



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF THE PUBLIC PROCUREMENT SYSTEMS OF THE REPUBLIC OF KAZAKHSTAN AND THE SOVEREIGN WEALTH FUND SAMRUK-KAZYNA

2019





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Acronyms

ASEAN	Association of Southeast Asian Nations
CIS	Commonwealth of Independent States
CSO	Civil society organization
CSTO	Collective Security Treaty Organization
EAPC	Euro-Atlantic Partnership Council
EBRD	European Bank for Reconstruction and Development
ECO	Economic Cooperation Organization
EEU	Eurasian Economic Union
EEU	Eurasian Economic Union
GoK	Government of Kazakhstan
IMF	International Monetary Fund
IOM	International Organization for Migration
MAPS	Methodology for Assessing Procurement Systems
MoF	Ministry of Finance of Kazakhstan
OECD	Organization for Economic Cooperation and Development
OIC	Organization of Islamic Cooperation
OSCE	Organization for Security and Co-operation In Europe
PEFA	Public Expenditure and Public Accountability
PPL	Public procurement law
PPS	Public procurement system
SCO	Shanghai Cooperation Organization
SDGs	Sustainable Development Goals
SOE	State-owned enterprise
UNCITRAL	UN Commission on International Trade Law
UNWTO	World Tourism Organization
WBG	World Bank Group



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Executive summary

1. **This report provides the results of the assessment of the Public Procurement system of the Republic of Kazakhstan using the Methodology for Assessing Procurement Systems (MAPS)¹ and its various steps, including the validation process.** Kazakhstan has a dual public procurement system, in which there are separate systems for a) the government procurement conducted by the general public administration and b) procurement conducted by Sovereign Wealth Fund Samruk-Kazyna, which accounts for the majority of public procurement spending. This MAPS assessment covers both. Due to the nature of the system, this MAPS assessment has to integrated parts and assessments of a) the government procurement system and b) of Samruk-Kazyna's procurement system. This assessment report identifies key findings, lays out the strengths of the analysed procurement systems and the remaining challenges, and provides a series of recommendations to address those challenges and allow for future improvement.
2. **Following a request of the Government of Kazakhstan (GoK) to assess both its general public procurement system (PPS) and the procurement system of the Sovereign Wealth Fund Samruk-Kazyna, using the revised MAPS, GoK and a coalition of international partners, led by the World Bank, the Organisation for Economic Cooperation and Development (OECD) with the European Bank for Reconstruction and Development (EBRD), Islamic Development Bank (IsDB), and Asian Development Bank (ADB) launched the assessment in April 2018.**
3. The MAPS assessment covered the Kazakhstan public procurement system governed by the PPL enacted in 2015 along with related regulations, the amendment to the PPL enacted in December 26, 2018, and subsequent changes to the regulations and procedures that were put into effect between January and March 2019. The assessment of Samruk-Kazyna procurement system covered the current separate rules and regulations. Given that the cut-off date for the assessment has been set as 31 December 2018, the assessment of SK procurement system does not cover the changes that will enter into force in January 2020 as envisaged by the amendments to the Law "On the Fund of National Welfare" enacted in December 26, 2018. Additional commentary by Samruk-Kazyna on progress, as pointed out during the validation of this assessment, can be found in the annex.
4. The assessment is organized in two main volumes: **Volume I** covers procurement carried out under the scope of the Public Procurement Law (PPL), and **Volume II** cover procurement carried out under separate rules and regulations of the Sovereign Wealth Fund Samruk-Kazyna (SK). This approach reflects the specific landscape of the public procurement system in Kazakhstan, with varying frameworks applying to the system for general government procurement and for the procurement of Samruk-Kazyna respectively. Procurement by Samruk-Kazyna, including its numerous companies in the holding, delivers important public services and accounts for the vast majority of public procurement in Kazakhstan. Therefore, the MAPS assessment was conceptualised to include a dedicated, full MAPS assessment of Samruk-Kazyna's procurement system in addition to the assessment of the general government procurement system, in order to provide a better analysis of the overall procurement system in the country. At the end, the report presents consolidated recommendations identifying those areas that cut across both systems.
5. A caveat applies to certain aspects of the MAPS assessment of Samruk-Kazyna: Due to a lack of access to information, the assessment team was unable to conclude the assessment of a) the e-procurement system, b) procurement performance, c) the audit and control framework,

¹ www.mapsinitiative.org



and d) the appeals system to the fullest extent. While Samruk-Kazyna's leadership supported the MAPS assessment through interviews and the provision of information, although limited, Samruk-Kazyna representatives did not provide access to procurement data or sample cases, despite repeated requests by the assessment team. Similarly, Samruk-Kazyna did not share vital documents or access for the analysis, such as rules are about the audit, control and appeals framework, or access to full functionalities of the e-procurement system.

6. The concept note for this MAPS assessment anticipated the risk that the assessment team would not have access to necessary data and information. The report presents conclusions based on review of secondary data sources, as well as interviews. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy. Nevertheless, from a purely conceptual point of view, it might be considered incomplete without the access to data or a meaningful sample of procurement documents. As a result, the assessment team recommends that for policy decisions touching upon Samruk-Kazyna, an additional assessment be undertaken to allow for evidence-based policy making.
7. This executive summary pertains to the entire assessment exercise. The first part of this summary consists of a narrative of the main findings of both assessments, providing a concise overview of the state of play of public procurement in Kazakhstan. The second part of the executive summary is a structured, pillar-by-pillar² overview of the findings of each of the two MAPS assessments, including areas for improvement, as prescribed in the methodology.

Country context

8. Kazakhstan is the ninth-largest country in the world by area and the largest world landlocked country. It consists of 14 regions. It has a population of around 18 million people, of around 125 nationalities, with Kazakhs (66%) and Russians (20%) accounting for the largest part.
9. In 2010, Kazakhstan joined Russia and Belarus to establish a Customs Union in an effort to boost foreign investment and improve trade. The Customs Union evolved into a Single Economic Space in 2012 and the Eurasian Economic Union (EAEU) in January 2015. Kazakhstan's exports to EAEU countries increased 30.2% in 2017. Imports from EAEU countries grew by 24.1%.
10. According to official statistics, Kazakhstan's gross domestic product (GDP) in 2017 was USD 162.9 billion. Annual GDP growth was 4.0 percent in 2017. Kazakhstan's GDP by purchasing-power parity (PPP), estimated at USD26,490 (2017). Kazakhstan's GDP per capita by purchasing-power parity (PPP), estimated at USD26,490 (2017)³
11. Over the past two decades, Kazakhstan has executed fundamental reforms aimed at building the foundations of a "socially oriented market economy". The World Bank ranked Kazakhstan 91st out of 193 countries on its Governance Effectiveness Index in 2016, and 28th in its Doing Business Survey of 2019.
12. **Overall, procurement activities using public funds in the country are estimated at US\$21 billion, or 13 percent of GDP, in 2017.⁴ Of this amount, procurement carried out using the PPL amounted to US\$6 billion (or 4 percent of GDP), as published in the Public Procurement Web Portal. This compares to US\$15 billion (9 percent of GDP) which are estimated to have**

² The assessment is structured under the four pillars of the MAPS: Pillar I – Legal and Regulatory Framework; Pillar II – Institutional Framework and Management Capacity; Pillar III – Procurement Operations and Market Practice; and Pillar IV – Accountability, Integrity and Transparency.

³ <https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=KZ>

⁴ Based on information provided in the web-portal of the Ministry of Finance, as well as an estimate based on public procurement plans by SOEs.



been spent collectively by SK, and national managing holdings, national holdings, national managing companies, and national companies (i.e. mainly state-owned companies), according to public procurement plans that are publicly available. The most recent figure for its procurement volume provided by Samruk-Kazyna relates to 2016 and accounts for USD 12 billion (8% of GDP). All of these SOEs are governed by separate procurement rules and regulations. Generally, procurement by SOEs, mostly Samruk-Kazyna, can be estimated to account for almost twice the size of government procurement.

13. The country enacted its first PPL in 1997, based on the UN Commission on International Trade Law Model Law on Procurement of 1994 (UNCITRAL Model Law). Since, the GoK has made a continuing effort to develop the public procurement system and comply with international standards. The current PPL was adopted in 2015, and major amendments were adopted on December 26, 2018 and are effective since January 1, 2019.
14. Samruk-Kazyna (SK) was founded in 2008 by Presidential decree as a sovereign wealth fund. Currently, there are 404 portfolio companies within the Fund that are active in diverse areas, including gas, oil, electricity, railway, post, etc. Kazakhstan has a target to reduce the share of government participation in the economy, according to the “Comprehensive Privatisation Plan 2016-2020”.
15. Reforms within Samruk-Kazyna also concern procurement procedures, which have seen major improvements in recent years. The most recent amendments to the Law “On the Fund of National Welfare” as part of December 26, 2018 procurement reform package affected public procurement by SK substantially, but they maintain its dedicated framework.

Assessment

16. **The GoK’s has made substantial and consistent efforts over the last two decades towards improving and bringing the PPS closer to the international standards.** The current PPL was adopted in 2015, primarily to comply with the requirements of the Eurasian Economic Union Treaty (EEUT) on public procurement. Since then, the GoK has improved the legal framework in terms of hierarchical order and identification of a comprehensive set of formal procurement rules and procedures. The GoK has also developed a public procurement web portal (a full-fledged single-window e-procurement system), which has allowed for an increased transparency in the disclosure of procurement documents, procurement notices and the GoK’s main decisions with respect to procurement. This open public platform, with free access to the most recent public procurement rules and regulations, is a major step towards achievement of the PPL’s principle of transparency in public procurement. However, the PPL does not cover the procurement of all goods, works and services (including consulting services) using public funds.
17. **The fact that a major part of the public procurement activity in Kazakhstan is not covered by the general public procurement legal and regulatory framework creates hurdles for effective and efficient public procurement practices.** A large part of the public procurement volume in Kazakhstan is being managed by SOEs, i.e., the quasi-state sector as well as sovereign wealth fund Samruk-Kazyna. The procurement systems for these entities largely followed the above-mentioned reforms of the general PPS, rules, procedures and practices. However, regulatory frameworks remain separate, creating a scattered landscape, with diverse and difficult to follow legal frameworks, generating increased burden for suppliers and interested stakeholders of the different procurement systems. Yet, it is fair to recognise that the most recent reform brought the quasi-state sector closer to the general PPS by requiring application of a unified set of rules. Nevertheless, Samruk-Kazyna, the entity with the highest public procurement spending in Kazakhstan by far, remains outside of the general PPS.



18. **Kazakhstan became a member of the WTO in 2015 and was admitted to the WTO's Government Procurement Agreement (GPA) as an observer in October 2016,⁵** following the continuous efforts to modernize the country's public procurement system.
19. **The rules and institutions of Kazakhstan's public procurement have reached a level of maturity that could potentially enable it to be leveraged to promote economic and market growth, innovation and environmentally sustainable development.** In particular, the public procurement framework could be used to drive SME development through specific provisions to increase the access of small and medium enterprises (SMEs) to procurement opportunities and facilitate their effective participation in government tenders.
20. **The GoK is expanding opportunities for effective linkage of the public procurement system to the overall public financial management and governance systems** to promote public participation in decision-making and monitoring of budget execution.

Procurement practices

21. The public procurement legal framework has contributed to the development of a relatively well-established practice for procurement planning guided by an analysis of needs for goods, works and services beginning in the first half of the previous [fiscal] year and preparation of annual budget proposals as part of the planning and budgeting process for the next fiscal year. However, this practice does not adopt a structured and holistic approach to procurement planning to inform the best approach to market and optimal procurement methods that would support achievement of fair level of competition and value for money.
22. The assessment of current procurement practices shows that a high level of efficiency has been achieved through the mandatory use of e-procurement system, with 56 days being the average time for conducting open tender procedures as opposed to 58 days, the maximum lead time stipulated in the legal framework. Despite this and the propensity of procuring entities to carry out procurement by open tender, the results are less than optimal. In 2017, of all the procedures using this method, only 32% led to a contract award; 68% of procedures failed and re-procurement took place using Single Source method, which in 2017 accounted for 81.79% of all procurement methods.
23. The reasons for such high rate of failure are not immediately evident but could be possibly emboldened by the fact that the PPL allows for the automatic use of single source method if an open tender failed, without obliging the procuring entities to seek to understand the reasons for such failure. The PPL amendments of December 2018 abolished this possibility, and it remains to be seen if there will be improvements in practice. Furthermore, the use of non-price attributions in evaluation are not frequent, and the legal framework does not provide for the life cycle costing principles.
24. Though the legal framework does not appear on its face to establish any barriers for participation of foreign bidders, the requirement of obtaining digital signature for foreign bidders to be able to use web-portal, coupled with the recent amendment introducing a fee for the use of web portal by all bidders, as well as requirement for e-bid security to be obtained through a commercial bank in Kazakhstan, create serious barriers to participation of foreign bidders. The existence of these restrictive policies explains, in major part, why in 2017 the contracts awarded to local private sector firms and individuals accounted for 99.7% of all contracts.

⁵ https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm



25. The practice of applying procurement methods permitted by the PPL shows some signs of inefficiency particularly for the use of the open tender method. In 2017, the use of this procurement method has shown a failure rate of 68 percent. This failure rate includes situation of failed and/or cancelled processes, which consequently led to the use of non-competitive methods such as Single Source. The current practice in applying the open tender methods is also marked by a high rate (50 percent) of non-responsive bids which limits the potential competitive outcomes of bidding processes. Furthermore, the practice of applying fixed discounts for non-price criteria with additional qualification appears inappropriate as some of the requirements are general and not specifically related to the nature of the subject procurement and do not allow to differentiate the qualitative criteria in terms of their importance or relevance in meeting the procurement objectives and outcomes of each specific procurement. There is room for improvement of this practice and its possible alignment with the international best practice of adopting technique of weighting technical and financial as well as life -cycle cost requirements to ensure better procurement outcomes and value for money.
26. **Regarding the assessment of procurement practices by Samruk-Kazyna, the MAPS assessment team was unable to assess those to a meaningful extent, as prescribed by the methodology. This was due to insufficient access to procurement data and procurement documents (sample cases), which were not provided by Samruk-Kazyna, despite repeated requests.** The conclusions presented on the performance of the procurement system of Samruk-Kazyna are based on desktop-research and stakeholder interviews with public officials from the government and Samruk-Kazyna, private sector representatives and representatives of civil society, as well as experts on Kazakhstan's public procurement system. Despite these efforts, the insight into actual procurement performance of Samruk-Kazyna remains limited and insufficient with regards to the MAPS Methodology, which is duly reflected in the assessment results. Based on available information dating from 2017, 86.5% of procurements managed by the Samruk-Kazyna holding were not conducted competitively. This represents a major concern as it illustrates that the procurement function in Samruk-Kazyna might not achieve general procurement principles nor obtain better value for money.

Professionalization

27. **The procurement landscape governed by the PPL is with about 23,200 procuring entities very dispersed, out of which 95 percent have organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from a procurement unit of other procuring entity, not counting the procuring entities in the SOEs and their subsidiaries.** However, professional procurement expertise in Kazakhstan lags behind that of most countries in Europe, and there is an urgent need for professional development and capacity building of the procurement workforce. The establishment of an institutionalized and sustainable procurement capacity-building program would represent a major benefit to Kazakhstan's procurement workforce and civil service in general and would have a positive impact on the overall efficiency of public sector operations.
28. **In fact, Samruk-Kazyna started implementing initial measures towards a professionalization strategy.** The holding has introduced a training offer and is planning on expanding its efforts to professionalise procurement workforce in the Samruk-Kazyna holding structure and subsidiaries by looking at different options to develop a certification mechanism.

Appeals mechanism

29. **The GoK has introduced measures to improve the transparency of the procurement complaints mechanism.** Although the legal framework allows for complaints to be filed on



public procurement, it is not clear whether the PPL allows for complaints that challenge the documentation for tenders. Further, the Internal Audit Committee (IAC), the first tier of complaints review within the Authorized Body (MoF), may not have the level of independence required for the resolution of complaints, taking into account that Ministry of Finance is a procuring entity itself, and the authority which the Single Public Procurement Organizer reports. Furthermore, given its role in ensuring compliance with legal and regulatory framework, IAC may be asked to review complaints that related to procurement process which may have benefitted from IAC's financial advice and control. The recent PPL amendments created the Complaint Decision Appeal unit within MOF which will allow complaining bidder to challenge the IAC's decision. Though this newly created structure will offer an additional forum for bidders to challenge IAC's decisions, its subordination under the MoF does not provide an adequate level of independence.

30. **Complaints by Samruk-Kazyna are handled internally by the Methodology and Control Department. The arrangement is similar to the government procurement system in its institutional overlap,** given that functions of policy setting, operations and review are closely linked. This raises concerns for institutional independence of the appeals function. Overall, the assessment team had insufficient access to information to come to a conclusive assessment result on these aspects.

Anti-corruption and Accountability Mechanisms

31. Notably, Kazakhstan has taken steps to strengthen its anti-corruption efforts and has ratified several international agreements and conventions⁶ against corruption over the years. Among others, the Anti-corruption Law mandates the reporting on corruption offenses and the country has put in place mechanisms for reporting annual statistics on corruption-related crimes; internal and external corruption risk assessments are carried out by the relevant government bodies and the Agency for Civil services and Anticorruption respectively; adoption of an anti-corruption charter by Kazakhstan entrepreneurs and a model corporate governance code for joint-stock companies with state participation; basic training on anti-corruption is offered as part of curricula for training of civil servants offered by the Academy of Public Administration and local universities; MoF has established a list of bad faith companies and individuals who provide fraudulent information in the course of the procurement procedure, etc.
32. There are however, a number of significant gaps that remain to be addressed such as: further alignment of the anti-corruption and conflict of interest legislation with good international practices, lack of comprehensive provisions in the procurement legislation on preventing and addressing fraud and corruption and other misconduct more generally, grounds for debarment of private sector are limited to engaging in fraud, leaving out corruption, collusion or other forms of misconduct, etc.
33. In terms of the role of civil society in public procurement, the Public Councils⁷ created as part of the GoK's 100 Steps agenda are intended to serve as the main instrument for civil society organizations (CSOs) to influence the operations of government agencies and enhance the

⁶ United Nations Convention against Corruption (May 4, 2008); Council of Europe's Convention of Laundering, Identification, Seizure and Confiscation of Proceeds from Crime (May 2, 2011); United Nations Convention against Transnational Organized Crime (June 4, 2008).

⁷ "Public councils – consultative, advisory and supervisory bodies formed by ministries, bodies directly subordinate and accountable to the President of Kazakhstan, as well as local government bodies on their competence, together with non-profit organizations and citizens. Law "On Public Councils" dated November 2, 2015 No 383-V ZRK https://online.zakon.kz/document/?doc_id=36800092#pos=4;-257



transparency of state decision-making. However, this approach falls short of specific provisions in legislation about public consultation and monitoring mechanisms.

34. **Findings are similar for Samruk-Kazyna as the general government provisions in the area of integrity and accountability apply also for the holding.** More specifically, there is a need to adopt a tailored and risk-based approach to maintaining integrity in Samruk-Kazyna. In addition, crucial functions for policy setting, control and appeals are located in the same branch of the organisation, which provides for a potential conflict of interest and lacking checks and balances. The fact that very limited information about public procurement processes is publicly available for Samruk-Kazyna's operations results in a lack of public oversight that could further compromise integrity and increase accountability.

E-procurement

35. **The GoK achieved significant results in transferring the public procurement system from a manual to a full-fledged electronic system especially over the last three years.** The legal and institutional framework allows for [all] procurement to be conducted effectively through the Procurement Web Portal, an e-government procurement system (eGP), relaunched by MOF in January 2016. However, there are some cases of public procurement that are not conducted through the e-procurement system, namely the single source procedures under clause 4 and 5 of the Article 44 of the PPL and key stages of the two-stage open tendering. The Procurement Web Portal may benefit from important enhancements, for instance, to **eliminate the requirements that for foreign bidders to be able to obtain a digital certificate, they need to register with VAT authorities which in turn requires the bidder to be physically present in Kazakhstan. Also, the e-GP system should be enhanced to enable and require the procuring entities to fully conduct two-stage tendering and single source method through the system.** Furthermore, to supplement the assessment of the e-procurement system described under Volume I of this report, a security and compliance review (independent audit) is undergoing to assess, validate and ensure that the e-procurement system conforms to international standards for IT system security and quality requirements for open competitive procurement.
36. **Samruk-Kazyna is using e-procurement extensively.** Unlike in the general PPS, the e-procurement system of Samruk-Kazyna offers a less restrictive alternative for the access by foreign bidders who can use a local third-party service provider to gain access. However, this solution remains complex and a potential hurdle. In contrast to the general PPS, Samruk-Kazyna publishes very limited information from its e-procurement system, creating ripple effects for supplier engagement, civil society oversight as well as performance monitoring.

Outlook

37. **During the next phase of the reform, the Government has an opportunity to further consolidate the procurement landscape,** continue the drive for greater transparency and value for money, strengthen the professionalization of the procurement workforce with clear standards of competence, strengthen further the complaints review mechanism as recently introduced by the amended PPL and enhance contract management arrangements and practices, and promote integrity and citizen engagement in public procurement. First, however, the GoK will need to address the remaining legal, institutional, marketing, integrity and transparency challenges identified by the MAPS assessment.
38. **Samruk-Kazyna's leadership has demonstrated readiness for reform through innovations in discrete areas, such as professionalisation.** Pending additional review and further evidence, the following efforts promise progress: implementing the proposals will increase the capacity and capabilities of the procurement workforce. Additional efforts should be made to increase



competition in the public procurement market of Samruk-Kazyna. A point for reform could also be to revise the appeals and control mechanisms to ensure institutional checks and balances, as well as institutional independence, and in turn increasing trust of suppliers in Samruk-Kazyna's public procurement system. Further efforts could be undertaken to engage civil society and the private sector.

39. The next section summarises the findings of the MAPS assessment on a pillar-by-pillar approach, including areas for improvement.

General government procurement system

Pillar I – Legal and Regulatory Framework

The key strengths of the legal and regulatory framework can be summarized as follows:

- The legal procurement framework is relatively well established, with an adequate hierarchy and corresponding precedence levels (PPL, regulations, instructions, standard templates), all of which are freely accessible at the public procurement web portal www.goszakup.gov.kz.
- The legal framework provides a broad description of permissible procurement methods and their procedural requirements.
- The use of a single electronic procurement system (public procurement web portal) is mandated and, with few exceptions, is largely consistent with the PPL.
- In keeping with good practice, the web portal provides a mechanism for public discussion of draft tender documentation, to seek feedback and requests for clarification from potential suppliers.
- Tender documentation available through the portal includes model procurement documents and standard contracts for all types of procurement except consulting services. The documents are kept up to date.
- The PPL stipulates that if an international treaty ratified by the Republic of Kazakhstan stipulates procurement rules other than those stipulated in the PPL, the procurement rules of the international treaty shall apply to procurement subject to international treaty.

The most critical Substantial gaps in the public procurement system identified by the assessment, and corresponding recommendations, are summarized in Table 1.

Table 1 - Gaps and Recommendations under Pillar I

Sub-indicator	Substantive gap	Recommended improvements
1(a) – Scope of application and coverage	The scope of application of legal framework is limited, leaving out a significant volume of activities procured with public funds. This has led to a severe fragmentation of the procurement landscape. The excluded categories include for example: goods, works and services procured by the	Uniformity and universality of the legal framework coverage contribute to predictability and savings in the operation of the procurement system. In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or



	National Bank of Kazakhstan, which in most jurisdictions are covered by the legal framework, save for highly specialized activities. In addition, the legal framework leaves out of its scope, goods, works and services procured by national management holdings, national holdings, national companies and its affiliates, which account for about of 2/3 of the overall procurement expenditures in the country. One such excluded entity with significant procurement activity is National Wealth Fund, Samruk-Kazyna.	through a unified separate special legislation, as many of the excluded categories as practically possible. In this respect, consideration should be given to international practices which show that entities like the National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework. To better inform such future reforms, the Government should undertake a comprehensive study⁸ taking stock of the existing procurement rules applied by each of the excluded entity, the performance of these entities and whether they actually achieve value for money while ensuring transparency and fair competition.
1(b) – Procurement methods	The PPL as amended on December 26, 2018 covers a limited range of procurement methods and continues to include an unusually high number (50) of grounds for the use Single Source (SS) procurement. Further, the PPL does not provide for distinct selection methods and procedures for consultancy/advisory services.	Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better value for money and substantial gains in service delivery. Amendments could include (i) making open tender a default method; (ii) more clearly specifying the conditions for the use of each procurement method; (iii) reducing further the circumstances for the use of single source procurement; (iv) including separate provisions of PPR and/or instruction manual to clarify the procedures for the selection of consultancy and advisory services; and (v) introducing framework agreements.
1(d) – Rules on participation	Requirements to obtain the digital signature for foreign bidders to be able to use the web portal	Consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential foreign bidders to obtain digital signature

⁸ As part of the study, the Government should assess experience and practices in other countries with transparent procurement systems on how they deal with procurement under Sovereign Wealth Funds. One such example is the Norwegian Government Pension Fund; whose management company follows the procurement rules and procedures as set out in the Norwegian Public Procurement Law. See link: <https://www.nbim.no/en/> and <https://www.nbim.no/no/organiseringen/styringsmodellen/retningslinjer/anskaffelser/>.



	requires, among other conditions, to obtain a certificate of the digital signature which needs a preliminary registration in Kazakhstan tax authority which in turn requires physical presence of bidder in Kazakhstan. In addition, the recent amendments to the PPL have introduced the obligations for potential bidders to: (i) make payment of a fee for using the procurement web portal as potential bidder, and (ii) furnish a bid security only in the form of an electronic bank guarantee, through an account opened in one of the commercial banks of the Republic of Kazakhstan. The above requirements and limitations are not aligned with the PPL which professes open eligibility to all bidders. Most importantly, they constitute a serious barrier to the participation of foreign bidders.	certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.
1(f) – Evaluation and award criteria	The application of evaluation criteria based on allocating conditional discounts to bid prices for meeting additional qualifications (experience, functional technical quality and operational characteristics) may not objectively support achievement of value for money procurement decisions. Also, the PPL and its recently introduced amendment do not fully address the confidentiality of the bidder's information included in the submitted bid. Bidders do not have the possibility to mark those parts of the bids they deem proprietary and commercially sensitive.	Consider improving the use of price and non-price criteria and their evaluation methodologies including combination of weighted quality and price. Revise the relevant provisions of the PPL as recently amended and public procurement regulations (PPR) to bring clarity on various aspects of evaluating bids, including preserving confidentiality of parts of the bid that the bidder does not want to be disclosed to competitors.



1(h) – Right to challenge and appeal	The legal framework does not provide for independent complaints review body.	The current arrangements for review of complaints would need to be revised to ensure a clear level of independence of complaints review body.
1(i) – Contract management	The legal framework lacks clarity regarding the organization of contract management function.	Consider strengthening the legal framework by defining roles and responsibilities for contracts management and by setting requirements for disclosing information on contracts management through the web portal. Also consider strengthening the regulatory requirements for measuring contract implementation performance.
3(a) – Sustainable public procurement	The legal framework lacks the basic concept of sustainable public procurement.	Building sustainability criteria into the legal framework would help ensure value for money throughout the procurement cycle. Efforts could be initially focused on incorporating life cycle costing and non-price dimensions in the evaluation criteria to account for various aspects of procurement object, with the ultimate goal of developing a sustainable procurement policy.

Pillar II – Institutional Framework and Management Capacity

There are significant strengths under Pillar II, which can be summarized as follows:

- The legal and regulatory procurement framework requires preparation of realistic annual procurement plans. The plans for all procurement activities are published through the web portal. The PPL details the public procurement process and provides adequate linkage to the public budget. A mechanism for feedback on budget execution is in place.
- The integrated public procurement web portal has been operational since 2015. It comprises e-planning, e-procurement, e-contracting, e-implementation, e-payment (active in 2017) and covers full procurement cycle. The portal is integrated with the licensing system, commercial banking systems, the Register of Bad-Faith Suppliers (blacklist) for interoperability.
- The functions of the regulatory and normative body are specified in the legal framework. Although not fully consolidated into one single entity, the regulatory and normative roles are assigned to two units within the Authorized Body under MoF, namely Department of Public Procurement Legislation (DPPL) and the Single Public Procurement Operator (e-Finance Center).
- The responsibilities of procuring entities are adequately defined in the legal framework. The predominantly decentralized nature of the public procurement function has been confirmed by the assessment, which showed that in 2017, about 95 percent of the procuring entities organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from a procurement unit of other procuring entity.



- The Open Contracting Data Standard (OCDS) has been partially implemented on the Procurement Web portal, and the e-Finance Center is currently developing OCDS forms of disclosure and publication.
- The public procurement web portal is widely used at all levels of government—national, regional, sub-regional and municipal—and for the full procurement and contract execution cycle. The system publishes information on procurement activities governed by the PPL, except for some contract management aspects.
- The portal provides adequate linkage to the legal and regulatory framework and related standard procurement documents and guidance /instructions
- The National Security Committee conducts quarterly security vulnerability tests of the public procurement web portal.
- The E-Finance Center is mandated to provide training on the use of the system for procurement staff of all procurement entities.
- The Authorized Body, through E-Finance Center, provides advisory and help desk services on the use of the portal, as well as video instructions and manuals that are available online.

In addition to these strengths, the assessment identified Substantial gaps in the institutional framework and management capacity of the PPS, as summarized in Table 2.

Table 2 - Gaps and Recommendations under Pillar II

Sub-indicator	Substantive gaps	Recommended improvements
4(b) – Financial procedures and the procurement cycle	The public procurement web portal does not include complete information on contract payments.	Enhance the reporting mechanism to cover completion of major contracts, including details on payments and other performance aspects such as time and cost overruns.
5(c) & 5(d) – Status and legal basis of the normative/regulatory institution function	The level of independence of the normative/regulatory units is not adequately established by the PPL.	Consider strengthening and consolidating the normative and regulatory functions into DDPL and ensure that DPPL has the appropriate level of independence.
6(b) – Centralized procurement body	The single public procurement organizer (SPPO) is not fully utilized.	Evaluate the SPPO's performance and explore better mechanism to implement centralized/consolidated procurement allowed under PPL, as amended in December 26, 2018, to ensure better efficiency and effectiveness.
8(a) – Training, advice and assistance	The PPL lacks a strategy for capacity development and professionalization of the procurement function.	Consider preparing a skills gap inventory and a training needs analysis. This would inform capacity building and professionalization of the procurement function, possibility in partnership with local higher education institutions.



Pillar III – Procurement Operations and Market Practice

The main strengths under Pillar III can be summarized as follows:

- The PPL provides for procuring entities to determine and analyze their need for goods, works and services, starting in the first quarter of the fiscal year, as part of the planning and budgeting process for the following fiscal year.
- The legal provisions regarding the identification, development and desired outcomes of contracts or projects are relatively clear. Feasibility studies and discussions of outcomes are required for large or high-value contracts and projects.
- In the case of complex procurement contracts, because of the difficulty of formulating detailed specifications for goods, works and services and determine their technical and other characteristics, the PPL provides for the use of two-stage bidding.
- The assessment of the quantitative indicators found that the average time to procure goods, works and services following an open tender procedure is 56 days, compared to the maximum 58 days stipulated in the PPL. This shows that the process is generally efficient, presumably due in part to the mandated use of e-procurement through the procurement web portal.
- All procurement records are securely maintained on the public procurement web portal and are accessible by all interested parties.
- The legal framework requires the Authorized Body to issue an annual public procurement report.
- Open dialogue with the private sector is encouraged by GOK, especially through the National Chamber of Entrepreneurs (NCE) Atameken and other industry associations and NGOs.
- The data show that small and medium companies are growing. This growth was estimated at 3.6 percent in February 2018 compared to the level observed in 2016.⁹

The Substantial gaps identified by the assessment and recommendations for possible ways to address them are summarized in Table 3.

Table 3 - Gaps and Recommendations under Pillar III

Sub-indicator	Substantive gaps	Recommended improvements
9(a) – Planning	There is a general absence of a strategic approach to procurement planning.	Strengthen the quality and performance of the public procurement system by introducing a more strategic approach, including proper systematic market analysis to inform procurement planning. The market analysis should inform the decision about adopting Single Source in exceptional cases

⁹ OECD 2018. *SME and Entrepreneurship Development in Kazakhstan 2018*.

<http://www.oecd.org/countries/kazakhstan/sme-and-entrepreneurship-policy-in-kazakhstan-2018-9789264301450-en.htm>



		instead of using an extensive list of exclusions.
9(b) – Selection and contracting	The system is characterized by: - Inadequacy of sustainability criteria and techniques to determine value for money is predominant. - Limitation in use of procurement methods and tender documents. - Insufficient safeguards to protect confidentiality of bid's content throughout the tender process and avoid allowing for the disclosure of sensitive information. - Inefficient use of the open tender method, as demonstrated by the high ratio (68%) of failed and/or cancelled open tender processes in 2017, resulting in additional use of non-competitive methods such as Single Source.	Consider embedding in the public procurement legal framework more adequate sustainability criteria and techniques to ensure value for money throughout the procurement cycle. Introduce better regulation for integrated use of the two-stage tender procedure through the web portal and adoption of procedure for pre-qualification as a separate exercise before tenders are launched (for complex and high value contracts). Strengthen general confidentiality provisions and introduce appropriate procedures to manage specific confidentiality clauses. This could include elaboration of instructions/guidance for proper marking by the bidder of the confidential information contained in the bids. The legal procurement framework should include more specific provisions for the use of optimal procurement methods based on the market analysis and in accordance with the purpose of the procurement.
9(c) – Contract management in practice	There is a lack of proper mechanisms and practices for contract management performance and monitoring.	Moving the public procurement system to the next level in terms of quality and performance will require further strengthening of contract management performance measures and monitoring. This would allow for objective assessment of procurement outcomes. The PPR could introduce specific clarification and guidance on contract management and adequate technical methodologies and tools to design key performance indicators and ensure their measurement.
10 (c) – Key sectors and sector strategies	The impacts of the public procurement policy is not systematically evaluated.	An assessment is needed of risks and lost opportunities, in terms of, e.g. cost savings and efficiency, due to exclusion of Samruk-Kazyna from the public procurement market.



Pillar IV – Accountability, Integrity and Transparency

The assessment identified the following key strengths under Pillar IV:

- The GoK is increasingly creating opportunities for the public to participate in decision-making and monitoring of budget execution, including public procurement. Public Councils created as part of the 100-steps agenda are seen by CSOs as the main instrument for influencing the operations of government agencies. In addition, the open reporting meetings held annually by ministers and heads of subnational or municipal governments (*akimats*) give citizens an opportunity to inquire about the use of public resources.
- Civil society can also participate in the legislative drafting process using the Open Legal Acts¹⁰, which provides for public comment on proposed changes to legislative drafts, including those related to the public procurement system.
- There is some evidence of direct citizen participation in the procurement process through monitoring, including the publication of reports and media items that provide a basic analysis of publicly available information on public procurement.
- Overall, the country's laws and regulations provide a comprehensive control framework, including internal and external audit and internal controls. The existing control framework adequately covers procurement operations.
- Periodic reports of the public audit bodies, published on their websites, include information on the percentage of orders and recommendations that have been implemented. More than 96 percent of external audit recommendations issued in 2017 were implemented in a timely manner.
- The Anti-Corruption Law defines prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties. It also includes procedures for dealing with allegations of fraud, corruption and other prohibited practices; and it obliges individuals, public associations and other legal entities to report corruption offenses.
- The Ministry of Finance maintains a list of bad-faith companies and individuals that have provided fraudulent information during procurement procedures, refused to sign a public contract upon award, or performed poorly on signed contracts.
- The web portal Qamqor, managed by the Committee of Law Statistics and Special Accounts under the General Prosecutor's Office, provides access to statistics on corruption-related legal proceedings and convictions.
- General integrity training programs are offered at the university level and by the Academy of Public Administration.
- A Code of Ethics for civil servants sets out general standards of behaviour. Civil servants are required to inform management in writing of a potential or actual conflict of interest.

