also part of the National Legislation training module and a mandatory subject to pass in order to obtain the internal audit certificate.</p>

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<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</i></p> <p>- number of training courses conducted to train internal and external auditors in public procurement audits:</p> <p>External auditors: 2020: 4, 2021: 7, 2022: 2. Internal auditors: N/A.</p> <p>- share of auditors trained in public procurement (as % of total number of auditors)⁷²: 100%.</p> <p>Source for all: Ministry of Finance/Supreme Audit Institution.</p> <p>Gap analysis</p> <p>The assessment has not identified any gap.</p>
<p>Recommendations</p> <p>None</p>
<p>Assessment criterion 12(d)(b):</p> <p>The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>To obtain the external audit certification, candidates need to pass the mandatory exam. Public procurement is one of the mandatory topics and SAI's Manual on Audit of Annual Consolidated Financial Reports of Political Subjects and Audit of Public Procurement is used as a textbook⁷³. Furthermore, written public procurement exams are often conducted as part of the selection process. Internal auditors are also required to pass mandatory exams which include the procurement topic.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gap.</p>
<p>Recommendations</p> <p>None</p>
<p>Assessment criterion 12(d)(c):</p> <p>Auditors are selected in a fair and transparent way and are fully independent.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Selection of auditors (external and internal) 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.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>

⁷² 63 external auditors are envisaged by the SAI's Rulebook on internal organization.

⁷³ Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.

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Recommendations

None

Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator 13(a) Process for challenges and appeals			
Assessment criterion 13(a)(a): Decisions are rendered on the basis of available evidence submitted by the parties.			
Conclusion: No gap			
Red flag: No			
<p>Qualitative analysis</p> <p>Appeal cases are handled by the Commission for Protection of Rights in Public Procurement Procedures (Appeals Body). The PPL prescribes that the appellant must submit evidence as part of the appeal (A.188) and prove the existence of facts on which the appeal is based (A.194). The PPL (A.194) also provides that the Appeals Body may engage an expert witness to resolve a case or seek advice from a responsible public body or organization with public authority. The PPL does not explicitly state that the Appeals Body's decisions should be rendered based on evidence. However, it refers to the General Administrative Procedure Act (GAPA)⁷⁴ on relevant issues related to protection of rights which are not regulated by PPL⁷⁵. Given that i) GAPA is applicable to all administrative procedures, ii) other laws must not contradict GAPA or affect protection of rights of parties in the procedure⁷⁶, and iii) GAPA prescribes that explanation of an administrative decision must, among other, provide description of factual circumstances and the rationale for the decision based on factual circumstances,⁷⁷ legal requirement for the Appeals Body's decisions to be based on evidence are in place..</p> <p>According to the interviews, 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.</p> <p>The following sample cases reviewed as part of the assessment show that the Appeals Body relies on available evidence which were cited in the decision letters:</p>			
#	Issue	Decision	Evidence referred and cited
1	Appellant requests annulment of public procurement procedure because i) the CA did not conduct public opening of bids and did not provide bidders with minutes of the bid opening meeting, ii) the decision on selection of bid does not mention opening of guarantee which was submitted by the selected bidder.	Appeal adopted in whole and public procurement procedure annulled.	Tender document (defining the date of public bid opening and the manner of submission of guarantees) Guarantee submitted by the selected bidder Minutes of bid opening CA's response to the appeal

⁷⁴ Official Gazette no. 56/14, 20/15, 40/16 and 37/17.

⁷⁵ PPL, Article 27.

⁷⁶ GAPA, article 4.

⁷⁷ GAPA, Article 22.

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2	Appellant requests annulment of decision on selection of bid because: i) the bid evaluation methodology defined in the Tender document was not in line with PPL and the Rulebook on the Manner of Evaluation of Bids, and ii) the decision on selection of bid states a requirement which was deleted from the Tender document through the changes to the Tender document.	Appel rejected as unfounded.	Tender document with evaluation criteria and changes to the Tender document Rulebook on the Manner of Evaluation of Bids Decision on selection of bid CA's response to the appeal
3	Appellant requests annulment of decision on selection of bid because: i) the selected bid does not include detailed specification of goods in line with the requirements of the Tender document, and ii) names of some of the brands/products defined in the bid are inaccurate.	Appeal adopted and the decision on selection of the bid annulled.	Tender document Bids received CA's response to appellant
4	A bidder has been debarred from the procurement because the executive director of the bidder's organization has been convicted for criminal act which does not establish the basis for debarment as per the PPL.	Appeal adopted and public procurement procedure annulled.	Ministry of Justice certificate on criminal conviction of the bidder's executive director, including the copy provided by the bidder and a new copy reissued by the Ministry of Justice at the request of the Appeals Body Tender document PPL Bidder's qualification statement
5	Appellant requests i) changes to the Tender document because the wording in the original and revised Tender document was not in line with PPL in describing quality standards, ii) publishing outcome of the appellant's previous appeal, which the CA failed to publish on EPPS and timely deliver to the appellant.	Appeal partly adopted under point i) (relevant wording annulled)	Institute for Standardization Database Written clarifications obtained from DPPA on the manner of publishing appeals by CAs. Tender document Announcement of appeal published at EPPS.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(a)(b):

The first review of the evidence is carried out by the entity specified in the law.

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Conclusion: No gap
Red flag: No
Qualitative analysis The PPL (A.185) provides that candidates submit an appeal to the Appeals Body through CA and through EPPS. The CA's committee established for the particular public procurement proposes to the CA's authorized person (i.e., its head) a response to the appeal (A.48). The Head of the CA decides on the appeal.
Gap analysis The assessment has not identified any gaps
Recommendations None
Assessment criterion 13(a)(c): The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *
Conclusion: No gap
Red flag: No
Qualitative analysis <p>There is no specific provision in the PPL that the decisions of the Appeals Body are final and binding (enforceable). However, the PPL stipulates that a lawsuit against the Appeals Body's decisions can be initiated at the Administrative Court (third instance) by a bidder, the CA, or other interested party. This implies that the decision of the Appeals Body is final and enforceable if no further appeal is submitted by the appellant to the Administrative Court.</p> <p>CA is required by PPL to enforce the decision of the Appeals Body within 15 days and inform the Appeals Body on the enforcement. Penalties for CAs amounting from EUR 5,000-20,000 are prescribed in case of non-compliance with these requirements. The Appeals Body is required to notify the DPPP and the Inspectorate in case of non-enforcement (A.192).</p> <p>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 without waiting for the deadline for submission of lawsuit to expire⁷⁸. The Administrative Court may issue a restraining order (injunction) based on the appellant's proposal, although this possibility is almost never used in practice. If the Administrative Court decides in favor of the appellant and the public procurement contract has been signed in the meanwhile, the appellant may seek compensation of damage by initiating a new procedure at relevant first instance court (i.e., Basic Court).</p>
Quantitative analysis <i>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):</i> <i>- number of appeals.</i> <i>Source: Appeals body.</i>

⁷⁸ 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.

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⁷⁹# of appeals received by the Appeals Body:

2020: 229

2021: 194

2022: 174

January 1 – November 28, 2023: 275

of appeals decisions (including on appeals from the previous year processed in the current year):

2020: 242

2021: 180

2022: 169

January 1 – November 28, 2023: 259

** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):*

number (and percentage) of enforced decisions.

Source: Appeals body.

2020: 57 (100% of relevant decisions)

2021: 102 (100% of relevant decision)

2022: 94 (97% of relevant decisions)

Gap analysis

The assessment has not identified any gaps.

Recommendations

None

Assessment criterion 13(a)(d):

The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Conclusion: No gap

Red flag: No

Qualitative analysis

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 by the candidate to the Appeals Body through the CA (PPL, A.186):

- i) for appeals related to the Tender document and changes to the Tender document: 20 days from the date of publishing of Tender documents and changes to the Tender document, if the deadline for submission of bids or qualification statements is at least 30 days from the date of publishing/providing of the Tender document or changes to the Tender document; 10 days from the date of publishing of Tender documents and changes to the Tender document, if the deadline for submission of bids or qualification statements is at least 15 days from the date of publishing/providing of the Tender document or changes to the Tender document; and until the expiration of half of the deadline for submission of bids or qualification statements, if this deadline is less than 15 days from the date of publishing/providing of the Tender document or changes to the Tender document; if the final date of the bid submission deadline has less than 24 hours, the deadline will expire on that day.

⁷⁹ Source: The Appeals Body documents provided to the Bank team, March 2023.

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- ii) For appeals related to debarment from procurement procedure: 10 days from the date of submission of the decision on debarment.
- iii) For appeals related to the selection of most favorable bid or annulment of procurement procedure: 10 days from the date of publishing of the decision on the selection of most favorable bid or the annulment of procurement procedure.

Timeframe for head of CA to issue decision and submit an appeal to the Appeals Body (PPL, A.189):

- i) 3 days to publish the appeal at EPPS and suspend the procurement procedure.
- ii) 8 days to reject an appeal if it finds it unallowed, untimely, submitted by an unauthorized person, or incomplete; 3 days to publish this decision at EPPS/submit it to the appellant; and 3 days to inform the Appeals Body, starting from the date of publishing its decision/submitting it to the appellant.
- iii) 30 days to adopt an appeal in whole, and depending on the subject of the appeal, annul the decision appealed on, issue another decision, change or amend the Tender document in line with the appeal, or annul the public procurement procedure in part or in whole.
- iv) 8 days to inform the Appeals Body on an appeal which it rejects in part or in whole, based on grounds other than those under point ii) above.

Timeframe for issuance of decision by Appeals Body (PPL, A.193):

- 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 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.
- iii) 3 days to publish its decision at the EPPS.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Sub-indicator 13(b) Independence and capacity of the appeals body The appeals body:

Assessment criterion 13(b)(a):

is not involved in any capacity in procurement transactions or in the process leading to contract award decisions

Conclusion: No gap

Red flag: No

Qualitative analysis

The status, organization, composition, and mandate of the Appeals Body are defined by the PPL (A.198-208) and operationalized in its internal Book of Rules. The Appeals Body is independent and professional in performing its duties. It comprises six members and president who acts as the head. The President and the members are appointed by the Parliament based on a 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. Administrative support to the Appeals Body is provided by its Secretariat whose head is selected through a public vacancy.

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Gap analysis The assessment has not identified any gaps
Recommendations None
Assessment criterion 13(b)(b): does not charge fees that inhibit access by concerned parties
Conclusion: No gap
Red flag: No
Qualitative analysis An appellant is required by PPL to pay fee for the initiation of the appeals procedure in amount of 1% of the estimated value of public procurement and not exceeding EUR 20,000. The proof of payment needs to be submitted before the 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.
Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 13(b)(c): follows procedures for submission and resolution of complaints that are clearly defined and publicly available
Conclusion: Minor gap
Red flag: No
Qualitative analysis 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 DPPP ⁸⁰ . Still, understanding of the appeals process and the Appeals Body's work appears to be insufficient, as evidenced by frequent clarifications and expert opinions provided by the DPP and legal opinions provided by the Appeals Body in response to various requests from institutions and bidders.
Gap analysis Available procedures and guidelines on the appeals process appear to be insufficient.
Recommendations Produce a commentary on the PPL to enable CAs and bidders to better understand the procurement procedures, including on the appeals process.
Assessment criterion 13(b)(d): exercises its legal authority to suspend procurement proceedings and impose remedies
Conclusion: Minor gap

⁸⁰ Public Procurement Manual, DPPA, <https://ujn.gov.me/wp-content/uploads/2021/12/Priruc%CC%8Cnik-javne-nabavke.pdf>.

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Red flag: No
<p>Qualitative analysis</p> <p><u>Suspension:</u> The PPL (A.189) 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.</p> <p><u>Remedies:</u> The Appeals Body has legal authority to impose remedies. PPL (A.192) lists 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 (related to CA's decision or action which cannot be appealed), ii) reject an appeal as untimely (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 required fee), 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 or procedure or act of the CA.</p> <p>It is supported with evidence that, upon receipt of an appeal, CAs publish appeals at EPPS and suspend the procurement procedure.</p> <p>CAs notify the Appeals Body on all appeals received, including those adopted in whole, along with evidence of publishing their decisions. The CA is obliged to publish notification of the appeal on EPPS within 3 days from the date of receipt of the appeal (A189). The CA may reject the appeal as unallowed, untimely, submitted by an unauthorized person, or incomplete within 8 days from the appeal. CA may also adopt the appeal in whole within 30 days from the appeal. In both cases the CA is obliged to publish such decision on the EPPS and inform the Appeals Body within 3 days from the day of the decision. If the CA rejects the appeal in part or in whole, it is obliged to publish such decision on the EPPS and inform the Appeals Body within 8 days (see also sub-indicator 13(a)(d)). This process suggests that the CA need to take action in the EPPS to notify the Appeals Body of the appeal. Hence, delayed CA's action may slow down the procedure, while no action is considered administrative silence. No such cases were however reported in practice. Prior to the establishment of the EPPS the appeals were submitted in paper form, copying the Appeals Body. It should also be noted that the fee charged to the appellant for the submission of the appeal (see sub-indicator 13(b)(b)) is paid to the Appeals Body's account. Hence the fee will need to be paid even if the appeal is accepted in full by the CA. There were cases in practice when the Appeals Body learnt about the appeal based on the bank transactions (funding reimbursed to the appellant).</p>
<p>Gap analysis</p> <p>To notify the Appeals Body on appeals not adopted 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.</p>
<p>Recommendations</p> <p>Establish adequate control mechanisms to ensure the Appeals Body is automatically informed on appeals not adopted in whole by CAs, without having the CA take action in the system.</p>
<p>Assessment criterion 13(b)(e):</p> <p>issues decisions within the time frame specified in the law/regulations*</p>
<p>Conclusion: Minor gap</p>
Red flag: No
Qualitative analysis

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The PPL (A.193) provides that the Appeals Body resolves the appeal within 30 days, or, in cases an expert witness needs to be engaged, within 40 days. In general, the Appeals Body provides the resolution within the legally prescribed timeframes. The Appeals Body resolved within the legal deadline 92% of appeals in 2020, 85% of appeals in 2021 and 68% of appeals in 2022, with average resolution time of 18, 23, and 28 days, respectively⁸¹. A trend of somewhat slowed resolution over the years can be attributed to several factors. First, although expert witnesses are engaged in approximately 5% of the cases, their engagement creates delays as it requires application of procedures established by GAPA and Civil Procedure Law. According to these procedures, draft expert opinion must be shared with the CA, the appellant and bidders, as relevant, for their potential comments, which can be provided within 8 days. The Appeals Body is obliged to pass the comments received to expert witness for his/her feedback. The expert's feedback is then shared with the party which provided the comments for its potential additional statement, which can be provided within 8 days. Finally, the Appeals Body shares potential additional statement with expert witness, requesting his/her final opinion. Limited availability and access to expert witnesses in certain areas also creates delays. Other causes of delays include the impact of Covid-19 on the Appeals Body's operations and staff health, capacity issues (position of one member of the Appeals Body has been vacant for a while), and lack of Internet connection for 44 days in 2022 due to a cyber-attack on the Government's IT system.

Private sector perceives the decision-making timeframe as too long. Of the survey respondents who have submitted at least one complaint related to public procurement to the Appeals Body⁸², only 31% agreed with the statement that decisions of the Appeals Body are taken within a reasonable timeframe. Similar responses were received regarding the decisions of CAs (38% agreed with the statement) and the decision of the Administrative Court (12% agreed with the statement).

A sample of 15 appeals was reviewed. Based on the sample, the minimum number of days between the date of the appeal and the date of the response is 10 days and the maximum number of days is 251 days. The average time between the date of the appeal and the date of the the Appeals Body's response is 75 days. Given that the response time is calculated from the date of submission of complete documentation by the appellant (PPL, Art. 193) and not from the date of the appeal as is the case here, and given that complete documentation is often submitted with delay, these figures should only be taken as a proxy of timeliness in the Appeals Body's work.

Quantitative analysis

Quantitative indicator to substantiate assessment of sub-indicator 13(b) assessment criterion (e):

- *appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).*

Source: Appeals body.

	2020	2021	2022	Jan 1 – 28 Nov, 2023 ⁸³
Total caseload (# of appeals):	242 100%	194 100%	188 100%	294 100%
Resolved within the legal deadline	223 92.1%	164 84.5%	127 67.6%	N/A

⁸¹ Source: Appeals Body.

⁸² 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.

⁸³ This column is added to capture available data on total caseload and appeals resolved in 2023 as of the time of writing.

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Resolved beyond the legal deadline	19 7.9%	16 8.2%	42 22.3%	N/A
Total resolved	242	180	169	259
	100%	92.8%	89.9%	88.1%
Unresolved	0 0.0%	14 7.2%	19 10.9%	35 11.9%

Gap analysis

Although average resolution time for the Appeals Body's decisions is within the legal timeframe, moderate number of appeal decision were not resolved within this timeframe. Analysis of sample appeals points to similar conclusion. The private sector perceives the appeals resolution as slow. However, the survey results should be taken with caution given that the sample may not be representative.

Recommendations

The Appeals Body should strive to reach its full capacity and achieve a 100% resolution of cases within the legal timeframes.

Assessment criterion 13(b)(f):

issues decisions that are binding on all parties

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no specific provision in the PPL stating that decisions of the Appeals Body are binding on all parties. A lawsuit can be filed against the Appeals Body's decisions at the Administrative Court. However, such lawsuit does not suspend the procurement process (PPL, A.197). See also sub-indicator 13(a)(c).

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(b)(g):

is adequately resourced and staffed to fulfil its functions.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The PPL envisages adequate resources for the Appeals Body, including through budget allocations and administrative support by the Secretariat, the head of which should be recruited based on merit (A.208). In practice, 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 align it with the new civil service legislation. The Appeals Body in principle receives requested operational budget allocations from the government to perform its duties.

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The members of the Appeals Body and its Secretariat regularly participate in trainings 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.

Gap analysis

While the Appeals Body receives requested funding from the Government, there seems to be several bureaucratic or capacity related reasons that are keeping it from reaching its full potential. 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.

Recommendations

Conduct a comprehensive functional review of the Appeals Body operations to determine organizational and capacity gaps and identify measures to improve its performance. Strengthening the Appeals Body's internal capacities in areas where the volume of appeal resolution is the largest could reduce the need for engagement of expert witnesses and thereby accelerate the resolution.

Sub-indicator 13(c)

Decisions of the appeals body

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

Assessment criterion 13(c)(a):

based on information relevant to the case.

Conclusion: No gap

Red flag: No

Qualitative analysis

Neither the PPL nor other regulations such as the Appeals' Body's internal Book of Rules or the DPPP's Public Procurement Manual prescribe that the Appeals Body's decision should be based on particular documents. However, the PPL prescribes that the CA must provide to the Appeals Body the appeal and all of 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 (A.191). Applicable provisions of GAPA also provide that the Appeals Body's decision are based on information that is relevant to the case (see 13(a)(a)). Finally, interviews with the Appeals Body and the actual review of the 5 sample cases (see 13(a)(a)) shows that the Appeals Body cited evidence reviewed and considered in reaching decisions.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(c)(b):

balanced and unbiased in consideration of the relevant information.*

Conclusion: Substantive gap

Red flag: No

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Qualitative analysis

As described above, procedures governing the decision-making process provide that decision of the Appeals Body's are balanced and unbiased in consideration of relevant information. Statistical data also point that most of the Appeals Body's decisions are made in favor of appellant (see 13(c)). However, survey results point that the private sector respondents who submitted at least one complaint to the Appeals do not see the appeals system as fair and trustworthy or consistent. Only 20% of such respondents agrees that the Appeals Body's decisions are consistent, unbiased, and well-informed, while 40% disagrees with this statement. Furthermore, 24% find the decision of the Appeals Body to be correct/necessary while 36% disagree with this statement. Additionally, respondents had more positive views of the Appeals Body then of the CAs or Administrative Court. 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.

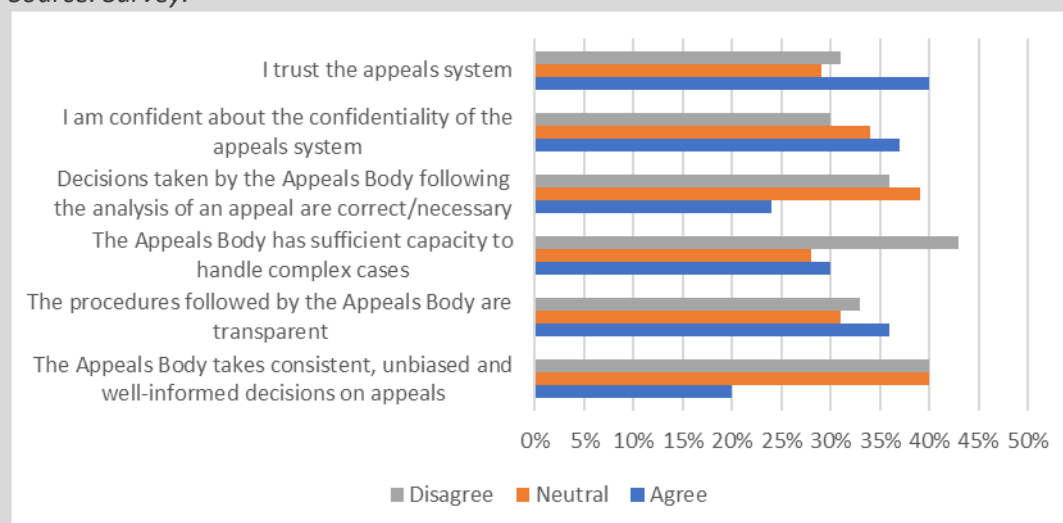
Quantitative analysis

Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):

- share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey.

- share of suppliers that perceive appeals decisions as consistent (in % of responses).

Source: Survey.



Gap analysis

The private sector does not consider the Appeals Body as trustworthy or fair. Perceptions of the private sector is that the decisions made by the Appeals Body are not consistent, they are biased, and they are not well-informed or correct.

Recommendations

Improve the capacity and transparency of work of the Appeals Body and its Technical Secretariat and sensitize the private sector on the work of the Appeals Body, such as through better public communication on its work.