The Substantial gaps identified by the assessment and corresponding recommendations for improvement are summarized in Table 4.

¹⁰ "Open Legal Acts" is a portal (<https://legalacts.egov.kz>), part of the e-government, for publishing draft concepts of the laws and regulatory legal acts for public discussion by citizens, consideration of public initiatives and conducting public hearings.



Table 4 - Gaps and recommendations Pillar IV

Sub-indicator	Substantive Gap	Recommended improvements
11 (a) – Transparency and civil society engagement	CSOs and citizens lack adequate capacity and involvement in public procurement.	The procurement legal framework should be revised to promote public oversight through CSOs' participation in the procurement process and contract management. GoK should establish programs to build CSOs' capacity to understand, monitor and contribute to improving the performance of the public procurement system.
14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities	The Anti-Corruption Law is still not in compliance with international standards, as noted by the 3 rd and 4 th rounds of monitoring of the Istanbul Anti-Corruption Plan.	Amend the Anti-Corruption Law to make it consistent with international standards. Amend the PPL, regulation and tender documents to include definitions of fraud, corruption and other prohibited procurement practices.
14(b) – Provisions on prohibited practices in procurement documents	There is a general lack of CSO participation in monitoring compliance with the PPL, assessing corruption risks, and assessing the effectiveness of anti-corruption measures.	Amend the PPL to include definitions of fraud, corruption and other prohibited practices.

Based on the recommendations of this assessment, the Authorized Body could prepare a detailed action plan that identifies the resources and responsibilities of each involved entity.



General government procurement system: Overview of compliance with MAPS indicators

- Green = full compliance
- Yellow = gaps identified
- Red = Substantial Gap identified

*Red flags identified

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



PILLAR II	
4. The public procurement system is mainstreamed and well integrated into the PFM system.	4(a) – Procurement planning and the budget cycle
	4(b) – Financial procedures and the procurement cycle
5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory institution function
	5(b) – Responsibilities of the normative/regulatory function
	5(c) – Organisation, funding, staffing, and level of independence and authority
	5(d) – Avoiding conflict of interest
6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities and formal powers of procuring entities
	6(b) – Centralized procurement body
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology
	7(b) – Use of e-Procurement
	7(c) – Strategies to manage procurement data
8. The public procurement system has a strong capacity to develop and improve.	8(a) – Training, advice and assistance
	8(b) – Recognition of procurement as a profession
	8(c) – Monitoring performance to improve the system
PILLAR III	
9. Public procurement practices achieve stated objectives.	9(a) – Planning
	9(b) – Selection and contracting*
	9(c) – Contract management
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector
	10(b) – Private sector's organisation and access to the public procurement market
	10(c) – Key sectors and sector strategies
PILLAR IV	
11. Transparency and civil society engagement foster integrity in public procurement.	11(a) – Enabling environment for public consultation and monitoring
	11(b) – Adequate and timely access to information by the public
	11(c) – Direct engagement of civil society
12. The country has effective control and audit systems.	12(a) – Legal framework, organisation and procedures of the control system
	12(b) – Coordination of controls and audits of public procurement
	12(c) – Enforcement and follow-up on findings and recommendations
	12(d) – Qualification and training to conduct procurement audits
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals
	13(b) – Independence and capacity of the appeals body
	13(c) – Decisions of the appeals body



14. The country has ethics and anticorruption measures in place.	14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties*
	14(b) – Provisions on prohibited practices in procurement documents*
	14(c) – Effective sanctions and enforcement systems
	14(d) – Anti-corruption framework and integrity training
	14(e) – Stakeholder support to strengthen integrity in procurement
	14(f) – Secure mechanism for reporting prohibited practices or unethical behaviour
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules



Procurement System of Samruk-Kazyna

Pillar I - Legal, Regulatory and Policy Framework

The key strengths of this Pillar can be summarized as follows:

- Overall, the procurement legal and regulatory framework is comprehensive and well-defined and generally covers most aspects of a well-functioning public procurement system.
- Rules for advertising rules and time limits are clearly defined.
- Requirements for procurement documents and technical specifications are clearly defined in the legal and regulatory framework.
- According to the legal and regulatory framework, all procurement procedures have to be carried out through the e-procurement system.
- Implementing regulations are strong and provide guidance for procurers.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:

Gaps and recommendations Pillar I

Sub-indicator	Substantive Gaps	Recommended improvements
1(d) – Rules on participation	Competition in Samruk-Kazyna is hindered by a number of legal requirements restricting participation of suppliers. If not addressed, this will result in inefficient public procurement that does not achieve value for money: An extensive list of exceptions provides grounds for single sourcing and discourages the use of competitive procurement methods. Suppliers' access to the procurement market hindered by complex rules on participation, different lists, pre-qualification, provisional discounts, set-asides and preferences. There is no general prohibition on the artificial splitting of the contracts to avoid the usage of competitive methods (see sub-indicator 1(b)). Participation is hindered by "in-house procurement", which foresees that items in 424 categories are required to be purchased from companies within the Samruk-Kazyna holding. While this list has been reduced since February 2018, the number is still substantive.	Reduce exceptions that allow for non-competitive procurement. Introduce a legal prohibition for artificial contract splitting.
1(f) - Evaluation and award criteria	Award decisions are effectively based on price-based criteria. A system of discounts translates limited quality considerations	Clearly delineate eligibility, selection and award criteria.



	into price-discounts. Eligibility criteria reference technical specifications in a “pass/fail” approach. However, these legal requirements are not commensurate to the at times complex procurements conducted by Samruk-Kazyna, which require a balanced approach to quality and price considerations. Life cycle costing will be introduced through the standard on category management. There are no legal specifications on safeguarding sensitive information included in a bid, such as trade secrets.	Strengthen the use of quality considerations in award criteria: Change the legal requirements to allow for quality considerations as part of the award criteria, following international good practice for example on the basis of “Most Economically Advantageous Tender” (MEAT). Introduce measures that safeguard sensitive business information.
1(g) - Submission, receipt, and opening of tenders	Bids are not required to be opened right after the opening deadline but rather on a date and time envisaged in the documents; furthermore, there are no specific rules on the retention and future accessibility of the records of proceedings for bid opening and there is no specific prohibition of the non-announcement/protection of sensitive information from a business / trade perspective.	Require the bids to be opened immediately after the deadline for submission. In addition, a clear retention policy should be introduced, not only for the records of bid openings but also for all documents created during the procurement procedure. The publication of sensitive information could be prohibited.
1(h) – Right to challenge and appeal	The units in charge of reviewing appeals in Samruk-Kazyna have limited independence, due to the institutional arrangements in the Samruk-Kazyna holding that place this unit together with the institutional and operational oversight over procurement. The functions for control (audit) and appeals are located in the same unit and are not sufficiently differentiated, which adds to the lack of independence. In addition, rules contain gaps related to process, such as no specification of the deadline for submitting a challenge, no provision on suspending procedures, and no need for publication of appeals decisions.	Create a dedicated, independent review function within Samruk-Kazyna that is independent of both the operational oversight and policy making body for public procurement, as well as independent from the audit function. Clarify the rules for appeals procedures to include suspension, deadlines and publication of decisions.
2(b) – Model procurement documents for goods, works, and services	The assessment team was unable to identify neither model procurement documents nor standard contracting conditions in publicly available spaces as of December 31, 2018. In addition, such documents were not made available to the assessment team for review so that the corresponding sub-indicators could not be fully reviewed. Making these types of documents and clauses available to the public allows companies to better prepare	The newly approved Standard for Contract Management includes standard contracting conditions and model procurement documents, according to Samruk-Kazyna representatives. As part of its implementation, model procurement documents for all categories of procurement, as well as standard contracting
2(c) – Standard contract conditions		



	for tenders and establishes clear expectations that prevent wrongdoing.	conditions, should be made publicly available.
3(a) Sustainable Public Procurement (SPP)	Samruk-Kazyna's public procurement system makes no consideration of sustainability, be it in terms of a general policy or with regards to concrete procurements.	As a first step, Samruk-Kazyna could adopt a general strategy on sustainability to outline how sustainability could be considered in public procurement and how it could be implemented. Additional measures could include capacity building activities as well as the use of technical specifications reflecting sustainability considerations.

Pillar II - Institutional Framework and Management Capacity

The key strengths of this Pillar can be summarized as follows:

- The Methodology and Control Department as the normative function in Samruk-Kazyna's procurement system has a high standing within the holding and the government as a whole.
- E-procurement is mandatory to be used for all procurements, which is a great achievement that enables further progress in reforming the public procurement system.
- Samruk-Kazyna recently approved a certification mechanism for public procurers, which represents a step towards increased professionalization of the procurement function.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:

Gaps and recommendations Pillar II

Sub-indicator	Substantive Gaps	Recommended improvements
4(b) – Financial procedures and the procurement cycle	In exceptional circumstances, contracting entities in Samruk-Kazyna can start a procurement procedure when the budget is preliminarily approved (i.e. before the formal approval). Contracts can only be signed after the formal approval, which means that there is no guarantee that procurement processes result in an award.	Limit the number of cases in which procurements can be launched without formal budget approval and consider allowing multi-annual procurement cycles for recurring needs. To implement these changes successfully, increase the staff's capacity to plan procurements.
5(c) Organisation, funding, staffing, and level of independence and authority	According to stakeholders, staffing of the Procurement Methodology and Control Department is not adequate to the functions entrusted to it. This might affect the quality of delivering the assigned tasks.	The leadership of Samruk-Kazyna could ensure adequate staffing of the Procurement Methodology and Control Department.
5(d) – Avoiding conflict of interest	Policy making, review (appeals) function and audit (control) function	Checks and balances rely on independent institutions. The



	are located in the same unit. This overlap in responsibilities can result in an institutional conflict in implementation, which is why good international practice suggests separating these functions.	functions of policy making, operations, appeals and control should be separated as much as possible. At minimum, an independent appeals body to hear and decide suppliers' complaints should be established.
6(a) Definition, responsibilities and formal powers of procuring entities	No information about the number of contracting authorities in Samruk-Kazyna was available to the assessors. While de facto, decision making power is delegated, the assessors were unable to identify specifications about delegation of decision making authority in the legal and regulatory framework.	The leadership of Samruk-Kazyna could gather statistics and information about the procurement units within its structure. The legal and regulatory framework could describe the rights and obligations of the procurement unit and responsible units with regards to decision making. It is also recommended to adopt a risk-based approach, balance the necessity for approval with the involved risk and monetary sums.
7(a) – Publication of public procurement information supported by information technology	Access to procurement information is relatively restricted and not available to the general public: Procurement information is generally available only for registered users in the e-procurement system. In order to register, interested parties have to a) possess a Kazakh tax number, or b) register through a fee-based system. This practice has implications for several aspects of the public procurement system: a lack of transparency has negative implications for integrity and accountability, as well as on competition.	Increase the transparency of the procurement system by making information throughout the procurement cycle more widely available.
7(c) Strategies to manage procurement data	The assessors were unable to verify information on data management strategies provided by Samruk-Kazyna due to a lack of access to information. No annual procurement report could be found online.	It would be advisable to publish annual procurement reports, introducing aggregated data for the procurement of Samruk-Kazyna and its subsidiary companies.
8. The public procurement system has a strong capacity to develop and improve	Samruk-Kazyna's certification programme does not speak to substantive, permanent trainings and the organisation does not provide for permanent training programmes. There is no advisory service or training for suppliers or the general public. No training strategy exists.	Samruk-Kazyna could establish clear rules on substantive, permanent training programmes as part of the efforts to certify procurers, starting with a training needs assessment of all its employees involved in procurement transactions. Based on the results, procurement training strategy should be developed which



	Procurement is not recognized as a profession. The existing framework does not speak to the question whether and how certification translates into appointment, promotion and continuous development. While past data is reportedly being used for decision making, the assessment team was unable to identify any consistent performance monitoring system based on performance indicators that would inform decision-making or improvements of the procurement system. A range of information is likely available through the e-procurement system. Not to use this information to conduct strategic decision-making puts the long-term efficiency and effectiveness of the procurement system at risk. In addition, the lack of objective, transparent indicators to measure success creates vulnerabilities.	in its turn will serve as a basis for the permanent training program. This training programme should be routinely evaluated and amended based on the needs of the stakeholders. Advisory services advisory services not only for contracting authorities but also for suppliers and for the public in general should be provided. The changing context created through the certification programme could be used to make appointments and promotions more competitive and ground them in a structured career path. Appointments and promotions could be based on the results achieved by the procurers during the qualification and certification programme. Create and publicise performance indicators and analyse them with available data. Publish the results of the analysis. Track progress from year to year by repeatedly using consistent indicators.

Pillar III - Public Procurement Operations and Market Practices

The key strengths of this Pillar can be summarized as follows:

- Wide use of e-procurement provides a promising basis to monitor and enhance procurement performance.
- The private sector is organised to some extent, with an important coordination and engagement role played by the National Chamber of Commerce Atameken.
- Samruk-Kazyna plans on introducing a pool of pre-qualified suppliers, a system which has model character for the Kazakhstan public procurement system as a whole.
- Subsidiaries within the holding develop sector strategies.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:



Sub-indicator	Substantive Gaps	Recommended improvements
9(a) – Planning	The assessment team was unable to conduct a full assessment of this indicator, as Samruk-Kazyna did not grant access to data or sample cases to conduct an analysis of the performance of the procurement system. That said, as detailed below, assessors assigned a red flag to this indicator given that current procurement practices do not appear to achieve value for money. According to stakeholder interviews, several tasks are not regularly conducted, including needs analysis, consideration of sustainability considerations, determination of best value for money, incentives for improved performance, civil society engagement. The assessment team was unable to determine whether a range of other aspects mandated by the assessment criteria were adhered to, including the quality of procurement and bidding documents; participation of civil society and bidders; evaluation, selection and award practices; and contract management practices. Data available in previous publications indicates that 86.5% of the overall procurement volume is procured using the “single source” method,¹¹ which indicates a low level of competition in the procurement system. This fact in itself represents a red flag. The only procurement documents available to the assessment team were from the second-tier subsidiary “KazAutoZhol”, whose shares are owned by the Samruk-Kazyna subsidiary Kazakhstan Temir Zholy for trust management. The assessed cases	Two types of interventions are recommended: a) conduct performance analysis, using the information from the e-procurement system, and make results publically available. In case necessary, the way information is stored in the e-procurement system could be amended to facilitate analysis. b) increase the capacity of the procurement workforce to reach a higher level of compliance with rules, as well as better value for money.
9(b) – Selection and contracting		
9(c) – Contract management		

¹¹ OECD Anti-Corruption Network for Eastern Europe and Central Asia (2017), Anti-Corruption Reforms in Kazakhstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>.



	largely confirmed the findings of the assessment team about the lack of documentation related to the contract management stage, lack of aggregated data and statistics and high level of cancelled procedures.	
10(b) – Private sector’s organisation and access to the public procurement market	Several findings point to hindrances in access for certain supplier groups, which, as a whole, suggests substantial hindrances to competition. According to stakeholder interviews, suppliers perceive Samruk-Kazyna’s procurement market to be a field largely for companies within the holding, with limited opportunities for external companies. There is limited diversity in the private sector’s organisation, with most activity and engagement taken up by Atameken. Foreign suppliers are at a disadvantage compared to domestic suppliers, given the fee-based system to access the e-procurement system which does not exist for domestic suppliers.	Aim at increasing competition within Samruk-Kazyna’s public procurement market. Introduce additional avenues for engaging suppliers and building their capacity, while maintaining high integrity standards. Publish more information on procurements to allow potential suppliers to prepare. Encourage diversity in supplier’s organisations and engagement.

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

The key strengths of this Pillar can be summarized as follows:

- The use of e-procurement has contributed to a relative improvement of transparency of the government public procurement system.
- The main cornerstones of an audit and control framework are in place.
- First, promising steps are undertaken to engage civil society.
- The most important elements of an anti-corruption framework are in place.

The substantial gaps identified by the assessment and corresponding recommendations for possible improvement actions are summarized in the table below:



Sub-indicator	Substantive Gaps	Recommended improvements
11. Transparency and civil society engagement foster integrity in public procurement	Changes to the policy framework are not based on a transparent process, as evidenced by the most recent reform. While some engagement of civil society took place, this engagement remained limited to Atameken. There was no evidence that feedback was taken into account; capacity building measures for civil society do not seem to be widely known where they exist. Overall, given these findings, there does not appear to be an enabling environment for public consultation and monitoring. Despite far-reaching rules mandating wide publication of detailed public procurement information, the assessment team was unable to access a large share of these types of information. Partly, this seems to be linked to hurdles to registering for the e-procurement portal (see pillar II). This represents a serious lack of transparency from the perspective of the general public, which has results for effectiveness and efficiency of the public procurement system. While formally, civil society is allowed to participate in public procurements, the assessors were unable to determine to what extent the participation really takes place.	Contribute to an active civil society by advertising capacity building efforts. Aim at including more than one organisation in consultations. Devise a forum for discussing changes to the legal and regulatory framework with integrity. This assessment criterion is linked to other indicators across the MAPS indicator framework, and recommendations follow accordingly: procurement information should be published widely and for the general public along the procurement cycle and in analytical form as appropriate. Representatives of civil society could be involved in all stages of procurement process.
12. The country has effective control audit systems	A de-facto verification of the quality of audit rules and processes was not possible. Samruk-Kazyna did not provide access to the rules, standards, guidance and manuals or any other documents regulating audit within Samruk-Kazyna beyond publically available documents. In addition, the assessment team did not have access to any quantitative information on audits, or insight into audit case files to verify outcomes, enforcement or timeframes. Notably, the assessment team was unable to establish whether there is independent, external oversight over audit within Samruk-Kazyna. In addition, there is no specific consideration of public procurement in	In order to comply with this indicator, substantial changes to the audit structure should be undertaken. Samruk-Kazyna could consider further separating the audit function from the day-to-day operations of the fund, notably the public procurement function. More information about audits, associated rules and standards, as well as data about their implementation and enforcement should be made available or collected where this is not yet done. Audit structures and auditors should be equipped with a “public procurement lens”, i.e., mechanisms should be introduced



	the audit function; no training or specific guidance is available.	to the audit toolbox that take account of the specific aspects of public procurement, and auditors should receive specific training on public procurement.
13(b) – Independence and capacity of the appeals body	The assessors were unable to definitely determine the roles and responsibilities with regards to appeals procedures due to a lack of access to rules on the appeals function. The Procurement Methodology and Control Department assumes the role of appeals body, while also being responsible for a range of other tasks that might interfere with the independence needed for a review body. In addition, the capacity of the Procurement Methodology and Control Department seems limited, and it did not appear plausible how all these different functions can be completed by such a limited number of staff.	Clarify roles and responsibilities with regards to the appeals procedure and establish them in an independent unit unrelated to regular procurement policy making and control. Equip the appeals unit with sufficient capacity.
13(c) – Decisions of the appeals body	The assessment team did not have access to any information, files or documents that provided insight on the practical implementation of the rules on the appeals mechanism. None of the appeals decisions are publicly available. Therefore, no evaluation of the quality of the decisions of the appeals body was possible.	Publish decisions of the appeals body in line with international good practices.
14(c) – Effective sanctions and enforcement systems	While there are indications on national level that the enforcement of anti-corruption legislation does take place, Samruk-Kazyna as a holding does have some gaps with regards to effective sanctions and enforcement systems. Assessors were unable to identify a reporting protocol, evidence of enforcement or a debarment regime.	Introduce clear guidance on reporting misconduct related to corruption – internally in Samruk-Kazyna and then externally to the authorities. Introduce and apply a debarment system that considers integrity offenses (possible to link it to the supplier blacklist.) Publish information on the identification and prosecution of integrity-related offenses.
14(d) – Anti-corruption framework and integrity training	Samruk-Kazyna largely falls under general anti-corruption framework of Kazakhstan as a whole. However, similar to other international holdings, Samruk-Kazyna could benefit from employing an integrity framework specific to the risk profile of the organisation. Samruk-Kazyna is largely lacking a comprehensive anti-corruption framework that includes preventative measures.	Identify corruption risks in the area of public procurement in Samruk-Kazyna and implement a preventative framework to mitigate these risks.



14(e) – Stakeholder support to strengthen integrity in procurement	The assessors did not find evidence to indicate that external stakeholders were involved in procurements to strengthen integrity. Failure to involve civil society (as relevant) in for example complex procurement processes can result in less accurate needs assessments for the end user, and in turn low value for money. In addition, civil society can have the role of an “integrity watchdog” to concretely prevent corruption in all phases of the procurement cycle.	Begin to increasingly involve civil society in more complex procurements with a high impact on local communities. Aim at involving citizens irrespective of associations. Strengthen the capacity of civil society organisations to participate in and monitor public procurement processes.



Public procurement system of Samruk-Kazyna: Overview of compliance with MAPS indicators

- Green = full compliance
- Yellow = gaps identified
- Red = Substantial gaps identified

*Red flags identified

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



PILLAR II	
4. The public procurement system is mainstreamed and well integrated into the PFM system.	4(a) – Procurement planning and the budget cycle
	4(b) – Financial procedures and the procurement cycle
5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory institution function
	5(b) – Responsibilities of the normative/regulatory function
	5(c) – Organisation, funding, staffing, and level of independence and authority*
	5(d) – Avoiding conflict of interest
6. Procuring entities and their mandates are clearly defined.	6(a) – Definition, responsibilities and formal powers of procuring entities
	6(b) – Centralized procurement body
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology*
	7(b) – Use of e-Procurement
	7(c) – Strategies to manage procurement data
8. The public procurement system has a strong capacity to develop and improve.	8(a) – Training, advice and assistance
	8(b) – Recognition of procurement as a profession
	8(c) – Monitoring performance to improve the system*
PILLAR III	
9. Public procurement practices achieve stated objectives.	9(a) – Planning*
	9(b) – Selection and contracting*
	9(c) – Contract management*
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector
	10(b) – Private sector's organisation and access to the public procurement market*
	10(c) – Key sectors and sector strategies
PILLAR IV	
11. Transparency and civil society engagement foster integrity in public procurement.	11(a) – Enabling environment for public consultation and monitoring*
	11(b) – Adequate and timely access to information by the public*
	11(c) – Direct engagement of civil society
12. The country has effective control and audit systems.	12(a) – Legal framework, organisation and procedures of the control system*
	12(b) – Coordination of controls and audits of public procurement*
	12(c) – Enforcement and follow-up on findings and recommendations
	12(d) – Qualification and training to conduct procurement audits
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals*
	13(b) – Independence and capacity of the appeals body*
	13(c) – Decisions of the appeals body*
14. The country has ethics and anticorruption measures in place.	14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties



	14(b) – Provisions on prohibited practices in procurement documents
	14(c) – Effective sanctions and enforcement systems*
	14(d) – Anti-corruption framework and integrity training*
	14(e) – Stakeholder support to strengthen integrity in procurement*
	14(f) – Secure mechanism for reporting prohibited practices or unethical behaviour
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules



Recommendations for Improvement Priorities

The recommendations emerging from the application of the MAPS, both for the general government public procurement system as well as for Samruk-Kazyna's procurement system have identified several key areas for improvement the details of which have been highlighted in the relevant sections and volumes of this report. The present section summarizes the critical areas that need to be improved urgently given their impact on the performance of the two procurement systems. However, setting the sequencing to implement the recommended improvement activities to address key weaknesses in the two assessed systems would be left the discretion of the GOK. The validation process would offer the opportunity for the GOK and participating development partners to explore possible ways and means to support the recommended actions plan.

Improvement priorities for the public procurement system.

The MAPS assessment identified the following seven priorities areas for improvement:

- I. **Legal framework Coverage:** the scope of application of the PPL is limited and the lack of uniformity and universality of the legal framework coverage appear not contribute to predictability and savings in the operation of the procurement system. **In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible.** In this respect, consideration should be given to international practices which show that entities like National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework.

To better inform such future reforms, the Government should undertake a comprehensive study taking stock of the existing procurement rules applied by each of the excluded entity, assess the performance of these entities whether they achieve value for money while ensuring transparency and fair competition.

- II. **Rules on participation:** Revise the current requirements for the access to e-procurement system and participation to bidding such as the requirement for electronic digital signature and the obligation to furnish a bid security only in the form of an electronic bank guarantee, through an account opened in one of the commercial banks of the Republic of Kazakhstan to ensure proper alignment with the PPL which professes open eligibility to all bidders.

GOK is recommended to consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential foreign bidders to obtain digital signature certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.

- III. **Procurement methods:** Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better value for money and substantial gains in service delivery. Amendments could include (a) making open tender a default method; (b) more clearly specifying the conditions



for the use of each procurement method; (c) reducing further the circumstances for the use of single source procurement; and (d) introducing framework agreements.

- IV. **Evaluation criteria and support to value for money.** Improve the current approach for application of evaluation criteria based on allocating conditional discounts to bid prices for meeting additional qualifications to ensure achievement of better value for money procurement decisions.

Consider improving the use of price and non-price criteria and their evaluation methodologies including combination of weighted quality and price. Revise the relevant provisions of the PPL as recently amended and public procurement regulations (PPR) to bring clarity on various aspects of evaluating bids, including preserving confidentiality of parts of the bid that the bidder does not want to be disclosed to competitors.

- V. **Contract management and performance monitoring:** Ensure moving the public procurement system to the next level in terms of quality and performance will require further strengthening of contract management performance measures and monitoring through (a) better definitions by legal framework of roles and responsibilities for contracts management, and (b) setting requirements for measuring contract implementation performance including KPIs.
- VI. **Professionalization:** Preparing a public procurement skills gap inventory and a training needs analysis. This would inform capacity building and professionalization of the procurement function, possibility in partnership with local higher education institutions. The establishment of an institutionalized and sustainable procurement capacity-building program would represent a major benefit to Kazakhstan's procurement workforce and civil service in general and would have a positive impact on the overall efficiency of public sector operations.
- VII. **Integrity and accountability:** Consider targeted measures to address corruption risks in public procurement. Some legal changes, such as revisions to the anti-corruption law as well as revisions to the procurement legal and regulatory framework, could ensure that corruption risks in the public procurement process are adequately captured by the legal and regulatory framework. In addition, practical guidance for procurers on preventing and reporting misconduct could be expanded.

Improvement priorities for Samruk-Kazyna's public procurement system

The MAPS assessment identified the following eight priorities areas for improvement:

- I. **Legal and Regulatory Framework:** It could be explored to what extent a unified public procurement framework for Kazakhstan would be beneficial. This could be beneficial also for Samruk-Kazyna as it could enhance competition and facilitate access for all interested companies to procurement opportunities.

Samruk-Kazyna could consider including missing aspects in its legal and regulatory framework, such as changing the rules in a way to promote sustainable and strategic procurement, clarifying the legal hierarchy of norms and evaluating the need to regulate PPPs. An important measure would also be to review and reduce the number of exceptions for open tendering currently permitted by the law, in order to enhance competition. Additional changes might be needed in the area of regulating bid opening, rules for information retention and for the review function.

- II. **Competition:** To enhance competition, Samruk-Kazyna could make efforts to eliminate preferences and set-asides. Increasing transparency is important as a prerequisite for fair competition. Aside from increasing trust and enabling civil society to engage in public



procurement, procurement information could allow potential suppliers to prepare and improve their submissions, resulting in better outcomes for the contracting authorities.

Samruk-Kazyna should make efforts to increase and diversify their supplier base to ensure access to the best value for money. As part of these efforts, Samruk-Kazyna could also devise activities to train and engage suppliers, while maintaining high integrity standards.

- III. **Strategic procurement practices:** As part of an effort to increase the performance of public procurement, Samruk-Kazyna could undertake efforts to make public procurement more strategic and sustainable, for example by devising a strategy on sustainability in its broadest sense (i.e., balancing the economic, social and environmental effects of public procurement.)

Samruk-Kazyna could conduct performance analysis, using the information from its e-procurement system, and make results publically available. The way information is stored in the e-procurement system could be amended to facilitate analysis. Monitoring of key performance indicators (KPIs) can be a useful way to identify opportunities to increase performance. This area is also amenable to capacity building initiatives.

In implementing these measures, a focus should be placed on the market analysis and planning stage, as well as the contract management stage. These were areas that exhibited particular challenges.

- IV. **Contract management and performance monitoring:** Special emphasis in all measures should be given to how contracts are managed. Beyond improving performance, this relates to evidence-based monitoring of contract performance. KPIs should be used to monitor performance of all procurements; analysis should be undertaken and published. The reporting mechanism in the general public procurement framework could be expanded to cover completion of major contracts, including details on payments and other performance aspects such as time and cost overruns. As part of these efforts, attention should be paid to the links between contract implementation and budget execution, streamlining the two wherever possible and limiting cases in which procurements are launched without formal budget allocation.
- V. **Professionalization:** Samruk-Kazyna could expand its successful professionalization efforts by developing a more structured approach to professionalization, including a procurement training strategy which can serve as a basis for structured professionalization programme. The programme should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions and other relevant topics. A full-fledged certification programme for procurers with diversified and targeted offers, linked to career trajectories should be part of this programme.
- VI. **Institutions, tools and strategies:** The current efforts to introduce tiered prequalification processes can be coupled with efforts to centralise those items in the more standardised categories. Considerable economies of scale could be achieved by using modern techniques combined with partial centralisation. Two stage procedures could be more widely used. Samruk-Kazyna's public procurement system suffers from institutional arrangements that limit the institutional independence of crucial actors in the public procurement system. The responsibility for policy setting internal to the holding should be separated from the task of overseeing the appeals, review and audit functions.
- VII. **Integrity and accountability:** Samruk-Kazyna could benefit from a risk-based approach to corruption, identifying specific risks in the area of public procurement and implementing strategies to mitigate these risks. In the area of control and audit, rules need to be clarified and the institutions (see above) structured in a way to allow for effective checks and balances.



A specific debarment system could be introduced that takes into account integrity offenses (possible to link it to the supplier blacklist.)

VIII. **Civil society & engaging the public:** This aspect is linked to other areas mentioned above and an area of concern for both procurement systems. For Samruk-Kazyna specifically, efforts should be undertaken to increase transparency of its procurement operations. In publicizing more information, Samruk-Kazyna could adopt the Open Contracting Data Standard (OCDS) to increase transparency and facilitate civil society oversight. Finally, civil society could be increasingly involved in more complex procurements.



1. Introduction

1. **Following a request of the Government of Kazakhstan (GoK) to assess both its general public procurement system (PPS) and the procurement system of the Sovereign Wealth Fund Samruk-Kazyna, using the revised MAPS, GoK and a coalition of international partners, led by the World Bank, the Organisation for Economic Cooperation and Development (OECD) with the European Bank for Reconstruction and Development (EBRD), Islamic Development Bank (IsDB), and Asian Development Bank (ADB) launched the assessment in April 2018. The timing of the assessment aligns with the objectives of Kazakhstan Strategic Plan 2050 which depends on optimal and effective use of public resources. The Strategic Plan's objectives, in turn, align with the OECD Recommendation of the Council on Public Procurement, the Sustainable Development Goals (SDGs), and the World Bank Group's (WBG) Systematic Country Diagnostic for Kazakhstan.**
2. **The main objective of the assessment is to support Government of Kazakhstan's (GoK's) efforts to further improve the quality and performance of public procurement.** The main objective is to assess whether the core principles of public procurement, including value for money, economy, integrity, fitness for purpose, efficiency, transparency and fairness are achieved for the entire public procurement system under the procurement framework. The assessment supports these efforts by identifying gaps in the system's performance and recommending ways to address them. The proposed recommendations aim at achieving a sound public procurement system that contributes to increasing public trust and enhances the nation's prosperity through transparency, fairness, value for money and good governance in the use of public resources.
3. **The scope and methodology of the assessment were designed to** (a) identify strengths and weaknesses of the public procurement system, their relative importance, and major risks and their likely consequences for the efficiency of the system; (b) identify any Substantial gaps that negatively impact the quality and performance of the PPS; (c) identify and recommend actions to strengthen the system; and (d) form the basis for elaboration of a strategy and reform action plan to continuously improve the quality and performance of the public procurement system.
4. **The assessment was jointly led by Ministry of Finance of Kazakhstan (MoF), referred to as the Authorizing Body, by the World Bank and by the OECD/EBRD, and was conducted by a team comprising the most active international partners in Kazakhstan, including the World Bank, Islamic Development Bank (IsDB), Asian Development Bank (ADB), the EBRD and the OECD. The multidisciplinary team included the organisations experts in procurement, governance, legal, financial management, e-procurement, and corporate finance. Under the leadership of MoF, the team established close collaboration with all relevant government institutions, private sector actors and civil society organizations (CSOs).**

Summary of the assessment period

- i. **Initiation workshop** held in March 2018 in Astana.
- ii. **Data collection process** – from March to April 2018 on Government Public Procurement System and SK' procurement system from all open and available sources.
- iii. **Main assessment mission** – From April 17 to August 1, 2018 – led by World Bank for the assessment of the Government Public Procurement System. OECD led SK's procurement system.
- iv. **First Draft Report on MAPS assessment of Government public procurement system** prepared by WB team on Dec. 7, 2018 and circulated for comments to ADB (Dec. 13, 2018); IsDB (Dec. 7, 2018); EBRD (Dec. 13, 2018); OECD (Dec. 12, 2018).
- v. **First Draft Report on MAPS assessment of SK procurement system** prepares and submitted for WB comments on April 9, 2019. The WB's comments on the draft were discussed with OECD and EBRD in Tashkent in the margin of 15th PRIMO Forum.
- vi. **Revised consolidated KZ MAPS draft Report** – finalized end of May 2019.

Main reasons for delay occurred in the delivery of the first KZ MAPS draft report:

- As per initial deliverable schedule (Concept Note attached), the final KZ MAPS report was planned for December 2019. However, while the team was about to finalize the draft report, the GOK enacted an amendment of the PPL as well as an amendment of the SK Law on December 26, 2019. This has mandated the modification of the deliverable schedule to allow the KZ MAPS teams (WB and OECD) to update the assessment in view of the amendments that were effective January 2019.
- Also, there were delays in completion of the assessment by OECD team of the procurement system the Sovereign Wealth Fund Samruk-Kazyna mainly due to limited access to the relevant procurement data in Samruk-Kazyna. The review teams (WB and OECD) had to adjust the timetable for consolidated report finalization accordingly.



5. **The assessment was launched at an initiation workshop held in March 2018 in Astana,** attended by key procuring agencies, private companies, industry associations and non-government organizations (NGOs). The workshop helped establish a common understanding of the assessment's objectives and the use of the MAPS core tool—comprising 4 pillars, 14 indicators and 55 sub-indicators—to take a snapshot of the country's public procurement system and how it compares to internationally accepted procurement principles and practice.
6. For the government procurement system, the qualitative analysis focused on the legislative framework and institutional structure of the PPS. The quantitative analysis looked at (a) 150 randomly selected public procurement transactions and contracts; and (b) online survey responses from private sector actors and NGOs.
7. The sovereign wealth fund Samruk-Kazyna represents a major part of the procurement system in Kazakhstan and accounts for the vast majority of public procurement spending. Therefore, since its conceptual design, the MAPS assessment aimed at evaluating the national procurement systems in the country. Therefore, considering the nature of public procurement in Kazakhstan, with a clear dual system (Government Procurement and Samruk-Kazyna), any MAPS assessment of public procurement in the country needs to incorporate a MAPS-based analysis of the Samruk-Kazyna public procurement system from the start. For this reason, the MAPS assessment team did not consider using any of the MAPS modules that could eventually apply, namely the Entity Level one.
8. Samruk-Kazyna's leadership supported the MAPS assessment through interviews and the provision of information, although limited. Additional information was provided as part of the validation of the assessment. However, all in all, the assessment team did not have sufficient access to information, data or systems to conclude the assessment of all issue areas to the fullest extent. Samruk-Kazyna representatives did not provide access to procurement data or sample cases, despite repeated requests by the assessment team. Similarly, Samruk-Kazyna did not share vital documents or access for the analysis, such as rules are about the audit, control and appeals framework or access to full functionalities of the e-procurement system. That means that it was not possible to conclude the assessment of a) the e-procurement system, b) procurement performance, c) the audit and control framework, and d) the appeals system to the fullest extent.
9. The concept note for this MAPS assessment anticipated the risk that the assessment team would not have access to necessary data and information. The report presents conclusions based on review of secondary data sources, as well as interviews with: a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy. Nevertheless, from a purely conceptual point of view, it might be considered incomplete without the access to data or a meaningful sample of procurement documents. As a result, the assessment team recommends that for policy decisions touching upon Samruk-Kazyna, an additional assessment be undertaken to allow for evidence-based policy making.
10. In addition, Samruk-Kazyna provided commentary on the assessment, which also details additional progress made since the cut-off date for this assessment (December 2018). This final report incorporates these comments wherever they pertain to the findings before the cut-off date in December 2018. Other comments related to the situation of Samruk-Kazyna's procurement system after the cut-off date of 31 December 2018 and could therefore not be



reflected in the assessment as such. However, the commentary is annexed to this assessment in order to reflect the progress made by Samruk-Kazyna to date as part of its ongoing reform.