Assessment criterion 13(c)(c):

result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*

Conclusion: No gap

Red flag: No

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Qualitative analysis

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 13 (b)(d)).

The Appeals Body in most of cases decided in favor of the appellant (74% in 2020, 72% in 2021 and 76% in 2022). On average 4% of the appeals annually were withdrawn by the appellant.

The number of lawsuits filed to the Administrative Court varied from 32 in 2021 (on 12% of the appeals decisions) to 29 in 2021 (on 14% of the appeals decision) and 30 in 2022 (on 16% of the appeals decision). From January 1 - November 28, 2023, 26 lawsuits were filed to the Court, of which 18 relate to the Appeals Body's decisions from 2023. The number of Administrative Court's judgments and decisions is on a slight decline. From January 1, 2020 to December 5, 2023, the Administrative Court passed 145 judgments and 14 decisions, of which 106 relate to the Appeals Body's decisions from 2016, 2018 and 2019, 33 relate to the Appeals Body's decisions from 2020, 8 relate to the Appeals Body's decisions from 2021, 6 relate to the Appeals Body's decisions from 2022, and 6 relate to cancelling procedures in relation to the Appeals Body's decisions from 2020-2022.⁸⁴.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).*

Source: Appeals body.

Outcome of appeals	2020	2021	2022	Jan 1 – Nov 28, 2023
Decision in favor of procuring entity (CA)	23%	23%	21%	34.75%
Decision in favor of appellant	74%	72%	76%	62.16%
Appeal withdrawn by appellant	3%	5%	3%	1.15%
Procurement procedure cancelled ex-officio				1.94%
Total	100%	100%	100%	

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(c)(d):

decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*

Conclusion: No gap

Red flag: No

Qualitative analysis

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 (PPL, A.189). 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 (PPL, A.192).

⁸⁴ Source: Appeals Body.

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The Appeals Body is obliged to publish its decisions on EPPS and on its website within 3 days from the date of adoption (PPL, A.193). The Appeals Body is also obliged to publish notice on administrative lawsuit filed and the court's decision on its website and on EPPS (A.197).

The EPPS was established in 2021. Until then the Appeals Body's decisions were published on the Government's public procurement portal. 100% of the Appeals Body's decisions are published. All notices on administrative lawsuit filed and the court's decisions are also published in line with legal requirements. 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.

Quantitative analysis

// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):

- share of appeals decisions posted on a central online platform within timelines specified in the law (in %).

Source: Centralised online portal.*

2020: n/a

2021: 100%

2022: 100%

Gap analysis

The assessment has not identified any gap

Recommendations

None

Indicator 14. The country has ethics and anticorruption measures in place

Sub-indicator 14(a)

Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties

The legal/regulatory framework provides for the following:

Assessment criterion 14(a)(a):

definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The 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 Corruption⁸⁵ 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 this law or definition. Definition of "corrupt activities" could be implied from the PPL A. 38, which requires CAs to undertake specific measures to prevent and remove consequences of corrupt practices (see 14(a)(b) below).

Gap analysis

There are no clear legal definitions on fraud, corruption, and other prohibited practices in procurement.

⁸⁵ Official Gazette no. 53/14, 42/17.

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<p>Recommendations</p> <p>Introduce clear definitions of fraud, corruption and other prohibited practices in procurement to PPL and relevant bylaws such as procurement manual, while ensuring consistency with the definitions provided in the Law on Prevention of Corruption.</p> <p>Assessment criterion 14(a)(b): definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</p> <p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Responsibility/accountability of government employees: PPL (A.38) requires CAs to undertake measures to prevent and remove consequences of corrupt practices, specifically to:</p> <ul style="list-style-type: none"> - Debar from public procurement process a business operator, qualification applicant, or a bidder for whom it has been determined that it indirectly or directly gave, offered, promised, or in other ways made certain a gift or another benefit to a public procurement officer, a member of public procurement committee, a person who participated in the preparation of tender document, a person who participates in procurement planning, or to another person, with the aim of obtaining confidential information or impacting actions taken by the CA. - Formally note such cases, report them to relevant state bodies so that they can take legal actions, and inform DPPP. - Conduct risk analysis and control in public procurement. <p>The PPL states that the contract concluded in violation of anticorruption rule is null and void ('anticorruption clause'). However, the PPL does not provide a clear definition of 'anticorruption rule'.</p> <p>Penalties for government employees: The PPL (A.211 and 212) sets out penalties for CAs and for responsible persons for offences under these provisions in form of fines. Amounts of fines (EUR 2,000—20,000) appears to be low given the potential impact of offense. The Criminal Law envisages imprisonment for individuals who terminate employment contracts to employees who reported corruption based on justified suspicion. The Law on Civil Servants and Employees establishes disciplinary liability for public employees and defines disciplinary measures, including suspension from work⁸⁶.</p> <p>Responsibilities of private firms: PPL (A42) prevents bidders or persons who participated in drafting of documents used for developing technical specifications for procurement of works or supervision of works, as well as persons who participated in technical consultations with CA, from participating in that procurement. Bidders are required to sign a statement on conflict of interest of their authorized person, either due to his/her ownership of, or personal relationships or previous engagement with the CA (A.43).</p> <p>Debarment: PL (A108) requires a CA to debar from procurement procedure a bidder that attempted to exercise undue influence (as per A.38 explained above), that is in a conflict of interest, or that was criminally indicted for bribery or fraud.</p> <p>Gap analysis</p> <p>While the definition of individual responsibilities, accountability and penalties for the relevant stakeholders are</p>

⁸⁶ Official Gazette 39/2011, Article 111.

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in place, there is no definition of 'anticorruption clause' and 'anticorruption rule' that these refer to. This appears to be the result of the recent PPL amendments.
Recommendations Consider adjusting the amounts of penalties for violation of anti-corruption rules so that they more adequately reflect potential impact of offenses.
Assessment criterion 14(a)(c): definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.
Conclusion: No gap
Red flag: No
Qualitative analysis The Law on Prevention of Corruption provides general definitions and provisions on conflict of interest in performing public duties. PPL (A41) defines that conflict of interest between the CA and business operator exists if a CA's representative involved in procurement has direct or indirect financial, economic, or other interest that can impact his/her impartiality and independence, providing detailed explanation of such cases. PPL (A.40) requires CA to take adequate measures to efficiently prevent, identify and remove conflict of interest in relation to public procurement. PPL (A.43) requires CA's authorized person, procurement officer, member of procurement committee, and employees participating in preparation of tender document and procurement planning to sign a statement of no conflict of interest or inform the CA's authorized person of existence of conflict of interest before the beginning of the procurement procedure, and to immediately submit a request for exclusion if conflict of interest appears during the procurement procedure. CA is required to record such requests in its record of conflict of interest and to immediately notify the MOF (DPPP) and the Corruption Prevention Agency (CPA). The Law on Prevention of Corruption (A.15) 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 employment or business relationship with that body, or use the information obtained when performing the public function.
Gap analysis The assessment has not identified any gaps
Recommendations None
Sub-indicator 14(b) Provisions on prohibited practices in procurement documents
Assessment criterion 14(b)(a): The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.
Conclusion: Minor gap
Red flag: No

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<p>Qualitative analysis</p> <p>The PPL specifies prohibited practices that should be observed by both public officials and business entities. PPL (A.111) requires bidders and qualification applicants to submit a self-declaration confirming compliance with conditions for participating in public procurement and absence of any grounds for their debarment, as defined by the tender document. PPL (A.99) prevents CAs and their authorized persons who have been convicted for certain criminal offences, including for fraud, bribery, and corrupt practices, from participating in public procurement. This requirement extends to subcontractors (A.128). However, definitions of these offenses are not provided and some other relevant prohibited practices such as collusive practices, coercive practices, and obstructive practices, are left out.</p> <p>The self-declaration form prescribed by a bylaw⁸⁷ contains clear instructions to business entities regarding the provision of data that confirm their adherence to these legal provisions.</p>
<p>Gap analysis</p> <p>While the PPL specifies criminal offenses for certain prohibited practices, definitions of these practices are lacking, and the list of prohibited practices is not exhaustive.</p>
<p>Recommendations</p> <p>Consider providing a comprehensive list of prohibited practices along with their clear definitions as part of the next PPL revision.</p>
<p>Assessment criterion 14(b)(b):</p> <p>Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>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 (eligibility requirements), tender documents (information on debarment, instructions for completing 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.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>
<p>Recommendations</p> <p>None</p>
<p style="text-align: center;">Sub-indicator 14(c) Effective sanctions and enforcement systems</p>
<p>Assessment criterion 14(c)(a):</p> <p>Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The PPL (A.38) requires MOF (DPPP) to prescribe the manner of keeping records on conflict of interest and</p>

⁸⁷ Rulebook on Business Entity's Self-Declaration Form, Official Gazette 74/19, 3/23.

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violation of anticorruption rules and the contents of those records, and the methodology for risk analysis in public procurement control, to ensure proactivity in corruption prevention and detection. Accordingly, the Rulebook⁸⁸ prescribes contents and forms for i) ii) record of violation of conflict of interest, i.e., anticorruption rule, and ii) risk analysis methodology. CAs are required to report annually to DPPA on conflict of interest and violation of anticorruption rules.

The Rulebook does not provide sufficient explanation of corrupt practices or of the reporting process. The template for the record of violation of anticorruption rules 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, data on bidders and their employees and CA's employees involved in such procedures, and whether the employees who submitted the notes of violation were pressed not to report on violation and how. Information on whether the case was reported to relevant agencies (and which ones) is not included.

PPL (A.39) requires CA's employees who have the information about corruption in public procurement to immediately notify the CA's authorized person, DPPP, Agency for Prevention of Corruption, or Prosecutors Office, depending on whom the information relates to. No additional guidance on this procedure is available.

Gap analysis

Coverage and treatment of fraud and corruption matters throughout the documentation is not comprehensive or consistent. Regulations on keeping records and reporting on corrupt practices do not provide sufficient explanation of corrupt practices and guidance and information on reporting.

Recommendations

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.

Assessment criterion 14(c)(b):

There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Interviewed CAs find the PPLs provisions and available regulations described above 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% of private sector respondents agree that the normative/regulatory institutions enable the conflict of interest to be identified and avoided. This suggests that the system may not be systematically applied.

Gap analysis

There is little evidence the system for reporting corruption in procurement is applied in practice.

Recommendations

Establish a clear reporting structure on issues of malpractices and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report

⁸⁸Rulebook on Records and Methodology for Risk Analysis in Conducting Public Procurement Control, Official Gazette 055/20.

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on cases of corruption and other malpractice and strengthening working relationship among the relevant agencies (DPPP, ACA, Prosecutors Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.

Assessment criterion 14(c)(c):

There is a system for suspension/debarment that ensures due process and is consistently applied.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Mandatory debarment is prescribed for bidders who attempted to make undue influence, who are in conflict of interest, who were criminally indicted for specified acts, or did not provide mandatory documents in procurement process (A.108). Debarment based on special grounds such as professional misconduct or provision of false data may also be prescribed by CAs in tender documents (A.110). Decision on debarment is made by CA's authorizing person based on recommendation from the Procurement Committee and submitted to bidder via EPPS. The decision can be appealed on.

However, 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 procurement procedures.

Gap analysis

While the PPL provides for mandatory debarment of ineligible bidders, there is no system in place for managing suspensions and debarments, including lists of debarred entities or a mechanism for automatic debarment of ineligible bidders.

Recommendations

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.

Assessment criterion 14(c)(d):

There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

External reports of international organizations, including the EC, and interviews with CSOs point to limited 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. Available reports of criminal justice or other institutions do not provide data on procurement-related cases of fraud or corruption (see 14.(d)(c)). However, statistics on prosecution and convictions related to cases of "high-profile corruption" and "abuse of official power", which cover procurement, indeed point to poor enforcement. As an illustration, in 2020 POs handled 476 criminal charges related to abuse of official power. While this represents a 10% increase compared to 2019, it is still only 3% of the total POs caseload. Only 12 indictments were proposed based on these charges, one indictment was ordered, and one investigation was

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conducted, while 120 charges remained unresolved. Similarly, courts processed only 40 indictments and passed only 6 convictions, leaving 30 indictments unresolved. Furthermore, courts upheld only one of the 6 complaints that POs filed against the court decisions.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):*

- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).

Source: Normative/regulatory function/anti-corruption body.

- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.

Source: Normative/regulatory function/anti-corruption body.

- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).

Source: Survey.

The team could not get hold of data for the recommended quantitative indicators.

Gap analysis

Available evidence and reports suggest to very poor enforcement of laws on corruption, fraud, and other prohibited practices.

Recommendations

Systematic action should be taken to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacities and integrity of law enforcement agencies, and raising public awareness and support.

Sub-indicator 14(d)

Anti-corruption framework and integrity training

Assessment criterion 14(d)(a):

The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The country has in place a comprehensive institutional anti-corruption framework. The CPA is the key institution for preventing corruption and promoting integrity. CPA 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 investigation) and police (investigation). CPA 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 CPA on its decision. ACA's decisions are final and can be appealed through an administrative court procedure. The ACA's Council, appointed by the Parliament for a four-year term in office, consists of five-members and is responsible for ACA's decisions and for the appointment of its director.

To create awareness and fight corruption at national level, CPA 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

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civil society. As part of this work, CPA proposed specific changes to the PPL during the process of its revision. CPA is also planning to work on preparation of the Government's new anti-corruption strategy and linking the institution's electronic database of cases with the EPPS.

Despite ACA's improved performance over the past years, its capacity to tackle corruption appears to be limited. CPA lacks the technical competence and budget to deliver its mandate. 55 out of 75 staff positions are currently filled.

While the total number of cases of suspected corrupt practices reported to CPA (including those related to public procurement) has been increasing over the past three years, the procurement-related cases averaged to only 10% of the total cases processed, and CPA determined the existence of corrupt practices in only three such cases (1% of total cases processed by ACA).

Cases processed by ACA	2020	2021	2022
# of cases processed reported by whistleblowers	75	142	188
# of cases processed ex-officio	3	6	9
# of cases processed total	78	148	197
Share of cases related to public procurement in total cases processed	6%	8%	15%
Share of cases related to public procurement in which corruption practices were established in total cases processed	0%	1%	1%

Quantitative analysis

**Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):*

- percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).

Source: Survey.

Only 20% of surveyed businesses perceive anti-corruption measures for public procurement as effective. 30% of respondents are neutral, while 51% disagree or strongly disagree with the statement that the anti-corruption measures are effective.

Gap analysis

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. Despite increase in total number of cases of corrupt practices processed by ACA, the share of procurement-related cases remains low with corrupt practices established at only 1% of the cases. General private sector opinion about the effectiveness of anti-corruption measures is unfavorable.

Recommendations

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 from 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.

Assessment criterion 14(d)(b):

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As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
Conclusion: No gap
Red flag: No
Qualitative analysis Several mechanisms are in place to detect and mitigate corruption risks in the public procurement cycle: <ul style="list-style-type: none"> • Internal control systems are fairly adequate, and the procurement organizational structure provides segregation of roles and responsibilities (see 12(a)). • Public bodies are required to analyze and mitigate risks in procurement cycle based on the prescribed Methodology⁸⁹. The methodology identifies conflict of interest as a risk area and defines mitigation measures. These are clarified in complementary guidance provided by DPPP. Furthermore, public bodies are mandated to maintain records of corruption and report on them (see 14(c)(a) above). • In line with legal requirements and the methodology prescribed by ACA, 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. ACA provides training to public bodies on topics related to corruption and conflict of interest (17 trainings attended by 197 participants in 2021 and 29 trainings attended by 362 participants in 2022). Furthermore, CPA employees received training on public procurement.
Gap analysis The assessment has not identified any gaps
Recommendations None
Assessment criterion 14(d)(c): As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Annual reports of the CPA 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 report provides detailed statistics on the number of criminal charges, investigation orders, investigations, verdicts, indictments, and court verdicts by category of criminal act and by PO. High-profile corruption 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 "abuse of official power". To better detect and fight procurement-related corruption and manage related data, the DPPP has undertaken initiative to introduce "persuasion of bidders" as a category of criminal act through changes to Criminal Law.
Gap analysis While compiled statistics are prepared and published on legal proceedings and convictions related to high-profile corruption and abuse of official power, they are not available for procurement-related corruption.
Recommendations Ensure that statistics on corruption related legal proceedings and others are compiled and published. In

⁸⁹ Rulebook on Recording and on Methodology for Risk Analysis in Conducting Public Procurement Control, Official Gazette 055/20.

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addition to strengthening data management systems, this might also require legislative changes, including to Criminal Law.
Assessment criterion 14(d)(d): Special measures are in place for the detection and prevention of corruption associated with procurement.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis There is no special mechanism in place for detecting and preventing corruption in procurement.
Gap analysis There are no special measures other than that what is described under 14(d)(b) above.
Recommendations Consider developing an integrated anti-corruption strategy and improve the use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system. The DPPP should continue improving e-links with Tax Administration and Ministry of Justice to facilitate automatic document exchange. Comprehensive training and awareness raising programs on corruption in procurement should be designed and implemented (see also 14(d)(e)).
Assessment criterion 14(d)(e): Special integrity training programmes are offered and the procurement workforce regularly participates in this training.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis There is no regular integrity training program on procurement. However, the CPA provides dedicated support on integrity training. Also, CPA engages in anti-corruption awareness raising for the public and training to public bodies as needed.
Gap analysis While CPA provides dedicated training on integrity, there is no regular integrity training program on public procurement.
Recommendations Incorporate integrity training session in the public financial management training program or as a standalone program delivered on regular basis.
Sub-indicator 14(e) Stakeholder support to strengthen integrity in procurement
Assessment criterion 14(e)(a): There are strong and credible civil society organisations that exercise social audit and control.
Conclusion: Minor gap
Red flag: No
Qualitative analysis In general, the country's civil society organizations sector is relatively well developed. Capacities and interest of CSOs vary and there are many formal and informal coalitions between CSOs and other stakeholders. However, only a couple of CSOs exercise effective social audit and control in public procurement. This can be attributed to lack of capacities on the CSOs side and their general focus on areas financially supported by international donors.

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Gap analysis While the CSOs sector is relatively strong, few CSOs provide effective social control and audit in public procurement.
Recommendations 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.
Assessment criterion 14(e)(b): There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The role of civil society in Montenegro is generally recognized and promoted. The current legal and institutional framework provides for effective and meaningful engagement of civil society (see 11(a)(a)), though improvements still 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. Funding rules for CSOs are also in place, though financial support by the government is limited. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are limited practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.
Gap analysis While the environment is generally conducive for the operation of CSOs, there are no procedures to ensure their meaningful engagement in monitoring procurement implementation.
Recommendations See 9(c)(f).
Assessment criterion 14(e)(c): There is evidence that civil society contributes to shape and improve integrity of public procurement. *
Conclusion: Minor gap
Red flag: No
Qualitative analysis There are not many CSOs that are working on public procurement in Montenegro. Institute Alternativa is very active in working on government accountability and transparency, including in public procurement. Its representative is also the member of the government's working group on Chapter 5 of the Acquis. Network for Affirmation of NGO Sector (MANS) is very active in working on corruption issues in various sectors, including in public procurement. Both these NGOs actively participated in drafting changes to PPL. 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. Private sector perceives CSOs contribution as limited – only 18% of the survey respondents agreed with the statement that CSOs actively provide oversight and social control in public procurement. Only 6% reported any cooperation with CSO, while only 1% reported regular and well-established cooperation with CSOs.
Quantitative analysis

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<p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):</i></p> <ul style="list-style-type: none"> - number of domestic civil society organizations (CSOs), including national offices of international CSOs actively providing oversight and social control in public procurement. <p>Source: Survey/interviews.</p> <p>2 CSOs actively provide oversight and social control in public procurement. Source: interviews with CSOs, private sector and government stakeholders.</p>
<p>Gap analysis</p> <p>While there is evidence of CSOs contribution to shaping and improving integrity in public procurement, the number of such CSOs is limited and the impact of their engagement is perceived as limited.</p>
<p>Recommendations</p> <p>See 14(e)(a) and 9(c)(f).</p>
<p>Assessment criterion 14(e)(d):</p> <p>Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>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 the principles and requirements of ethical behaviors with the aim of ensuring transparency and integrity in operations. Compliance in public procurement is ensured through relevant legal and regulatory framework on financial management, internal control mechanisms and external audit. Over 82% of surveyed businesses have internal rules and compliance measures on public procurement in place. However, businesses generally lack internal rules, regulations and procedures on various integrity and anti-corruption aspects of their operations, such as conflict of interest/breach of integrity by employees (41%), giving gifts and hospitality (27%), and handling corruption reports and protection of whistleblowers (21%). Only 31% of businesses have anti-corruption or integrity plans.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d):</i></p> <ul style="list-style-type: none"> - number of suppliers that have internal compliance measures in place (in %). <p>Source: Supplier database.</p> <p>82% of suppliers that have internal compliance measures in place. Source: survey.</p>
<p>Gap analysis</p> <p>Majority of businesses have adequate internal compliance measures to support public procurement, but rules and procedures on integrity and conflict of interest in operations are generally missing.</p>
<p>Recommendations</p> <p>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.</p>
<p>Sub-indicator 14(f)</p> <p>Secure mechanism for reporting prohibited practices or unethical behaviour</p>
<p>Assessment criterion 14(f)(a):</p> <p>There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.</p>

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Conclusion: No gap
Red flag: No
Qualitative analysis <p>The information regarding the suspected fraud/corruption/prohibited practices cases can be reported to a public body suspected, or directly to ACA, in writing, verbally, via mail or electronically. CPA can also initiate the procedure to establish the existence of fraud/corruption/prohibited practices <i>ex-officio</i>. The information is kept confidential and anonymous unless the person reporting requests the information to be publicly available.</p>
Gap analysis <p>The assessment has not identified any gaps</p>
Recommendations <p>None</p>
Assessment criterion 14(f)(b): <p>There are legal provisions to protect whistle-blowers, and these are considered effective.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis <p>The Law on Prevention of Corruption provides for protection of whistleblowers' identities and rights (A.58-A.68). CPA 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 written or verbally. CPA decides on the request based on review of the information provided and notifies the whistleblower within 15 days. If CPA determines that a whistleblower has been or could be harmed, it provides recommendations to a relevant public body. CPA 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 on court protection, as well as to a reward in case his/her reporting on corruption has contributed to generating public revenues.</p>
Gap analysis <p>Criterion is met.</p>
Recommendations <p>N/A.</p>
Assessment criterion 14(f)(c): <p>There is a functioning system that serves to follow up on disclosures.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis <p>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 checks the accuracy of information, takes appropriate action, and informs the whistleblower of action taken within 45 days. If the public body does not provide feedback or if the whistleblower is not satisfied with the feedback provided, the whistleblower can opt to report to the ACA. In such case the CPA will provide its opinion and, if it determines the existence of fraud/corruption/prohibited practices, recommendations on actions that the public body</p>

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should take. The public body is required to report to CPA on actions taken within the deadline specified by the ACA. If it fails to do so, the CPA 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 CPA are both required to inform the Prosecutors' Office in case the suspect corrupt practices involve criminal acts, or other institution as relevant to the case. These institutions are in turn required to report back to CPA on outcome of the procedure.