11. **The results of the MAPS assessment are presented in two volumes. Volume 1** reviews procurement governed by the Public Procurement Law (PPL) and related regulations. **Volume 2** reviews procurement governed by separate procurement rules and regulations used by the Sovereign Wealth Fund Samruk-Kazyna.
12. The MAPS assessment covers the Kazakhstan public procurement system governed by the PPL enacted in 2015 along with related regulations, the amendment to the PPL enacted in December 26, 2018, and subsequent changes to the regulations and procedures that were put into effect between January and March 2019. The assessment of SK procurement system covered the current separate rules and regulations and does not cover the changes to public procurement of SK that will enter into force in January 2020 as envisaged by the amendments to the Law “On the Fund of National Welfare” enacted in December 26, 2018.

2. Analysis of Country Context

2.1. Political, economic and geostrategic situation of the country

13. **Kazakhstan is the ninth-largest country in the world by area and the largest landlocked country.** It has a territory of roughly 2.7 million square kilometres (1.04 million square miles) and a population of about 18.0 million. Kazakhstan shares borders with Russia, China, Kyrgyzstan, Uzbekistan, and Turkmenistan, and adjoins a large part of the Caspian Sea. Kazakhstan's neighbours, namely Russia and China historically constituted major centres of economic and political activity. The country consists of 14 regions, subdivided into 177 districts. The population consists of around 125 nationalities, with Kazakhs and Russians accounting for the largest segments, roughly 68 and 20 percent, respectively.
14. **According to official statistics, Kazakhstan's gross domestic product (GDP) in 2017 was USD 162.9 billion.**¹² Annual GDP growth was 4.0 percent in 2017, up significantly from 1.1 percent for 2016. The main factors for growth were the slight increase in oil and metal market prices in 2016-2017 and increased trade with the EU, Russia and China. With oil prices projected to reach US\$65, on average, during 2018-20, the current account balance is projected to improve during those years. GDP growth is expected to reach 3.7 percent in 2018 due to higher oil prices and output. Kazakhstan continues to entertain the ambition to achieve OECD standards within the framework of the OECD Kazakhstan Country Program, first launched in 2015 and renewed in November 2018.¹³
15. **Kazakhstan's medium-term economic outlook faces potential risks from both external and domestic factors.** The economy's vulnerability to external shocks remains the primary challenge to achieving stable and sustainable development. External demand from China and Russia, Kazakhstan's main trading partners, as well as global oil demand and prices, will remain



¹² Committee on Statistics of the Ministry of National Economy, Republic of Kazakhstan.

¹³ <http://www.oecd.org/eurasia/countries/kazakhstan.htm>



the key external factors impacting Kazakhstan's economic performance. Local factors include the pace of implementation of structural and institutional reforms, especially in anticipation of a political transition over the medium term, as well as the potential worsening of problems in the banking sector.

16. **Over the past two decades, Kazakhstan has executed fundamental reforms aimed at building the foundations of a “socially oriented market economy”.** The World Bank ranked Kazakhstan 91st out of 193 countries on its Governance Effectiveness Index in 2016,¹⁴ and 28th in its Doing Business Survey of 2019.¹⁵ Kazakhstan also ranked 39th out of 193 countries in the United Nations' E-Gov Development Index in 2018.¹⁶ The GoK is working to improve the business environment in all regions of the country. The recent Doing Business Survey provided the Government with feedback from the business community and helped it to fine tune the design of business regulatory reforms.
17. **The Constitution of the Republic of Kazakhstan, adopted on August 30, 1995, serves as a framework for the development of legislation and the establishment and evolution of State institutions.**¹⁷ The latest amendments of March 10, 2017 transferred several powers from the Presidency to the Parliament. This action aimed at strengthening the legislative branch by giving it more decision-making authority. Nevertheless, the institution of the President remains the driving force in determining development priorities, while the Parliament is the supreme legislative body of the country. It consists of two chambers: The Senate and the lower house, the *Mazhilis*, whose members discharge their mandate on a permanent basis. Regional public administrations consist of regional representative bodies, known as *Maslikhats*, and are responsible for their respective territories (village, rural district, district, city, region/oblast). *Akimats* are part of a unified system of the executive bodies of Kazakhstan and ensure implementation of general State policy in conjunction with the interests and development needs of their territories.
18. **Kazakhstan plays an active role in regional cooperation and is a member of several regional and international organizations.** These include the Commonwealth of Independent States (CIS), Eurasian Economic Union (EEU), and the Shanghai Cooperation Organization (SCO). The country also engages in regional security dialogue with the Association of Southeast Asian Nations (ASEAN), Collective Security Treaty Organization (CSTO), and Euro-Atlantic Partnership Council (EAPC). Kazakhstan held the chairmanship of the Organization for Security and Co-operation In Europe (OSCE) in 2010. The country became a full-fledged member of the Organization of Islamic Cooperation (OIC) in 1995, and in 2011 hosted the OIC's 38th session. Kazakhstan is also a member of several other international organizations, including the Economic Cooperation Organization (ECO), the European Bank for Reconstruction and Development (EBRD), the World Tourism Organization (UNWTO), International Organization for Migration (IOM), the World Bank, the International Monetary Fund (IMF), the Asian Development Bank, the Islamic Development Bank and some others.
19. **The GoK has made good progress in bringing national anti-corruption legislation in conformity with the basic provisions of international anti-corruption agreements.** Kazakhstan has ratified the United Nations Convention against Corruption (May 4, 2008); the United Nations Convention against Transnational Organized Crime (June 4, 2008); and the Council of Europe's Convention on Laundering, Identification, Seizure and Confiscation of the

¹⁴ The World Bank, Governance Effectiveness Index, 2016.

¹⁵ The World Bank, Doing Business Survey, 2019.

¹⁶ United Nations, E-Gov Development Index, 2018.

¹⁷ Constitution of the Republic of Kazakhstan, August 30, 1995, with changes and amendments.



Proceeds from Crime (May 2, 2011). Kazakhstan is ranked 122nd out of 180 countries in Transparency International's 2017 Corruption Perception Index.¹⁸ In alignment with the UN conventions on corruption and as part of the Kazakhstan 2050 Strategy, the country adopted the Law on Anti-Corruption in 2015, a package of legislation aimed at implementing the anti-corruption policy of the Republic of Kazakhstan through 2025.

2.2. The Public Procurement System and its links with the public finance management and public governance systems

20. The public procurement of goods works and services through the e-procurement system amounted to US\$6 billion, or 4 percent of GDP, in 2017. This figure does not include procurement expenditures by the National Welfare Fund SK, national asset holding companies, and other national companies such as state-owned enterprises (SOEs), which are governed by a separate set of rules and regulations. The procurement expenditures of Samruk-Kazyna alone were an estimated US\$14,6 billion in 2017, bringing the total volume of State procurement expenditures to US\$21 billion, or 13 percent of GDP. The most recent figure for its procurement volume provided by Samruk-Kazyna relates to 2016 and accounts for USD 12 billion (8% of GDP). The estimate for 2017 is based on publicly available public procurement plans). Since adoption of the first Public Procurement Law, based on the Model Law of the UN Commission on International Trade Law (UNCITRAL), in 1997, the GoK has made a continuing effort to develop the public procurement system and comply with international standards. The current PPL was adopted in 2015, primarily to comply with the requirements of the Eurasian Economic Union (EEU) Treaty on Public Procurement. As a member of the EEU, Kazakhstan had the obligation to adapt its PPL to comply with the treaty, particularly with regard to (a) ensuring optimal and efficient expenditure of funds used for procurement in the member States; (b) granting national treatment in procurement to member States; (c) ineligibility of third countries to more favourable treatment than that accorded to member States; (d) ensuring openness of information and transparency of procurement; (e) ensuring unhindered access of potential suppliers and suppliers from member States to participate in procurement conducted electronically, through the mutual recognition of electronic signature designed in accordance with the legislation of a member State.
21. **However, the current legal and regulatory framework does not cover all public procurement.** It excludes: (a) procurement expenditures by Samruk-Kazyna and by organizations in which Samruk-Kazyna has a 50 percent or more controlling interest; (b) the National Bank of Kazakhstan (the central bank) and the departments and organizations included in its organizational structure, and legal entities in which the NB has a 50 percent or more controlling interest or are under trust management of the NB, and legal entities affiliated with them; (c) national asset management holding companies, national holdings, national companies (as defined in the Property Law), and organizations in which a national company has a 50 percent or more controlling interest, either directly or indirectly; and (d) SK-Pharmacia LLP and public health care institutions that procure pharmaceuticals, medical equipment and materials for free medical treatment at public hospitals and clinics for certain segments of the population.

¹⁸ Transparency International, Corruption Perception Index, 2017.



22. Kazakhstan's public procurement system has been the subject of several assessments and diagnostic works by international organizations and international financial institutions (IFIs).¹⁹ These reports highlighted the launching of the e-procurement system in 2010 and its continued development to reach the level of a mandated comprehensive and integrated national public procurement web portal on January 1, 2016. However, nearly all also emphasized the need to (a) eliminate or reduce the PPL's numerous exemptions for SOEs, or adopt separate SOE legislation that is transparent, conducive to fitness for purpose and better value for money; (b) reduce the high volume of non-competitive procurement; (c) further modernize the public procurement framework; (d) remove or reduce barriers to participation by foreign bidders; and (e) establish an independent complaints review body. The Public Expenditure and Public Accountability (PEFA) report²⁰ highlights the impact of these issues on the low performance of the PPS.
23. **The GoK is increasingly creating opportunities for linking the PPS to the PFM and governance systems** through public participation in decision-making and monitoring of budget execution. Public Councils, created as part of the Government's 100 Steps agenda,²¹ are the main instrument for civil society organizations to influence the operations of government agencies. However, this approach falls short of specifically providing for public consultation and monitoring mechanisms related to public procurement, as mandated in the PPL. Atameken is the only non-profit organization with legal standing to influence public procurement policies and practices.

2.3. National policy objectives and sustainable development goals

24. GoK's Strategic Development Plan 2025 (Strategy 2025), announced in early 2018, aims at fostering better economic and social development outcomes. It focuses on the systemic reforms and priority policies needed to achieve economic transformation towards more sustainable and inclusive national development (Figure 1). Two of these pathways, Competitiveness and the Public Sector as a Champion of Change, are linked with public procurement reform.

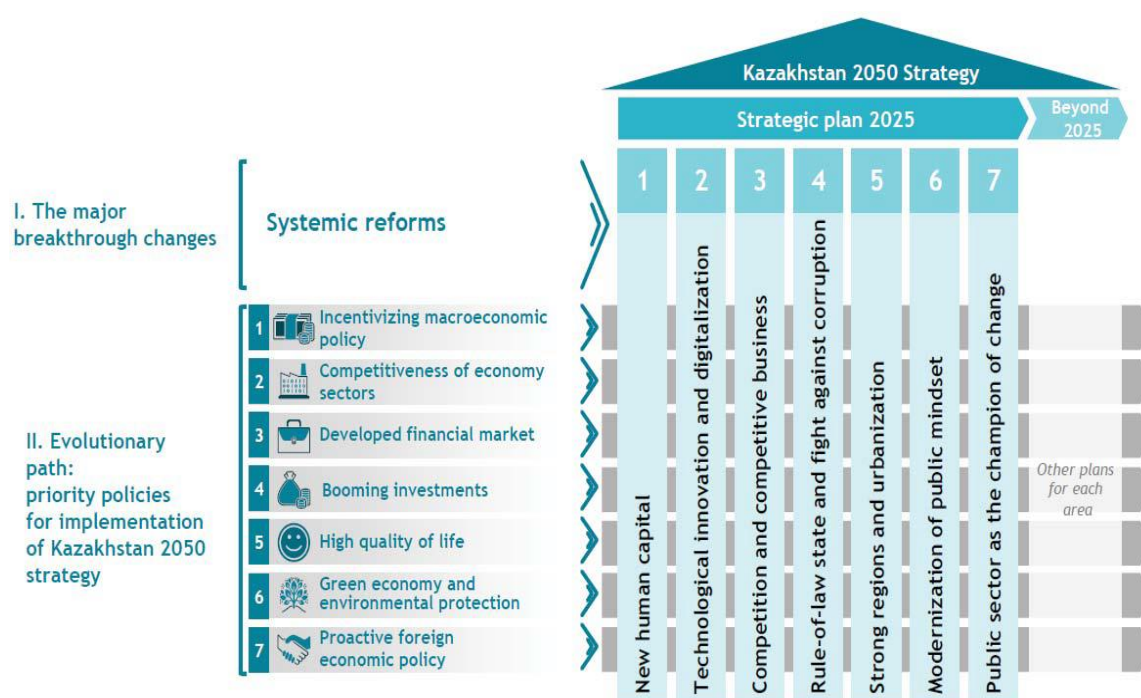
¹⁹ These assessments include *Republic of Kazakhstan Country Procurement Assessment Report* (World Bank 2002); *Public Procurement Assessment* (EBRD 2010); *Regional Self-Assessment of Public Procurement Legislative Framework* (EBRD 2012); *Integrated Fiduciary System Review Report* (World Bank 2014); *Country/Sector Procurement Risk Assessment Report* (ADB 2017); , several rounds of peer review as part of the *Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN)*, as well as a 2017 OECD Integrity Scan and a separate review on the basis of OECD Recommendation of the Council on Public Procurement

²⁰ World Bank 2018.

²¹ *100 Concrete Steps: Modern State for All*, announced by the President of the Republic of Kazakhstan in May 2015, identifies 100 steps to implement five essential institutional reforms needed for a modern state: (a) creation of a professional civil service; (b) ensuring the rule of law; (c) industrialization and economic growth; (d) development of a national identity and unified State; and (e) transparency and accountability of the State.



Figure 1 - Strategy 2025's core systematic reforms support the seven evolutionary paths of the Kazakhstan 2050 Strategy



Source: Kazakhstan Strategic Development Plan 2025

2.4. Public Procurement Reform

25. Public procurement reform is a key priority of the President's modernization program. In announcing that Competitiveness would be the third stage of his modernization program (after Human Capital Development and Technological Innovation),²² the President stated that the modernization, which includes "*institutional transformation, security and anti-corruption efforts...requires a significant optimization of the public procurement system.*"
26. The need to reform public procurement was recognized as early as 2005, with the President's order on strengthening public systems to fight corruption.²³ An Electronic Public Procurement Information System was first piloted as part of the e-government system in October 2007, and a public procurement web portal became operational on January 1, 2010. These measures aimed at strengthening the transparency of procurement processes, improving efficiency in the use of public funds, and simplifying and reducing paperwork and costs for participants, leading to fair competition, increased economic opportunities, more equitable development and greater confidence in government.
27. The 100 Steps program of 2015 also aimed to address a number of barriers to effective public procurement, including (a) the refusal of state monopolies to submit pre-project procurement estimates for examination or to undertake procurement in a competitive environment; (b) the lack of a resource-based methodology to estimate construction costs; and (c) the lack of

²² Address to the Nation on the Third Modernization of Kazakhstan: Global Competitiveness, President Nazarbayev, January 31, 2017.

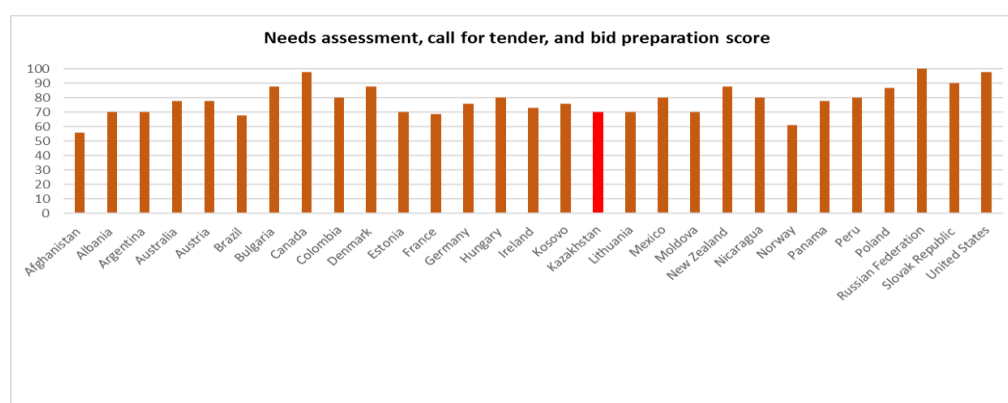
²³ On Measures To Strengthen the Fight against Corruption, Strengthen the Discipline and Order in the Activities of State Bodies and Officials, Order of the President No. 1551, April 14, 2005.



internationally recognized (Eurocode) construction standards and rules. The announcement of this program was followed by enactment of the Law on Public Procurement in December 2015.²⁴

28. After passage of the PPL, Kazakhstan was admitted in October 2016 as an observer in the WTO's Government Procurement Agreement. However, the World Bank's 2017 [Benchmarking Public Procurement database](#) (Figure 2), which compared Kazakhstan's PPS against 180 countries, suggested further room for improvement, particularly if Kazakhstan plans to augment the development impact of its resources through the greater use of public-private partnerships (PPP). Amendments to the PPL were then drafted and reviewed by the World Bank team, which recommended some improvements to the PPL (shown in tables 1-4 above). The current Law on Public Procurement, as amended in December 2018, mandates transparency, predictability, consistency, and accountability in the use of public funds.

Figure 2 - Benchmarking public procurement, 2017



Source: Benchmarking Public Procurement Database (<http://bpp.worldbank.org/>), World Bank.

29. Public procurement in Kazakhstan has now reached a level of maturity that could potentially enable it to promote synergies among national policies on economic and market growth, innovation and sustainable development. Nevertheless, more efforts will be necessary to leverage the public procurement framework to promote socioeconomic and environmental objectives. SMEs, in particular, face barriers in benefiting from public procurement business opportunities given their limited resources and the existence of procurement rules and regulations that do not create a level playing field for their participation in government tenders. Leveraging Kazakhstan's public procurement system to benefit SMEs could be a key driver of SME-oriented reform.
30. Professional procurement expertise in Kazakhstan lags behind most countries in Europe. The E-Finance Center (EFC) within the Ministry of Finance has been providing procurement training, but it has not been able to meet the needs of procuring entities given the frequent changes in implementation guidelines and the rapid evolution of the web portal. Public and private educational institutions have yet to offer training in procurement. For these reasons, the establishment of an institutionalized procurement capacity-building program that keeps pace with changes in the system would represent a major benefit to Kazakhstan's procurement workforce and civil service and would have improve the efficiency of public sector operations. The Astana Road Map for the professionalization of the public procurement function, which was developed and agreed upon by European and Central Asian countries at the 12th Procurement, Integrity, Management and Openness (PRIMO) Forum in Astana in May

²⁴ No. 434-V.



2016, included concrete measures that could guide GoK's efforts to strengthen capacity building and achieve effective and sustainable professionalization of public procurement.

2.5. Samruk-Kazyna – background and management structure

31. Joint Stock Company Sovereign Wealth Fund “Samruk-Kazyna” was founded in accordance with the Decree of President of the Republic of Kazakhstan dated October 13, 2008 № 669 “On some measures on competitiveness and sustainability of national economy” and by the Decree of the Government of the Republic of Kazakhstan dated October 17, 2008 № 962 “On measures on realization of the Decree of President of the Republic of Kazakhstan № 669” by the merger of two joint stock companies Kazakhstan Holding for the Management of State Assets SAMRUK and KAZYNA Sustainable Development Fund.²⁵ The only shareholder of Samruk-Kazyna JSC is the Government of the Republic of Kazakhstan.
32. The Government of Kazakhstan and Samruk-Kazyna have signed an agreement “taking into account the need to manage the Fund in accordance to international best practice of corporate governance as a condition for the Fund to reach its aims and fulfil the assigned tasks”.²⁶ The agreement sets out the mode of cooperation and interaction between the Government and Samruk-Kazyna. The agreement clearly states that the Government, its bodies and employees have no right to interfere with the operational activities of the Fund while the latter is obliged to report annually on its financial standing.
33. The Law N550-IV “On Fund of National Welfare” dated 01 February 2012 lays down the main aims and principles of the work of Samruk-Kazyna as well as the institutions responsible for the management of the Fund. The main aim of the Fund is “to increase the national wealth of the republic of Kazakhstan by increasing the long-term value of the organisations included into the group of Samruk-Kazyna and by effective management of assets belonging to the group of the Fund”. In accordance to Art. 5, the main principles of the work of the Fund are maintaining the interests of the state as the sole shareholder; profitability, effectiveness, transparency and accountability of the Fund and of other organisations of the Fund; consistency and efficiency of taking decisions and their realisation; social responsibility of the Fund and legality. In this respect, Samruk-Kazyna follows the approach of many sovereign wealth funds around the world, as described in the box below.

²⁵ See JSC Samruk Kazyna (Kazakhstan), *International Forum of Sovereign Wealth Funds*, the text can be accessed here: <http://www.ifswf.org/member-profiles/jsc-samruk-kazyna>

²⁶ See Government Decree N1599 “On the Approval of the Draft Agreement on Cooperation between the Government of Kazakhstan and Joint Stock Company “Fund of National Welfare “Samruk Kazyna” and on Repealing Several Decrees of the Government of Kazakhstan”, dated 14th of December 2012.



Sovereign Wealth Funds – General description

Diverse definitions for Sovereign Wealth Funds (SWF) exist. For the purposes of the current assessment, the definition of the International Monetary Fund (IMF) has been chosen according to which SWFs are “special purpose investment funds or arrangements that are owned by the general government. Created by the general government for macroeconomic purposes, SWFs hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies that include investing in foreign financial assets”.²⁷

The IMF classifies five types of SWF based on their goals though some SWFs might fall under several categories described below:

- i. Stabilisation Funds;
- ii. Savings Funds;
- iii. Reserve investment corporations;
- iv. Development Funds;
- v. Pension Reserve Funds.

Legal grounds of SWFs might also be diverse. Some countries may adopt special laws and regulations for SWFs while others might regulate the funds as part of budgetary laws, or even the Constitution. Countries also sometimes create SWFs under a dedicated legal status from that of the government or the central bank. Sometimes, SWFs remain part of pooled assets that belong to the government or the monetary authority. Usually, laws define the source of funds for SWFs, as well as their purpose.²⁸ Thus, countries that have created sovereign wealth funds opt for various legal and economic instruments when establishing and managing the funds. The following are considered to be the five largest SWFs in the world: 1. Government Pension Fund Global in Norway; 2. Abu Dhabi Investment Authority; 3. China Investment Corporation; 4. Kuwait Investment Authority; and 5. SAMA Foreign Holdings – Saudi Arabia.²⁹ Kazakhstan has created an SWF named “Samruk-Kazyna” which will be the focus of the rest of this assessment.

34. The management bodies of the Fund are the following: the Supreme Body – sole shareholder (Government of Kazakhstan); Governing Body - Board of Directors; Executive Body – Management Board and other bodies created in accordance to the Charter of the Fund. The Charter itself has been adopted by the Government Decree N1418 dated 8 November 2012. It is detailing the rights and obligations of the sole shareholder (i.e., Kazakhstan’s Government) and of the institutions of the Fund as well as other details related to the management of the Fund (such as the composition of the bodies, voting schemes, etc.). The Prime Minister is the head of the Board of Directors *ex officio*. It is also noteworthy that the majority of the wealth of Kazakhstan is separated from the state budget through the creation of Samruk-Kazyna, which is under the control of the executive branch of the government, while the state budget and its implementation are under the control of the Parliament.³⁰

²⁷ Quoted in Quadrio, Curzio, Alberto. *Sovereign Wealth Funds*, Harriman House, 2010, page 19

²⁸ See Quadrio, Curzio, Alberto. *Sovereign Wealth Funds*, Harriman House, 2010, page 26

²⁹ See Mrinalini Krishna, “5 Largest Sovereign Wealth Funds”, Investopedia, September 19, 2017, the text can be accessed here: <https://www.investopedia.com/news/5-largest-sovereign-wealth-funds/>

³⁰ See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 143

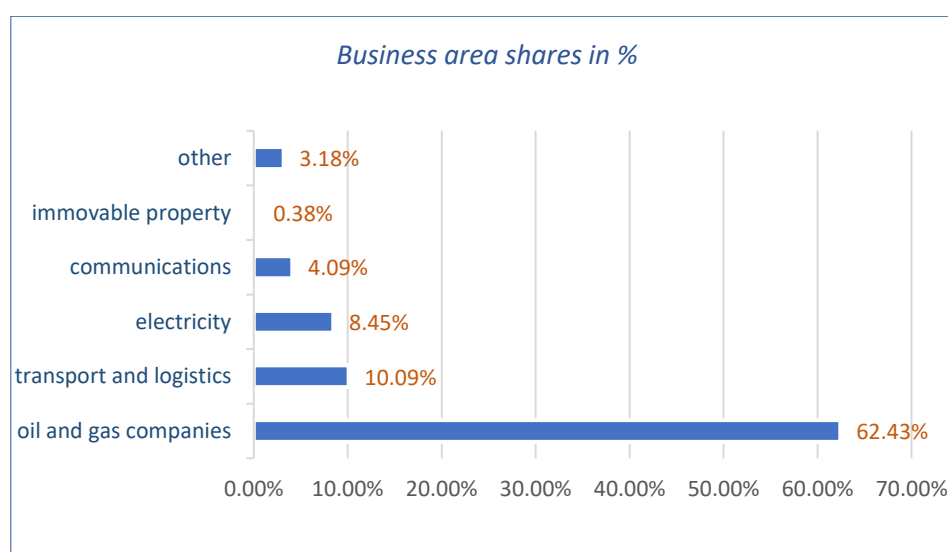


35. Overall, the assets of the Fund have been increasing, representing KZT 22 460 billion in 2016. Cash generated in 2016 was KZT 4 100 billion, a visible increase from the indicator of 2015 which was KZT 3091 billion.³¹ Assets of Samruk-Kazyna account for about 40 percent of Kazakhstan's GDP.³² The Fund employed 327 500 people in 2016.³³

2.6. Samruk-Kazyna's portfolio companies and privatization plan

36. Currently, there are 404 portfolio companies within the Fund that are active in such areas as gas, oil, electricity, railway, post, etc. The table below details the share of net asset value of different areas of property in the Samruk-Kazyna in 2016:³⁴

Figure 3 - Business area shares in %



37. Kazakhstan has a target to reduce the share of government participation in the economy to 15% by 2020.³⁵ To this end, a comprehensive privatisation programme was devised in 2014 according to which about 782 organisations would be privatised. The programme was cancelled in 2015 with the adoption of the new “Comprehensive Privatisation Plan 2016-2020”. In accordance to this plan 106 of the organisations to be privatised belonged to Samruk-Kazyna. Assets were selected for privatisation on the basis of discrepancy with the owner's core operations; market presence of private companies engaged in similar operations; lack of strategic importance; and lack of public importance.³⁶ In 2015, the authorities have announced the Top 60 companies under privatisation; a list that grew to become the Top 65. In this list of companies 38 belonged to Samruk-Kazyna. Others were owned by the state-owned enterprises Baiterek, KazAgro or directly by the state.

³¹ See <https://sk.kz/investors/>

³² See Ambassador Robert Lighthizer, “2018 National Trade Report on Foreign Trade Barriers”, Office of the United States Trade Representative, page 282

³³ See Annual Report 2016: Vol.1 – Sharing Values

³⁴ See <https://sk.kz/investors/portfolio-companies/>

³⁵ See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 150

³⁶ See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 149



38. Privatisation is directed towards the enhancement of efficiency of Kazakhstan and was stated to achieve the following benefits:

- stimulation of the development of healthy competition;
- decreasing state regulation of the economy;
- development of the national market of capital and financial institutions;
- increase of business activities and enhancement of the investment climate.³⁷

39. As a resource-dependent state, Kazakhstan also aims at diversifying its economy with the help of a catalyst investor. It is estimated that the privatisation programme will attain the investment budget of about KZT 250 billion, which will later be invested in such areas as IT, integrated systems, agriculture value chain, healthcare, the environment and green technologies.³⁸

40. As was mentioned in media, Samruk-Kazyna's largest companies will be privatised from 2018. The first ones are planned to be Air Astana, Kazatomprom and Kazakh Telecom, as there is already a high level of foreign investment. Other big companies such as KazMunayGas will start their listing process in 2020.³⁹ To this end, they are going through a transformation process which concerns also procurement procedures described below. About 160 small companies will be privatised mainly with the usage of electronic auction. By 2020, as a result of the Transformation Programme and of privatisation, it is envisaged to decrease the number of the companies in the Holding to 300 with 4 levels of ownership (the Fund, sub-holdings, production companies and separate organisations (if needed)).

41. How much of each individual company will be privatised depends on the company. In accordance with the People's IPO Policy, it has been decided to privatise 10% minus one share which means that the government effectively retains the control over the organisation.⁴⁰

2.7. Transformation Program in SOEs and Samruk-Kazyna

42. Aside from privatisation, all state-owned enterprises are also undergoing a major effort to restructure the companies and make them fit for the future. The main aim of the transformation programme as indicated in the "Programme for Transformation of Samruk-Kazyna JSC" dated 25 February 2018, is to reach the efficiency of companies and restructuring of the portfolio from the period from 2018 to 2028. The President of Kazakhstan has set a goal of making Kazakhstan one of the world's 30 most developed countries by 2050 and Samruk-Kazyna managing a huge portfolio of strategically important organisations can play an important role in attracting foreign investments. It is estimated that the net profit from the realisation of transformation projects will be around KZT 300 billion. Suppliers of Samruk-Kazyna (employing 600-900 thousand people) and the overall business environment of Kazakhstan are expected to benefit. Moreover, the dividends paid to the sole shareholder and the taxes to be paid will increase accordingly. Currently, transformation is realised in six

³⁷ See Complex Plan of Privatisation for 2016-2020, page 7

³⁸ See Baljeet Kaur Grwal, "Kazakhstan's sovereign wealth fund, Samruk-Kazyna, is looking to finally privatise many of its assets, after a series of false starts", Foreign Direct Investment, London, October/November 2016

³⁹ See same above.

⁴⁰ See Multi-Dimensional Review of Kazakhstan: Volume 2. In-Depth Analysis and Recommendations, OECD Development Pathways, 2017, page 155



companies: KazMunayGas, Kazakhstan Temir Zholy, Kazatomprom, Samruk-Energo, KEGOC, and Kazpost.

2.8. Procurement Reform in Samruk-Kazyna

43. The transformation that has been ongoing in Samruk-Kazyna also concerns procurement procedures. Recent amendments to the Law “On the Fund of National Welfare” envisage that the procurement of Samruk-Kazyna is carried out in accordance with the rules approved by the Board of Directors in agreement with the Authorised Body for public procurement (i.e., the Ministry of Finance). The changes enter into force in January 2020. Currently, the Ministry of Finance has no role in Samruk-Kazyna’s procurement.
44. These amendments are part of a wider legislative package that has been adopted in December 2018. The proposed changes will alter public procurement by Samruk-Kazyna substantially. Instead of single procurement rules for the Fund and companies in the Holding, seven standards will be adopted while the organisations will be requested to draft their own procurement procedures based on the standards and taking into consideration their needs in a specific area of operation. The following standards are already drafted and made public:
45. **Warehouse Management** –The main aims of this standard are the prevention of a production deficit, organisation of an effective storage system, establishment of the unified principle of structured inventory accounting, etc. It regulates such areas as planning of logistics infrastructure, assessment and optimisation of internal infrastructure of the warehouse, management of the material flow, formation of the optimal “storage-delivery” model, establishment of a model for transportation, optimal allocation of reserve and emergency stocks, etc.
46. **Procurement Planning** – This standard defines the specificities of procurement planning for future procurement transactions by Samruk-Kazyna. A rolling plan will be drafted, which includes two types of needs – long term and annual. Specific plans are drafted based on the rolling plans after deduction of free warehouse inventory, goods already being delivered to the organisation and responsibilities within the scope of the effective procurement contracts. There are two instruments of planning described in the Standard and these are marketing prices and models for restocking.
47. **Standard for pre-qualification** – This standard prescribes six levels of pre-qualification with A1 being the simplest and C2 being the most complex. The Annex to the Standard describes questionnaires with information required from potential suppliers in order to be pre-qualified for a specific level. The suppliers for the most complex procurement should be pre-qualified in accordance to C1 or C2 level which also entails an external audit paid by the suppliers themselves.
48. **Standard for procurement rules** – Detailed rules on the procurement procedures and processes are described in this standard. It prescribes procurement methods, deadlines, information to be included in the procurement documentation and bids, cases of single sourcing, etc. This standard will harmonise practices among the companies in the holding structure, and result in less discretion of the individual companies.
49. **Standard for category management** – According to the standard, a category of procurement is a group of goods, services, works which are not identical but are summoned into one group based on similar characteristics or attributes, technical and other characteristics ensuring the implementation of similar functions. Main aims of category management, inter alia, are technological improvement, cross-functional cooperation, maximisation of economic effect



and risk management. Category management strategies are drafted by the Fund (for categories for which there are high potential synergies for procurement across the holding structure) and subsidiary companies (for less strategic items). To support implementation, a Centre of Competence is being created at the central management of the Fund.

50. **Standard for contract management** – The contract management stage is not specifically covered in current legislation. The standard defines the roles and responsibilities with regards to contract management and accepting commission. The standard also contains provisions on standardisation of contracts, acceptance of deliveries, payment and monitoring of the performance of the contract.
51. **Corporate standard on conflict of interests** – This standard mirrors the already existing Policy on the Prevention of Conflict of Interest when Engaging Consultancy Services for the procurement of other categories. It describes in detail the cases where conflict of interest can potentially arise, as well as requires the suppliers and the employees of contracting authorities to disclose in written any potential conflict of interest. It also has a section on corporate and professional ethics.
52. Procurement data is the best indicator of how the procurement system functions. Latest procurement data was not provided. The data presented below was found in older reports.