Gap analysis

The assessment has not identified any gaps

Recommendations

None

Sub-indicator 14(g)

Codes of conduct/codes of ethics and financial disclosure rules

Assessment criterion 14(g)(a):

There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The Government's Code of Ethics for Civil Servants and Employees⁹⁰ prescribes general codes of conduct in areas such as respectful treatment of colleagues and clients, public appearance, data management, etc. Head of public institution is required to inform employees of this code and employees are required to report to their superiors on its violation. The code however does not deal with PFM or procurement. Furthermore, while the code applies to all central government employees (including PFM and procurement staff) it does not apply to employees in local self-government units or state-owned enterprises, which also act as CAs.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):*

- share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).

Source: Normative/regulatory function.

There is no 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 PFM or procurement.

Gap analysis

The government's code of ethics provides general rules of conduct for all employees in central government institutions, including those dealing with PFM and procurement. However, there is no legal requirement or practice of adopting codes of conduct or ethics in areas of PFM or procurement.

Recommendations

Consider developing codes of ethics applicable to staff and officials working on PFM area.

Assessment criterion 14(g)(b):

The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*

⁹⁰ Official Gazette no. 050/18.

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Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>While the PPL prescribes specific duties of heads of public bodies and procurement staff, it does not clearly define their accountability for decision making. General accountability for decision making and management of human and financial resources for ministers and heads of public bodies is prescribed by the Law on Government and the Law on State Administration.</p> <p>The Law on Prevention of Corruption (A.23-A.27) obliges public officials to report to CPA on their revenues and property. No such requirement is in place for other officials involved in public procurement. CPA 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 team could not access any of the registries maintained by CPA at its website or at the website of the agency which previously managed the registry⁹¹.</p>
Quantitative analysis <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):</i></p> <p><i>- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).</i></p> <p><i>Source: Normative/regulatory function.</i></p> <p>N/A.</p>
Gap analysis <p>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.</p>
Recommendations <p>Consider expanding accountability provision to cover all involved in procurement activities and decisions.</p>
Assessment criterion 14(g)(c): <p>The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>As explained under 14(g)(a), no mandatory code of conduct in areas of PFM or procurement is in place. Failure to comply with accountability and financial disclosure provisions results in administrative or criminal penalties.</p>
Gap analysis <p>Penalties are in place for violation of financial disclosure rules. As there is no mandatory code of conduct in areas of PFM or procurement, no relevant penalties can be defined.</p>
Recommendations <p>See 14(g)(a). Ensure provisions on penalties are included.</p>
Assessment criterion 14(g)(d): <p>Regular training programmes are offered to ensure sustained awareness and implementation of measures.</p>

⁹¹ Internet search at <https://www.antikorupcija.me/me/registri/> from August 10, 2023.

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Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>The CPA has a dedicated department with four employees that conducts research and design and delivers training to public bodies in coordination with the HRMA (see 14(d)(b)). Training is delivered based on annual training plans and training needs. The greatest interest is for training in the areas of financial disclosure, conflict of interest, whistleblowers' protection and integrity. There is no regular training program related to code of ethics.</p> <p>No regular training programs are in place for the private sector. 92% of surveyed business reported that they have not attended any training related to anti-corruption or integrity in public procurement. 8% of the respondents who did receive such training all found it useful.</p>
<p>Gap analysis</p> <p>While CPA delivers training on various topics, including financial disclosures, there is no regular training program related to code of ethics.</p>
<p>Recommendations</p> <p>Ensure regular training of ethics. It can be jointly organized by CPA and HRMA or DPPP. Chamber of Commerce and DPPP should work together to establish regular training programs on-anticorruption and integrity for business entities.</p>
<p>Assessment criterion 14(g)(e):</p> <p>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.</p>
Conclusion: Substantive gap
Red flag: Yes
<p>Qualitative analysis</p> <p>There is no requirement to capture information on beneficial ownership. CPA maintains registries on conflict of interest and financial disclosure. While this data is accessible at CPA website, the system for systematically using this information by decision makers is underdeveloped.</p>
<p>Gap analysis</p> <p>There is no established procedure and practice to capture information on beneficial ownership. Data on conflict of interest and financial disclosures is not systematically used for decision making.</p>
<p>Recommendations</p> <p>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.</p>



MAPS

Methodology for Assessing
Procurement Systems

Background Documents

ANNEX 5



Laws and regulation:

1. Law on Public procurement (Official Gazette of Montenegro no. 074/19 from 30.12.2019, 003/23 from 10.01.2023, 011/23 from 27.01.2023.)
2. Law on Public-Private Partnership (Official Gazette of Montenegro no. 073/19 from 27.12.2019.)
3. Law on Concessions (Official Gazette of Montenegro no. 008/09 od 04.02.2009, 073/19 from 27.12.2019.)
4. Law on Alternative Dispute Resolution (Official Gazette of Montenegro no. 77/2020 from 29.7.2020.)
5. Law on Free Access to Information (Official Gazette of Montenegro no. 044/12 from 09.08.2012., 030/17 from 09.05.2017.)
6. Law on protection of Competition (Official Gazette of Montenegro no. 44/2012, 13/2018 and 145/2021)
7. Law on Prevention of Corruption (Official Gazette of Montenegro no. 053/14 od 19.12.2014.)
8. Law on the Budget and Fiscal Accountability (Official Gazette of Montenegro no. 20/2014, 56/2014, 70/2017, 4/2018)
9. Decree on the Manner of Planning and Implementing Centralised procurement (Official Gazette of Montenegro no. 069/20 from 11.07.2020, 105/20 from 29.10.2020, 139/22 from 16.12.2022, 029/23 from 16.03.2023.)
10. Decree on the list of military equipment and products, procedure and method of implementation of public procurement in the field of defense and security (Official Gazette of Montenegro no. 076/20 from 28.07.2020.)
11. Law on Management and Internal controls in the public sector (Official Gazette of Montenegro no. 075/18 from 23.11.2018)
12. Law on State Audit Institution of Montenegro (Official Gazette of Montenegro no. 28/04 from 29.04.2004, 27/06 from 27.04.2006, 78/06 from 22.12.2006, 17/07 from 31.12.2007, 73/10 from 10.12.2010, 40/11 from 08.08.2011, 31/14 from 24.07.2014, 070/17 from 27.10.2017.)

Bylaws and implementing acts to the Public Procurement Law:

13. Decree on the method of procurement for diplomatic and consular representation of Montenegro abroad (Official Gazette of Montenegro no. 090/20 from 01.09.2020.)
14. Rulebook on Simple procurement (Official Gazette of Montenegro no. 016/23 from 10.02.2023, 020/23 from 22.02.2023, 036/23 from 29.03.2023.)
15. Rulebook on the list of social and other special services that may be a subject to public procurement (Official Gazette of Montenegro no. 056/20 od 15.06.2020)
16. Rulebook on forms of records in public procurement (Official Gazette of Montenegro no. 061/20 od 24.06.2020.)
17. Rulebook on the content of bid in public procurement (Official Gazette of Montenegro no. 071/20 from 16.07.2020, 009/21 from 01.02.2021)
18. Rulebook on the declaration form of the economic operator (Official Gazette of Montenegro no. 071/20 from 16.07.2020.)



19. Rulebook on the methodology for bid evaluation in public procurement (Official Gazette of Montenegro no. 074/20 from 23.07.2020)
20. Rulebook on detailed criteria for forming the commission for implantation of public procurement procedure (Official Gazette of Montenegro no. 055/20 od 12.06.2020)
21. Rulebook on forms to be used in public procurement procedures
22. Rulebook on records and methodology of risk assessment in performing controls in public procurement procedures (Official Gazette of Montenegro no. 055/20 from 12.06.2020)
23. Rulebook on the forms of records of registered bidders in the electronic public procurement system (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
24. Rulebook on the list of works and jobs that may be the subject to the public procurement (Official Gazette of Montenegro no. 057/20 from 18.06.2020)
25. Rulebook on the method of determining the correction of calculation error in the bid in public procurement (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
26. Rulebook on the methodology for evaluating the public procurement value (Official Gazette of Montenegro no. 057/20 from 18.06.2020.)
27. Rulebook on the program and method of passing the professional exam for public procurement (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
28. Rulebook on the public procurement plan form (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
29. Rulebook on the use of the e-procurement system (Official Gazette of Montenegro no. 001/21 from 04.01.2021)

Bylaws and implementing acts to the Law on Budget:

1. Decision on the Creation of the Capital Budget and Evaluation Criteria for the selection of capital projects (Official Gazette of Montenegro no. br. 008/09 from 04.02.2009, 073/19 from 27.12.2019)
2. Decision on the method of preparation and content of the program budget (Official Gazette of Montenegro no. 075/17 from 09.11.2017.)
3. Instructions on the work of the state treasury (Official Gazette of Montenegro no. 053/14 from 19.12.2014, 072/15 from 21.12.2015.)

Bylaws and implementing acts to the audit laws:

1. Methodology for Conducting Financial Audit and Compliance Audit, Official Gazette no. 7/15.
2. Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.