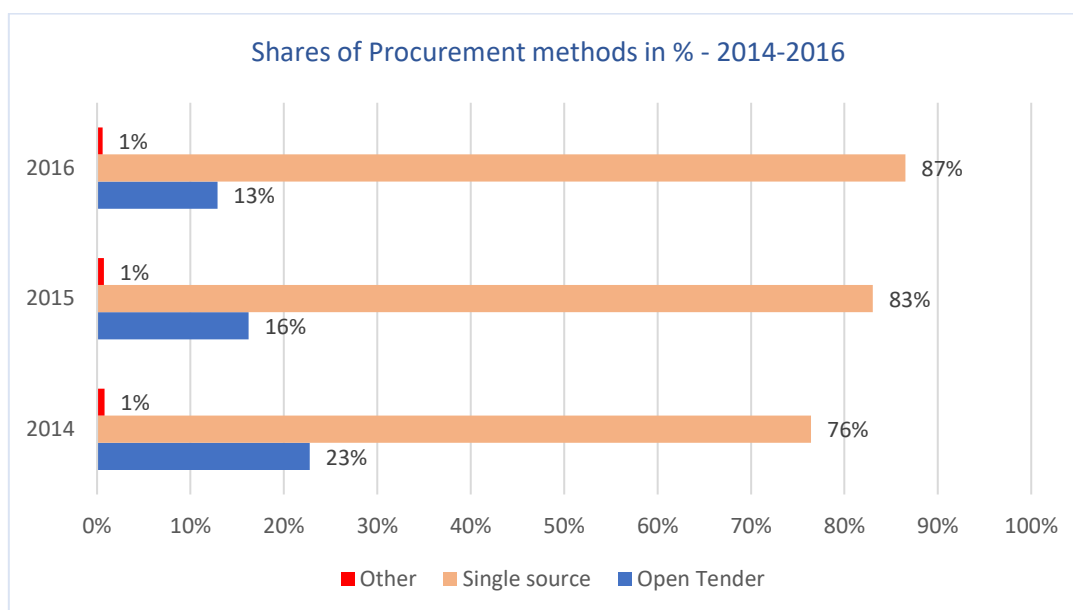
*Total volume of procurement by Samruk-Kazyna:*⁴¹

Year	2014	2015	2016
	Value (in million KZT)	Value (in million KZT)	Value (in million KZT)
Total	3,870,073	3,486,110	4,121,927
(including)			
Open tender	881,239	565,783	531,206
Centralised energy trading	1,262	2,775	2,432
Shopping	25,697	20,080	21,318
Single source	2,958,187	2,895,287	3,566,823
Commodities	3,688	2,168	147

⁴¹ See Anti-Corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 2017, page 113



Figure 4 - Shares of Procurement methods in % - 2014-2016



Procurement-related complaints in Samruk-Kazyna:⁴²

Year	2014	2015	2016
Complaints reviewed	1,032	1,856	1,620
Complaints upheld	329	515	399
Complaints referred to relevant organisations	354	749	479
Complaints deferred	349	547	667
Number of staff subject to disciplinary actions	28	144	149

⁴² See Anti-Corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 2017, page 114



Assessment

3. Volume I: Assessment of the Government Procurement System

53. This section discusses the findings of the MAPS assessment of the public procurement system for general government procurements. These findings (main strengths, gaps, recommendations and red flags for each pillar and indicator) are based on the qualitative review and quantitative analysis set out in the MAPS. Overview for each sub-indicator also identifies gaps with high, medium and low risk level (H/M/L) and recommendations.
54. As noted above, this is **Volume I of the MAPS assessment**. It covers the public procurement system governed by the PPL enacted in 2015 along with related regulations, the amendment to the PPL enacted in December 26, 2018, and subsequent changes to the regulations and procedures that were put into effect between January and March 2019. It does not cover procurement governed by separate rules and regulations applied by the Sovereign Wealth Fund SK, which are entity specific. A separate assessment of the procurement framework used by Samruk-Kazyna has been carried out by OECD, supported by the EBRD and its findings and recommendations are presented in the following **Volume II of this assessment section**.

3.1. Pillar I - Legal, Regulatory and Policy Framework

55. This pillar assesses the existing legal, regulatory and policy framework for public procurement in Kazakhstan. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The indicators under Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also consider international obligations and national policy objectives to ensure that the public procurement system lives up to its important strategic role and contributes to sustainability.

Summary for Pillar I - Legal, Regulatory and Policy Framework

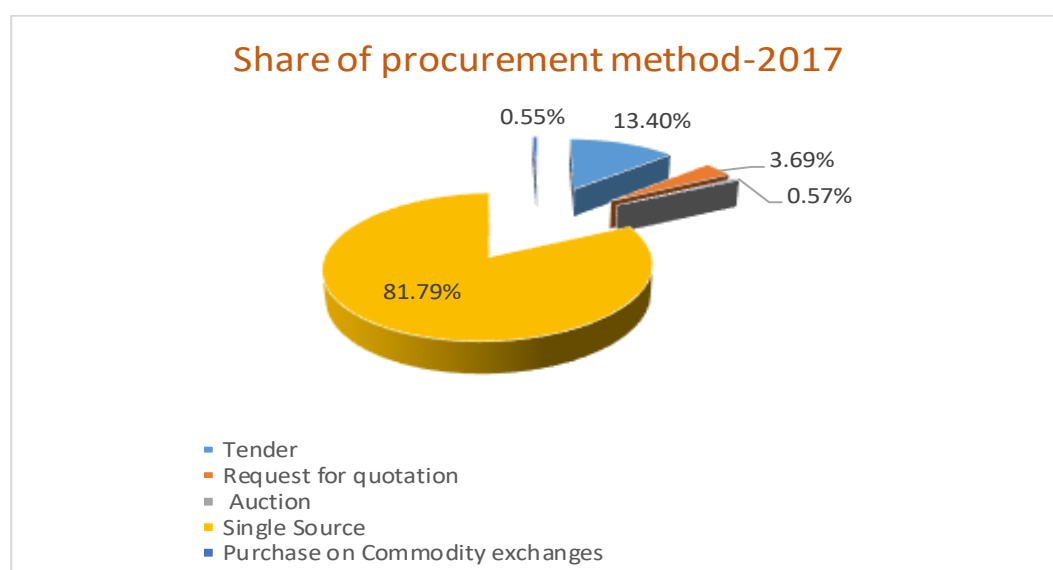
56. The legal framework consists of the PPL, as the primary legal act, and the main secondary legislation in the form of Public Procurement Regulations (PPR). Other documents forming the framework include manuals, technical instructions, user guides and contracting documents. Once a procurement contract is signed, it is governed by the Civil Code. The framework is organized in adequate hierarchical order and is comprehensive in identifying formal procurement rules and procedures. All laws, regulations and relevant documents are freely accessible on the web portal www.qoszakup.gov.kz. Annex III include a list of public procurement and procurement-related laws and regulations currently in force in Kazakhstan.
57. The procurement methods stipulated in the PPL as amended on December 26, 2018 provide a limited range of competitive and non-competitive procurement approaches; i.e., tender (open tender, prequalification tender, two-stage tender), auction, budget enquiry, Single Source procurement and commodity exchanges. However, the Law does not appropriately define the hierarchical order for their use. More importantly, the PPL authorizes the contracting authorities to decide on the most appropriate method of procurement and does not mandate open tender as the default method. The lack of a requirement for open tender,



combined with lack of clarity on conditions for the use of other procurement methods, allows for the frequent use of non-competitive contracting methods, which may not yield the desired value for money.⁴³

58. Despite a slight reduction (five in number) of the grounds for the use of single source procurement, the amended PPL, effective January 1, 2019, continues to include an unusually high number (50) of circumstances for Single- Source (SS) and direct contracting procurement. Before its recent amendment, PPL allowed for more possibilities to use SS method in case of failed open tenders or request for quotations. Because of this flexibility in the Law, the Single Source method was used in the re-procurement of about 68 percent of the failed and cancelled open tenders in 2017. *In aggregate for 2017, 82.8 percent of procurement transactions by number and 81.8 percent by value were carried out following Single Source or direct contracting (see Figure 5).* These percentages far exceed the norms established by the Framework for Assessing Public Financial Management, Public Expenditure and Financial Accountability,⁴⁴ which requires, for an “A” rating, that 80 percent or more of the total value of contracts be decided through competitive methods; and gives a “D” rating to scores lower than 60. The Kazakhstan’s “D” rating was recently confirmed by the Kazakhstan 2018 PEFA assessment.

Figure 5 - Share of procurement methods by value- 2017



59. Furthermore, the range of permissible procurement methods is limited. Aside from competitive bidding, the PPL does not provide for or enable the use of other fit-for-purpose procurement methods or approaches, such as the method of Framework Agreement for procurement of common use Items by the centralized procurement body or the Quality-based Selection Method for consultancy and advisory services. The application of these methods/techniques/approaches can help Kazakhstan to achieve better value for money and increase efficiency in service delivery.
60. Kazakhstan achieved significant results in transferring the public procurement system from manual to full-fledged electronic system especially over the last three years. The legal and institutional framework requires all procurement to be conducted effectively through the

⁴³ The 2015 Public Procurement Law states that Single Source shall apply if: (i) as per Article 39(2), public procurement by tender or request for quotation is declared void; and (ii) circumstances exist as set forth under Article 39(3).

⁴⁴ PEFA Framework, 2016 version, Dimension PI-24.2 on Procurement Methods.



Procurement Web Portal, an e-government procurement system (eGP), relaunched by MOF in January 2016. The adoption of this single, fully functioning web portal and its mandated use for public procurement has—despite remaining issues with Single Source and direct contracting and two-stage tender—contributed to improvements in transparency and efficiency. However, the Procurement Web Portal may benefit from some enhancement, for instance, eliminating **the requirements for foreign bidders that in order to obtain a digital certificate they need to register with Tax authorities in Kazakhstan which in turn requires the bidder to be physically present in Kazakhstan, and obtaining an e-bid security issued by a local commercial bank only. These requirements contradict the PPL’s provisions on eligibility, which professes open eligibility for all bidders,** and thereby depriving the procuring entities of the benefits of greater competition and a better chance for achieving value for money. This qualitative finding is supported by the quantitative assessment under Pillar III, which shows that in 2017, fewer than one (1) percent of total contracts procured through open tenders were awarded to foreign bidders.⁴⁵

61. Furthermore, to supplement the assessment of the eGP system described under this report, a security and compliance review (independent audits) is undergoing, with ADB support, to assess, validate and ensure that the eGP system conform to international standards for IT system security and quality requirements for open competitive procurement.
62. All public procurement opportunities are published and available through the web portal, providing detailed information to better inform potential bidders about tender opportunities.
63. Another aspect of the PPS that does not fully meet the assessment criteria under this pillar is the confidentiality of bidders’ procurement information. The Public Procurement Regulations establish the right of potential suppliers who have submitted tenders to view the tender applications of other potential bidders, except for the price quotations. In absence of clear instructions on the marking of sensitive and confidential information, this rule implies that the procuring entity cannot withhold access to any part of a bid, including technical information. Although the recent amendment of the PPL has tried to limit the access to this information to the bidders that have passed the preliminary examination, this practice is not consistent with international standards, including the obligation to safeguard the confidentiality of bids’ information and protect confidentiality of bid’s content throughout the tender process and avoid allowing for the disclosure of sensitive information.
64. The negative impacts of this practice have been already observed. For example, some of the competitive elements of a bid appear to have been copied and pasted in a competitor’s bid in a subsequent procurement process.
65. The legal framework for the PPS meets the conditions for defining a minimum and exhaustive list of tender documents. These documents include a description of technical specifications, including the required functional, technical, qualitative and operational characteristics of the required goods, works and services; as well as evaluation criteria for the bid, based on price and non-price items. **The legal framework also provides for mandatory public discussion, by way of the web portal, of the draft tender documents.** In addition to allowing potential bidders to request clarifications of the tender documents, the practice serves as an early engagement with potential market stakeholders, to seek their feedback on the proposed scope, technical specifications, qualification requirements and evaluation criteria for the tender. **Though this is good practice, the fact that it is mandatory in all open tendering cases**

⁴⁵ It is worth noting that the SK e-Procurement System allows foreign bidders to receive a digital signature remotely, without having to be physically present in Kazakhstan.



raises questions about efficiency and fitness-to-purposes, as well as about the potential risk for more forthcoming bidders to shape the final design, technical specifications or qualification criteria of the tender.

66. The evaluation method based on discounting bid prices, the application of anti-dumping measures, although limited by the recent amendment of PPL to services, is not consistent with international evaluation practices, which consider value for money, relevant costs and benefits, risks, and non-price attributes and/or life cycle costs in determining the most advantageous bid. For example, keeping the application of anti-dumping measures to services could lead to the selection of a high-risk bidder that has offered an abnormally low bid without due examination, as long as it pays an extra performance security fee.
67. The legal framework provides for the right of bidders to challenge procuring entities' decisions or actions, but the framework has gaps pertaining to the core procedural aspects of complaints review and institutional set-up for the review. As per the provisions of the PPL, the Internal Audit Committee (IAC) is responsible for complaints review as part of the Authorized Body (through MoF), including those complaints that might be lodged against procurement decisions made by the Single Procurement Organizer which is under the same administrative authority (MOF) as IAC or by the procuring unit of the MoF when the latter acts as procuring entity. Furthermore, IAC is in charge of reviewing/auditing compliance with legal and regulatory framework. That means that IAC may be asked to review complaints related to procurement processes which may have benefited from IAC's financial advice and control. The amended PPL, effective January 1, 2019 created a new unit of Complaint Decision Appeal within MOF, which will allow complaining bidders to challenge the IAC's decision. While this offers an additional forum for bidders to file their grievances and appeal IAC's decision, yet its subordination and constitution under MoF do not provide adequate independence.
68. The legal framework covers contract management and stipulates the minimum requirements of the draft contract in terms of form, conditions, amendments, and provisions for dispute resolution in connection with contract performance. However, the legal framework lacks clarity regarding the organization of contract management function. It does not provide a direct definition of contract management, or clearly define the roles of the procuring unit and the end user/beneficiary in contract management. The legal framework could benefit from more detailed instructions under the regulations and implementing rules. This could include strengthening the regulatory requirements for measuring contract implementation performance and setting requirements for disclosing information on contracts management through the web portal.
69. The GoK has committed to implementing the Sustainable Development Goals (SDGs), which are part of the Kazakhstan 2050 Strategy. However, the PPL, as amended on December 26, 2018, does not consider the social, economic and environmental aspects of procurement, as per SDG 12.7, except for certain sustainability evaluation criteria included in the PPR related to some limited environmental and economic aspects of procurement.
70. Finally, the procurement-related obligations deriving from binding international agreements such as the Eurasian Economic Union Treaty (EEUT) are clearly and consistently reflected in the PPL and PPR.



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

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

Strengths:

72. The legal framework for public procurement is relatively well established, with an adequate hierarchy and corresponding precedence levels (PPL, PPR, instructions, standards templates). All are freely available to the public at the web portal www.goszakup.gov.kz. This open public platform and free access to the latest public procurement rules and regulations make a significant contribution towards achieving the PPL's principle of transparency of the public procurement process.
73. The PPL provides for the application of the rules of international treaties ratified by the Republic of Kazakhstan which stipulate the use of procurement rules other than those in the PPL.
74. The legal framework provides for a description of the permissible procurement methods and their procedural requirements. It provides for competitive and non-competitive procurement methods for goods and works, which are: tender (open tender, prequalification tender, two-stage tender), auctions, budget enquiry, Single Source procurement and commodity exchanges. The conditions for the use of these procurement methods are described, to a limited extent, in the PPL.
75. The standards for open tender procedures are described in the PPL and are broadly in accordance with international standards.
76. The PPL prohibits fractioning of contracts to circumvent open competition.
77. Use of the web portal as mandated is largely consistent with the PPL, with some exceptions. Both bidders and contracting entities reported that use of the portal has significantly increased the transparency of public procurement practices.
78. All open tenders are published through the portal and available to all potential bidders free of charge. The legal framework adequately describes rules on advertisement of tender notices, minutes of bid opening and evaluation, and notification of contract awards, along with respective timelines. Similarly, the requirements for bid submission, receipt and opening, and the content of procurement documents (tender documents, templates of minutes of bid opening, evaluation and decision on contract award, standard contract conditions) are clearly defined and allow suppliers to understand what is required of them and how the procurement process is to be carried out. These procurement documents are available on the portal and available to all interested parties.
79. Another key feature of the legal framework is the mandatory public discussion of the draft tender documents, to seek feedback from potential bidders and give them an opportunity to request clarifications. This process may result in the draft tender documents being revised. As a matter of good practice, the early engagement with potential suppliers ensures the relevance of tender documents to the potential market, the neutrality of the technical specifications, and the objectivity and proportionality of the qualification requirements and evaluation. However, if not handled with care and consideration for the risks and fitness-for-purpose, this provision may be inefficient and/or may impair the fairness of the procurement process.



80. The legal framework establishes the potential bidders' right to challenge the decisions or actions of a procuring entity. According to Article 47 of the PPL, a "potential supplier" has the right to appeal to the Authorized Body (IAC) a decision, action or inaction of the procuring entity, public procurement organizer or operator, committee or expert, "if their actions (inactions) or decisions infringe the potential supplier's rights and lawful interests." The complainant need not refer to any violation of PPL itself. The appeals mechanism is managed through the portal, including publication of decisions and supporting documents, and real-time status of the review of complaints. The Authorized Body is required to respond to the complaint within 10 working days from the day it is received. There is a period between the notification of results and conclusion of the contract, similar to a "standstill" period, although the purpose of the standstill and its length are not properly described in the PPL.

Substantial gaps:

81. The Substantial gaps are presented with reference to the corresponding sub-indicators and related assessment criteria. For presentation purposes of the identified major gaps throughout the report, the reference to the related sub-indicator/assessment criteria is followed, after a dash, by a short title summarizing these gaps.

Sub-indicators 1(a) - Coverage and exclusions.

82. The scope of the public procurement legal framework does not cover all procurement of goods, works and services, including consulting services, using public funds. The framework does not apply to procurement under : (i) the National Welfare Fund Samruk-Kazyna and by organizations in which Samruk-Kazyna holds 50 percent or more of the voting shares, directly or indirectly; (ii) the National Bank (NB) and the departments and organizations included in the organizational structure of the NB, and the legal entities in which NB holds 50 percent or more of the voting shares or are in trust management of the NB, and legal entities affiliated with them; (iii) national management companies, national holdings, national companies (as defined in the State Property Law) and organizations of which 50 percent or more of the shares belong, directly or indirectly, to the respective national companies; and (iv) SK-Pharmacia LLP and public health care institutions in charge of procurement of pharmaceuticals, medical equipment and materials distributed to public hospitals and polyclinics for provision of guaranteed free medical treatment to the population by the State. The PPL amendment, effective January 1, 2019, has added a new exclusion to the scope and which relates to procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member. This includes procurement of goods, works, services as part of the implementation of investment projects, fully or partially funded by other foreign banks, and which will follow to the rules of these banks. However, the Law "On State Property" dated March 1, 2011 as amended in December 26, 2018, has introduced an obligation for all SOEs, except SK, which are excluded from the PPL coverage, to have their public procurement better regulated by GOK and mandated MOF

Good international standards on state-owned enterprises in public procurement

As part of good international standards ([OECD Guidelines on Corporate Governance of State-Owned Enterprises](#)), SOEs engaged in public procurement should use procedures that are competitive, non-discriminatory and safeguarded by appropriate standards of transparency. In general, the activities of SOEs can be divided into two parts: activities that are for commercial sale or resale; and activities to fulfill a governmental purpose. In cases where an SOE is fulfilling a governmental purpose, or to the extent that an activity allows an SOE to fulfill such a purpose, the SOE should adopt government procurement guidelines that ensure a level playing field for all competitors, state owned or otherwise. State-owned monopolies should follow the same procurement rules applicable to the general government sector.



to develop and approve the unified procurement rules for such SOEs. This unified procurement rules will come into force on January 1, 2020 only.

83. In addition, the Public Private Partnership (PPP) Law of October 2015 states that the PPL shall not apply to matters covered by the PPP Law, including off-take by the State of goods, services and works.

Sub-indicator 1(b) - *Limited range of procurement methods*

84. The PPL provides for only one fully competitive method, open tender, which can be organized in one or two stages. The PPL also provides for Single Source contracting, and for requests for quotations for procurement below certain thresholds. In terms of procurement techniques, the PPL provides for use of auction. The PPL does not provide for restricted tendering or framework agreements even though there is a single public procurement organizer within the MoF in charge of centralized purchasing of a list of approved items. The amended PPL, effective January 1, 2019, has extended centralized procurement to the regional level through regional Single organizers that includes local governments. Equally important, the permissible procurement methods do not differentiate between procurement of services in general and procurement of consulting and advisory services. The latter are predominately based on quality considerations, with price as a secondary consideration. Therefore, procurement of consulting and advisory services should preferably be governed by separate methods and procedures that consider the quality dimension and other specificities of this category of public procurement.

85. The hierarchical order for the use of procurement methods is not appropriately defined in the legal framework, and there is no mandated default method (such as open tender). Furthermore, the criteria for using each method are not sufficiently defined. For example, the permitted prequalification is mainly based on a form of qualification and registration of potential qualified bidders to participate in procurement for a sector and category of goods, works, and service. The recently amended PPL has assigned the mandate of keeping register of qualified potential bidders to Samruk-Kazyna instead of MOF.

86. Furthermore, the amended PPL has slightly reduced the number of grounds for the use of Single Source. It has also abolished the possibility to use SS method in case a failed tender process or request for quotation as per the conditions of Article 39(2) of the 2015 PPL. The key rationale behind this abolishment is to address the high incidence of use of SS whenever a failed open and request for quotation procedure. ***The assessment of the quantitative sub-criterion 9(b) under Pillar III has revealed that in 2017 only 32 percent of all procurement processes under open tender lead to contract award. 68 percent of failed and cancelled processes were then repeated following Single Source procurement.***

Key circumstances under which the use of Single Source would be justified:

(a) the subject matter of the procurement is available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights with respect to the subject matter of the procurement;

(b) in response to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in any other methods of procurement would be impractical because of the time involved in using those methods;

(c) for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services;

(d) use of any other method of procurement is not appropriate for the protection of essential security interests of the State; and

(e) to implement socio-economic policies of the country.

Source ; PPL



87. The PPL as amended continues to include an unusually high number (50 of circumstances under which Single Source (SS) and direct contracting may be used. Reducing further the number of SS and direct contracting grounds would improve the country procurement system towards greater competition and a better chance for achieving value for money.
88. For efficient application of the amended PPL provision regarding unsuccessful or voided tendering process, the re-tendering should take place after identifying and addressing the causes for the failure and revising the tender documents accordingly.⁴⁶

Sub-indicator 1(d) - Restrictive requirements for foreign bidders' participation

89. The procedure for obtaining a digital certificate to participate in a tender through the Procurement Web Portal requires from a foreign bidder to authenticate in Kazakhstan in person. For more, the amended PPL, effective January 1, 2019, mandates submission of an electronic bid security as well as payment of the web portal access fee by potential bidders through a Kazakhstan commercial bank only. These requirements contradict the PPL's provisions on open eligibility and constitute barriers to foreign bidders' participation and thereby deprive the procuring entities of the benefits of greater competition and a better chance for achieving value for money. This qualitative finding is supported by the quantitative assessment under Pillar III, which shows that in 2017, fewer than one percent of total contracts procured through open tenders were awarded to foreign bidders.⁴⁷
90. The amended PPL introduces a new provision on the concept of e-wallet, to be effective January 1, 2020, and which consists of a personal account that any potential bidder will be obliged to open and place under a local bank account of the Procurement Web Portal single operator (e-Finance Center) in Kazakhstan. The e-wallet will serve the purpose of processing payment by the potential bidder for the Web Portal access fee and payment for issuance of the electronic bid securities. The implementation of the e-wallet and its associated requirements would increase further the above-mentioned restrictions for foreign bidders' participation.
91. Furthermore, the PPL grants an exception to the requirement for digital signature for bidders from EEUT countries under the overall provision of "National Regime," allowing them to use digital signatures obtained from their countries. Since this is not yet technically possible on Kazakhstan's public procurement web portal, however, bidders from EEU countries still need to physically be in Kazakhstan to obtain a digital signature.

Sub-indicator 1(f)- Inappropriate use of price and non-price attributes in evaluation.

92. The stipulated evaluation criteria provide for some limited and inadequate form of use of price and non-price attributes for bids evaluation. The evaluation method based on discount on the bid prices for additional non-price requirements/qualifications, etc., and the way the evaluation of bids is carried out do not appear to be consistent with international best practice regarding the use of non-price criteria as award criteria. Also, the legal and regulatory framework do not provide for the use life-cycle costing principles (consideration of net present value with a combination of initial and operating cost) for objective and value-for-

⁴⁶ The amended PPL mandates re-tendering after a failed tender, hence SS will not be allowed as first recourse after a failed tender.

⁴⁷ It is worth noting that the SK e-Procurement System allows foreign bidders to receive a digital signature remotely, through a local third party, without having to be physically present in Kazakhstan.



money decisions. Furthermore, there are no specific provisions, procedures or criteria in the PPR to evaluate the quality and technical capacity of consultancy and advisory services.

93. The amended PPL, effective January 1, 2019, has abolished the provisions, concerning anti-dumping measures, which explicitly allowed a potential bidder to propose a dumping price in procurement by tender, provided additional performance security over the limit of the dumping price is part of the bid. However, it has kept this practice for procurement of some advisory services. This approach, which is commonly known as “Abnormally Low Tender/Bid,” does not reflect international good practice, which seeks to balance the needs of procuring entities to calculate and manage the risk of non-performance with fair treatment of bidders. Good practice instead requires bidders to substantiate abnormally low prices and provide relevant clarifications. Based on such clarifications, the contracting authorities could decide either to accept or reject a bid. The additional performance security provides some protection to the procuring entity; however, it puts a financial burden on the bidders, and does not deal with any performance risks that may arise from offering such low price.
94. Overall, the stipulated evaluation criteria do not use life-cycle costing principles (consideration of net present value with a combination of initial and operating cost) for objective and value-for-money decisions. In addition, there are no specific provisions, procedures or criteria in the PPL and PPR to evaluate the quality and technical capacity of consultancy services.

Sub-indicators 1(g) - Disclosure of bidders’ confidential information.

95. The confidentiality of procurement information and the procurement process is not adequately dealt with in the PPL. Paragraph 9(123) of the PPR specifies that “potential suppliers who have submitted their tender applications shall be provided with access to view the tender applications of other potential suppliers, except for the quotations, upon publication of the evaluation protocol.” This practice is not consistent with international standards for the confidentiality of information submitted by bidders. Although disclosure of information is limited to the participating bidders, and the amended PPL has tried to limit further the access to this information to participating bidders that have passed some preliminary examination requirements, the assessment was able to confirm the associated risk and learnt that some of the competitive elements of a qualified bidder’s bid have been used by other bidders in subsequent procurement processes. The lack of safeguards for confidential and proprietary information may cause bidders to refrain from providing complete information in their bids.

Sub-indicator 1(h)- Lack of fair and transparent complaints review mechanism.

96. The legal framework establishes the right of tenderers to appeal a decision, action or inaction of the procuring entity, public procurement organizer, single public procurement operator, single public procurement organizer, committee or expert, “if their actions (inaction) or decisions infringe the potential supplier’s rights and lawful interests.” Tenderers may appeal a decision without reference to any violation of PPL itself.
97. There are, however, several gaps in the PPL pertaining to core requirements and procedural aspects of the appeals system:
98. The matters that can be appealed are not explicitly stated in PPL;
99. While Article 47(2) provides a timeline for filing complaints from the date the tendering results are reported, it is not clear when complaints against tender documents can be filed, especially in connection with the preliminary discussions of the draft tender documents;



100. The PPL does not provide details on the process for review of complaints by the Authorized Body; for example, whether the review is based on available evidence or the parties are permitted to provide additional information or testimony;
101. Furthermore, the PPL does not describe sufficiently and with clarity the institutional arrangements for the review of complaints:
102. The PPL is silent as to whether the complaints can be filed with the contracting authority;
103. The PPL uses the term “Authorized Body” for the body which will administer complaints, without identifying such authority, where it is hosted or its independence from the contracting authority. As further elaborated under Indicator 5 of the Assessment, since the Ministry of Finance, through its Internal Audit Committee (IAC), is in practice the Authorized Body referred to in the PPL, the question arises as to whether the review function of the Authorized Body provides independence and impartiality, and whether it is compatible with the IAC’s other functions, such as monitoring compliance with regulations, centralized procurement, and other functions prescribed under Article 16 of PPL.
104. Based on international good practice, the complaints review body should be independent of the procuring entity, which has the authority to suspend the award decision and grant remedies and hence should not engage in activities that by nature conflict with its other functions. In the case of Kazakhstan, the involvement of the Internal Audit Committee in the review of appeals creates two main issues:
105. The IAC is under the same entity (MoF) as the Single Procurement Organizer, and as such, it may be required to review appeals arising from procurement conducted by the Organizer and/or procuring unit under the MoF. This lack of independence may impact the trust among bidders in the review system; and
106. The non-appeal functions of IAC may conflict with its appeal function. Specifically, if IAC oversees the ongoing financial control (or compliance audit) of specific procurement transactions, which to some extent makes them part of procurement decisions. Hence, the IAC could not be asked to objectively and impartially review a complaint that may relate to a procurement process which benefitted before from IAC’s financial advice and control.

Sub-indicator 1(i) - Insufficient organization of contract management function.

107. The legal framework provides for procedures and responsibilities throughout the entire procurement cycle, including contract management. However, there is lack of specific and clear definition of the role of the procuring unit and the end user/beneficiary in contract management. Detailed instructions on the organization of the contract management function also are not addressed in the regulations and implementing rules, and no written procedures on the subject are available. In addition, not all contract management milestones and documents are available on the portal, which may make the contract management process less effective. For example, despite some integration between the e-procurement system and the treasury system, information on the time between the submission of an invoice and the issuance of payment is not available on the portal.
108. The sub- indicators 1 (a), 1(d), 1(f), 1(h) and 1(i) were assessed as high risk and red flags were raised as they hinder the achievement of basic public procurement principles.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements



1	Sub-indicator 1(a) Limited coverage and wide ranging exclusions from the legal framework.	H	Uniformity and universality of the legal framework coverage contribute to predictability and savings in the operation of the procurement system. In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible. In this respect, consideration should be given to international practices which show that entities like National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework. To better inform such future reforms, the Government should undertake a comprehensive study⁴⁸ taking stock of the existing procurement rules applied by each of the excluded entity, the performance of these entities and whether they actually achieve value for money while ensuring transparency and fair competition.
	Sub-indicator 1(d) Restrictive requirements for foreign bidders' participation	H	Consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential international bidders to obtain digital signature certificates and submit the electronic bid security and pay for the web portal access fee from wherever

⁴⁸ As part of the study, the Government should assess experience and practices in other countries with transparent procurement systems on how they deal with procurement under Sovereign Wealth Funds. One such example is the Norwegian Government Pension Fund, whose management company follows the procurement rules and procedures as set out in the Norwegian Public Procurement Law. See link: <https://www.nbim.no/en/> and <https://www.nbim.no/no/organiseringen/styringsmodellen/retningslinjer/anskaffelser/>.



			they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.
Sub-indicator 1(b) Limited range of procurement methods	M		Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better value for money and substantial gains in service delivery. Amendments could include (i) making open tender a default method; (ii) more clearly specifying the conditions for the use of each procurement method; (iii) reducing further the circumstances for the use of single source procurement; (iv) including separate provisions of PPR and/or instruction manual to clarify the procedures for the selection of consultancy and advisory services; and (v) introducing framework agreements.
Sub-indicator 1(f) Disclosure of bidders' confidential information	H		Amend the related provisions in the legal framework and tender documents/ contracts to ensure greater protection of the confidential, proprietary and commercially sensitive information in the bids. The framework should provide detailed instructions/guidance for proper marking by the bidder of the information to be protected.
Sub-indicator 1(f) Inappropriate use and application of price and non-price attributes in evaluation	H		Introduce evaluation methodologies based on price and non-price criteria and on quality and price combination; (i) reconsider the mandatory nature and the timing of preliminary discussions by adopting a more fit-for-purpose and/or risk-based approach; (ii) revise the relevant provisions of the PPL and the PPR to bring clarity on various aspects of bid evaluation; (iii) introduce amendments to the PPR on alternative approaches to identification and treatment of abnormally low bids.
Sub-indicator 1(h) Lack of fair and transparent complaints review mechanism	H		The existence of an independent complaints review mechanism confers confidence in the procurement process by increasing the likelihood that procurement will be carried out in a fair, impartial and transparent manner. Based on international good practice, the complaint review body should not engage



			in activities which conflict with its other review functions. Therefore, the current arrangements for review of complaints by IAC needs to be revised to ensure a clear level of independence from the MoF. Furthermore, the gaps identified by the assessment in terms of complaints review process should be more clearly addressed, possibly in the PPL, but at a minimum, in the procurement regulations.
	Sub-indicator 1(i) Insufficient organization of contracts management function	H	Contract management is the most critical phase of the procurement cycle and should be a key feature of the organizational and institutional arrangement of the public procurement function. Consider introducing guidance to clarify the contract management function and responsibilities and make all contracts management information available on web portal.

Indicator 2. Implementing regulations and tools to support the legal framework

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

Strengths:

110. Procurement regulations and manuals are updated regularly by the Public Procurement Legislation Department (PPLD). User instructions and manuals are available for procuring entities (procurement units), suppliers (tender participants), and procurement organizers at: <https://wiki.goszakup.gov.kz>
111. Technical instructions on the use of web portal are well maintained by the e-Finance Centre of Kazakhstan.
112. Model procurement documents and contracts are included as part of tender documentation on the portal, except for consulting services. Standard and mandatory clauses and templates for goods and works and services are included in the tender documentation. The documents are kept up to date. All standard tender documents include a draft contract with standard contract conditions.
113. The PPL states that “if a public procurement contract is concluded with a non-resident of the Republic of Kazakhstan, [the contract may be executed] in the form proposed by the non-resident with due consideration of the requirements of Republic of Kazakhstan legislation.” As currently written, the PPL implies that different forms of contracts can be used if the winner is a foreign bidder.



114. In addition to the regulations (PPR) that expand on the provisions of the PPL,⁴⁹ supplementary details are provided by several orders of the MoF, including:

- i. The definition of a single operator in the field of electronic public procurement (No. 668, December 21, 2015);
- ii. A list of goods, works, services for which the organization and conduct of public procurement is carried out by a single organizer (No. 669, December 21, 2015);
- iii. A list of goods, works, services of daily and/or weekly needs (No. 677, December 23, 2015);
- iv. Rules for preparation of the annual report on public procurement (No. 688, December 25, 2015);
- v. Rules for using the public procurement web portal and for operation of the web portal in the event of technical malfunction (No. 692, December 28, 2015);
- vi. Rules for collecting, summarizing and analyzing reports based on the information on purchases from domestic producers (No. 693, December 28, 2015);
- vii. Rules for the formation and maintenance of registers in public procurement (No. 694, December 28, 2015);
- viii. Rules for retraining and advanced training of employees engaged in public procurement (No. 697, December 28, 2015); and
- ix. A list of goods, works, services for which public procurement is carried out in a competitive tender with prequalification (No. 91, February 29, 2016).

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

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

Strengths:

- i. The PPL provides for certain and very limited sustainability evaluation criteria (e.g. certified system of quality management; a document confirming voluntary certification of goods made of secondary raw materials obtained from waste products on the territory of the Republic of Kazakhstan; a certified system of management of the environmental management) that allows procurement processes to consider some limited environmental and economic aspects.
- ii. The PPL clearly states that if an international treaty ratified by the Republic of Kazakhstan stipulates rules other than those stipulated in the PPL, the procurement rules of the international treaty shall be applied.

Substantive gaps:

Sub-indicator 3(a) - Absence of the sustainable public procurement policy

⁴⁹ On approval of the Rules for Public Procurement, Order of the Minister of Finance of the Republic of Kazakhstan No. 648, December 11, 2015 with changes and amendments.



116. The country has not yet adopted any standalone Sustainable Public Procurement (SSP) policy. Social, economic and environmental aspects as laid out in SDG 12.7 are not clearly addressed in any legal or policy document.
117. As reported for Indicator 9(a) under Pillar III, SSP considerations, such as the use of life-cycle costing principles in evaluation; or incorporation of environmental, social, health and safety standards, are not properly and systematically applied for complex procurement, either as part of the procuring entity's requirements or a factor in evaluation of responsiveness of the bids.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	<i>Sub-indicator 3(a)</i> Absence of the sustainable public procurement concepts or policy.	M	GoK should consider introducing and gradually implementing a comprehensive sustainable procurement policy. Focus could initially be in implementing life cycle costing principles, with the ultimate objective of developing a comprehensive policy.

3.2. Pillar II - Institutional Framework and Management Capacity

118. Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.
119. This pillar evaluates the procurement system's effectiveness in discharging the obligations prescribed in the Public Procurement Law, without gaps or overlaps. It assesses whether: (i) the PPS is adequately linked with the country's public finance management system; (ii) the institutions in charge of necessary functions are in place; and (iii) the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

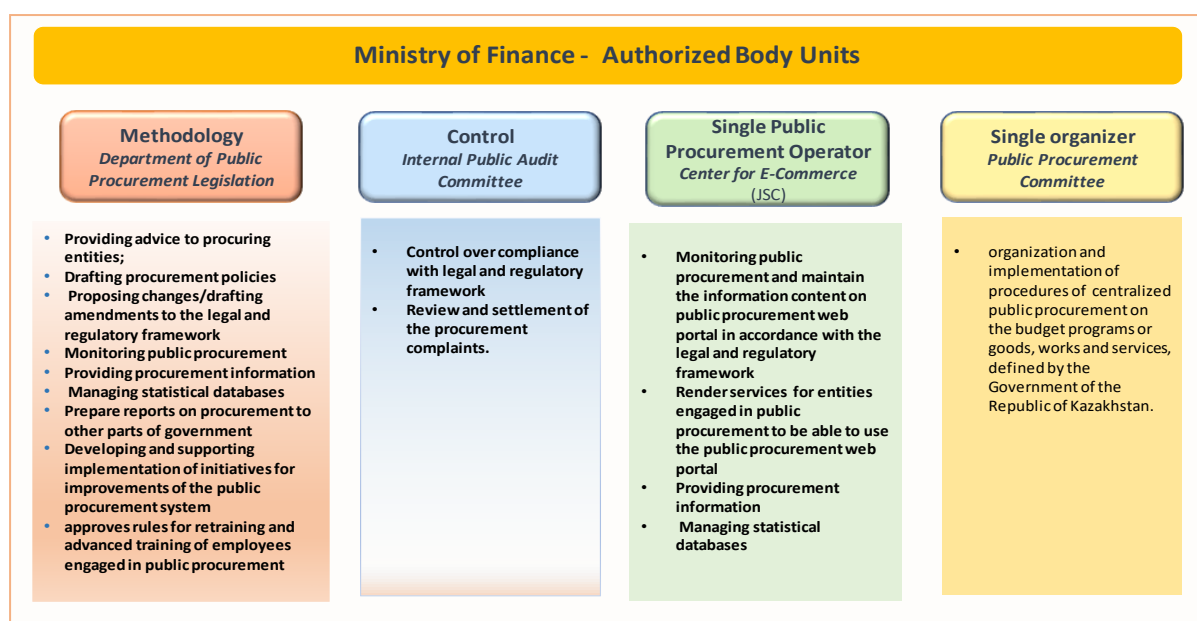
Summary for Pillar II - Institutional Framework and Management Capacity

120. The legal procurement framework provides a reasonable approach to the preparation of annual procurement plans, with adequate linkage to budget planning, approval and release of funds. Procurement not provided for in the procurement plan is prohibited, except for certain Single Source cases and special procedures. The portal has a built-in mechanism to ensure the availability of funds prior to initiation of a procurement process.
121. Many aspects of public financial management (PFM) are regulated by the Budget Code, as revised in 2017. The Code sets out how the budgets of both central government and all local governments are to be planned, prepared and executed, including the timing of different stages and the responsibilities of different institutions, including the two houses of Parliament. Socio-economic and medium-term fiscal planning are the responsibility of the Ministry of the National Economy (MNE), while MoF is responsible for the preparation and execution of the annual budget. The overall profile of the budget, and the expenditure ceilings for each Ministry, are supervised by the Republican Budget Commission appointed by Resolution of the Government. The Budget Commission includes, in addition to the Ministers, representatives of Parliament and the business community.



122. A feedback mechanism to report on budget execution is in place. The Government and the Accounts Committee are responsible for planning and preparing reports on budget execution, to be presented to and approved by the Parliament. However, this mechanism falls short in that it does not include reporting on the completion of major contracts, including details on payments.
123. The PPL identifies the entity in charge of the normative and regulatory functions of public procurement as the “Authorized Body”. Its mandate is to develop the main policy directions on public procurement and put in place the framework for its implementation. The functions of the Authorized Body are clearly specified by the legal and regulatory framework and are assigned to the following units within MoF (Figure 6): (i) Methodology – the Public Procurement Legislation Department, with functions specifically defined in the PPL; (ii) Control – Internal Audit Committee (IAC), with functions defined by the PPL as control over compliance with the legislation⁵⁰ as well as responsibility for handling complaints; (iii) Single Public Procurement Operator – e-Finance Center JSC, with assigned functions defined by the PPL; and (iv) Single Public Procurement Organizer (SPPO) – the Committee for Public Procurement, which carries out unified public procurement as per specific assigned functions defined in the PPL. The Structure of the Central Administrative Office of the Ministry of Finance of Kazakhstan is represented at Annex IV.

Figure 6 - Roles and Responsibilities



124. The functions of the Department of Public Procurement Legislation (PPLD) and the Single Public Procurement Operator (e-Finance Center) appear to meet the key assessment criteria for the responsibilities of the normative/regulatory function, except for the function of providing tools and documents, including integrity training programs and supporting professionalization of the procurement function, which are not assigned to either unit.
125. Figure 6 and Annex IV present a pictorial analysis of roles and responsibilities of the four units of the Authorized Body, including the level of organization, funding, staffing, and level of independence and authority. The PPLD unit, which has the core responsibility for the normative and regulatory function, is part of MoF and its financing comes through the

⁵⁰ In conjunction with the powers established by the Law of the Republic of Kazakhstan, “On State Audit and Financial Control.”



republican budget. The Director of the Department of Public Procurement Legislation (DPPL) is appointed by and reports to the Minister of Finance through a Vice Minister of Finance.

126. The DPPL is positioned at the same level in MoF organigram as the other three units of the Authorized Body (IAC, e-Finance Center and the SPPO). The Director of DPPL reports to one of the Deputy Ministers of Finance. Accordingly, the unit's level of independence and hierarchy compared to the overall governance structure of the GoK raises concerns about impartiality and transparency in discharging the procurement normative and regulatory functions. From the viewpoint of some stakeholders (private sector, CSOs and international organizations) and based on the results of the survey carried out for this assessment, 72 percent of respondents do not perceive that the unit has a situation of conflict. However, 40 percent of respondents believe that a conflict of interest exists, related to the unclear separation of duties between Authorized Body units. In terms of what constitutes conflict of interest, 18 percent of respondents believe that it is due to unclear competencies of officials, and 40 percent relate it to an official position being used improperly for private advantage
127. The function and responsibilities of procuring entities are adequately defined in the legal framework. Most of the ministries have a unit responsible for organization and conducting procurement activities and processes. Decision-making authority for each procurement process is delegated to the competent unit within the procuring entity. Quantitative Indicator 6(a) shows that in 2017, about 95 percent of the procuring entities organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from a procurement unit of other procuring entity, which confirms the predominantly decentralized nature of the public procurement function in Kazakhstan. The legal framework also provides for limited centralized procurement carried out by the Single Public Procurement Organizer at the central level, and recently through the amended PPL, at regional level for a defined list of 27 items. An evaluation of the performance of SPPO could help GoK and explore better mechanism to implement centralized/consolidated procurement allowed under PPL, as amended in December 26, 2018, to ensure better efficiency and effectiveness and minimize the risk of potential conflict of interest with respect to MOF's public procurement normative and regulatory function and responsibilities.
128. The web portal, under the responsibility of the e-Finance Center, serves as a centralized and integrated public procurement information system providing up-to-date information that is easily accessible to all interested parties at no cost. It provides access to all the Government's procurement plans along with the procurement method, tender documents, technical specifications, clarifications, preliminary and final bid evaluations reports, details of the winning contract, amendments to the contract and complaints resolution decisions. The system is also integrated with many other systems for interoperability, including the tax, licensing, commercial banking, debarment and justice systems. **However, the assessment noted that the procurement web portal does not provide information on public procurement conducted outside the e-procurement system, including procurement permitted under the Single Source method (in accordance with the PPL, Article 41, paras 4 and 5) and information related to key steps of the two-stage tendering procedure.** In addition, the system does not track or publish information on the payment process after submission of invoices by suppliers.
129. The web portal is widely used at all levels of government, down to the municipal level. The e-Finance Center is mandated to provide the required training on the use of the system for procurement staff of procurement entities. There is, however, no official certification program for using the e-procurement system. The web portal gives an opportunity to entity to identify



its size and type while registering as the participating bidder. Based on information captured by web portal 98 percent of the vendors participating in web portal were SMEs in 2017.

130. There is no evidence of a substantive permanent procurement training program. One of key training providers in the country, Finance Academy, has only three modules related to public procurement out of 165 modules, mostly on audit and financial management. The procurement modules have a strong focus on technical aspects of the web portal. However, quantitative analysis of the survey data identified a lack of training on the principles of public procurement, including integrity issues. Furthermore, there is a lack of evidence that the procurement function is recognized in the civil servants' framework. Certification programs and other aspects of professionalization would enhance the efficiency of the system and improve the overall use of public resources. This will require GoK's attention to developing a comprehensive strategy on professionalization of the procurement function in the country.

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

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

Strengths:

132. The e-procurement information system is well integrated with the public financial system and the budget process. The legal and regulatory procurement framework allows for a relatively realistic preparation of annual procurement plans based on budget allocations. The procuring entities prepare their plans in two stages: a preliminary procurement plan upon receipt (by October every year) of information about their indicative annual budget allocation, and then the final procurement plan upon receipt of final budget allocation approval (by the following January). Once the budget is committed under an activity, the procuring entity may start procurement.
133. A feedback mechanism reporting on budget execution is in place. Its responsibility lies with the government and the Accounts Committee which are trusted with the mandate to plan and prepare reports on republican budget execution to be presented and approved by the Parliament.
134. The Open Contracting Data Standard (OCDS) is partially implemented on the web portal except for report visualization. Currently, with support of OECD, the e-Finance Center is developing OCDS forms of visualization. The system is also integrated with many other systems for interoperability, include the tax system, licensing system, commercial banking systems, debarment system, justice system and court decision system.

Substantial gaps:

Sub-indicator 4(a)- Initiation of tendering process without approved budget allocation.

135. The legal framework provides for the possibility of tenders being launched without budget allocation approval in the case of two-stage tender procedure. It is not clear when the procuring entity receives budget allocation approval for such contracts. Even if the budget is allocated after stage one has been completed, some bidders may not want to spend resources



on tenders without any firm budget commitment. This practice is not in keeping with international procurement practice, which requires that no unfunded tenders be launched.

Sub-indicator 4(a) - Partial information on contract payments in the procurement web portal.

136. The portal contains information about payments for contracts, but not enough information to determine any delays in the payment of invoices, as needed for a quantitative assessment of sub-indicator 4(b). The Treasury and other State bodies also do not monitor delays in payments. This lack of information is considered as a significant gap.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	<i>Sub-indicator 4(a)</i> Initiation of the two-stage tender procedure process without approved budget allocation.	M	Further enforce the legal and regulatory system to avoid unfunded tenders under all procurement methods and procedures.
2	<i>Sub-indicator 4(a)</i> Incomplete information on contract payments on the procurement web portal.	M	Enhance the feedback mechanism to fully report on completion of major contracts, including details on timely or delayed payment of invoices, and other aspects of execution such as time and cost overruns.

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

137. This indicator refers to the normative/regulatory function in public procurement and its proper discharge and coordination. The assessment focuses on the existence, independence and effectiveness of these functions and the degree of coordination among responsible organizations. The normative/regulatory function should be clearly assigned, without gaps or overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-coordinated joint effort.

Strengths:

138. The PPL clearly defines government competence on public procurement (articles 15 through 19) and the competence of the Authorized Body under the administrative and financial control of MoF.
139. The functions of the Authorized Body are clearly specified by the legal and regulatory framework and are assigned to four specialized units (Figure 4).
140. The functions of the regulatory and normative body are clearly specified by the legal and regulatory framework and are assigned to two departmental units within the Authorized body—the Department of Public Procurement Legislation (PPLD) and the e-Finance Center.



141. The functions and responsibilities of procuring entities are adequately defined in the legal framework. In general, all ministries have a procurement service/unit responsible for organizing and conducting procurement activities and processes. Decision-making authority on each procurement process is delegated to the competent unit within the procuring entity.

Substantial gaps:

Sub-indicators 5(b) – Responsibility for developing procurement training programs (including on integrity) and professionalization of the procurement function.

142. The PPL and its amendment, effective January 2019, entrust the Authorized Body with the responsibility to approve rules for retraining and advanced training of employees engaged in public procurement and to develop and approve methodological recommendations on public procurement issues. However, there is no assigned responsibility for developing procurement training programs (including on integrity) and professionalization of the procurement function.

Sub-indicator 5(c) - Level of independence of the normative/regulatory units.

143. All the functions of public procurement—regulatory and normative, advice and methodological advice, oversight and control, review of complaints and conduct of unified centralized public procurement—are under the organizational and administrative responsibility of the Ministry of Finance as Authorized Body. The Director of the Department of Public Procurement Legislation (DPPL), with core responsibility for the normative and regulatory function, is appointed by and reports to the Minister of Finance. The department is financed through the MoF allocation of the republican budget.
144. Given the positioning of the Department of Public Procurement Legislation (PPLD) as among the other three units of the Authorized Body (IAC, e-Finance Center, and Single Organizer), the level of independence of the normative and regulatory unit appears not to be adequately established. Furthermore, there is no evidence of any system to avoid conflict of interest within PPLD.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	Sub-indicators 5(b) No assigned responsibility for developing procurement training programs (including on integrity) and professionalization of the procurement function.	M	Consider assigning responsibility for training programs and professionalization of the procurement function to a specific government entity.
2	Sub-indicators 5(c) and 5(d) Level of independence of the normative/regulatory units.	H	GoK should consider reinforcing the status and independence of the PPLD as the normative and regulatory authority and supporting the professionalization of the procurement function



Indicator 6. Procuring entities and their mandates are clearly defined

145. This indicator assesses whether (i) the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities; (ii) the framework includes provisions for delegating responsibilities in the procurement process to procurement staff and other government officials; and (iii) the framework includes a centralized procuring entity.

Strengths:

146. The function and responsibilities of procuring entities are adequately defined in the legal framework. Most line ministries have a procurement service or unit responsible for organizing and conducting procurement activities and processes.
147. Decision-making authority for each procurement process is delegated to the lowest competent unit within the procuring entity.
148. The predominantly decentralized nature of the public procurement function has been confirmed by the assessment of related quantitative indicators, which showed that in 2017, 95 percent the procuring entities organized and conducted decentralized procurement activities and processes through either their in-house designated procurement unit or through a support from procurement unit of other procuring entity.

Substantial gaps:

Sub-indicator 6(b) - Unoptimized approach of the Single Public Procurement Organizer.

149. The Single Organizer (Committee for Public Procurement) is responsible for carrying out unified (centralized) public procurement on behalf of procuring entities for a limited list (currently) 27 items. The centralized procurement has been extended to regional level through regional single procurement organizers. The central procurement of commonly used items is not carried out, through a framework agreement particularly for consolidated specialized procurement.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	Sub-indicator 6(b) Unoptimized approach of centralized public procurement organizer (SPPO)	M	Evaluate the SPPO's performance and explore better mechanism to implement centralized/consolidated procurement allowed under PPL, as amended in December 26, 2018, to ensure better efficiency and effectiveness and minimize the risk of potential conflict of interest with respect to MOF's public procurement normative and regulatory function and responsibilities

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

150. The objective of this indicator is to assess the extent to which the country or entity has systems in place to publish procurement information, efficiently support the different stages of the



public procurement process through digital technologies and manage data for analysis of trends and performance of the entire public procurement system.

Strengths:

151. There is an integrated information system which is centralized and provides up-to-date information and is easily accessible to all interested parties at no extra cost.⁵¹ The system is also integrated with other systems for interoperability, including the tax, licensing, commercial banking, debarment system and justice systems. Based on 2018 data for 2,046,036 contracts, there was 100 percent compliance with publication on the portal of procurement plans, key procurement information and invitations to bid. Similar compliance was observed for years 2017 and 2016.
152. The Open Contracting Data Standard (OCDS) is partially implemented on the portal and the e-Finance Center is currently developing OCDS forms of visualization.
153. A relatively well-organized appeals system was launched on January 1, 2018 through which 7,600 appeals were received, all of them posted along with the decisions about their disposition.
154. The e-procurement system is widely used at all levels and for the full procurement and contract execution cycle. For the procurement cycle, the system publishes tender documents, draft contracts, preliminary evaluation reports, final minutes of evaluation reports, contract award information and details of the contract, and implementation information, including amendments and payments for the executed contract.
155. The portal provides adequate linkage to the legal and regulatory framework and related standard procurement documents and guidance /instructions.
156. The National Security Committee conducts quarterly security vulnerability tests of the e-procurement system.
157. The system has 88 terabytes of capacity and can safely store the procurement and contracts database for 75 years.

Substantial gaps:

Sub-indicator 7(a) - Incomplete procurement information on the portal.

158. Payment information is captured by the e-procurement system. However, the system does not publish information about the actual date of payment of invoices or provide data on time and cost overruns that may occur during contract implementation. It also does not publish procurement information for some Single Source cases and for key steps of the two-stage tendering procedure. Further, the system is unable to capture information on procurement conducted outside of the system.

Sub-indicator 7(c) - Need for better standardization of procurement data.

159. The published procurement information is not in a complete form of standardized data, which would help interested parties to track each step of the contracting process, create summary records and determine patterns. Providing for procurement information publication in a completely standardized form of data would further increase the transparency and public oversight.

⁵¹ The amended PPL, effective January 1, 2019, imposes a fee for the use of the web portal by suppliers.



Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	Sub-indicator 7(a) Incomplete procurement information published on the web portal.	M	Ensure the publication of information on all procurement methods as well as complete information on payment dates, through better integration with the information systems of Treasury and commercial banks.
2	Sub-indicator 7(c) Need for better standardization of procurement data.	M	Complete and enforce the ongoing Open Contracting Data Standard (OCDS) for information disclosure.

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

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

Strengths:

- 161. The e-Finance Center is mandated to provide training on the use of the system for procurement staff of procuring entities.
- 162. The Authorized Body and e-Finance Center provide advisory and help desk services on use of the portal. Video instructions and manuals are also available on the portal.

Substantive gaps:

Sub-indicators 8(a) to 8(c)-Lack of overall strategy for development capacity and professionalization of the procurement function.

- 163. The key gap identified under indicator 8 is the lack of an overall government strategy to develop public procurement capacity and professionalize the procurement function. Most training is on the mechanics of the web portal, with no tie-in with any institution for regular professional training or certification on procurement and contracts management. In addition, there is no mechanism to measure the quantitative or qualitative performance of the procurement system.
- 164. Further, the procurement function still is not recognized as a profession in the civil servants' system.

Overview of Gaps and Substantive gaps with risk and recommendations



SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	<i>Sub-indicator 8(a)(to 8(c)</i> Strategy for capacity development and professionalization of the procurement function	M	GoK should consider preparing a skills gap inventory and a training need analysis and use the results to design, develop and deliver frequent and content-rich training programs for public and private stakeholders. In addition, to ensure that only qualified staff work on procurement, a testing and accreditation system is necessary. MoF should develop a strategy to build procurement capacity and professionalize procurement training, possibly in partnership with local higher education institutions.
2	<i>Sub-indicator 8(c)</i> Monitoring performance to improve the system	M	There is no performance measurement system to focus on qualitative and quantitative aspect. Need to introduce a performance measurement system based on indicators that, among others, measure performance, effectiveness, and savings of the procurement system.

3.3. Pillar III - Public Procurement Operations and Market Practices

165. This pillar focuses on how the procurement system in a country operates and performs in practice. It looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the procuring entity responsible for managing individual procurements. It also examines the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice.

Summary for Pillar III - Public Procurement Operations and Market Practices

166. This part of the assessment is supported to large extent by empirical evidence on how procurement principles, rules and procedures embedded in the legal and regulatory framework are being implemented. The evidence is based on the results of quantitative analysis carried out on a representative sample of 150 contracts selected from different procuring entities. The assessment also examined the market response to public procurement solicitations and the possible factors that might influence this response. In addition, a survey was used to solicit feedback on the functioning of the system

167. While the assessment acknowledges the PPL's good practice provision for early engagement with potential market/suppliers seeking their feedback on the draft tender documentation through the portal, it concludes that the legal framework does not provide for a structured strategic and holistic approach to procurement planning. Such planning would help to identify the best approach to market tenders and procurement methods, which would support the



achievement of fair competition and value for money. The assessment observed that procuring entities generally conduct some form of needs analysis, but it is not based on a proper and systematic market study or analysis. The absence of any detailed guidance on the practical application of needs assessments, or how to link them with market research and analysis, supports this conclusion. There is also an insufficient use of sustainability criteria in procurement due to the lack of a proper policy/strategy that integrates specific sustainability criteria throughout the procurement cycle, from identification of needs, definitions of specifications to contract administration.

168. Moreover, a careful analysis of the actual practice of two-stage tendering identified a partial noncompliance with respect to the application of the method as prescribed by the PPL and PPR, particularly the mandated use of the web portal. The analysis concluded that in practice the procedure is conducted off the system, and on paper, rather than through the portal and procuring entities confirmed this practice in the interviews.
169. The quantitative analysis also identified some efficiency issues with respect to the portal. In particular, there are limited provisions and guidance of the legal and regulatory framework for contract management performance indicators and monitoring. The system does not automatically analyze the procurement data collected through the portal or feed the results to the authorities responsible for taking mid-course corrective actions in how procurement is conducted and how contracts are performing. Moving the public procurement system to the next level in terms of quality and performance will require strengthening the system's legal and regulatory framework, technical and procedural tools, and performance measurement aspects and practices, with a focus on contract management.
170. Kazakhstan's public procurement market is relatively well functioning, particularly with Government support for open dialogue and consultation with the private sector when formulating changes to the public procurement system. Furthermore, the private sector shows a high willingness to participate in public procurement opportunities, mainly due to measures such as the mandated use of e-procurement system, streamlined tender procedures and the early engagement with potential market and bidders through public discussion of draft tender documents. **However, the assessment of the quantitative indicators shows that 99.7 percent of procurement opportunities and corresponding contracts for the year 2017 went to local private sector firms only. This confirms the barrier to the participation of foreign (non-resident) tenders caused by the restrictive requirements for acquiring the digital signature certificate. These barriers will be further heightened by the additional requirements introduced by the amended PPL, effective January 1, 2019, and related to payment of Web Portal access fee and e-bid security through an account opened at a local Kazakhstan commercial bank only.**

Indicator 9. Public procurement practices achieve stated objectives

171. The objective of this indicator is to collect empirical evidence on how procurement principles, rules and procedures embedded in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.
172. The assessment of this indicator was based on the results of a quantitative analysis carried out on a representative sample of 150 contracts from selected sectors—40 contracts from the road sector, 40 from the water sector and 70 from other sectors. The source of data was the public procurement web portal. As data on the actual implementation of contracts are not captured on the portal, these were obtained manually through desk review of contracts files.



Strengths:

173. The PPL provides for the procuring entities to determine and analyze their needs for goods, works and services beginning in the first half of the year and prepare their annual budget proposals as part of the planning and budgeting process for the following fiscal year. The PPL follows good practice in requiring a mandatory preliminary public discussion, by way of the portal, of the draft tender documentation. This early engagement allows for feedback from suppliers and for preparation and publication of the minutes of these discussions on the portal. The objective is to adjust the procurement approach to the actual market and improve the chances for a level playing field and achievement of value for money.
174. The contract requirements and desired outcomes are relatively well defined by the legal framework. The annual budget proposals discuss program objectives, and identify needs in terms of goods, works and services, as well as their purpose. For high-value and complex projects, feasibility studies are carried out, which identify good, works and services contracts and their desired outcomes. Fine tuning of these needs takes place when the procuring entity prepares a preliminary procurement plan upon receipt (tentatively by October) of information about its indicative annual budget allocation, and then the final procurement plan upon receipt of final budget allocation approval.
175. For complex procurement contracts, the PPL provides for two-stage tender and defines the situations for their use. These include projects for which it is difficult to formulate detailed specifications of the goods, works and services or determine their technical and other characteristics. Stage one is used to screen out the bidders who do not comply with the procuring entity's requirements. The PPL also provides for open tender with prequalification, as stipulated in the PPL and detailed in the Public Procurement Regulations.
176. Regarding rules and practices to ensure value for money and quality procurement outcomes, the current legal framework provides for some limited non-price criteria in evaluating bids and corresponding outcomes. These criteria include considerations for functional, quality and environmental management characteristics, in accordance with standards and related legislation of the Republic of Kazakhstan, as well as some limited consideration for the cost of operation and maintenance.
177. The procurement portal allows the procuring entity to select and document procurement methods at the planning stage, as well as to make any before bidding is opened to the public in accordance with the provisions of the PPL. Information on the procedures for bid submission, receipt and opening are provided and clearly described in the procurement documents on the portal. Bid submission, receipt and opening are done automatically/electronically, with a relatively fair level of transparency.
178. Assessment of the quantitative indicators has shown that the average time to procure goods, works and services following an open tender procedure is 56 days. The maximum lead time stipulated by the PPL and regulations for this method is 58 days. This demonstrates that a high level of efficiency has been achieved for the pre-award stages of the open tender procedure, mainly due the mandated use of the e-procurement system.
179. Except for certain cases defined by the PPL, all contract awards are announced on the portal as prescribed in the PPL and Regulations. All procurement records are maintained on the portal and are accessible to all interested parties.
180. The legal framework requires the Authorized Body to issue an annual public procurement report

Substantial gaps:



Sub-indicator 9(a) - Lack of strategic approach to procurement planning.

181. The legal framework does not provide for a structured and holistic approach to procurement planning to inform the best approach to market and optimal procurement methods that would support achievement of fair level of competition and value for money. Further, no detailed guidance or instructions are provided to the procuring entity on the practical application of needs assessments or how to link them to market research.
182. This gap is substantial. The quantitative assessment of indicator 9(b)(j) revealed that only 32 percent of all processes under open tender lead to contract awards. The remaining 68 percent either fail or are cancelled. Further, the lack of guidance has resulted in poor procurement planning and acquisition of goods, works and services that may not yield optimum competitive, efficient, and value for money outcomes.
183. While the PPL and PPR provide for the solicitation of seeking feedback on draft tender documents from potential bidders, they do not spell out whether bidders can seek further clarification once the documents are issued. Further, there are risks associated with soliciting user feedback without any consideration to procurement method, value, or nature and complexity of the procurement activity.

Sub-indicator 9(b)

184. *Inadequacy of sustainability criteria and techniques to determine value for money* . The legal and regulatory framework lacks a sustainable public procurement policy that requires specific sustainability criteria to be integrated throughout the procurement cycle, from identification of needs to definitions of specifications to contract administration. Except for some social considerations in the PPL (Article 51), few sustainability-related evaluation criteria are included in the legal framework, and these are limited and unbalanced and do not include social aspects of procurement outcomes. Thus , the sub- indicators 9 (b) was assessed as high risk and a red flag was raised as they hinder the achievement of basic public procurement principles.
185. The procurement framework provides for some use of non-price criteria in the evaluation of bids and corresponding outcomes with respect to quality and the cost of operation and maintenance. These criteria are applied based on a fixed percentage discount to be used in the evaluation for the sake of comparison (Regulations, paragraphs 153–166). The bidder that is determined to have met the requirements for qualification, experience, technical and other aspects, as specified in the tender documents, has his/her bid price discounted accordingly. However, the actual practice of applying the fixed percentage discount has been assessed as inappropriate, as some of the requirements are not product specific or specifically related to the nature of the subject procurement and its outcomes, and hence do not ensure achievement of value for money.
186. **The discount for no price criteria with additional qualification also appears inefficient compared to the technique of weighting technical and financial requirements and may not lead to value for money.** Moreover, the framework also lacks an appropriate weighting system that differentiates the qualitative criteria in terms of their importance or relevance in meeting the objectives and outcomes of each specific procurement. The absence of a proper life-cycle cost assessment technique to determine value for money is another obstacle to promoting sustainable public procurement outcomes and increasing impact by optimizing the efficiency of public service delivery in the country.



187. *Limitation in the use of procurement methods and tender documents.* While the PPL mandates the use of the web portal for all procurement methods, including two-stage bidding, the assessment found that, in practice, two-stage bidding is not fully conducted through the web portal system, except for notice of tender and posting of contract award⁵². For example, for 2 the period January 1 – September 28, 2018 there were only two procurements that followed this procedure, and which were ultimately cancelled; in 2017 there were 27 two-stage tendering processes out of which only 14 were successfully completed. This raises questions as to the relevance and understanding by the procuring entities of the conditions for use of this method. The amended PPL, effective January 2019, has brought a clarification that the two-stage tender method will be used only for a list of limited procurement. This list, as approved by MOF Order No. 156 of February 23, 2019, includes 5 types of procurement.
188. Another procurement issue relates to open tender with prequalification. However, the open tender process does not actually provide for a separate prequalification stage (notice, prequalification applications documents and their evaluation) to determine whether potential bidders have the required level of experience, staff and management capacity, and financial capacity. The absence of prequalification makes it difficult to ensure that suppliers and contractors are qualified to carry out complex and high-value contracts.
189. The third issue relates to the requirement in the PPL (Article 21) to prepare specialized tender documentation. The assessment noted that, except for furniture and light industry, there are no specific tender documents for specialized procurement such as ICT or textbooks.
190. *Insufficient safeguard of confidentiality of the tender information.* As noted under Pillar I (indicator 1(g)), the legal framework, including tender documentation, does not provide for proper marking by bidders of confidential information. Although the disclosure of information is limited to participating bidders. It has been reported that parts of their bids have been copied in similar procurements.
191. This violates bidders' rights to safeguard their proprietary, confidential, business and commercial secrets. In the long term, this could potentially impact on the participation of qualified bidders who might fear disclosure of sensitive information to competitors. The lack of protections is a substantial gap that could cause serious reputational damage to the current public procurement system
192. *Insufficient use of open tender method.* The assessment of quantitative indicators related to sub-indicator 9(b)(j) revealed a serious performance issue with respect to open tender procedures, as illustrated by the very high ratio (68 percent) of failed and/or cancelled processes, leading to the use of non-competitive methods such as Single Source.
193. The analysis, based on the sample of 150 contracts, found that 50 percent of the bids were non-responsive to the bidding criteria. This could be due to unclear or insufficient information in the tender documents, restrictive requirements and specifications, poor capacity of bidders to prepare and submit a quality and responsive bid, or poor professional judgment of the tender committee in accepting non-responsive bids. Generally, non-responsive bids are

⁵² The PPL amendment submitted to Parliament in December 2017 and currently being deliberated aims to clarify that two-stage tenders will be held according to the list only for a list of approved procurements? approved by the Ministry of Finance.



known to reduce competition. This finding raises questions about the practice of preliminary admission, as stipulated in the PPL (Article 27, paragraph 3), which gives bidders the opportunity to bring their pre-rejected bid into compliance with qualification a technical requirement within a period of three working days.

Sub-indicator 9(c)

194. *Lack of proper practices for contract management performance measurement and monitoring.* The legislative and regulatory framework does not focus sufficiently on contract management performance measurement and monitoring. The deficiency of these practical aspects of procurement has been assessed as a substantial gap, given its impact on obtaining value for money and timely achievement of procurement objectives and GoK's corresponding goals for efficient service delivery. The absence of incentives for better contract performance limits contractors' efforts to achieve better value for money.
195. *Partial monitoring of procurement statistics by the web portal.* The procurement web portal is an effective means of producing and capturing government public procurement statistics. However, it does not capture statistics on procurement conducted outside the e-procurement system, such as with the Single Source method for cases under clause 4 and 5 of Article 41, as well as statistics related to the key steps of two-stage tendering. The statistical system is therefore not put to full use for any meaningful analysis of procurement performance.
196. The absence of a proper system to regularly analyze procurement data, or to use the results of the analysis to inform those responsible for improving procurement practices, is a missed opportunity.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	Sub-indicator 9(a) Lack of strategic approach to procurement planning	H	Strengthening the quality and performance of the public procurement system will require the adoption of a more strategic approach, including systematic market analysis to inform optimal procurement strategies and planning. The strategy should guide the use of Single Source only in exceptional cases and not through an extensive listing of exclusions in the PPL.
2	Sub-indicator 9(b) Limited sustainability criteria and techniques unfit to determine value for money	H	Strengthening the strategic role of the public procurement system and improving its quality and performance will require embedding adequate sustainability requirements in the legal framework to obtain value for money and better outcomes throughout the procurement cycle.
3	Sub-indicator 9(b)	H	Better regulate the two-stage tender procedure and integrate all its steps in the e-procurement system.



	Limitation in the use of procurement methods and tender documents		Introduce criteria and procedures for pre-qualification as a separate exercise before tenders are launched for complex and high-value contracts. Complete the regulatory framework by developing and introducing separate standard tender documents for services, as well as for specialized procurement such as consulting services, with suitable terms and conditions.
4	<i>Sub-indicator 9(b)</i> Insufficient safeguarding of confidentiality throughout the tender process	H	Strengthen general confidentiality provisions and introduce appropriate procedures to manage specific confidentiality cases. This could include elaboration of instructions/ guidance for proper marking by bidders of the confidential information contained in their bids.
5	<i>Sub-indicator 9(b)</i> Performance issues in the use of the open tender method	M	The legal framework should include additional provisions and instructions on selection of the optimal procurement method based on the market analysis and in accordance with the purpose of the procurement.
6	<i>Sub-indicator 9(c)</i> Lack of proper practice of contract management performance measurement and monitoring	H	Moving the public procurement system to the next level of quality and performance will require strengthening contract management, including through legal, regulatory, technical and procedural tools and performance measurement aspects and practices. The current legal framework should be reviewed to identify and specific causes of the system's poor performance.
7	<i>Sub-indicator 9(c)</i> Incomplete monitoring of procurement statistics captured by the web portal	M	Monitor and analyze all public procurement data on a regular basis to determine the performance of the system and share results with all concerned, including citizens.

Indicator 10. The public procurement market is fully functional

The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors, such as the general economic climate, policies to support the private sector and a good business



environment, strong financial institutions, the attractiveness of the public system as a reliable client, and the kind of goods or services being solicited.

Strengths:

197. The Government encourages open dialogue with the private sector, especially through the NCE “Atameken” and industry associations, IT companies and NGOs. GoK also consults with stakeholders on proposed changes to the public procurement system, including laws and regulations. The consultations are carried out through public hearings, such as the public hearing held by MoF in early 2017 following the posting on its website of the draft amendment to the 2015 PPL. The minutes of the public hearing were then posted on the Ministry’s website in October 2017. The website of the Kazakh Parliament also posted the same proposed amendment to the PPL. In the survey carried out as part of the assessment, around 83 percent of the participating private sector and civil society entities agreed that the Government consults with the private sector to varying degrees before making changes to public procurement laws and regulations.
198. The private sector in the form of small and medium companies is growing and the quality of its goods and services is improving, although not in proportion to the Government’s needs, as shown by the average number of bids received. Nevertheless, the private sector plays a vital role in meeting these needs, even though the Government has very few programs to build private sector capacity to participate in public procurement. The e-Finance Center provides only limited technical training. However, Atameken through its headquarters in Astana and branches in all regions, organizes public procurement training seminars and makes its services available to its members via telephone and the internet.

Substantive gaps:

Sub-indicator 10 (a) - Insufficient private sector procurement capacity building.

199. A better-informed private sector contributes to the efficiency and effectiveness of a public procurement system. The assessment noted the involvement of the Government in procurement training programs is very limited. More than 70 percent of survey respondents said they were not aware of capacity building programs being run by the government for private contractors and SMEs, while 30 percent said they were aware of such programs.
200. Procurement training for the private sector is provided mainly by the e-Finance Center and by Atameken, which organizes training seminars through its headquarters in Astana and branches in all regions.

Sub-indicator 10(b)- Systemic constraints inhibiting private sector access to public procurement market.