Statistical reports:

1. Annual 2023 Report on public procurement prepared by the Directorate for Public Procurement Policy



2. Annual 2022 Report on public procurement prepared by the Directorate for Public Procurement Policy
3. Annual 2021 Report on public procurement prepared by the Directorate for Public Procurement Policy
4. 2023 Annual Report of the Commission for protection of Rights
5. 2022 Annual Report of the Commission for protection of Rights
6. 2021 Annual Report of the Commission for protection of Rights
7. 2022 Work Report Administrations for Inspection Affairs
8. 2021 Work Report Administrations for Inspection Affairs
9. 2023 State Audit Institution Annual Report
10. 2022 State Audit Institution Annual Report
11. 2021 State Audit Institution Annual Report
12. Statistical annual reports on public procurement of the Capital City of Podgorica for 2018, 2019, 2020, 2021 and 2022
13. Statistical annual reports on public procurement of the Administration for Capital Investments for 2018, 2019, 2020, 2021 and 2022
14. Statistical annual reports on public procurement of the Ministry for Public Administration for 2018, 2019, 2020, 2021 and 2022
15. Statistical annual reports on public procurement of the Health Insurance Fund for 2018, 2019, 2020, 2021 and 2022
16. Statistical annual reports on public procurement of the Roads of Podgorica for 2018, 2019, 2020, 2021 and 2022
17. Statistical annual reports on public procurement of the Traffic Administration of Montenegro for 2018, 2019, 2020, 2021 and 2022
18. Statistical annual reports on public procurement of the Electric Company of Montenegro for 2018, 2019, 2020, 2021 and 2022

Other documents:

1. 2023 European Commission's Report on Montenegro
2. 2022 European Commission's Report on Montenegro
3. 2021 SIGMA Monitoring Report on Principles of Public Administration - Montenegro
4. 2023 Investment Climate Statements: Montenegro – U.S. Department of State
5. Council of Europe, Group of States Against Corruption (GRECO) Reports
6. UNCAC Civil Society Coalition: New Civil Society Report on Montenegro: Comprehensive Legislation Not Matched with Practical Enforcement Of Anti-Corruption Measures, August 2023
7. 2019 World Bank, Public Expenditure and Financial Accountability (PEFA) assessment



Montenegro Stakeholders Analysis and Mapping

The primary objective of undertaking MAPS assessment is to assess the quality and effectiveness of the public procurement systems in Montenegro. This enables the Government to form a basis for implementation of modern, efficient, sustainable, and more inclusive procurement system.

Purpose and Rationale: Stakeholder analysis studies the stakeholders in the system; their roles, formal and informal links, and influence to better manage and engage these stakeholders during a project or change process. Stakeholder analysis is not purely normative and may involve the perceptions of stakeholders regarding their level of influence and engagement regardless of what their mandates may say. This section on MAPS stakeholders examines:

- Who the stakeholders are;
- What their level of influence is;
- Which MAPS pillars they affect the most.

More specifically, the analysis organizes the procurement system stakeholders according to the following categories:

- being core, extended or external stakeholders
- the role they play in the procurement system
- the level of influence they have, where influence is defined as formal authority or assigned function, informal authority, being consulted and/or the capacity to deliver a procurement related mandate

Overall, the stakeholder analysis complements the findings of the institutional and legal analysis completed under MAPS. Patterns in who had which level of influence were mirrored between the central and local level. Stakeholders with medium to low influence tended to be those whose institutional arrangements and legal mandates weakened their ability to play their role.

While not an explicit category of analysis, the nature of communication and engagement between core and non-core stakeholders had an effect on non-core stakeholder influence.

In addition to institutional arrangements and type of communication/engagement, another factor affecting stakeholder influence was training/capacity. This made categorizing the level of influence of stakeholders a challenge as both good and poor performance would have an impact on the quality of the work.

The following section provides details on the core stakeholders of the Government of Montenegro procurement system.

1. Ministry of Finance (MoF)

- **Role and Responsibilities:** The Ministry of Finance holds overarching responsibility for public procurement. This includes executing responsibilities outlined in the Public Procurement Law (PPL) through the Department for Public Procurement Policy (DPPP). MoF is also tasked with oversight of implementing Public Procurement Law.
- **Influence and Interest:** High influence due to its central role in policy formulation, implementation, and oversight. High interest in ensuring compliance and efficiency in public procurement processes.
- **Potential Impact:** The Ministry's policies and decisions directly affect all aspects of public procurement, from policy formation to implementation and oversight.

2. Department for Public Procurement Policy (DPPP)

- **Role and Responsibilities:** The DPPP, under the MoF, executes responsibilities related to public procurement as listed in the PPL. This department is a central administrative body responsible for developing and implementing procurement policies.
- **Influence and Interest:** High influence as the main executor of procurement policy. High interest in maintaining an efficient and transparent procurement system.
- **Potential Impact:** Plays a crucial role in ensuring the public procurement system's effectiveness and efficiency. It is also expected to use inspection findings to improve the system, although the mechanism for this is not clearly defined.

3. Inspection Authority

- **Role and Responsibilities:** Responsible for oversight and inspection in public procurement. This authority examines compliance with procurement laws and regulations.
- **Influence and Interest:** Moderate influence in the procurement process through oversight activities. High interest in ensuring compliance and rectifying irregularities.
- **Potential Impact:** Inspection findings can influence policy adjustments and operational improvements in procurement practices.

4. Commission for Protection of Rights

- **Role and Responsibilities:** Focuses on protecting the rights of economic operators within the public procurement process. This includes addressing complaints and disputes related to procurement.
- **Influence and Interest:** Moderate influence in safeguarding the interests of bidders and economic operators. High interest in maintaining a fair and transparent procurement environment.
- **Potential Impact:** Their decisions can significantly impact the fairness and perceived integrity of the procurement process.

5. Supreme Audit Institution (SAI)

- **Role and Responsibilities:** SAI conducts compliance, financial, and performance audits of public entities, including audits of public procurement processes. It also covers audits of state assets, SOEs, IT systems, and political parties.
- **Influence and Interest:** High influence due to its comprehensive audit responsibilities and authority to assess the entire procurement process. High interest in transparency, accountability, and proper use of public funds.
- **Potential Impact:** Audit findings and recommendations can lead to significant reforms and improvements in public procurement practices.

6. Internal Audit Function

- **Role and Responsibilities:** Provides advisory services to top management in each institution, ensuring internal controls and compliance with procurement regulations.
- **Influence and Interest:** Moderate influence, primarily within individual institutions. High interest in ensuring compliance and efficient use of resources.
- **Potential Impact:** Can influence institutional policies and procedures, leading to improved internal control and compliance.

7. Government Entities (Central and Local Levels)/Procuring Entities

- **Role and Responsibilities:** These entities, including central government departments, local authorities, and state-owned enterprises (SOEs), are subject to the public procurement rules and regulations. They are responsible for executing procurement processes according to the PPL.
- **Influence and Interest:** Moderate to high influence as they are direct actors in the procurement process. High interest in obtaining goods and services efficiently and legally.
- **Potential Impact:** Their adherence to procurement laws affects the overall integrity and efficiency of the public procurement system. They are also key in implementing procurement-related reforms and improvements suggested by oversight bodies.

8. Economic Operators (Suppliers and Contractors)

- **Role and Responsibilities:** These are private sector entities that participate in public procurement processes by bidding for government contracts.
- **Influence and Interest:** Moderate influence as stakeholders in the procurement process. High interest in a transparent, fair, and efficient procurement system that provides equal opportunities for participation.
- **Potential Impact:** Their feedback and experience with the procurement system can highlight areas of improvement or inefficiencies. They are directly affected by the fairness and transparency of the process.

9. Civil Society and Media

- **Role and Responsibilities:** These stakeholders provide oversight and scrutiny of the public procurement process, promoting transparency and accountability. They can also act as advocates for good governance and public interest.
- **Influence and Interest:** Moderate influence through their ability to shape public opinion and pressure for reforms. High interest in ensuring that public funds are used effectively and that procurement processes are transparent.
- **Potential Impact:** Can act as watchdogs, bringing issues to light and prompting corrective actions. They can also influence public perception and trust in the public procurement system.

Summary of Stakeholder Dynamics

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.

Potential Areas for Improvement

- **Coordination and Communication:** Enhancing communication among all stakeholders, particularly between oversight bodies and implementing entities, can lead to more consistent and effective procurement practices.
- **Transparency and Fairness:** Ensuring that the procurement process is transparent and fair to all participants, particularly economic operators, is crucial. This can be supported by clear and accessible avenues for grievance redressal.

- **Accountability and Follow-up:** Strengthening the mechanisms for accountability, including the systematic use of inspection and audit findings, can improve the overall efficiency and trust in the public procurement system.

Summary of Stakeholder Dynamics and their influence in implementing MAPS recommendations

Stakeholders	Roles and responsibilities in Public Procurement	Interest and Influence	MAPS PILLAR THEY ARE ASSOCIATED WITH	Pioneer stakeholders to support implementation of MAPS recommendations and Plan of actions
Ministry of Finance, Directorate for Public Procurement Policy	Policy and regulations; Monitoring; Guidance and training; Advisory assistance; Examination & certification; E-procurement; Green and sustainable procurement; SMEs	Interest: HIGH Influence: HIGH	All Pillars + supplementary e-procurement module	All actions proposed under Pillar 1; 4 actions proposed under Pillar 2; all actions proposed under Pillar 3; 6 actions proposed under Pillar 4
Ministry of Finance – Directorate for the Budget	Budget planning and budget execution; State budget payments and reporting	Interest: HIGH Influence: HIGH	Pillars I, II and III + supplementary e-procurement module	Actions linked to pillar 2 for the PFM related activities
Commission for protection of rights in public procurement procedures	Handling complaints on public procurement procedures	Interest: HIGH Influence: MEDIUM	Pillars III and IV + supplementary e-procurement module	1 action under Pillar 4
Administration for Inspection Affairs – Inspectorate for Public Procurement	Ex post control and supervision; Simple procurement	Interest: HIGH Influence: MEDIUM	Pillars I and III + supplementary e-procurement module	1 action under Pillar 1

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

Agency for Prevention of Corruption	Conflict of interest and prevention of corruption	Interest: MEDIUM Influence: MEDIUM	Pillar IV	5 actions under Pillar 4
State Audit Institution	External audit	Interest: HIGH Influence: MEDIUM	Pillar I, III and IV + supplementary e-procurement module	1 action proposed under Pillar 4
Chamber of Commerce representing economic operators*	Economic operators' participation in PP processes; competition	Interest: HIGH Influence: HIGH	All Pillars + supplementary e-procurement module	Actions related to pillar 3
Administration for Cadaster and State Property	Centralized procurement for the central government level	Interest: HIGH Influence: MEDIUM	Pillars I and III + supplementary e-procurement module	1 action under Pillar 2
Capital City Podgorica	Contracting authority; Conducting public procurement procedures and implementing the PPL; Centralized procurement for municipality of Podgorica	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Traffic Administration	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of works	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Health Insurance Fund	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of medical supplies and services	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

Administration for Capital Investments	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of capital investments	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Electric Company of Montenegro	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of electricity	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Roads of Podgorica	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of civil works in the Capital City Podgorica	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Ministry of Public Administration	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of IT services	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
NGO Institute Alternative	NGO active in monitoring public procurement	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar IV) + supplementary e-procurement module	Consultative role for implementation of all actions
NGO MANS	NGO active in monitoring public procurement	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar IV) + supplementary e-procurement module	Consultative role for implementation of all actions

*A thorough consultation was conducted with the private sector through the launching of an online survey. The results have been used to inform the analysis of assessment criteria mainly in Pillar 3 and Pillar 4. 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.

List of Stakeholder consulted during the Assessment.

1.	Ministry of Finance – Directorate for Public Procurement Policy
2.	Ministry of Finance – Directorate for the Budget
3.	Commission for protection of rights in public procurement procedures
4.	Administration for Inspection Affairs – Inspectorate for Public Procurement
5.	Agency for Prevention of Corruption
6.	State Audit Institution
7.	Chamber of Commerce
8.	Administration for Cadaster and State Property
9.	Delegation of European Union in Montenegro
10.	Capital City Podgorica
11.	Traffic Administration
12.	Health Insurance Fund
13.	Administration for Capital Investments
14.	Electric Company of Montenegro
15.	Roads of Podgorica Ltd.
16.	Ministry of Public Administration
17.	Administration for Public Works;
18.	Ministry of Health
19.	Montenegrin Investment Agency
20.	Montenegrin Electric Distribution System – CEDIS

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

21.	Post Office of Montenegro
22.	Investment and Development Fund
23.	Montefarm ltd.
24.	Secretariat of Prosecutor Council
25.	Union of Municipalities
26.	NGO Institute Alternative
27.	NGO MAN

Minutes

MAPS Validation Workshop

Thursday November 30, 2023

Workshop Objectives

The Validation Workshop aims at presenting the results of MAPS assessment conducted in Montenegro over November 2022- December 2023. Stakeholders have the opportunity to discuss the findings and share their views and feedback.

The presentation of the findings covers core MAPS and E-Procurement Supplementary Module.

Participants

1. Directorate for Public Procurement Policy
2. Ministry of Finance
3. State Audit Institution
4. Administration for Inspection Affairs
5. Anti-Corruption Agency
6. Commission for the Rights Protection 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
12. Montenegrin Electric Distribution System – CEDIS
13. Ministry of energy and mining
14. Post Office of MNE
15. Investment and Development Fond
16. Secretariat of Prosecutor Council

Opening remarks

The workshop opening remarks were made by Cristopher Sheldon, World Bank Country Manager for Montenegro and Jelena Jovetic, DPPP General Director. They emphasized the relevance on the MAPS assessment towards Montenegro accession process to EU. In addition the recommendations provided by this assessment will allow to continue with the procurement reform path in the country.

Pillar I - Legal, Regulatory and Policy Framework and Pillar II - Institutional Framework and Management Capacity

Main findings and gaps under these 2 indicators were presented by Orjana Ibrahim, World Bank

Discussion and feedback received on presentation of Pillar 1 and 2

State Audit Institution (SAI):

- We would like to express our very positive opinion about the overall assessment report as it matches to the greatest extent with everything we identified during our work. Primarily, when it comes to gaps, we would like to single out the ones referring to contract management stage and failures to meet contractual obligations by contractors in particular. Despite such situation, contracts are not terminated. However, it has been noted that such unfavorable practice for contracting authorities has slowly been changing recently.
- When it comes to centralized procurement, bidders complain that they do not receive adequate and timely information. For example, in case of procurement of mobile telephony, if a tender fails, it takes too long time to initiate a new one. Individual procurement processes therefore appear to be better practice currently. At the same time, it is recommended to establish a new department which would deal with centralized procurement only.

Response by MAPS Assessment team:

Thank you for confirming the findings.

Department of Public Procurement Policy (DPPP)

- The finding stating that exclusions of economic operators from public procurement procedure in two-stage biddings is not regulated is unclear. It was stated that they are not reflected in the electronic procurement system, which they are, and bidders can complain accordingly.

Response by MAPS Assessment team:

The finding in our report is related to non-existence of list of debarred firms as well administrative procedures for debarment, how these decisions are made, on what grounds. They are not related to exclusions during public procurement procedure, in tendering stage.

- The other comment refers to contract form to be provided in bidding documents. It should be noted that this is not legally binding as it is not part of our by-laws. Also, receiving bids and a part referring to bidding documents itself should be separated as they already are separated in our by-laws as it is clearer that way. By-laws and laws are available at one place publicly available and easily accessible and in chronological order, i.e. following the whole procurement process.

Response by MAPS Assessment team:

When it comes to contract clauses being part of bidding documents, it is very important that bidders are informed in advance about contract conditions, rights and obligations that will be imposed on them as well as possible restrictions and termination conditions.

When it comes to legal possibility of contracting authorities to provide contract clauses in additional remarks, practice varies, some do not use this possibility at all.

- We do agree that sustainable procurement require further amendments and improvements.
- We do agree that competencies of supervision and inspection are not clear and the provision in the PPL regulating this could be clearer when it comes to these competencies.

Response by MAPS Assessment team:

Thank you for confirming the findings.

- When it comes to delegation of responsibilities, authorized person can authorize other person for some small-scale procurements, but it is not a common practice in high value procurement. In these cases, it is usually either minister or executive director, depending on organizational structure of a contracting authority. PPL was not able to regulate allocation of responsibilities in further detail as this issue has been regulated by other laws.

Response by MAPS Assessment team:

Regarding delegation of responsibilities, one of the options for regulating this matter and further improvements in the legal framework is to define thresholds which would define who can be authorized for contracts of certain values, which was the aim of this recommendation.

- Regarding the finding related to major contract clauses being omitted in bidding documents, this requires additional clarification. On the other hand, a full text of contract is published in electronic procurement system upon its signing. Publishing form of contract in bidding documents leaves space for complaints on conditions of contract by bidders. However, such complaints would be pointless as such form would be provided by the law and corresponding by-law anyway, i.e. it would be legally grounded. Part of bidding documents called Form of Contract does not exist per se but there are parts of bidding documents covering this matter. In additional remarks, contracting authority has a legal right to define particular contract conditions in more detail.

Response by EBRD:

Allocation of risks or clear division of responsibilities increases transparency and integrity. We have an example of Ukrainian electronic procurement system ProZorro which is considered as one of the most transparent systems in Europe.

I would like to provide one example related to intention to publish full text of contract. In international court practice, there has been ruling recently judged at the European court of Justice by which it was prohibited to publish the full text of contract due to protection of confidentiality of data.

Administration for capital investments:

- Regarding the gap related to contract clauses which should be part of the bidding documents as well as standard contract templates, we are the authority with large number of contracts on annual level and so far the bidders have not complained about this, therefore this is not something we would stress as a current problem. The current practice of including only particular contract clauses through special remarks in bidding documents proved to be sufficient and even better than in the past period when all clauses were included.

Response by MAPS Assessment team:

Thank you for sharing your practice.

- Contract implementation proved to be problematic though as the only available document in the EPPS is a report on contract implementation that we upload in the system. IT sector should be able to link the systems so that we as contracting authorities have better picture of contract implementation and both physical and financial progress.

Response by MAPS Assessment team:

Thank you, this addressed by the assessment team in the E-Procurement Supplementary module by recommending the establishment of a contract monitoring module within EPPS.

- The whole cycle from planning to payments stage should be included and that is what is really missing. Linking the system with other ones especially financial management systems to avoid duplication of work when it comes to payments recording is essential and would reduce workload on our side.

Response by MAPS Assessment team:

Thank you, this addressed by the assessment team in the E-Procurement Supplementary module by recommending the establishment of a e-invoice function within EPPS.

Investment and Development Fund of Montenegro:

- It is important that bidders are informed in advance about contractual clauses and their rights and obligations, therefore it is a must to include the most important contract clauses.

Response by MAPS Assessment team:

Thank you for confirming the finding on the need to have a form on contract conditions .

E-Procurement Supplementary Module

Main findings and gaps under this part were presented by Rajesh Kumar Shayka, World Bank

Discussion and feedback received on presentation of E-Procurement Module

State Audit Institution (SAI)

- Although there is no special public procurement relation audit they are conducting, within each regularity audit they perform, public procurement are audited as a special segment. She has also announced their intention to implement a special procurement specific audit that should cover larger number of contracting authorities in a near future. SAI representative wanted to find out more about debarment lists mentioned in the presentation, some good examples in other countries, criteria and whose competence the lists are.

Response by MAPS Assessment team:

There are many different ways to do it and shared some examples, including different practices of who does debarment lists – in some countries, contracting authorities do it, but also institutions similar to Directorate for Public Procurement Policy.

NGO Institute alternative

- The civil society need to have access to the reports produced within the e-procurement system in real time, which was well recognised in the report. She explained that this NGO did not have much trouble obtaining the required reports due to their overall good cooperation with DPPP, but that these should be by default publicly available to all.
- When it comes to low value procurement that are not registered in the e-procurement system (up to 5.000 euro before, and up to 8.000 euro now), she shared the concern of PP system not being fully transparent and said that IA's findings show that invoices reported in the e-procurement system within annual reporting make much less of direct contracting than this NGO is regularly obtaining through freedom of information requests, thus showing that direct contracting is not fully transparent.

Response by MAPS Assessment team:

Thank you for the comments and confirmations of the Bank's findings that transparency is transparency and should be the same for all of the procurement, including the low ones.

- Following the comments of NGO Institute alternative's representative, SAI's representative confirmed that plenty of irregularities found in PP by SAI relate to low procurement that are not implemented through the e-procurement system.
- Representatives of DPPP argued that the framework agreements are being done through the e-procurement system, as well as complaints.

Response by MAPS Assessment team:

Thank you for the suggestions and will check and make changes to the report accordingly.

Pillar III - Public Procurement Operations and Market Practices

Main findings and gaps under this indicator were presented by Carmen Calin, World Bank

Discussion and feedback received on presentation of the Pillar III

State Audit Institution (SAI)

- Confirmed plenty of presented findings, particularly those referring to the low competition index and single bid tenders. She shared some concerns related to potential corrupt practices in public procurement that deters economic operators from bidding, including, among others,

that, sometimes, preferred bidders participate in drafting tender specifications, especially in IT services.

- She also confirmed the need for better public procurement planning, emphasising that contracting authorities often just re-write the same plan from year to year, not taking into account real needs or realistic influences, such as inflation. Another thing she reflected on was the need of conducting a real cost analysis of procurement procedure, thinking that, if CAs knew how much each procedure costs, they would only opt for those procedures and procurement that are really necessary.

Response by MAPS Assessment team:

Thanked for the comments and highlighted again the importance of hearing from the bidders and listening to the market.

DPPP

- Shared concerns about the competition index and said that improving it will definitely be DPPP's one of the top priorities in the period to come. Regarding the survey conducted by the Bank with Chamber of Commerce's support, she expressed their concern about only 15% response rate and explained that for the survey they have implemented 2 years ago with the British Council for Competition, the response rate was 989 out of 1000 that was invited.
- As for the procurement planning, it was explained that several factors influence poor planning of CAs, such as frequent reorganisations of public administration. It was emphasized the need of the CAs to learn how to better estimate PP value.

Response by MAPS Assessment team:

It is very encouraging that the Competition Council Survey had that high response rate, but that this one should not be disregarded neither, if for nothing else, then at least as a roadmap for looking deeper into some of the most concerning findings. The team will discuss with DPPP in a separate meeting to present the methodology in calculating the competition index.

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

Main findings and gaps under this indicator were presented by Zuhra Osmanovic-Pasic , World Bank

Discussion and feedback received on presentation Pilar IV

NGO Institute alternative

- Agreed with all of the finding related to civil society participation without further comments. Shared some of their own findings about repression in public procurement from 2016 onwards, including, among other, that there has been only one court verdict on corruption in public procurement, which was deliberating. It is stressed the need for the introduction of a special criminal offense related to public procurement.