201. Overall, the public procurement legal framework and the way it is implemented appears to favour the participation of local contractors, suppliers and service providers. Assessment of the quantitative criteria in Pillar I, indicator 1(d)(b) found that 99.7 percent of contract awards went to the local market. In terms of participation, however, only 2 to 3 bids per tender were received, on average. Moreover, in 2107, only 41 percent of participating suppliers were awarded contracts. This low rate of participation reduces competition and has a bearing on the prices the Government pays for goods, works and services. Such low participation may be due to the presence of more systemic constraints to greater private sector access to the public procurement market. These constraints have been identified as (i) difficulties in accessing financing, and lack of incentives to local banking system to provide financing to SMEs; (ii) the procuring entity’s lack of know-how in specifying its needs, including the use of outdated technical standards; (iii) contract prices with a fixed ceiling not always consistent with



prevailing market prices; (iv) excessive use of Single Source procurement; (v) inadequate capacity of the private sector to prepare quality and responsive bids; and (vi) the Government's practice of not allowing advance payments once contracts have been finalized without bank guarantee.

Sub-indicator 10(c) - Impacts on public procurement policy objectives not fully evaluated.

202. There is no practice of conducting a risk-based procurement assessment in key sectors. The risks that poses the decision of placing all key public procurement sectors under Samruk Kazyna on sector markets have not been assessed by the government. In addition to the lack of any analysis on the impact of Samruk Kazyna adoption of less competitive procurement procedures on fair access to the local qualified private sector players to Samruk-Kazyna procurement opportunities.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	<i>Sub-indicator 10(a)</i> Insufficient private sector procurement capacity building	H	Government, alone or jointly with NEC, to develop and launch a comprehensive program of procurement training for private sector contractors and providers of goods, works and services.
2	<i>Sub-indicator 10(b)</i> Systemic constraints inhibiting private sector access to the public procurement market	M	Leverage the public procurement framework to promote increased and efficient participation of SMEs in public procurement opportunities.
3	<i>Sub-indicator 10(c)</i> Impacts on public procurement policy objectives not fully evaluated	H	It is recommended to assess the risks and lost opportunities for the sector procurement market to inform GOK policy related to exclusion of SOE procurement from the PPL.

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

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

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



204. Transparency and civil society engagement strengthen integrity in public procurement. However, the assessment found no evidence of an enabling environment for public consultations with CSOs in formulating legislative changes or monitoring the procurement process and contract implementation. There is a restricted and selective participation in consultations related to procurement policies, limited to representatives of Atameken.
205. The legal and regulatory framework does not provide for specific provisions on public consultation and monitoring mechanisms specifically related to public procurement. According to the Law on Public Councils, the main functions of these councils include consultations on strategic planning, budgeting, and budget execution of line ministries and local government bodies.⁵³ Although budget execution may include discussions of procurement plans, these discussions usually do not address the next stages of the procurement process, such as bid opening, evaluation and contract award, contract management and completion. Similarly, there are no programs in place to build the capacity of civil society organizations to understand, monitor and improve public procurement. As of March 2018, there were about 14,349 non-governmental organizations (NGOs) in Kazakhstan operating mostly in areas such as youth policy, support to socially vulnerable groups, education and science, sports, healthy lifestyle, human rights, gender issues, environment, culture and arts.
206. There also is no public consultation in the planning process prior to large-scale or environmentally and socially sensitive procurement; nor are citizens officially involved in monitoring contract performance. The country's laws and regulations overall provide for a comprehensive control framework, including internal and external audits and internal controls. The Accounts Committee (AC), as the Supreme Audit Institution (SAI), is responsible for conducting procurement audits as part of compliance and performance audit, but its focus is on compliance and not on key performance indicators related to procurement. However, the State Committee on Internal Public Audit's (CIPA's) role in ex-ante review of procurement transaction puts CIPA in a conflicting role both as a true internal auditor and complaints reviewer. For certification of public auditors, there is no separate training module on public procurement. Further, Kazakhstan's control and audit system does not provide dedicated rules or guidance related to public procurement, and there is no specialized procurement audit.
207. Regarding efficiency and effectiveness of the complaints review mechanism, Article 47 of the PPL describes a mechanism of appeal against (action/inaction) decisions of the procuring entity, the Public Procurement Organizer, the Single Procurement Organizer, the Single Public Procurement Operator and others. Complaints are to be filed with the Authorized Body through the public procurement web portal using an electronic digital signature. The first review of the appeal is done by IAC. Based on limited complaints data from the portal from January 1, 2018 through June 15, 2018, the appeals system appears to function well and be balanced and unbiased. In the survey, however, 66 percent of respondents reported thinking that procurement decisions were unfair and did not believe the appeal system was sufficiently trustworthy to embark on an appeal. Almost 84 percent of respondents are not satisfied with the public procurement appeals system.
208. Regarding ethics and anti-corruption measures, the Anti-Corruption Law of 2015 defines prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties, but without specific reference to public procurement.⁵⁴ However, the definition of

⁵³ On Public Council Law of the Republic of Kazakhstan № 383-V ЗРК, November 2, 2015.

⁵⁴ Anti-corruption Law of the Republic of Kazakhstan № 410-V ЗРК, November 18, 2015 with changes and amendments.



conflict of interest is not in line with international standards; nor are sanctions for violating rules on conflict of interest.

209. PPL Article 6 states that prohibited practices specified in paragraphs 1 and 2 of that article can be detected at any stage of procurement. If unlawful actions are detected during an ongoing procurement process, the concerned bidder is expelled from the tender process, while in cases when the unlawful action is detected at the contract implementation stage, the contract is subject to suspension until investigation results are issued. However, there is no system of suspension or debarment based on due process (also covered under Pillar I), and the blacklist maintained by MoF does not specifically include corruption or fraudulent practices.
210. There are no dedicated training programs on integrity in procurement. Based on survey results regarding the effectiveness of anti-corruption measures, only 63 percent of respondents have a favourable opinion of the effectiveness of anti-corruption measures. Further, about 85 percent said they were not aware of any CSO actively providing oversight or a social audit of public procurement.

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

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

Strengths:

212. The GoK is increasingly creating opportunities for the public to participate in decision making about and monitoring of budget execution, including public procurement. Public Councils created as part of the 100 Steps agenda are seen as the main instrument for CSOs to influence the operations of government agencies. In addition, the annual reporting meetings of ministers and heads of subnational/municipal governments, or akims, provide opportunities for civil society to inquire about the use of public resources.
213. The National Action Plan on Promoting Interaction between Non-Governmental Organizations and the State for 2016-2020 includes several activities that promote civil society's role in anti-corruption policy, monitoring of social projects and evaluation of social orders.⁵⁵ Civil society can also participate in the legislative drafting process using the Open Legal Acts policy, including by commenting on proposed changes related to the public procurement system.
214. The assessment found that Atameken participated in drafting the PPL and initiated some of its amendments. It also closely collaborated with the GoK on improving public procurement processes.
215. Kazakhstan has significantly advanced in making public procurement information available to the public. All documentation related to the public procurement legislative and regulative framework is fully and freely available on the public procurement web portal. Government procurement plans, tender opportunities, and contract awards are all published online.

⁵⁵ *National Action Plan on Promoting Interaction between Non-Governmental Organizations and the State for 2016-2020, Order of the Prime Minister № 159-p, December 8, 2015*



However, the e-procurement system covers only 23 percent of overall public procurement expenditure.

216. Although scattered, there is some evidence of citizens' participation in procurement monitoring, such as civil society reports and press items that provide a basic analysis of publicly available information on public procurement. Also, the Citizens' Control project, launched in 2016 by the Agency for Civil Service Affairs and Anti-Corruption (ACSA), provides a framework within which citizens can report local authorities who overstate procurement prices.

Substantive gaps:

Sub-indicator 11(a)- Insufficient CSO and citizen capacity and involvement in public procurement.

217. Despite general provisions for public participation in decision making, monitoring and oversight, there are no specific provisions related to public consultation and monitoring of public procurement. Other than training programs on "state social order", there are no specific training programs for civil society and NGOs to understand, monitor and improve public procurement.
218. Atameken is the only non-profit organization specifically entitled by law to participate in drafting and amending public procurement legislation. Other than Atameken, there is no true public consultation and participation by civil society in the procurement planning process, even in cases of large-scale or environmentally and socially sensitive procurement.
219. The public procurement framework also does not provide for a sufficient level of civil society involvement in monitoring public procurement. The Law on Public Councils does not include specific provisions that would give the Councils a role in monitoring of public procurement. Furthermore, the Public Councils have been criticized by civil society representatives as being restrictive and non-transparent when it comes to the composition and selection of members.

Overview of Gaps and Substantive gaps with risk and recommendations:

SI	Gaps and Substantive gap	Risk	Recommended improvements
1	Sub-indicator 11(a) Insufficient CSO and citizen capacity and involvement in public procurement	M	The procurement legal framework to be revised to promote and encourage public oversight through CSO participation in the procurement process and contract management. GoK to establish programs to build CSO capacity to understand, monitor and contribute to improving the capacity and performance of the public procurement system.

Indicator 12. The country has effective control and audit systems

220. The objective of this indicator is to determine the quality, reliability, timeliness and effectiveness of the public procurement system's internal and external controls. For this indicator, effectiveness means the expediency and thoroughness of the implementation of



auditors' recommendations. The assessment also relied, in addition to its own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

Strengths

221. The country's laws and regulations overall provide for a comprehensive control framework, including internal and external audits and internal controls. The PPL establishes that compliance is controlled through the powers established by the "Law of the Republic of Kazakhstan on State Audit and Financial Control" of November 12, 2015 #392-V (hereafter the Audit Law), according to which audits and controls are carried out by responsible public external and internal audit and control bodies. In addition to the Audit Law, there are several regulations in the area of public audit, including General Standards approved by the Decree of the President on State Audit and Financial Control; and Procedural Standards developed by the Accounts Committee of the Supreme Audit Institution and the Authorized Body of the Internal Audit. The institutions, policies and procedures as defined in the Audit Law and regulations are in place and operational.
222. The existing control framework overall adequately covers procurement operations. The internal control/audit mechanisms, including proper reporting to management on compliance, effectiveness and efficiency are in place. The overall basis for internal control over budget expenditures is established by the Budget Code, which identifies the controls during budget preparation and execution processes and in the expenditure classification framework. The Budget Code also outlines the accounting and financial reporting systems for public bodies and specifies the use of a Treasury Single Account for budget execution.
223. There are specific internal controls that relate to procurement, including those exercised via authorization and approval mechanisms as well as monitoring via the procurement web portal. The list of entities subject to audit is well coordinated among the Authorized Bodies.
224. Audit reports prepared by the Accounts Committee are subject to quarterly review by the Parliament in compliance with Article 44 of the Audit Law. Requirements of the Legislature, reflected in the Resolution of the Government on Approval of the Reports of the Government and the Accounts Committee, are mandatory for implementation and have the status of laws.
225. Fair and regular monitoring of how recommendations are implemented. The report of the Accounts Committee on the Key Results of the Accounts Committee for 2017 specifies that less than 1 percent of non-compliance cases with the PPL were identified in 2017 (compared to 4.2 percent in 2016), although the number of audited objects increased by 38 in 2017.⁵⁶
226. There are well-established internal controls over budget expenditures. The Budget Code identifies the controls during budget preparation and execution processes and as part of the expenditure classification framework. Controls are also detailed in the Rules of the Ministry of Finance on Budget Execution and Cash Payments dated December 4, 2014. The PEFA 2018 praises the practice and suggests a score of "A" score for internal controls over non-payroll expenditures (PI-25).⁵⁷ The Audit Law clearly prescribes the reporting lines for internal and external audit. The internal audit function reports to the Government/Cabinet, while the external audit function reports to the legislature and the President. The Rules for Public Audit and Financial Control⁵⁸ require that recommendations provided during public audit are subject to mandatory execution for all state bodies and officials to which they are addressed.

⁵⁶ *Key Results of the Accounts Committee for 2017*, Accounts Committee for Control over Execution of the Republican Budget of the Republic of Kazakhstan.

⁵⁷ PEFA 2018.

⁵⁸ Rules for Public Audit and Financial Control, Decree of the Accounts Committee No. 17-NK, November 30, 2015, with changes and amendments.



Such recommendations are communicated in the form of resolutions and orders, with specified deadlines for implementation. All recommendations are included in the so-called “control list” of the public audit bodies, for their implementation to be monitored constantly. Periodic reports of the public audit bodies are disclosed on their websites and include information on the progress of implementation of orders and recommendations. Over 96 percent of public external audit recommendations issued in 2017 were implemented in a timely manner. The PEFA for 2018 states that: “the fact that two-thirds of the financial violations found in 2017 had already been subject to recovery confirms that audit findings are respected and acted upon.”⁵⁹ According to the State Committee on Internal Public Audit (CIPA), over 92 percent of the internal audit recommendations on procurement were implemented in 2016 and 2017.

227. With the adoption of the Law on State Audit and Financial Control, the Accounts Committee as Supreme Audit Institution took a step toward development of a curriculum/program for training and certification of public auditors. This program’s modules were initially developed by the SOE Center for Research of Financial Violations, and later given to the Organization of Education, which is authorized to deliver the training and provide certificates. The training organizations are selected on a competitive basis. For 2019, it is the Financial Academy.
228. The certification of public auditors is in accordance with the Rules of Certification for Public Auditors, approved by the Regulation of the Accounts Committee #22NK of December 15, 2015.⁶⁰

Substantive gaps:

Sub-indicator 12 (a)

229. *Apparent conflicts of interest in the ex-ante procurement audit function.* CIPA’s role in ex-ante review of procurement transactions puts the agency in a conflicting role both as a true internal auditor and as complaints reviewer. Kazakhstan’s control and audit system does not provide dedicated rules or guidance related specifically to public procurement. In practice, public procurement audits are conducted as part of compliance and performance audits, and no separate and specialized procurement audit is performed. All activities are handled as part of the general auditing framework.

230. *Absence of clear notion and methodology for procurement audit.* While the Accounts Committee as the Supreme Audit Institution is charged with responsibility for conducting procurement audits as part of the compliance and performance audits, procurement audits are mainly performed by the Committee of Internal Public Audit of the MoF as desk/online reviews. Decisions on whether to include procurement procedures as part of field compliance and performance audits are based on perceived risk and can be conducted less than once a year.

Sub-indicator 12(d)- Lack of training modules and training to auditors on procurement aspects.

231. There is no regular formal training on procurement for public auditors. For certification of public auditors, there is no separate module on public procurement, but rather a set of questions on the PPL are included in the Compliance Audit module of the certification exams.

⁵⁹ PEFA

⁶⁰ On approval of the Rules of certification of persons applying for the state auditor qualification, Regulation of the Accounts Committee No. 22NK of December 15, 2015



Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	<i>Sub-indicator 12 (a)</i> Apparent conflict of interest in the ante procurement audit function The State Committee on Internal Public Audit's role in ex-ante review of procurement transaction puts it in a conflicting role both as a true internal auditor and for complaints review	H	The State Committee on Internal Public Audit should not be involved in review of procurement transactions. There should be proper segregation of roles and functions between the external and internal audits as well as the financial control (inspection).
2	<i>Sub-indicator 12 (a)</i> Lack of training modules and training to auditors on procurement aspects.	M	Develop a targeted module on public procurement legislation, rules and procedures for public auditors and public internal auditors and ensure that the relevant staff receive training on a regular basis.

Indicator 13. Procurement appeals mechanisms are effective and efficient

232. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

Strengths:



233. There is a mechanism for appealing action/inaction decisions of the procuring entity, the Public Procurement Organizer, Single Procurement Organizer, the Single Public Procurement Operator, and other procurement authorities.

234. The appeals submission is free of charge. The web portal allows for the appellant to state grounds for challenging the decision. Complaints data from January 1 through June 15, 2018 show evidence of a well-functioning appeals handling system.

Substantive gaps:

Sub-indicator 13(a) - Insufficient provisions on supporting evidence for complaints decisions.

235. The PPL does not provide clear provisions regarding decisions to be rendered based on the evidence submitted by the parties. There is no time limit for Authorized Body to publish information on complaints decisions.

236. PPL does not describe sufficiently and with clarity the institutional arrangements for the review of complaints. In this respect:

- I. the PPL is silent as to whether the complaints can be filed with the procuring entity;
- II. the PPL uses the term “Authorized Body” for the body which will administer complaints, without identifying such authority, where it is hosted, or its independence from the contracting authority.

Complaints Data January 1, 2018 till June 15, 2018	
Status	Number
Completed with timeframe	7568
Not handled within the mandated timeframe	149
Not responded within the mandated timeframe	155

Complaints Data January 1, 2018 till June 15, 2018		
Status	Number	%
Satisfied:	3801	44.46
- fully	2191	57.64
- partially	1610	42.36
Denied unsatisfied	3957	46.29
Just submitted	176	2.06
Under consideration	615	7.19
Total	8549	100



Summary of Results of Survey on Perception of the Private Sector

Out of 37% the participants to survey who used the appeals system, 63% believe that the system is trustworthy and fair.

Almost 84% at different degree are not satisfied with the public procurement appeals system:

- The procuring entity is always "right." All public procurement laws are against an entrepreneur;
- The authorized body does not inspire confidence, as it is guided by opinion and not by normative acts. There is no consistency in the decision-making progress, for the same situation two contradictory decisions could be made;
- The requirements are not clearly spelled out. Risks on the contract are not distributed fairly, the supplier is liable, while the customer is in more comfortable conditions;
- The authorized body does not have the competent employees to monitor the procurement procedure.

Suggestions for Improvements and areas of focus

- Efficiency and fairness of appeal system.
- Simplification of complaints submission procedure and shortening of the time for consideration of complaints.
- Provide clarifications on time.
- Reduce corruption risks.
- Professional competence of procuring entities staff.

Source: 84 responses from SurveyMonkey participants

Sub-indicator 13(b) - Insufficient level of independence of the Authorized Body in the review of complaints.

237. As further elaborated under Indicator 5 of the Assessment, Ministry of Finance through its Internal Audit Committee is in practice the Authorized Body referred to in the PPL. Therefore, the question arises as to whether the review function of the Authorized Body is compatible with its other functions such as monitoring of compliance, regulatory, centralized procurement, and other functions under Article 16 of PPL.
238. Based on international good practice, the complaints review body should be independent of the procuring entity. The involvement of the Internal Audit Committee in the review of appeals creates two main issues:
239. it is under the same Ministry (MoF) as the Single Public Procurement Organizer, and consequently would be required to review appeals arising from procurement performed by that co-equal department under the MoF. That relationship may create a lack of confidence among bidders; and
240. the other non-appeal functions of the Internal Audit Committee may conflict with the appeals functions. Specifically, if the Internal Audit Committee oversees the ongoing financial control (or compliance audit) of specific procurement transactions, they are part of procurement decisions. Hence, they should not be asked to objectively review a complaint that may arise from financial advice and control that the Internal Audit Committee had previously given.

Overview of Gaps and Substantive gaps with risk and recommendations:

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	Sub-indicator 13(a) Insufficient provisions	M	Regulations to provide for clear provisions



	related to the process requirements for the review of complaints		
2	<i>Sub-indicator 13 (b)</i> Lack of independence of the Authorized Body in the review of complaints	L	GoK to undertake a review of the options for the creation of an independent complaints review mechanism outside the MoF

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

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

Strengths:

242. Kazakhstan has made good progress in bringing national anti-corruption legislation in conformity with basic provisions of international anti-corruption agreements. Kazakhstan has ratified the United Nations Convention against Corruption (May 4, 2008); the United Nations Convention against Transnational Organized Crime (June 4, 2008); and the Council of Europe's Convention on Laundering, Identification, Seizure and Confiscation of the Proceeds from Crime (May 2, 2011). Kazakhstan is also part of the Istanbul Action Plan to Combat Corruption, a sub-regional mutual assessment program launched within the OECD Anti-Corruption Network in 2003.
243. Kazakhstan's Anti-Corruption Law provides definitions of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties. In addition, the Criminal Code includes detailed descriptions of fraud and corruption offenses, and lists individual responsibilities, accountability and penalties for government employees, commercial firms and other organizations.
244. Definitions and provisions concerning conflict of interest were added to the Anti-Corruption Law and Civil Service Law in 2015. In potential or actual conflict of interest situations, civil servants are prohibited from performing their official functions and should inform their management of the conflict in writing.
245. Kazakhstan has made important progress in enforcement of corruption cases, many involving senior governmental officials and receiving wide media coverage. Criminal statistics show consistency in the number of registered corruption offenses—309 cases in 2016, 303 cases in 2017, and 251 in the first half of 2018.⁶¹ Still, there is a certain level of mistrust among the public; many observers believe that enforcement is selective and politicized.
246. Although procurement legislation does not contain specific provisions obliging procuring entities to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, there are established procedures for dealing with such cases. Article 6 of the PPL states that prohibited practices specified in paragraphs 1 and 2 of that article can

⁶¹ Source: Information Service of the Committee of Law Statistics and Special Accounts under the General Prosecutors Office of the Republic of Kazakhstan.



be detected at any stage of procurement: in case of detecting unlawful actions during the ongoing procurement process, the concerned bidder is expelled from the tender process, while in the cases when the unlawful action is detected at a contract implementation stage, the contract is subject to suspension until investigation results are issued. In the latter case, a report is to be submitted to the State Internal Audit Committee, while in the former scenario, the information remains within the procuring entity.

247. The Anti-Corruption Law also obliges individuals, public associations, and other legal entities to report on the commission of corruption offenses known to them (Article 23). Law enforcement authorities follow up on reports received from the State Internal Audit Committee regarding offenses committed during the contract implementation stage.
248. The Ministry of Finance, through its Public Procurement Committee, maintains a list of bad faith companies and individuals who may be included based on either (i) providing fraudulent information during the procurement procedures; (ii) declining to sign the public contract upon award; or (ii) poor performance on a contract. The list of bad faith companies and individuals is available on the web portal. There is also a register of unfair suppliers, who shall not be allowed to participate in public procurement within 24 months from the date of entry into force of the court decision recognizing them as unfair participants.
249. Kazakhstan has had a comprehensive anti-corruption framework in operation since January 2016. The legal framework consists of the Anti-Corruption Law (2015), the Law on Civil Service (2015), and the Criminal Code (2014). The anti-corruption policy is based on the Anti-Corruption Strategy (2015-2025), the Action Plan on Anti-Corruption (2015-2017 and 2018-2021), and the Annual Anti-Corruption Report. The institutional anti-corruption framework includes the Agency of Civil Service Affairs and Anti-Corruption, the Anti-Corruption Bureau, the General Prosecutor's Office, and ethics officers in central and local governmental agencies.
250. The Anti-Corruption Law introduced external and internal corruption risk assessment. The Agency for Civil Service Affairs and Anti-Corruption (ASCAC) conducts external risk assessments, while government agencies conduct their own internal risk analysis. The ASCAC conducted the first external risk analysis in 2017, covering 16 areas, including tax, customs, health, education, and public procurement. Twelve risk mitigation plans were approved based on the risk analysis for different government agencies. Internal corruption risks analysis is conducted by public bodies, organizations and the quasi-state sector, and the synopses are published on ASCAC's website. In 2017, the Ministry of Education, Ministry of Culture and Sport, Emergency Committee of the Ministry of Interior and the KazAgro national management holding conducted their internal corruption risks analyses, and their results inform these entities' three-year anti-corruption action plans.
251. The web portal Qamqor, managed by the Committee of Law Statistics and Special Accounts under the General Prosecutor's Office, provides access to monthly and annual statistics on corruption-related legal proceedings and convictions. The aggregated statistics are included in the Annual National Anti-Corruption Report published on the ASCAC website.
252. There are general integrity training programs offered at the university level and by the Academy of Public Administration. There is also a two-hour session on integrity in public procurement and procurement in quasi-governmental sector offered as part of a larger course on integrity for Corp A officials entering the civil servant service. The first training specifically dedicated to integrity in procurement is planned for July 2018.
253. Business associations support integrity and ethical behaviour in public procurement. Atameken established an Anti-Corruption Council that cooperates with ASCAC and other



government agencies and quasi-governmental organizations in promoting ethical behaviour and promoting public-private dialogue on anti-corruption. In June 2016, Atameken also adopted the Anti-Corruption Charter of Entrepreneurs of Kazakhstan, which advocates for corruption-free business practices, as well as voluntary commitments to implement anti-corruption mechanisms. The Charter is open for signature by all companies, business organizations and associations.

254. In addition, the Ministry of National Economy adopted a non-binding Model Corporate Governance Code for joint-stock companies with state participation—a total of about 760 companies and 600 daughter companies. According to Chapter 2 of the Model Code, corporate governance should build upon fairness, integrity, responsibility, transparency, professionalism and competency. The assessment of corporate governance is in accordance with the Methodology of Introduction of Corporate Governance Best Principles and Standards and the Annual Report to the Government on compliance results. In addition, a National Council on Corporate Governance was established to develop and implement a unified policy and further improve the system of corporate governance.
255. There are several channels for reporting cases of fraud, corruption and unethical behaviour, with varied levels of security, accessibility and confidentiality. Information on these channels is available on the Anti-Corruption Bureau's website, as well as at the signboards at the entrance to every government office. Anonymous reports, however, are not accepted, except in cases when such a report contains information about crimes being prepared or committed, or about a threat to state or public security. Every report received by the Anti-Corruption Bureau by any information channel is registered in the Bureau's information system, directed to the responsible body and followed up. Although information on whistle-blowers is protected by the Law on State Secrets, civil society organizations report that citizens do not fully believe their confidentiality will be protected and are afraid of informal punishment. To overcome their reluctance to report wrongdoing, the ASCAC provides monetary encouragement.
256. A Code of Ethics for civil servants sets out mandatory standards of behaviour; however, the consequences of any failure to comply are disciplinary, not administrative or criminal. Every civil servant has to study the Code of Ethics before commencing his or her service. At least once every three years all civil servants have to go through a training program at the Academy of Public Administration, which includes a session on ethics.
257. Civil servants must inform their management in writing of a potential or actual conflict of interest situation as per Article 51 of the Law on Civil Service. ACSAC launched a project on Prevention and Resolution of Conflict of Interest Situations, whereby seven cases were detected. However, the assessment team found no evidence that this information is systematically filed; moreover, it is not accessible by the public. Financial disclosure forms are filed by every civil servant but are not accessible. Civil servants are encouraged to publish their declarations, but mandatory disclosure will not be effective until 2020. Beneficial ownership information is submitted to human resources (HR) units and is not accessible by the public.

Substantive gaps:

Anti-corruption law pending compliance with good international practice.

258. Kazakhstan's anti-corruption legislation needs to be brought into compliance with international standards, as recommended by 3rd and 4th rounds of monitoring of the Istanbul Anti-Corruption Plan. Definitions and provisions concerning conflict of interest need to be broadened in line with the recommendations of the 4th round of monitoring of the Istanbul Anti-corruption Plan.



Missing anti-corruption provisions in the PPL.

259. The public procurement legal and regulatory framework does not include provisions on anti-corruption measures, except for Article 4, which includes prevention of corrupt practices as a general principle. Neither the PPL nor the Anti-Corruption Law specifies the mandatory requirement and instructions on how to incorporate provisions on prohibited practices into procurement and contract documents. Hence, procurement and contract documents do not include provisions on fraud, corruption and other prohibited practices.
260. The definition of conflict of interest is not yet in line with international standards, and norms and sanctions for violations of rules on conflict of interest need to be strengthened.
261. There is lack of compliance by civil servants with the requirement to inform their management of a potential or actual conflict of interest, as per Article 51 of the Law on Civil Service. Financial disclosure forms filed by every civil servant are not accessible, and mandatory disclosure will not be effective until 2020 only. These are general requirements, not specific to procurement cycle.
262. There is also no mechanism to enforce post-employment restrictions or a cooling-off period. Restrictions regarding gifts are scattered among several laws and require additional clarification and awareness raising. In addition, provisions for protection of whistle-blowers need to be strengthened.
263. The Anti-Corruption Law fails to effectively counter corruption in the private sector. Criteria for bad faith suppliers do not include special provisions for corruption and prohibited practices.
264. Corruption risk analysis is a new mechanism that has not yet evolved into a systemic measure. There are no dedicated training programs on integrity in procurement except for ad-hoc events. There are no CSOs specializing in social audit and control, which may be due in part to a lack of financing for such activities, and in part to lack of an enabling environment. Moreover, the Law on Public Councils does not include provisions on the Council's role in procurement.
265. There are no provisions in the Code of Ethics for those involved in public finance management or procurement; nor does the Code specify accountability for decision-making. Criteria for inclusion in the blacklist maintained by MoF do not specify corruption offenses or fraudulent practices.
266. The grounds for including a firm or individual in the list of bad faith contractors lack clarity, leading to different interpretations. For example, Article 12(4)(1) of the PPL specifies as grounds for inclusion the early termination of a contract when a procuring entity discovers that the bidder submitted unreliable information related to his qualifications. This raises the question of whether inclusion in the list is triggered by termination of contract or by the determination by court that bidder submitted fraudulent information. Determination of the fraudulent behaviour should be the grounds for inclusion in the list, whereas termination of the contract is a consequence of such determination. Importantly, the grounds for inclusion in the list do not include corruption, collusion and similar misconduct, which are grounds for debarment in many jurisdictions of other countries.
267. Additional grounds for including a bidder in the list of bad faith contractors is non-performance or improper performance, as established by a court. However, the non-performance is mostly decided administratively through termination of a contract for default or application of penalties and damages.



268. The PPL refers to the Authorized Body (MoF) as the body in charge of maintaining the register of bad faith firms and individuals. However, it is not clear which of the four departments involved in procurement is directly responsible for maintaining the list.
269. The sub- indicator 14 (a) and 14 (b) were assessed as high risk and red flags were raised as they hinder the achievement of basic public procurement objectives.

Overview of Gaps and Substantive gaps with risk and recommendations

SI	Gaps and Substantive gaps	Risk	Recommended improvements
1	<i>Sub-indicator 14 (a)</i> Kazakhstan's Anti-corruption law pending compliance needs	H	Kazakhstan's anti-corruption legislation needs to be brought into compliance with international standards, as recommended by 3 rd and 4 th rounds of monitoring of the Istanbul Anti-Corruption Plan. It is recommended to amend the PPL, regulation, and tender document to be amended Consider including definitions of fraud, corruption and other prohibited practices in procurement in the Public Procurement Law.
	<i>Sub-indicator 14 (a)</i> Lack of clarification on conflict of interest in procurement transactions	M	Regulation on procurement should clarify "conflict of interest", "cooling-off" and definition of "close relatives" in procurement transactions to be made. Consider introducing a cooling-off period for former public officials in the Law on Civil Service and public procurement legislation. Anti-Corruption Law to be amended. Legal provisions for the protection of whistle-blowers should be further strengthened. The types of cases, where anonymous reports are accepted, could be extended
2	<i>Sub-indicator 14 (b)</i> The legal/regulatory framework does not specify the mandatory requirement for procurement documents to include provisions on anti- corruption.	M	The PPL and standard tender documents should be amended to specify the mandatory requirement for procurement documents to include provisions on anti- corruption.
3	<i>Sub-indicator 14 (d)</i> Lack of Corruption Risk Analysis	M	Corruption risk analysis and <i>mitigation</i> should gradually evolve into a systemic measure with public procurement being a regular focus.
4	<i>Sub-indicator 14 (e)</i>	M	Code of Ethics is revised to include specific provisions on those involved



	Lack of specific code of ethics as applicable for PFM including procurement		in public finance management. Conflict of interest statements, financial disclosure forms and information on beneficial ownership need to be systematically filed and made available to the public.
5	<i>Sub-indicator 14 (e)</i> Lack of adequate grounds and due process requirements for inclusion of a firm or individual in the register of bad faith contractors No system of suspension and debarment based on due process	M	Further guidance and regulations should be issued by the Authorized Body on various aspects of the exclusion system including on: Grounds for exclusion. Due process requirements, including providing due notice to concerned parties. Identity of the unit within Authorized Body in charge of debarment Possibility to appeal the decision of debarment Actions to ensure independence of the unit in charge of debarment Scope of debarment, i.e. does it extend to the parent, affiliates, senior management of the concerned entity; Committing corrupt acts need to be included as ground for debarment.

4. Volume 2: Assessment of the Public Procurement System of Samruk-Kazyna

53. This section discusses the findings of the MAPS assessment of the public procurement system for Samruk-Kazyna. These findings (findings, substantive gaps and recommendations for each pillar and indicator) are based on the qualitative review and quantitative analysis as far as possible set out in the MAPS.
54. As noted above, this is Volume II of the MAPS assessment. It covers the public procurement system for procurement conducted by Samruk-Kazyna according to its specific procurement rules. For results of the assessment of the general public procurement system, please refer to volume I.
55. Further to the validation workshop held in Nur-Sultan on September 24, 2019, Samruk-Kazyna submitted comments on the assessment in a separate document. This final report incorporates these comments wherever they pertain to the findings before cut-off date in December 2018. Other comments related to the situation of Samruk-Kazyna's procurement system after the assessment cut-off date of 31 December 2018 and could therefore not be reflected in the assessment as such. However, the commentary is presented in annex II to this assessment in order to reflect the progress made by Samruk-Kazyna to date as part of its ongoing reform.



4.1. Pillar I - Legal, Regulatory and Policy Framework

56. Pillar I assesses the existing legal, regulatory and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.
57. The legal and regulatory framework for the procurement transactions of Samruk-Kazyna mainly complies with the assessment criteria, but substantive gaps exist specifically related to requirements for using non-price criteria, coverage of the Public-Private Partnerships and record keeping. The legislation is comprehensive in regulating different areas related to public procurement – from procurement methods to review mechanisms and blacklisting.
58. Implementing guidance exists, but due to a lack of access, the assessment team was not able to verify the existence and content of standard bidding documents and standard contracting conditions.
59. The legal and regulatory framework does not make reference to sustainable public procurement.
60. In 2018, the Government of Kazakhstan adopted a reform, revising the legal and regulatory framework applicable to procurement, including rules for Samruk-Kazyna. The changes to the law are included in the revised public procurement law, as well as the revised law on Samruk-Kazyna. The changes will enter into force in January 2020. The analysis of Pillar I (and other Pillars requiring analysis of legislation) are based on the current legislation. In some cases reference is made to the future regulation with a clear note that it is not in force yet.

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

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

Findings

62. The basic structures of legal framework for public procurement conducted by Samruk-Kazyna follow the legal framework for general government procurement even if the law as such does not apply to Samruk-Kazyna. Samruk-Kazyna has a specific set of rules to regulate public procurement. The main legislative act regulating procurement in Samruk-Kazyna are the *Rules on Procurement of Goods, Works and Services of the Joint Stock Company “National Wealth Fund Samruk-Kazyna”* and Organisations 50% and more Voting Shares of which Directly or Indirectly Belong to Samruk-Kazyna with the Right of Ownership or Trust Management (hereinafter referred to as Procurement Rules)⁶² laying down the main elements of procurement procedures and phases.