Response by MAPS Assessment team:

Asked if it is realistic to introduce procurement-specific criminal offence, to which representative of NGO Institute alternative replied that they have analyzed practices in the region to find out that three Western Balkans countries have it, including Serbia, for example, that has two PP related criminal offenses.

DPPP

- Explained that there is already ongoing initiative for introducing the PP related criminal offense into the Criminal Code and that DPPP already has a series of meetings with the Ministry of Justice, Police and Prosecution. However, she explained that this criminal offense is only related to the bidders' agreements the first ranked to give up their offer in order for the second one to win the tender, or about price etc.)
- The survey with economic operators' response rate is added to the Report.

Response by MAPS Assessment team:

Thank you and well noted. The response rate will be added in the Report.

Commission for protection of rights

- The representative of the commission didn't agree that the Commission has been inefficient, having in mind all of the objective reasons mentioned also in the MAPS report, in terms of capacities etc. He explained that in 2023 the Commission has received 83% more complaints than in 2022 – 275 cases by the end of November, and that they have solved 259. He also explained that expert witnesses are the reason for prolonging case management in some cases - mostly energy and medical related procurement, which only makes 5% of the total number of their workload, not more.

Response by MAPS Assessment team:

Thank you for the comments and we will address the expert witnesses part once again and review accordingly.

Closing remarks

The Assessment team informed the participants that they can send written comments to the MAPS Assessment team **until December 8, 2023.**

Annex 1

List of participants

Names of participants	Institution
1. Jelena Jovetić 2. Sanja Poleksić 3. Farisa Kardović 4. Gorana Mrvaljević 5. Jasna Hodžić 6. Svetlana Tomović 7. Nerma Kalač 8. Dijana Vukčević	Directorate for Public Procurement Policy
9. Goran Vojinović 10. Marija Radević 11. Mara Bajevac	Ministry of Finance
12. Nataša Cicmil 13. Nikola Golubović 14. Dušan Marković	Commission for the Rights Protection in Public Procurement Procedures
15. Lejla Kaljić 16. Nađa Rašović 17. Ivan Milićević	Administration for Inspection Affairs
18. Tanja Dragović 19. Radovan Šćepanović	State Audit Institution
20. Jelena Dajković	Anti Corruption Agency
21. Nataša Begović 22. Danijela Vukčević 23. Dijana Krivokapić	Administration for Cadaster and State Property
24. Dragoljub Bulatović 25. Ivana Parača	Chamber of Commerce
26. Žaklina Kosić 27. Dalila Orahovac 28. Supresa Gjelij	Administration for Capital Projects
29. Ivana Krstajić 30. Julijana Planić 31. Dijana Džaković 32. Zoran Amidžić	Ministry of Public Administration
33. Dragana Jaćimović	Institute Alternativa
34. Predrag Ivović	Montenegrin Electric Distribution System - CEDIS

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35. Bilgena Pačariz	Ministry of energy and mining
36. Anja Rešetar	Post Office of MNE
37. Stanka Pejović	
38. Darko Krivokapić	Investment and Development Fond
39. Milica Drašković	Secretariat of Prosecutor Council
40. Andreja Neral Lamza	EIB
41. Evgeny Smirnov	EBRD
42. Stana Maric	
43. Rafael Torrent	
44. Orjana Ibrahimi	World Bank
45. Carmen Calin	
46. Tamara Travar	
47. Zuhra Osmanovic-Pasic	
48. Yolanda Tayler	
49. Rajesh Kumar	
50. Ana Durnic	
51. Dragana Varevic	

Annex 8. Sampling methodology for selected contracts and results of the review

Summary

To complement the data analysis conducted based on the data extracted from the e-procurement system for the period February 2021-March 2023, a sample of 65 procurement cases from 6 procuring entities was also selected to support the qualitative assessment. The sample included an appropriate mix of goods, works, consultancy contracts completed during the period 2018-2022 with focus on strategically important and top-spending ministries and cutting across different levels of the 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 DPPP during the kick-off mission.

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 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.

Selected Contracting Authorities

The following procuring entities were selected for the sample analysis. The table below shows their procurement activity during the period February 2021-March 2023 as captured by the e-procurement system.

	Procurement Procedures	Estimated volume(EUR)	Contracts	Contracted volume(EUR)
Capital City Podgorica (324)	398	12,514,303	409	8,512,773
Health Insurance Fund (556)	17	865,240	14	738,087
Traffic Administration (653)	74	36,523,875	52	26,617,655
Capital Projects Administration (880)	170	125,829,295	96	70,533,665
Ministry of Public Administration (171)	48	8,234,827	43	5,809,672
Roads of Podgorica (288)	134	15,530,368	128	6,680,634

Montenegrin Electrical Enterprise (242)	387	94,231,555	315	26,133,792
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The following table shows the procurement volumes compared to the volume at country level.

	% of tot Procedures	% of tot Estimated volume	% of tot Contracts	% of tot Contracted volume
Capital City Podgorica (324)	3.2%	1%	3.3%	1.3%
Health Insurance Fund (556)	0.1%	0.1%	0.1%	0.1%
Traffic Administration (653)	0.6%	3%	0.4%	4.1%
Capital Projects Administration (880)	1.4%	10.2%	0.8%	10.8%
Ministry of Public Administration (171)	0.4%	0.7%	0.3%	0.9%
Roads of Podgorica (288)	1.1%	1.3%	1.1%	1%
Montenegrin Electrical Enterprise (242)	3.1%	7.6%	2.6%	4%

Selected Contracts

As mentioned above, some criteria were considered for the selection of contracts for the review, as follows:

- contracts concluded during the period 2018-2022
- appropriate mix of goods, services and works from each contracting authority
- high value contracts
- different types of procedures, including cancelled procedures

The initial list included 90 contracts: 29 works, 29 goods and 32 services. However, the analysis of all stages of the procurement procedure was conducted for 60 contracts from the list. For the remaining 30 some preliminary analysis was done based on data from the e-procurement system, desk research and interviews.

Since the focus of the analysis is on contract implementation, the sample of contracts targeted completed contracts (considering the estimated time for finalization).

Sample list	2018	2019	2020	2021	2022	Total	In-depth analysis
CAPITAL CITY PODGORICA	4	4	3	3	3	17	0
CAPITAL PROJECT ADMINISTRATION	0	5	5	4	6	20	19
HEALTH INSURANCE FUND	4	4	0	1	1	10	10
TRAFFIC ADMINISTRATION	0	5	0	2	4	11	11
MINISTRY OF ADMINISTRATION	3	1	2	2	5	13	11
MONTENEGRIN ELECTRIC ENTERPRISE	4	5	0	0	0	9	9
ROADS OF PODGORICA	5	5	0	0	0	10	0
	20	29	10	12	19	90	60

Approach for the review

The review was conducted mainly on public information available in the e-procurement system and the registry in place prior to the introduction of the e-procurement system. Selected contracting authorities were requested by DPPP to provide additional information which regard to those stages of the procurement process which are not covered by the e-procurement system or the other databases (i.e. planning, evaluation and contract management). The response rate was low with only two authorities providing access to some contract implementation data, specifically on payments and amendments, but which was insufficient to draw a conclusion at a bigger scale.

Results of the assessment

The assessment followed a list of questions related to each sub-indicators, as presented below. The summarized conclusions of the assessment are captured within the matrix for Pillar 3 which makes reference to the performance of the contracting authorities in relation to the different sub-indicators. More results on the procurement activity of the selected contracting authorities are presented in annex 9 regarding the analysis of the e-procurement data which cover the following aspects:

- use of open procedures
- processing times by procedure type
- competition
- modified/cancelled contracts

List of questions

Indicator	Question
9 (a) (a)	Do you carry out need analysis and market research to guide the identification of optimal procurement strategy? When? annually or when updating procurement plans, or when necessary? how? Distribute Questionnaires', ongoing contract, past experience, etc? <i>Ask for evidence.</i>
9 (a) (b)	Do you clearly define at the planning stage the requirements and desired outcomes of contracts? Do you have defined internal processes / procedures for conducting the needs analysis? Briefly explain the process. <i>Assess who does what, level of inter-departmental collaboration / cross functional work.</i>
9 (a) (c)	Do you have access to clear guidance on when and how to use sustainability criteria? In which type of procurements you usually use sustainability criteria? What type of criteria do you mostly use? Are sustainability criteria, if any, used in a balanced manner and in accordance with national priorities, to ensure value for money?
9 (b) (a)	Are multi-stage procedures used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process?
9 (b) (b)	Do you use standard bidding documents and general contract conditions proportional to the need? Did you develop them or they were made available to you? Do you use them in all procurements consistently? To which extent you adapt them?
	Are the contract clauses published at the launch of the procurement process?
9 (b) (c)	Do you choose procurement methods in accordance with the purpose and in compliance with the legal framework? Do you justify and document the choice?
	How do PEs comply with the legal framework when choosing procurement methods?
9 (b) (d)	Are procedures for bid submission, receipt and opening clearly described in the procurement documents? Are these procedures complied with?
9 (b) (e)	What are the means to ensure the confidentiality throughout the bid evaluation and award process? Was there any breach of confidentiality?
	Were there any complaints regarding breach of confidentiality?
9 (b) (f)	Do the procurement documents include criteria to achieve value for money? What techniques do you apply to achieve value for money? Are these applied consistently?
9 (b) (g)	Are the contracts awards announced/published?

9 (b) (h)	Do contract clauses include sustainability considerations, where appropriate? If not, which would be the reason? Is there sufficient available guidance on how to do this?
9 (b) (i)	Do the contract conditions include clauses that provide incentives for exceeding defined performance levels and disincentives for poor performance? Is there guidance available on how to do this?
9 (b) (j)	How do you ensure that the selection and award process is carried out effectively, efficiently and in a transparent way?
	Do you generally consider that procuring entities implemented the right measures to ensure that the selection and award process is carried out effectively, efficiently and in a transparent way?
9 (c) (a)	Do you consider that generally contracts are implemented in a timely manner?
9 (c) (b)	How do you carry out Inspection, quality control, supervision of work and final acceptance of products? Are there any procedures in place establishing the workflows besides contract conditions?
9 (c) (c)	Does the time payment defined in the contract comply with the international good standards? What process do you follow to approve invoices for payment? Do you examine invoices? Are payment provisions used in the contract in compliance with the law? Are payments processed as stipulated in the contract?
	Are payment provisions used in the contract in compliance with the law? Do you consider that generally procuring entities comply with the requirements?
9 (c) (d)	Do you have internal procedures for contract amendment? How do you prepare contract amendments? What is the process to approve the contract amendments? Are they prepared and issued timely? Are they published?
9 (c) (e)	Are procurement statistics available and a system is in place to measure and improve procurement practices? What is the frequency for elaboration of such statistics? Are they publicly available?
9 (c) (f)	Do you provide opportunities for the civil society to participate in planning phase; evaluation and contract award; contract implementation?
	With the introduction of the e-procurement system, would such opportunities be possible?
9 (c) (g)	Are the records complete and accurate, and easily accessible in a single file? <i>Ask for a sample file.</i>
	Would you generally consider that procuring entities keep accurate and complete records?
	With the introduction of the e-procurement system, would such records be available in the PE's profile?