⁶² The version is from the 30th of March 2018



63. The legal framework for public procurement in Samruk-Kazyna is comprehensive and well-defined. All normative acts including the recent amendments are accessible online and free of charge. The legislation covers the procurement of all goods, services and works, and there is a dedicated regulation for the procurement of consultancy services envisaging an attestation (pre-qualifications) of potential consultants. However, there is no clear hierarchical structure, which can be problematic in case of contradictions.
64. There is a good mix of competitive and non-competitive procurement procedures covering a broad variety of situations. Competitive procedures are not required as default option, and there is a long list of exceptions that justify the use of the least competitive method (single sourcing). As a consequence, this method is used most frequently, according to previous research.⁶³
65. Samruk-Kazyna is a self-sufficient organization and procurement is carried out using its own funds. According to the Kazakhstan's Budget Code of Kazakhstan, funds from the state budget can be directed to Samruk-Kazyna for the realization of socio-economic programmes in the scope of the state order. Overall, Samruk-Kazyna does deliver public services in a most basic sense via public procurement, while these expenses are not regulated by the general public procurement legal and regulatory framework.
66. Rules on participation are restrictive and depend on a supplier's origin (whether he is a local supplier) or whether the supplied items have local content by favouring "in-house" suppliers (i.e., suppliers in holding structure of Samruk-Kazyna). Each 1% of local content will result in a provisional discount of 0.15% of the offer price; in specific circumstances, local goods will receive a discount of as much as 5% on the offer price. In addition, the legislation contains set-asides and discounts for organizations of disabled persons and any suppliers considered reliable ("white-list") included in a dedicated list. Procurement rules applicable to the holding's subsoil users (i.e. the largest mining and oil and gas companies in Kazakhstan) favour domestic suppliers of goods, works and services with the highest local content (each 1% of local content will result in a provisional discount of 0.15% of the offer price for goods and 0.1% for works and services). Any companies that benefit from this advantageous treatment are also not required to provide any securities. In addition, there is a list of unreliable suppliers ("blacklist"). The lists are comprised and maintained by Samruk-Kazyna Contract LLP (a subsidiary of the Fund).
67. The grounds for including a company in the "blacklist" are stated in a dedicated regulation and relate mostly to non-performance. Corrupt practices or criminal activities are not explicitly listed as grounds for blacklisting.
68. While the legal framework clearly defines which documents have to be provided by suppliers, there is no clear differentiation between eligibility and qualification criteria (see Art. 49 of the Procurement Rules.) Information on procurement opportunities is widely disseminated through mass media and a web-based platform.
69. The procurement rules require the usage of the lowest price as the only award criterion, i.e. almost exclusively for all methods of procurement.
70. Bid submission, receipt and opening rules are clearly and comprehensively regulated. Once bids are opened, there is no specific prohibition to announce sensitive information.

⁶³ OECD Anti-Corruption Network for Eastern Europe and Central Asia (2017), Anti-Corruption Reforms in Kazakhstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>



71. Samruk-Kazyna does not have an independent body to review complaints. The units in charge of procurement, control and monitoring in Samruk-Kazyna's subsidiaries are tasked with carrying out any reviews of complaints. As a second tier, suppliers can lodge a complaint with the Procurement Methodology and Control Unit of the Holding. In addition, a Commission was created to review complaints by suppliers and contracting authorities against the decisions of the Procurement Methodology and Control Unit. Disputes in the contract management phase are handled by the courts, as specified in the law.
72. The legal framework mandates that all procurement transactions of Samruk-Kazyna are carried out electronically, and participants are informed about this. While according to the legal framework there are no restrictions for access, there are practical aspects in the implementation of e-procurement that de facto restrict access (see indicator 7.)

Substantive gaps

73. There are several gaps in indicator 1, the most severe of which are suggested to be highlighted as a red flag as they hinder the achievement of basic public procurement principles (sub-indicators a, d, l and h).

Sub-indicator 1(a)- Hierarchy of norms

74. The legislation does not set a clear hierarchy for different normative acts. This is an important provision to solve potential conflict between two sets of rules included in different normative acts. While some indication of hierarchy is provided by the law No. 550-IV of February 2012 ("On the Sovereign Wealth Fund"), article 19 of which provides the basis for the fund to develop its own public procurement rules, as well as by the institution that is responsible for the respective set of rules, the hierarchy is not indicated in the rules themselves and constitutes a gap. This gap was assessed as high risk.

Sub-indicator 1(d) - Access and competition

75. Several gaps, notably with regards to sub-indicator 1(d), restrict competition, and a red flag is raised for this sub-indicator. First, there is an extensive list of exceptions that provide grounds for single sourcing and discourage use of competitive methods. Second, access of suppliers to the procurement market is complicated by the introduction of the complex rules on participation, different lists, pre-qualification, provisional discounts, set-asides and preferences. Third, there is no general prohibition on the artificial splitting of the contracts to avoid the usage of competitive methods (see sub-indicator 1(b)). Fourth, participation of suppliers is hindered by "in-house procurement", which foresees that items in 424 categories are required to be purchased from companies within the Samruk-Kazyna holding. While this list has been reduced since February 2018, the number is still substantive. Fifth, the legal framework mandates that award decisions are based on the lowest price, which represents a gap with regards to sub-indicator 1(f). Considering the complex nature of some of the procurement conducted by the subsidiaries, the lowest prices cannot be the sole award criteria providing the necessary value for money. Life cycle costing will be introduced as part of the implementation of category management. Introduction of life cycle costing is related to the overall reform of the procurement system of Samruk-Kazyna. The standard for category management defines life cycle costing in Art. 2(8). Sixth, there are no clauses on safeguarding sensitive information included in a bid, such as trade secrets. This might discourage suppliers to submit know-how and innovative ideas. This gap was assessed as high risk.



76. Competition results in savings and increased quality goods, services and works. Increased competition can also support the development of companies and encourage them to better target their offer to the needs of Samruk-Kazyna. While the list of exceptions is currently under review as part of the ongoing reforms, according to stakeholder interviews, the list of exceptions to results in single sourcing will be left to the discretion of individual subsidiaries to be decided upon once the new procurement law enters into force. This gap was assessed as high risk.

Sub-indicator 1(i) - Contract management

77. Samruk-Kazyna's legal framework does not clearly define functions and responsibilities related to contract management, as outlined by sub-indicator 1(i). There is also no provision on dispute settlement during the contract management stage, settlements and their enforceability. This gap was assessed as medium risk.

Sub-indicator 1(h) - Integrity and accountability

78. The legal framework does not specify an independent review process to challenge and appeal decisions by contracting authorities (sub-indicator 1(h)). As described above, the procurement entities, as well as the Procurement Methodology and Control Unit of the Samruk-Kazyna holding and the Commission fulfil review functions. However, these units are involved in procurement operations as well as policy setting for procurement. In addition, the units on the level of the holding's management have a supervisory function over the subsidiaries with regards to general management that might render this unit biased when procedures are challenged. In addition, control and review functions are not differentiated, which is considered a substantive gap. The rules that exist with regards to challenges and appeals have gaps, such as a lack of specification of the deadline for submitting a challenge and no provision on suspension of the procurement procedure. Decisions of the contracting authority, the Procurement Methodology and Control Unit or the Commission are not required to be published. This gap was assessed as high risk.
79. Some gaps relate to rules that describe the handling of the procurement process. For example, bid opening is not required to take place right after the deadline of the bid submission has elapsed. The usage of e-procurement mitigates most of the risks related to the late opening of bids, such as tampering with bids, but the rules do not comply with the assessment criteria of sub-indicator 1(g). In addition, rules foresee an opportunity for the bidder to amend their submission in case the bidder has some noncompliance with the requirements of tender documentation. As expressed by Samruk-Kazyna representatives, the purpose of this measure is to avoid complaints that might arise due to instances of formal non-compliance. However, the practice opens room for corrupt practices and cannot be considered good practice. The bid retention policy necessary to ensure traceability, accountability and reporting of procurement data is not described in procurement rules. The wide usage of e-procurement facilitates the retention of documents and collection of data, but legal basis for such policies should be established in either Procurement Rules or the Instructions on E-Procurement. These gaps were assessed as high risk.

Sub-indicators 1(j) and 1(k) - IT tools and data retention.

80. Even though the e-procurement is advanced in Samruk-Kazyna, some substantive gaps with regards to the legal framework were identified. The legislation does not contain any provision on the security of data when using the e-procurement platform. Cybersecurity, especially in such important area as budget execution should be a priority and should follow clear legal provisions. In addition, with the increase of types of technologies, interoperability should be ensured in order not to restrict the access of potential suppliers due to the problems of



technical nature. The possibilities granted by e-procurement in terms of data retention are not used as they could be. There is no specific data retention policy in Samruk-Kazyna compatible with the statute of limitations in the country and prosecuting cases of fraud and corruption and compatible with the audit cycles. In addition, the policy for access and public inspection of the data are not described in the legislation. Taking into account that all of the subsidiaries and the Fund use the same e-procurement system, it would be logical to suggest a unified data retention policy and accessibility rules. These gaps were assessed as medium risk.

Sub-indicator 1(I) - Procurement principles in specialized legislation.

81. Public Private Partnerships (PPPs) are not covered by Samruk-Kazyna's procurement legislation. This is a substantive gap as PPPs can be used to deliver the type of project that Samruk-Kazyna engages in. Procurement principles should apply also to the delivery of PPPs. This gap was assessed as high risk.

Recommendations

82. Several additions to the legal framework should be made to comply with the gaps: The hierarchy of legal norms should be clearly established by legislation. This will help avoiding situations of conflict of norms and will ensure smooth implementation of provisions. Second, the scope of the legislation should be extended to cover PPPs by the Procurement Rules or by a separate dedicated piece of legislation. Third, legal changes should aim at increasing the use of competitive tendering to achieve the best value for money.
83. In order to enhance the access of potential suppliers, it is recommended to reduce the number of cases where single sourcing is permitted. In this regard, the list of limited tendering specified in the WTO GPA can be a good source of reference as a standard of international best practice. In addition, competition could be enhanced by clearly defining eligibility, selection and award criteria. Any criteria used should be adequate to the value and complexity of the procurement and should not be discriminatory or exclusionary. Practices like set-asides and provisional discounts favor some suppliers and hinder others, and they should therefore be eliminated. It is possible to do so gradually. One concrete measure in this context is to reduce the number of items that are to be procured in-house. While this list has been decreased recently, the aim should be to eliminate such preferential treatment as much as possible. Access to the procurement markets of different goods, services and works should be streamlined both for the domestic and foreign suppliers.
84. Another step towards increased competition and compliance with the MAPS criteria is to prohibit contract splitting and to include measures to protect sensitive information submitted by the suppliers.
85. The legal framework could include more definite provisions to use award criteria other than price. The use of the LCC in the future requires the use of non-price criteria in the evaluation of the bids, but it is recommended to lay down in the rules that the price as well as non-price criteria can be used. In addition, Samruk-Kazyna contracting authorities should be required to define and include the way the evaluation criteria are combined and their relative weight in the tender documentation.
86. Integrity and accountability are cornerstones of procurement transactions providing the necessary tools to ensure the taxpayers' money are spent in a corruption-free environment. In order to comply with the MAPS assessment criteria in this respect, the procurement legal framework should include requirements that state an immediate bid opening once the deadline for the submission elapse. The use of e-procurement will facilitate this aspect, as the software can open the bids automatically. In addition, suppliers should not be allowed to



amend their bids after the opening. This practice bears risks of corruption and is recommended to be eliminated.

87. The legal framework should establish a review function to protect the rights of suppliers. In the medium term, it is suggested to provide for an independent body created specifically to hear the complaints from aggrieved suppliers. In the short term, the current system should be amended in order to comply with the best practices in this area, such as including deadlines for the submission of complaints for each institution (subsidiary, the Fund and the Commission) should be regulated together with the rules on suspension of the procedure. Decisions of each of the tiers of review should be required to be published for a wide audience free of charge. The fora for the settlement of disputes in post-award stage should be clearly described in the legislation. In case the resolution of such disputes is entrusted to the courts (which is the case in accordance to Samruk-Kazyna authorities), this should be clearly mentioned.
88. The use of IT tools and data retention policies should be further specified in the law. Samruk-Kazyna's legal framework does not contain any provision in this regard, hence it is advised to have a clear retention policy not only for the records of bids opening but also for all documents created during the procurement procedure. Adoption of a unified data retention policy for the Fund and the subsidiaries will be important to establish norms on the policy for the access and public inspection. Documents that are required to be retained should cover the whole procurement cycle and provide controllers with meaningful information about each procurement transaction. Such instructions should be aligned with any global rules in Kazakhstan (in case those exist), and be included in the procurement legal framework. Finally, any IT tools used throughout the holding structure should be made interoperable.

Indicator 2. Implementing regulations and tools support the legal framework

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

Findings

90. As detailed for indicator 1 above, the legal basis of Samruk-Kazyna's procurement is well-defined and comprehensive and is supplemented by additional regulations and policies that further specify the rules in the procurement regulation. Guidance exists for both procurers and suppliers. There are video tutorials, guidelines and other materials available online that provide information on how to register and to participate in the announced procurement procedures.
91. However, it was not possible to verify the existence of model procurement documents or standard contracting conditions. Standard Bidding Documents are not part of the legal and regulatory framework. However, as stated by stakeholders, standard bidding documents are used as part of e-procurement procedures. Procurement Rules do not require using standard bidding documents. Similarly, there are no standardized terms to be included in the contracts.
92. As mentioned by stakeholders, Samruk-Kazyna has recently approved a Standard on Contract Management, which would fill some of the mentioned gaps. However, the standard remains to be implemented. The assessment team did not have access to this standard.



Substantive gaps

Sub-indicators 2(b) and 2(c) – Lack of provisions for bidding documents and standard conditions of Contract

93. As of December 31, 2018, the assessment team was unable to verify that the current legal and regulatory framework includes standard bidding documents or standard contracting conditions. This is a substantive, high risk gap and a red flag should be raised for sub-indicators b and c: it is not possible for the general public to review standard bidding documents or contracting terms to prepare for participation in the procurement process. In addition, failure to clarify what are the universally accepted terms and standards creates discretion and opportunity for wrongdoing. These aspects hinder the achievement of basic procurement principles. It will be needed to see how the future standard on Contract Management is implemented.

Recommendations

94. Approval of standard bidding documents as secondary or tertiary legislation is necessary in order to legitimize the information contained therein. At minimum, the most basic clauses to be included in the contracts should be included in the legislation. The new standard on the Contract Management requires subsidiaries to have standardized contracts but this piece of legislation is not in force yet.
95. It is also recommended to clearly assign the task of maintenance of the manuals to SK Contract LLP, which would affirm the current, de facto arrangements.

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

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

Findings

97. Samruk-Kazyna does not have a general, overarching policy or strategy for the implementation of sustainable public procurement to support broader policy objectives (protection of environment, women empowerment, etc.). As a consequence, there is no implementation plan and no tools to operationalize, facilitate and monitor the application of sustainable public procurement. The new standard for pre-qualification, which has not yet been approved, envisages a qualification criterion named “Ecology, Safety and Protection of Labour”. Sustainability might therefore be considered as a pre-qualification criterion but is not taken into account in other stages of the procurement cycle (e.g., contract award). In addition, no criteria are considered beyond environmental and labour standards.
98. The international obligations of Kazakhstan related to public procurement such as the Treaty on the Eurasian Economic Union (EAEU), the Enhanced Partnership and Cooperation Agreement (EPCA) with the European Union do not apply to Samruk-Kazyna. In case of the EAEU, the latter covers the procurement activities from the state budget and other means in case so envisaged by the national legislation of the Member States. The public procurement law of Kazakhstan explicitly excludes the procurement by Samruk-Kazyna. For the EPCA, Samruk-Kazyna is not listed as a covered entity, which effectively excludes it from the coverage of the agreement.



Substantive gaps

Sub-indicator 3(a) – Absence of the sustainable public procurement policy

99. Samruk-Kazyna has no general policy or strategy for the implementation of sustainable public procurement and no implementation plan or tools to operationalize, facilitate and monitor the application of sustainable public procurement. Sustainability is not incorporated in any stage of the procurement cycle and this is a clear substantive gap considering the impact of procurement on sustainable development of the economy. This indicator requires an overarching strategy or a policy for the implementation of SPP within the broader national policy scope; such a strategy was not identified for Samruk-Kazyna. The limited use of some criteria, like ecology for the pre-qualification procedure, cannot satisfy the requirements of the current indicator. This gap was assessed as high risk and a red flag was raised.

Recommendations

100. In the context of Samruk-Kazyna's diverse holding structure with many subsidiaries, Samruk-Kazyna could, as a first step, draft a general strategic document describing the importance and ways of implementation of sustainable public procurement, tools for the facilitation and monitoring of the implementation, ways of incorporation into the different stages of the procurement cycle and identifying priority areas of sustainability, etc. Capacity building activities could also be offered to familiarize the contracting authorities and the suppliers with the new policies on sustainable public procurement. At a later stage, the incorporation of sustainable public procurement in technical specifications, as contract award criteria and standard contract terms should be mandated, coupled with the creation of specific tools for the monitoring and control of its implementation.

4.2. Pillar II - Institutional Framework and Management Capacity

101. Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector.
102. Pillar II evaluates how effective the procurement system is in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses: i) whether it is adequately linked with the country's public finance management system; ii) whether institutions are in place in charge of necessary functions; and iii) whether the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.
103. Samruk-Kazyna's financial management systems are fairly well-integrated with the procurement function, and planning is undertaken. Gaps relate to the complex bureaucracy with regards to payments, which results in delays and burdens suppliers.
104. The normative and regulatory function, as well as procuring entities are well-defined. However, several responsibilities are not defined. The institutional arrangements raise concerns as operational, policy-related and review-related responsibilities are shared in the same unit. Centralisation is not carried out on a larger scale.
105. E-procurement is well-developed and appears to be widely used. There is no single integrated platform and public information is scarce. Some gaps with regards to data management, including archiving, remain.



106. Samruk-Kazyna currently does not have a comprehensive, strategic approach to professionalization and capacity building, and no structured performance monitoring that could provide evidence for these activities and wider reforms.

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

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

Findings

108. Samruk-Kazyna, i.e. the fund management and the subsidiaries within the holding, are required to compile annual and multi-annual procurement plans. In most cases (but not all, as would be good practice), the budget are allocated before contracting and cover the full amount of the contract. Financial procedures are specified.

Substantive gaps

Sub-indicators 4(a) and 4(b) – Launching of tendering process without budget allocation and gaps in financial procedures

109. There are some, exceptional cases where the authorities can start the procurement process before the budget is officially allocated. In such cases the contract is not signed until the official approval of the budget. This saves time and the necessary goods, services and works are supplied without delays. It is very rare that the budget needed for these procedures is afterwards not allocated. While there are benefits from this procedure, it also entails risks: In case the budget is not allocated, the resources for the organization of procedure are wasted. The potential supplier with whom the contract should have been signed is also carrying the risk as common practice appears to be that most suppliers take provisions to prepare the delivery of the good, works or service, to ensure timely delivery, albeit this being against good practice. As a result, suppliers might lose trust in the procurement system of Samruk-Kazyna and will no longer participate in procurement procedures. This, in turn, affects competition and ultimately the value for money that Samruk-Kazyna is able to realize through its procurements. Bidders might be incentivized to increase their asking price in order to account for losses incurred to projects that do not actually materialize. It is thus important to take all the necessary measures to limit the cases where the procedure is conducted before the final allocation of funds. This should be allowed only when strictly necessary to carry out the main functions of the contracting authority. These gaps were assessed as medium risk.
110. The provisions for invoices are not clear enough. According to stakeholders, the payment stage is very bureaucratic. Even though the legislation requires that invoices should be paid within 30 days of signing the acceptance act, in practice this deadline is frequently missed by the contracting authorities. Due to a lack of data, it was not possible to assess the quantitative assessment criterion in this indicator, but the indications by stakeholders suggest that invoices are largely not paid on time. Timely payment is essential for the suppliers, especially SMEs that usually do not possess much financial means. In case not paid in time, the suppliers might face insolvency or just refuse to supply to the state. This will affect competition and final prices the contracting authorities can get as a result of the tender procedures.
111. Payments seem to be significantly delayed, which impacts the ability of suppliers to participate in public procurement; in addition, there is limited visibility about payments. This



hinders the ability to achieve basic public procurement objectives, which means that a red flag is suggested to be raised for sub-indicator 4(b) and this gap is assessed as high risk.

112. Another gap relates to the reporting stage. According to the rules, the contracting authorities are required to provide monthly reports about the contracts for the procurement of goods, services and works to the management of the Fund. However, there is no specific mechanism for the reporting on the budget execution as a whole. The specific feedback mechanism on budget execution usually takes the form of an (annual) report; this report allows to detect and remedy the mismatch between the planned and actual expenditure.

Recommendations

113. Timely budget execution is important for the achievement of goals of Samruk-Kazyna. As a big holding, the Fund should monitor how the means are absorbed by the subsidiaries. Data could be gathered for individual processes and then be aggregated for a specific period (trimester, year, etc.) or category. This can provide information about any challenges with regards to budget planning and execution, allowing Samruk-Kazyna to take appropriate measures. On the basis of this analysis, the number of cases in which procurements can be launched without formal budget approval could be limited as much as possible and ultimately eliminated altogether. In addition, Samruk-Kazyna could consider allowing multi-annual procurement cycles for recurring needs. To implement these changes successfully, increased capacity in the procurement workforce is needed, which can be achieved by conducting training on planning and increasing the use of electronic tools. To realize the most benefit of electronic procedures, it is recommended to introduce e-invoicing which will automatically disburse the money once the delivery act is signed in the system or uploaded. The bureaucracy of the payment process should be reduced allowing the suppliers to receive the payment once delivery up to the agreed standard is made.

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

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

Findings

115. The Fund and its management have a high-level standing in the government, including the units tasked with aspects of public procurement. The head of the Board of Directors of Samruk-Kazyna is the Prime Minister of Kazakhstan ex officio. The current head of the Management Board was deputy Prime Minister twice during his career. Samruk-Kazyna's financing is sourced predominantly from its own means, which in fact positions the organisation in a strong and independent position vis a vis the government.
116. With regards to its structure, previously two units of Samruk-Kazyna's management structure were merged to form the Procurement Methodology and Control department, in the beginning of 2018. This newly created department is entrusted with regulatory, review and



control functions over subsidiaries. As has been reported during the interviews, there is a shortage of staff within the department which might affect the fulfilling of the assigned tasks.

117. De jure, the procurement rules specify the normative/regulatory function and assign appropriate authorities to enable the department to function effectively. In addition to the Procurement Methodology and Control Department, Samruk-Kazyna's subsidiary company SK Contract LLP is tasked with normative and regulatory aspects. Most of the functions required by the MAPS are specified in the Rules assigned to one of the mentioned institutions (see below for missing elements.) The Fund in this case can be considered the regulatory body while the subsidiaries are the contracting authorities.
118. Kazakhstan's government is the sole shareholder of Samruk-Kazyna, and the legal and regulatory framework governs the relationship between the Fund and the government. Interference of the Government, its employees and other officials of state bodies into the operational activities of the Fund can be allowed if prescribed by law, normative acts and orders of the President of Kazakhstan.
119. Certification rules for procurement specialists in Samruk-Kazyna have been recently approved. This decision is currently being implemented. Overall, there is an increasing emphasis on professionalizing the procurement workforce in Samruk-Kazyna.

Substantive gaps

120. Qualified and capable staff is a prerequisite for well-thought and well-implemented policies. As the Procurement Methodology and Control Department is tasked with important functions of not only methodological guidance and setting procurement policies but also of control over the transactions and hearing complaints, staffing requirements are high. There is also a need for specialized knowledge to fulfil the diverse task appropriately. According to stakeholders, there are constraints, and the unit does not have a sufficient number of staff to fulfil its tasks. This gap was assessed as high risk and a red flag was raised.
121. From an institutional point of view, several aspects warrant a note. On the one hand, the independence of the normative and regulatory function (i.e., the Procurement Methodology and Control Department) is institutionally limited by the oversight of Samruk-Kazyna's management structure, but also by the political appointees in the board. However, it was not reported by any source that there is any interference that would prevent the normative and regulatory function from achieving its aims or basic procurement goals. On the other hand, it is noteworthy that the control and review functions are within the same unit (Procurement Methodology and Control Department) of the Fund. This means that the policy making, review and control functions are carried out by the same department. This might result in a conflict of interest and is considered a red flag for sub-indicator (d) as it might affect the achievement of basic public procurement principles. This gap was assessed as high risk.
122. Several tasks are not clearly attributed, including the responsibility to advise contracting authorities and to amend and draft new legislation (though it is assumed to be part of "methodological management" mentioned in the Procurement Rules.) In addition, the powers of provision of procurement information and preparation of reports for other parts of the Fund are not prescribed at all. In relation to the latter it should be noted that in practice the Procurement Methodology and Control Department is carrying out the task as it organizes workshops, seminars, etc. (see indicator 8.) These gaps were assessed as medium risk.

Recommendations

123. In order to avoid gaps in the policy making it is recommended to clearly define the powers to advise authorities and to amend and draft new legislation. In addition, the powers of provision



of procurement information, preparation of reports for other parts of the government (Samruk-Kazyna), support of professionalization should be assigned to either the Procurement Methodology or Control Department or to SK Contract LLP.

124. All of the above-mentioned powers require adequate and capable staffing which should be ensured with the usage of certification and capacity building programmes described in indicator 8. In addition, it is recommendation to avoid cases of conflict of interest and to delineate the functions of control and review. This will make the review function more independent as is required by international standards and will ease the burden of the Procurement Methodology and Control Department.

Indicator 6. Procuring entities and their mandates are clearly defined

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

Findings

126. The subsidiaries of Samruk-Kazyna can be considered contracting authorities. Their rights and obligations are described in detail in different articles of the Procurement Rules and cover the entire procurement cycle. The contracting authorities are required to have a separate structural unit responsible for organizing and carrying out procurement procedures. According to stakeholders, the procurement units collect requests describing needs of the requiring units and organize the procurement procedures for these requiring units. The deliveries are received by the requiring unit. Payment is done from the treasury of each subsidiary after the final check of the invoice. The requirement to have a staff with adequate capacity is not prescribed in the legislation.
127. Even though a regulation on centralized procurement exists, centralization is used only to a limited extent. Some centralization is conducted on the level of the subsidiaries in the Samruk-Kazyna holding. Framework agreements are not used and no separate centralized purchasing body exists. Either the Fund or the organization in the Fund will carry out the centralized procurement; in practice, it is the Fund.

Substantive gaps

Sub-indicators 6(a) and 6(b) – Unoptimized approach for centralised procurement

128. Samruk-Kazyna does not have a separate centralized purchasing body entrusted with the organization of procurement procedures for several or all subsidiaries. The range of authorized methods does not include those that would be amenable to centralized purchasing. This gap was assessed as medium risk.
129. Another gap relates to the delegation of decision-making. Authority is not allocated consistent with the risks associated and the monetary sums involved as required by the MAPS assessment criteria. There is a specific unit dealing with the procurement procedures and several responsible units that are accepting the delivery depending on their needs. That said, the responsibilities for these two phases of the procurement cycle are at risk of being not aligned. This gap was assessed as medium risk.

Recommendations



130. In order to have a smooth procurement process from needs assessment to contract management, it is necessary to describe in the legislation the rights, responsibilities and decision-making powers of the procurement unit and responsible units. It is also recommended to adopt a risk-based approach, balance the necessity for approval with the involved risk and monetary sums. Suppliers also benefit from knowing who is responsible for a specific action and what deadlines are in force with regards to the acceptance of delivery, approval of invoices and dispatch of the payment.
131. Even though there is a separate piece of legislation related to centralized procurement,⁶⁴ Samruk-Kazyna's contracting authorities are not making full use of the advantages that centralization offers. It is recommended to increase the use of centralized purchasing, for example by creating a body entrusted with the procurement of standardized goods, works and services for all subsidiaries. It is also possible to enhance the use of centralized purchasing at the level of subsidiaries which will then procure for their own subsidiaries. In doing so, utilization of tools such as framework agreements, dynamic purchasing systems and e-catalogues is much advised taking into account how efficient these tools can be when used in combination with centralization. The current efforts to introduce tiered prequalification processes can be coupled with efforts to centralize those items in the more standardized categories. Considerable economies of scale could be achieved by using modern techniques combined with partial centralization, e.g. dynamic purchasing systems, e-catalogues, etc.

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

132. The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, to efficiently support the different stages of the public procurement process through application of digital technologies, and to manage data that allows for analysis of trends and performance of the entire public procurement system.
133. The assessors did not have access to neither the e-procurement system nor to data to verify and triangulate information retrieved elsewhere. In addition, it was not possible to substantiate the assessment through an analysis of the mandatory quantitative assessment criteria in this indicator. That means that the assessment of this indicator cannot be fully concluded. Red-flags and substantive gaps have been assigned accordingly.

Findings

134. IT tools are widely used by Samruk-Kazyna, they serve the dissemination of procurement information as well as the conduct of procurement procedures. Additionally, information on the procurement platform is transmitted by television. According to the assessors' review, the platform has dedicated websites that are relevant, timely and complete to the extent specified in the legal and regulatory framework. Electronic procurement sites help interested parties to understand the procurement process and to access the results. The electronic procurement portal provides for video instructions and manuals and technical documents for purchasing personnel. There is no formal certification programme to use the e-procurement system.
135. Regarding the volume of information published on the websites, the Procurement Rules provide that unclassified (non-military) procurement plans are published in the system automatically following approval. Procurement plans are published at the beginning of the

⁶⁴ See The Rules on Implementing Centralized Procurement for Goods, Works and Services of the JSC "Samruk Kazyna" and Organizations 50% and more Voting Shares of which Directly or Indirectly Belong to Samruk Kazyna with the Right of Ownership or Trust Management"



purchasing year before the bidding, and the requiring units in Samruk-Kazyna publish long-term and yearly procurement plans. In addition, according to the Procurement Rules, the e-procurement system publishes a range of documents along the procurement cycle and meets the assessment criteria. However, the system does not publish contracts and information on the implementation of the contract, amendments to contracts, final payments for completed contracts and appeals.

136. According to stakeholder interviews, e-procurement seems to be used at all levels of government; officials have the required capacity with regards to both e-procurement oversight, planning and operations. However, the assessors did not have access to quantitative information to substantiate the findings from interviews.
137. While data is not fully open, Samruk-Kazyna does use the data from the e-procurement system for analysis and monitoring. Systems from subsidiary are equipped to feed information to the central management of the holding, according to stakeholders. However, no reporting on detailed indicators was publicly available.
138. At an institutional level, SK Contracts has a clear responsibility to manage and operate the system.
139. E-procurement is one of the most highly developed areas of procurement of Samruk-Kazyna. According to the authorities, currently 100% of all the transactions are carried out using the e-procurement platform. Since July 2018, all modules (e-planning, e-tendering) are integrated into one single web-site making it easier to navigate and trace single transaction. Once the development is concluded, the platform will be connected to state registers which will speed up the process and will free the suppliers from the requirement to supply documents: checks will be automatic. In addition, Samruk-Kazyna uses data analytics to inform the ongoing reforms.

Substantive gaps

140. Substantive gaps in indicator 7 relate to two areas: access and transparency of e-procurement and to performance monitoring. Due to the wider implications of the large gaps in sub-indicator 7(a), a red flag is assigned to this sub-indicator and it is assessed as high risk.
141. The majority of the information published on the websites is accessible only for registered users. In order to register, users must have an e-signature which they can obtain in two ways: 1.) By having a legal representation in Kazakhstan which is costly for foreign suppliers; or 2.) by applying to GAMMA technologies which will issue e-signatures for a maximum of one year with the cost of about EUR 130. These procedures create barriers for participation for foreign suppliers.
142. There is no single integrated website for the procurement information and procedures. Purchases are conducted on one site, market analysis on another, prequalification procedure on a third website. Participants need to register using e-signature in case they want to access tender documentation and/or to participate. Obtaining e-signature can be burdensome for foreign companies.
143. With regards to transparency, it is noteworthy that tender documentation, contract awards, and procurement statistics are not open for the wider public. The system is not yet integrated with other public systems, such as the taxation system, the justice system and the court decision system.
144. It remained unclear how statistics are being collected and what the frequency of any data publication is (if any). This hinders the opportunity to use the procurement data for policy



decisions and hinders performance monitoring of the system as a whole. According to stakeholders, the system is used to support data collection and analysis, but no such report could be found online.

145. The assessors did not have access to neither the system nor to data to verify what kind of information is gathered and published. It was not possible to substantiate the assessment through an analysis of the mandatory quantitative assessment criteria in this indicator.

Recommendations

146. In order to enhance the transparency of the procurement process, Samruk-Kazyna could give the public access to the procurement documentation, e.g. procurement plans, tender documents, evaluation reports, contract award decisions, contracts, statistics, etc. This would allow NGOs and citizens to act as watchdog and to take part in the monitoring function. In addition, increased publication can enhance competition and can prevent corruption. Wherever possible, data should be published in an open format according to internationally accepted standards on transparency, such as the Open Contracting Data Standard. Transparency requirements should not only refer to the publication of procurement documents of a single transaction but also the publication of aggregated data. This can take form of trimester, semester and/or annual reports covering the main indicators related to the efficiency and effectiveness of the procurement system (see the quantitative assessment criteria for this indicator.) Published information could include data related to the review function.
147. Access to the e-procurement system should be freed from technical and legal hurdles and instead allowing for an easy registration and participation of all potential suppliers, not only local but also foreign suppliers. In this regard, as detailed above, the usage of e-signatures can be a significant challenge for some companies and de facto works as a barrier to accessing to the market. This practice should be eliminated. Access for foreign suppliers can be facilitated also by translating at least the contract notice into English, so that foreign suppliers have an understanding of whether they are interested in the procurement procedure. Creation of a single integrated web-site with a single database for all procurement transactions is recommended in order to save suppliers and contracting authorities' time and resources spent on conducting procurement procedures on different platforms.

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

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

Findings

149. SK Contract LLP, a subsidiary in the Samruk-Kazyna holding structure, is tasked with the training of the representatives of subsidiaries and organizes seminars related to procurement. Samruk-Kazyna also has a subsidiary called Corporate University Samruk-Kazyna, which provides training for purchasing staff of procuring entities as well as suppliers. This training is part of general training for staff from the entire holding.



150. In addition, new rules on certification have been adopted in August 2018. These rules do not contain any reference to permanent training programs but regulate the process and procedures specific to certification.
151. There is no training strategy and no permanent training programs. According to stakeholders, the existing trainings are carried out on an ad-hoc basis. Procurement is not recognized as a function. There is no specific grading system for procurement officers, but there is one for general human resource management. Procurement officers pass through the general human resources procedure in order to be appointed (testing, interviews.)
152. Key performance indicators (KPI) and data are used for decision making, but the extent of their use remained unclear. Performance evaluations are carried out based on the general human resource regulations, no specific evaluation for procurement officers exists. Newcomers are trained in a short course about the activities of the Fund, including procurement. No specific continuous professional development programme is provided for procurement officials.

Substantive gaps

153. While the introduction of a certification mechanism greatly enhances the professionalization efforts in Samruk-Kazyna, the holding does not yet have a strategic and encompassing approach to capacity building and professionalization of public procurement. Initial efforts are undertaken that are likely to provide a considerable improvement to Samruk-Kazyna's capacity to develop and improve procurement; however, a red flag was raised as procurement is not recognized as a profession
154. A red-flag is assigned to sub-indicator (c) (performance monitoring), as this area presents a substantial gap that might have an impact of the achievement of basic public procurement objectives. This gap was assessed as high risk. The assessors were unable to verify to what extent a performance monitoring system exists.
155. Currently, Samruk-Kazyna does not have a capacity building program that caters to all staff involved in procurement activities in a strategic and evidence-based way. The existing initiatives, mostly trainings, have *ad hoc* character. Overall, procurement is not considered a profession. There is also no performance measurement system that could support improvements to the system and inform capacity building efforts. The KPIs that are used are not linked to any capacity building measures or to inform merit-based promotions. This gap was assessed as medium risk.

Recommendations

156. Samruk-Kazyna should aim to build a comprehensive, strategic and evidence-based approach to capacity and professionalization. In doing so, the Fund can follow a step-by-step approach, building on existing efforts and expanding them gradually to fill all aspects of a strategic approach. The recently adopted certification mechanism could serve as a starting point and the momentum gained from its introduction should be used for further enhancing performance management and professionalization.
157. As a first step, Samruk-Kazyna could assess training needs for all employees involved in procurement transactions. Based on the results, a procurement training strategy should be developed which in its turn will serve as a basis for the permanent training program. The program should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions and other relevant topics. The program should be routinely evaluated and amended based on the needs of the stakeholders and the feedback received. Training programs can also be linked to more structured certificate programs with



differing levels of qualification (certificate, diploma, etc.). Once the certificate program is fully established, the next step could be the recognition of procurement as a profession in Samruk-Kazyna. The routine evaluation of staff can help to find gaps in knowledge and direct people to appropriate training and certification programs.

158. Finally, to ensure that professionalization and capacity building activities are evidence-based, Samruk-Kazyna should develop and implement a performance measurement system that focuses on both quantitative and qualitative aspects of public procurement. Evaluations of procurement procedures and their effectiveness should be undertaken, as well as evaluations of procurement staff. Insights from these processes can also inform policy decisions on the future development of the procurement system of Samruk-Kazyna, and can also be instrumental in tracking the outcomes of the current transformation program that the Fund undertakes throughout its structures.

4.3. Pillar III - Public Procurement Operations and Market Practices

159. This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.
160. While several good practices exist in public procurement in Samruk-Kazyna, gaps remain – limited visibility about performance exists. Available statistics indicate a disproportionate use of single source methods, and price is the only award criteria that is commonly used.
161. Overall, the public procurement market that Samruk-Kazyna interacts with is functional. However, a major gap (and red flag) relates to access. In addition, there is limited engagement of suppliers and no sector strategies.
162. The assessment presented in the following pages has to be considered in light of the fact that the assessors were not granted access to information about procurement performance and no access to sample procurement cases by Samruk-Kazyna. Therefore, the assessment was unable to ascertain whether public procurement practices achieve the assessment criteria stated in indicator 9. The conclusions for indicators 9 and 10 are based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. Nevertheless, the assessment remains incomplete without the access to data or a meaningful sample of procurement documents.
163. Red flags are raised for indicator 9 and sub-indicator 10 (b).

Indicator 9. Public procurement practices achieve stated objectives.

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



165. The assessment of this indicator cannot be fully concluded due to a lack of access to information. Red-flags and substantive gaps have been assigned accordingly. Despite repeated requests by the assessors, Samruk-Kazyna did not grant access to a sample of procurement documents, data or other information on actual procurement cases that would be necessary to analyse the performance of Samruk-Kazyna's procurement system. The conclusions for indicators 9 and 10 are based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology, and all the necessary steps were taken to guarantee its accuracy. Nevertheless, the assessment remains incomplete without the access to data or a meaningful sample of procurement documents.

Findings

166. The evaluation of the assessment criteria in indicator 9 would usually require the review of a sample of procurement cases. In this review, no such access was provided. As a consequence, the analysis of this indicator has to remain limited and is based on interviews with representatives from procuring entities, requiring units and suppliers and limited procurement documents from a second-tier subsidiary KazAutoZhol.
167. Overall, the legal and regulatory framework creates the basis for a procurement process that would comply with many of the assessment criteria in this indicator. However, the practical implementation, according to stakeholders, remains behind the possibilities outlined in the Procurement Rules.
168. One of the major findings with regards to the procurement practices is the relatively high share of single source procurement 86.5% of the entire procurement volume (2016; see section on country context for a detailed representation of procurement spending by Samruk-Kazyna).⁶⁵ This is due in part to the large list of exceptions that allow for single sourcing. There does not seem to be an intent to reduce this list as part of the ongoing reform. Instead, it is envisioned to authorize all subsidiaries in the holding structure to approve their own list of exceptions, which will probably result in an increased list of exceptions, rather than a more limited list.
169. The Procurement Rules prescribe to award contracts to the bidder offering the lowest price, for all methods of procurement, including consulting services. This means in practice that the quality of procured goods, works and services is likely lower than in a situation where non-price criteria would be used. Overall, good value for money cannot be achieved under these circumstances. According to interviews, in the procurement of consulting services, an attestation (pre-qualification) is being organized to assess the technical abilities of the suppliers (experience, suggested staff). The list of pre-qualified suppliers is published and the contracting authority is asked to procure from the suppliers included in this list. This allows the usage of the lowest price as the award criterion among the attested consultants. In the future, Samruk-Kazyna is planning to use life cycle costing in accordance with category management.
170. As reported by stakeholders, e-procurement is used across the board, without exceptions. While this statement could not be verified due to a lack of access to information and the e-procurement system, it seems plausible that there is a high rate of compliance with the

⁶⁵ OECD Anti-Corruption Network for Eastern Europe and Central Asia (2017), Anti-Corruption Reforms in Kazakhstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>.



requirement to conduct all procedures via e-procurement. This, in turn, means that procedures are most likely also complying with aspects that can be controlled through electronic procedures, such as the quality of the documents, timelines, etc. In fact, stakeholders reported that a large part of the bid evaluation (since it is based mostly on price and pre-specified discounts) is automated. Errors are likely reduced, but there is no room for discretion on the part of the individual procurers that would allow realising value for money in other areas.

171. Stakeholders mentioned that it is practically impossible for some suppliers to participate in procurement by Samruk-Kazyna, as the holding tries to create its own pool of suppliers. Market distortion as a result of such actions is obvious, especially taking into account the importance and size of the procurement of Samruk-Kazyna.
172. In general, there are detailed rules that prescribe a plethora of advanced procurement methods and processes to increase efficiency and effectiveness. However, due to a lack of access, limited evidence could be obtained to what extent these rules are actually applied on a regular basis. The low number of competitive procurement methods used suggests a relatively lax enforcement of these rules.

Substantive gaps

173. Despite repeated requests by the assessors, Samruk-Kazyna did not grant access to a sample of procurement documents, data or other information on actual procurement cases that would be necessary to analyse the performance of Samruk-Kazyna's procurement system. The conclusions for indicators 9 and 10 are based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. Nevertheless, the assessment remains incomplete without the access to data or a meaningful sample of procurement documents.
174. Only a limited analysis of procurement cases was undertaken (five published cases), given that the assessment team had no access to a sample of procedures that adequately represent Samruk-Kazyna's public procurement. The assessment team had access to cases from second-tier subsidiary KazAutoZhol, which speak to Samruk-Kazyna's overall procurement practices only to a limited extent. The quantitative assessment criteria have not been evaluated. Based on information retrieved from the legal and regulatory framework, in stakeholder interviews, and based on the limited document review, several gaps were identified as described below.

The following tasks are not undertaken or used in practice:

- Needs analysis and adequate market research
- Inclusion of sustainability criteria or considerations thereof in contracts
- Determining best value for money
- Inclusion of incentives for better performance of suppliers in contract clauses
- Engaging civil society throughout the procurement cycle (only above a certain threshold, not involved in planning and contract management.)
- Extensive procurement statistics do not seem to be publicly available.



As stated in indicator 4, suppliers that were interviewed described hurdles with regards to receiving payments and complained that being paid required cumbersome follow up, and even then payments were often late.

175. The assessment team was unable to evaluate whether:

- Standard bidding documents are used (however, it is assumed that they are used because e-procurement requires their use);
- Procurement documentation include reasoning for procurement methods chosen;
- Procedures are clearly described in bidding documents;
- Actual participation of civil society in the procurement process;
- Bidders attend the bid opening;
- Awards are adequately published;
- The selection and award process is conducted with efficiency and effectiveness;
- Contracts are implemented properly;
- Contract amendments follow the rules, and
- Records are complete.

176. Taking together the limited visibility about procurement performance, as well as the indications of procedures that do not favour value for money (high number of single sourcing, no use of evaluation and award criteria beyond price), it is likely that basic principles of public procurement are jeopardized by the procurement practices in Samruk-Kazyna. Therefore, a red-flag is raised for this indicator as a whole and the gaps are assessed as high risk.

Recommendations

177. There are two leverage points that should be used to increase compliance with this indicator and improve procurement performance: first, data gathering and performance monitoring, and second, professionalization of the procurement workforce.

178. First, Samruk-Kazyna could increase data gathering and in parallel develop a system to monitor performance, aiming at addressing the performance indicators stated in the MAPS indicator 9. The wide use of e-procurement offers potential to analyze public procurement performance in more detail and more strategically than to date. Many of the items mentioned in indicator 9 could be easily analyzed using electronic procurement data, not only for the benefit of this assessment, but more broadly to improve the efficiency and effectiveness of Samruk-Kazyna's public procurement. Whatever the solution, data and insight should be published, so that interested citizens, potential suppliers and civil society organizations can review the information. Publishing statistics and performance indicators has several benefits, including increased oversight by civil society which can reduce corruption, and support improved preparation of the procurement market which can result in better suited offers by potential suppliers.

179. Second, Samruk-Kazyna could focus on improving the performance of public procurement in delivering value for money. As highlighted in pillar I, procurement processes should be increasingly competitive, and rules should be amended to allow for evaluation criteria beyond price. These measures would render the procurement system more competitive, which will improve value for money. As mentioned above, the implementation of e-procurement is



promising with regards to efficiency gains and the elimination of errors. However, efforts should go beyond these measures, focusing on the capacity of the procurers and procurement units to deliver value for money (see also indicator 8.) Measures to increase capacity should be structured and strategic, and cover all aspects of capacity and professionalization, including hiring a sufficient number of staff, providing training and career paths, but also written and verbal guidance, and the creation of standard documents and standard contracting conditions.

Indicator 10. The public procurement market is fully functional

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

Findings

181. As mentioned in previous indicators, access to public procurement opportunities with Samruk-Kazyna is limited at times due to the set-up of the public procurement framework. The public procurement market that Samruk-Kazyna taps into is characterized by these constraints.
182. Generally, there are elements of dialogue between Samruk-Kazyna and suppliers about public procurement; the private sector is organized to an extent and some sector-specific strategies exist. An important role is played by Kazakhstan National Chamber of Commerce Atameken (see further information on Atameken in indicator 11), which acts as the mouthpiece of business in Kazakhstan. Suppliers that were contacted for this assessment seemed in general willing to participate in public procurement opportunities; however, some stated that procurement opportunities with Samruk-Kazyna and other SOEs were more difficult to attain than those in the general government sector. According to anecdotal evidence, Atameken has been included in hearings related to the current reform process. However, it remained unclear how far-reaching this engagement has been and to what extent suggestions have been taken into account.
183. As part of the general reform efforts, Samruk-Kazyna is planning to create a pool of prequalified suppliers. The system will include several tiers, depending on the complexity of the item to be purchased. Aside from rendering the procurement process more efficient and effective, one goal in this plan is to reduce exposure to non-performing suppliers (“unreliable suppliers”). As has been reported by several procuring entities, both in Samruk-Kazyna and beyond, it has been a problem on the one hand to maintain open competition and on the other hand to ensure that the contract is awarded to a reliable supplier that will perform the task satisfactorily. As stated in indicator 1, this problem is related to the fact that qualification, evaluation and award criteria are not properly distinguished, and that price is the only criterion used to determine the winning bid.
184. Sector strategies are developed to a limited extent by the subsidiaries in the Samruk-Kazyna holding, but not on the overarching fund-level. At the fund-level, the prequalification mechanism can be considered a risk-based approach, as it groups procurements according to their complexity and also according to their vitality to Samruk-Kazyna’s mission. More important, and more complex procurements require a more thorough prequalification level.

Substantive gaps

Sub-indicator 10(b) – Restricted participation to the procurement market and opportunities



185. The most problematic issue in this indicator is the status of foreign suppliers and their access to public procurement opportunities, which is assessed as medium risk. Therefore, a red flag is assigned to sub-indicator 10 (b) because it is likely impossible to resolve this issue in the medium term, as the political strategy in Kazakhstan is to promote local content. De facto, foreign suppliers are in most cases unable to participate in public procurement opportunities: while there is no direct restriction or preference for local content, access is limited by a cascade of administrative requirements. All procurement opportunities are processed using the e-procurement system, which means that bids have to be submitted exclusively through this portal. In order to do that, a bidder has to demonstrate that he possesses an electronic signature. A supplier can obtain an electronic signature by filing a request with the provider of the e-procurement portal. One of the requirements to file this request, however, is a Kazakh tax number. This tax number is provided only to entities that have a registered presence in Kazakhstan. This, however, is a step that the majority of foreign suppliers do not want to undertake, as it is costly and bureaucratic. While foreign suppliers can register with a dedicated body to receive an electronic signature, this process as well is complicated and not transparent.
186. This hindrance of access for foreign suppliers has led to difficulties for some contracting authorities in other SOEs, which were unable to purchase security relevant spare parts that are exclusively available from foreign suppliers. While similar situations have not been reported from subsidiaries in the Samruk-Kazyna holding, these scenarios cannot be dismissed as unrealistic. In addition, and more importantly, lack of access of foreign suppliers reduces competition and will result in worse performance of public procurement processes in terms of efficiency and effectiveness. This gap was assessed as high risk and a red flag is raised.

Sub-indicator 10(a) – Lack of structured mechanisms for involvement beyond the established associations

187. Another gap relates to the lack of structured mechanisms for involvement beyond the established associations, as well as to the support suppliers receive in participating in procurement opportunities. There is no structured approach for the exchange with suppliers or to build their capacity in responding to bids; no particular consideration is given to SMEs. A number of open tenders is ultimately handled as a single sourcing procedure, which is permissible if only one or no responsive bid was received. This indicates a relatively low quality of submissions and potentially challenges on the part of suppliers to develop bids that are responsive indeed. Another reason might be that potential suppliers are unaware of procurement opportunities. Both issues could be addressed by increased dialogue with suppliers. This gap was assessed as medium risk.
188. No quantitative information about Samruk-Kazyna's suppliers were made available to the assessment team.

Recommendations

189. In response to the identified gaps, Samruk-Kazyna could undertake the following measures:
- a) In line with the recommendations in previous indicators, increase competition by increased access for suppliers, in particular for foreign suppliers. This includes reviewing the procedures for registration and requirements for submitting bids, and should aim at removing all systemic constraints to participation.
 - b) Introduce additional and diverse avenues for supplier engagement, while maintaining a necessary neutrality and distance to ensure high standards of integrity (i.e., avoiding corruption or collusion.) A viable mechanism could be to provide additional



information on the procurement process, in particular to smaller suppliers, in the form of guidance documents, trainings or helpdesks. These capacity building opportunities should be disseminated widely. As Samruk-Kazyna is undergoing its modernisation process, suppliers should be surveyed to capture their needs and suggestions.

- c) Gather statistics about suppliers and use them as part of performance monitoring, e.g. to see what share of firms in the market actually participates in procurements, what share of suppliers is successful (or not), etc.
- d) Expand the risk-based approach beyond the prequalification mechanism. That means to comprehensively identify risk areas (beyond the tiered system used in prequalification) and to make efforts in tackling these risks beyond the prequalification stage.

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

- 190. Pillar IV includes four indicators that are considered necessary for a system to operate with integrity that has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework, and that has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which include stakeholders, including civil society, as part of the control system. This Pillar takes aspects of the procurement system and governance environment to ensure they are defined and structured to contribute to integrity and transparency.
- 191. First steps have been undertaken in engaging civil society about public procurement, notably when it comes to procurement reforms and through a cooperation with business associations. However, limited public information hinder meaningful input by civil society, be it in the procurement process or with regards to reforms.
- 192. Samruk-Kazyna's audit and control mechanisms appear to be working as intended and in general are able to control and audit public procurement activities. Gaps relate to a lack of independence of the audit function, which is combined with other functions in Samruk-Kazyna's Procurement Methodology and Control Department
- 193. While a process for challenges and appeals exists, procedures do not meet the assessment criteria outlined in the methodology. Notably, gaps relate to a lack of independence that impacts its decisions (similar with regards to the issues outlined for the audit function.)
- 194. Samruk-Kazyna's anti-corruption framework follows the rules for Kazakhstan as a whole and the most important legal and regulatory provisions are in place. There is evidence of some enforcements. Gaps relate to procurement-specific measures and stakeholder engagement.
- 195. Red flags have been assigned to indicators 11, 13 (b, c) and 14 (c, d, e).

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

- 196. Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract



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

Findings

197. Samruk-Kazyna has taken steps to increase transparency with regards to public procurement, and to involve stakeholders in the processes, which has contributed to increased integrity. Some aspects of stakeholder engagement and transparency have been enshrined in procurement rules, but the de facto engagement and transparency remains limited. To what extent there is a meaningful contribution of civil society to the public procurement system has been difficult to assess.
198. Laws, regulations and policies are published and accessible for everybody (at least in Russian.) Any documents related to procurement procedures, such as notices about opportunities, sample documents, etc. are available on Samruk-Kazyna's e-procurement portal. However, in order to access these documents, interested parties have to be registered as a user in the portal, which is hindered by several bureaucratic requirement (see indicator 7 for additional information.)
199. As mentioned in indicator 10, an important role in terms of engagement of the public is played by Atameken, the National Chamber of Commerce. Aside from commentary on the legal reform, Atameken representatives are also participants in procurement commissions that are formed for above-the-threshold open tenders. This is a positive measure to ensure procurement is conducted with fairness. Beyond Atameken, there appear to be limited organizations with strong influence on policymaking in the area of public procurement.

Substantive gaps

200. While there are some rules that allow and encourage for the inclusion of civil society in public procurement, there does not seem to be a culture of openness and transparency, as illustrated by the gaps detailed in this section. Most of the identified gaps do not prevent the successful attainment of basic procurement principles. However, the culture within Samruk-Kazyna seems engrained in a way that does not favour transparency and openness towards stakeholder engagement, which will make action extremely difficult. In addition, there are no civil society organizations that independently monitor public procurement. While the gaps do not seem to hinder the attainment of basic public procurement objectives, the change of culture towards engagement and exchange is likely to require significant political will. Changes are necessary beyond the leverage that policy by Samruk-Kazyna can have. Therefore, sub-indicators 11 (a) and (b) are assessed as high risk and it is suggested to raise a red flag for both indicators.
201. Further gaps relate to the inclusion of civil society organizations. There is no capacity building or training for CSOs on public procurement, and no evidence that the comments and feedback of civil society is sought for policy making, and that if it is, it would be taken into account. Civil society organizations that were interviewed as part of the fact finding for this assessment were not contacted to provide feedback.
202. With regards to individual procurement processes, there is limited transparency and limited opportunity for some specific representatives (such as from Atameken) to participate. Not all procurement information is accessible, albeit far-reaching rules that make the publication mandatory. De facto, access is hindered by additional rules requirement to register for the e-procurement system. There was no evidence that civil society representatives participate in



procurement proceedings, such as during bid-opening or as watchdogs, or in the analysis of procurement cases ex-post. These gap for sub-indicator 11 (c) was assessed as medium risk.

Recommendations

203. At the heart of indicator 11 is a culture of transparency and openness towards influence by the public. Samruk-Kazyna could, to the extent possible in its realm of competence and policy setting, build on existing measures to seek feedback from the public, and further increase transparency. Samruk-Kazyna can gain immensely by allowing more transparency and access to information about public procurement (and requiring the subsidiary companies in the holding to follow this approach): transparency can increase competition and in turn more effective and efficient outcomes of procurement procedures, which can translate in financial savings and can reduce corruption. From a planning perspective, early engagement of stakeholders can ensure that the purchased good, works or service delivers in the best possible way for Kazakhstan's citizens.
204. Practically, one mechanism could be to actively seek feedback to proposed changes from suppliers and the public, by sharing draft rules and gathering (anonymized) commentary. Efforts should be made to publish all documents that are not classified and provide them in a platform that is accessible to the general public without hurdles such as registration only for companies and not for users that use the system in a "watchdog" role. Civil society organizations and interest groups could be invited to participate in important public procurement processes.

Indicator 12. The country has effective control and audit systems

205. The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, "effectiveness" means the expediency and thoroughness of the implementation of auditors' recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.
206. The assessment of this indicator cannot be fully concluded due to a lack of access to information about the control and audit system. Substantive gaps have been assigned accordingly. The report presents conclusions based on review of secondary data sources, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy.

Findings

207. Samruk-Kazyna has a separate audit structure that largely reflects the structure of the general audit system in Kazakhstan. Overall, the main elements of an audit system are in place. However, the system does not seem to be fully independent or effective. In addition, there is no specific structure for public procurement, nor is any specific attention to public procurement made.
208. The conclusions for this indicator remain limited given that the assessors did not have sufficient access to information that would allow a full assessment of this indicator. Not all documents detailing the rules pertaining to the audit function in Samruk-Kazyna were publically available or made available to the assessment team by Samruk-Kazyna. The



following presents findings from interviews with stakeholders, information provided by Samruk-Kazyna in written form and additional research.

209. Viewed top-down, the audit structure for Samruk-Kazyna is as follows: The Accounts Committee (also referred to as “Accounts Chamber”, Russian Счетный Комитет по контролю за исполнением республиканского бюджета) is Kazakhstan’s Supreme Audit Institution and is the top organ overseeing audit in Kazakhstan, including in Samruk-Kazyna. The Accounts Committee reports directly to president, who appoints the Accounts Committee’s members.
210. The highest audit institution within Samruk-Kazyna is the Audit Committee on the level of Samruk-Kazyna’s board of directors. The Audit Committee consists solely of independent directors. It is the Audit Committee that handles results of audits throughout Samruk-Kazyna.
211. In addition, Samruk-Kazyna has a Special Committee, consisting of representatives from the Holding management, the Ministry of Finance and Kazakhstan’s Accounts Committee. The remit of the Special Committee is more related to follow up on the holding’s operations from a general impact and efficiency perspective. That means that the Special Committee focuses more on performance monitoring for operational decision-making rather than audits to tackle violations. While being a member of the Special Committee, the full role of the Accounts Committee vis a vis Samruk-Kazyna remained unclear: whether the Accounts Committee’s oversight is limited to this participation in the special committee, or whether the Accounts Committee can act independently of this Special Committee to exercise a full supervisory function that an SAI should have.
212. The Procurement Methodology and Control Department is responsible for conducting the audits. This department acts as an external audit unit to the subsidiaries within the holding.
213. Finally, each individual subsidiary in the Samruk-Kazyna holding structure has its own audit committee (similar to the Internal State Audit Committee in other governmental institutions in Kazakhstan.) These audit committees or units report to the Procurement Methodology and Control Department.
214. There are two types of audits in Samruk-Kazyna and its subsidiaries: scheduled and unscheduled audits. The schedule for scheduled audits is determined based on the level of the subsidiary within the Samruk-Kazyna holding structure, past procurement activity and results of past audits (e.g., unscheduled audits.) Unscheduled audits are generally conducted in response to tip offs. In addition, subsidiaries can ask the Procurement Methodology and Control Department to conduct an unscheduled audit.
215. As can be assessed from interviews, the frequency and type of audits seem to be overall sufficient and coordinated, they support timely and efficient decision-making while allowing for adequate risk mitigation. However, no quantitative information or case-related documents were made available to the assessment team, so that no evidence for the actual frequency, quality or enforcement of audits and their recommendation was found.
216. Based on the audits of the subsidiaries or the Procurement Methodology and Control Department, the Audit Committee issues recommendations on how to address any shortcomings that were identified during an audit. However, it remained unclear how binding these recommendations are: The subsidiaries have considerable freedoms in acting on the results of their own audit. In addition, reporting lines are unclear.
217. Manuals, standards and guidance exists, but similar to the rules and regulations these are not publically available and were not made available to the assessors.

Substantive gaps



218. While the general structures of an audit system exist and interviews point towards a reasonable implementation according to standards, larger gaps remain. These gaps were assessed as high risk.
219. First, a de-facto verification of the quality of audit rules and processes was not possible. The assessment team did not have access to the rules, standards, guidance and manuals or any other documents regulating audit within Samruk-Kazyna beyond publically available documents that shed only limited light on the matter. As a result, a red flag was raised. In addition, the assessment team did not have access to any quantitative information on audits, or insight into audit case files to verify outcomes, enforcement or timeframes.
220. Second, reporting lines and responsibilities in the audit structure remain unclear (mostly due to the limited insight into rules and regulations.) It cannot be established to what extent external oversight over audit within Samruk-Kazyna is exercised by the Accounts Committee (the SAI in Kazakhstan). While external audit firms are hired to conduct audits, it would be important to ensure the quality of audits, which is most effectively done through the oversight of an independent institution. As a result, a red flag was raised.
221. Third, previous research indicated that Kazakhstan's SAI, the Accounts Committee, could not be considered fully independent.⁶⁶ Ideally, the SAI should be responsible only to the parliament and no other institution or actor. While this aspect is not directly related to the public procurement system nor the influence of Samruk-Kazyna's management, the fact that the audit system overall is not fully independent represents a major obstacle to the achievement of the basic principles of public procurement, notably efficiency and effectiveness. Without an independent audit function, there cannot be a guarantee that rules are adhered to and public funds are indeed spent according to the rules.
222. Fourth, there is no specific consideration of public procurement in the audit function; no training or specific guidance is available. Auditors are selected according to standard human resource rules and no specific qualification is necessary to conduct procurement audits.

Recommendations

223. In order to comply with this indicator, substantial changes to the audit structure should be undertaken. While changes to the general audit structure are out of reach for Samruk-Kazyna's management, as detailed above, without an independent external oversight, audit in Samruk-Kazyna cannot be considered fully effective. With regards to their immediate reach, Samruk-Kazyna could consider further separating the audit function from the day-to-day operations of the fund, notably the public procurement function. To fully act in lieu of an external audit to the subsidiaries of the fund, a unit with this task should be fully independent and not integrated into the rest of the management structure.
224. More information about audits, associated rules and standards, as well as data about their implementation and enforcement should be made available or collected where this is not yet done. This should include quantitative information. Knowing the rules for audits can help procurers on all levels of the Samruk-Kazyna structure to comply with these rules, and implement procurement procedures with a view to documenting their decisions, which in turn will make subsequent audits easier. Analyzing the outcome of audits with a quantitative lens can highlight challenges with regards to the implementation of public procurement processes, and in turn will inform decision making and policy reform.
225. Finally, audit structures and auditors should be equipped with a "public procurement lens", i.e., mechanisms for both compliance and performance should be introduced to the audit

⁶⁶ OECD (2017), Integrity Scan of Kazakhstan.



toolbox that take account of the specific aspects of public procurement, and auditors should receive specific training on public procurement. Part of this should be to hire auditors with knowledge of public procurement that can then disseminate their expertise among their peers.

Indicator 13. Procurement appeals mechanisms are effective and efficient

226. Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.
227. The assessment of this indicator cannot be fully concluded due to a lack of access to information about the appeals mechanism. Red-flags and substantive gaps have been assigned accordingly. The report presents conclusions based on review of secondary data sources, information provided by Samruk-Kazyna after the validation workshop, as well as interviews with a) a large number of representatives from Samruk-Kazyna about their own procurement practices; b) representatives from companies with exposure to Samruk-Kazyna's public procurement system; and c) interviews with experts on Kazakhstan's public procurement system. The assessment follows the MAPS methodology and all the necessary steps were taken to guarantee its accuracy.

Findings

228. The assessment of this indicator remains limited, because the assessors were not granted access to sufficient information by Samruk-Kazyna. Notably, the assessors did not have access to documents related to actual appeals cases. The following conclusions are based on desktop-research and stakeholder interviews.
229. Samruk-Kazyna has appeals and challenge procedures and institutions, and its basic elements are set. However, gaps remain for the more advanced assessment criteria, such as the deadlines and independence of the appeals body. In addition, it is not clear to what extent the appeals procedures are actually used and prove effective for the challenger and the institutions in practice.
230. The rules for appeals are set on the level of Samruk-Kazyna. In addition, it is noteworthy that the appeals mechanism and the audit function seem to largely overlap in terms of responsible institutions. Suppliers can submit appeals first directly to the subsidiary conducting the procurement, and then – if the supplier is not satisfied with the outcome – to the Procurement Methodology and Control Department. If still not satisfied, the supplier can elevate her complaint to the Commission on Procurement complaints (internal to the fund). The courts are the ultimate forum for complaints if the Commission cannot resolve the dispute. All institutions in this hierarchy can recommend the subsidiary associated with the procurement in question to remedy the appealed situation; it remained unclear which institution has the ultimate decision making power (i.e., whether the subsidiary in the holding is obliged to observe the decision of the Special Committee or the Procurement Methodology and Control Department.) Deadlines are stated in the rules, but they remain unclear from the perspective of the suppliers. No fees are charged.
231. According to the authorities, a system of automatic suspension is currently being developed to be included in the e-procurement system.

Substantive gaps



232. Several gaps were identified in this indicator. The appeals mechanism has a crucial role in guaranteeing a public procurement system that meets basic procurement principles, as it is a key lever for establishing accountability.
233. The rules of the appeals procedure in Samruk-Kazyna are overall not clear and omit to specify several important elements. Aside from vague definitions of responsibilities, roles and decision-making authorities (see the section “findings” above), several concrete, procedural elements are not specified. For example, the time frames for submitting a challenge are not complete. As a consequence, concrete deadlines remain unclear for suppliers. In addition, more problematically, the deadline for the review by the appeals body can be extended without a final deadline – potentially unlimited. As a result, a red flag was raised. Finally, there are no clear rules with regards to suspension of procedures. It is not clear whether, how and under what circumstances the appeals body can suspend procurement procedures, and what kind of remedies are permissible. Finally, the rules do not specify whether it is mandatory for subsidiaries in the holding to act upon the decision of the appeals function and how enforcement is ensured. These gaps were assessed as high risk.
234. Second, a major concern relates to the independence and capacity of the appeals body. A central role is entrusted with the Procurement Methodology and Control Department, which is the same unit that sets rules for procurement and is also deeply involved in the day-to-day activities of public procurement in Samruk-Kazyna. Having this unit in charge of appeals and challenges to the same processes they design or potentially lead, means that this unit cannot be considered an independent appeals body in line with the MAPS methodology. This gap was assessed as high risk and a red flag is raised.
235. Third, there is limited insight into the practical workings of the appeals mechanism, such as the extent to which decisions are independent, based on facts or timely, whether decisions are enforced, whether there is sufficient qualified staff, whether the proceedings follow the rules, etc. This is because no data or casefiles were public or made available to the assessment team; insight into actual proceedings was not possible. The fact that appeals decisions are not published represents in itself a gap with regards to the assessment criteria. Interestingly, appeals decisions in the government procurement framework are published. It was not possible to develop any of the quantitative assessment criteria, including the mandatory ones, due to a lack of information. This gap was assessed as high risk and a red flag is raised.

Recommendations

236. Samruk-Kazyna could consider reorganizing its appeals mechanism with the goal of rendering it more independent and clearer, with increased certainty for suppliers. One of the most important measures would be to consider creating a more independent institution that is removed from the day-to-day procurement processes and policy setting, and entrust this unit with the review of challenges and appeals. This unit should be sufficiently staffed to conduct its work. While doing so, the rules for the appeals mechanism should be revised to address the above-mentioned gaps and to further specify details of the appeals mechanism. This will increase the accountability provided by the appeals body.
237. Finally, Samruk-Kazyna could consider gathering and publishing more information and data related to appeals procedures. Publishing case decisions, for example, can provide insight to procuring entities (i.e., subsidiaries in the holding) on how to decide in case they face a similar situation. Gathering quantitative information about appeals cases can allow the Procurement Methodology and Control Department to gain insights into the implementation of its policies.



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

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

Findings

239. Samruk-Kazyna is subject to the general anti-corruption framework of the Republic of Kazakhstan. That means that the general laws and regulations apply, and these define prohibited practices, consequences for convicted public officials, as well as conflict of interest. However, no “cooling off” specifications were found. Additional administrative sanctions for the violation of procurement-specific rules are envisioned for the quasi-state sector; currently, a reform is being prepared that will focus on the seven most sensitive violations of public officials.
240. Given that no access to procurement documents, standard or individual was provided, it was not possible to verify the inclusion of prohibited practices in contract clauses. Employees of the contracting authority, as well as consultants, but not other types of suppliers, have to sign a conflict of interest disclosure.
241. The structure of the reporting system for allegations of prohibited practices remained unclear. As most basic elements, Samruk-Kazyna as an SOE is required to conduct internal risk analysis regarding prohibited practices, and has to refer cases to law enforcement institutions for follow up. More specific processes were not found, and no evidence was found the reporting is taking place. There is no debarment system, and enforcement takes place entirely outside of Samruk-Kazyna.
242. Several high-level corruption cases have been prosecuted, as reported by media, and illustrate that enforcement seems to function.
243. Dedicated measures by Samruk-Kazyna to prevent or tackle corruption remain limited. There is a general framework for corruption prevention in the public sector that is applied in Samruk-Kazyna, but the assessors did not find any publically available information to indicate that Samruk-Kazyna made any efforts to introduce preventative or analytical measures for the fund and its risk profile specifically. There are, however, risk analyses undertaken, but their extent and effectiveness remained unclear. There is no dedicated anti-corruption training, no statistics or monitoring, and no specific considerations of public procurement and corruption.
244. Civil society organization do not seem to be engaged with regards to corruption prevention in public procurement of Samruk-Kazyna. Civil society organizations that were interviewed about public procurement in general (i.e., with regards to the general government sector and SOEs), did not report any specific oversight activities that related to Samruk-Kazyna. In public procurement in Kazakhstan in general, the existing civil society organizations focus on corruption in general and procurement to a limited extent; their real influence is limited. In fact, some NGOs are hired by public institutions, to monitor procurement projects. However, it remains questionable to what extent these oversight efforts are really open and meaningful if the NGOs receive money from the institution they are supposed to check on.
245. Samruk-Kazyna does not have any such oversight. In comparison with the general government procurement, Samruk-Kazyna’s procurement information appears to be less accessible to the public, given that documents pertaining to general government procurement are available in



an electronic portal. There is no evidence that any oversight over the integrity of Samruk-Kazyna's public procurement is exercised by civil society.

246. Suppliers contribute to integrity mostly through the presence of the Chamber of Commerce (Atameken), who sends representatives to tender commissions of Samruk-Kazyna.
247. There is a mechanism to report suspicions of corruption, via a telephone hotline. However, it was not possible to ascertain to what extent it has been used. Overall, reporting lines for employees are clearly established, and such information is considered confidential and is followed up on.
248. A code of conduct exists, albeit with only limited specifications regarding corruption and public procurement. No financial disclosure requirements were found, and accountability is not established. While conflict of interest statements and financial disclosure forms are used regularly, beneficial ownership is not reported.

Substantive gaps

249. Samruk-Kazyna is lacking a comprehensive framework to tackle corruption. General rules exist and investigation and enforcement takes place via the general administration. However, the assessment team was unable to find evidence of the existence and effective use of various elements that should be part of a modern anti-corruption framework, including preventative measures and a risk-based approach. Samruk-Kazyna lacks rules about cooling-off periods, standard provisions related to fraud, corruption and prohibited practices for contract and procurement documents, clear procedures for reporting corrupt practices, debarment mechanisms, procurement-specific measures to prevent and tackle corruption related to procurement, data or statistics, or integrity training. Integrity in the public sector should be supported by a comprehensive framework utilizing a variety of tools. Considering Samruk-Kazyna as a multinational company, it is evident that many multinational companies have adopted complex and well-designed frameworks that serve to prevent and detect corruption, fraud and other prohibited practices. Without a functioning, comprehensive anti-corruption framework and a portfolio of measures aiming at preventing and reducing fraud, corruption and prohibited practices, it is likely that the basic objectives of public procurement, effectiveness and efficiency, are not met.
250. A second major gap relates to civil society oversight, for which no evidence was found. This aspect cannot be easily mitigated as it will not be possible to create a civil society watchdog that focuses on public procurement. Only the scrutiny of the public, however, establishes accountability for how public funds are spent.
251. Given the deeply rooted corruption risks and the simultaneous gaps in the anti-corruption framework, it is suggested to assign a red flag to some sub-indicators as the current situation hinders the achievement of basic public procurement objectives. The red flag is due to gaps in sub-indicators (c), (d), and (e), which are also assessed as high risk.

Recommendations

252. Samruk-Kazyna could introduce a comprehensive anti-corruption framework that considers the specific risks of public procurement. In doing so, Samruk-Kazyna could adopt not only clear rules and standards, but could also introduce tools like training, data gathering, due diligence, and others. Goal should be to work towards a culture of integrity.
253. In addition, Samruk-Kazyna could increase oversight by civil society to create accountability and ensure that procurements are conducted efficiently and effectively. In doing so, Samruk-Kazyna should create prerequisites for meaningful civil society engagement as mentioned in



other indicators (see, for example, indicators 7, 9, 10, and 11). An important aspect is to make information and data on public procurement publicly available, and usable in a way that is amenable to analysis (i.e., opting for more open data formats, allowing access without any bureaucratic or technical hurdles).



5. Consolidated Recommendations

Recommendations for Improvement Priorities

The recommendations emerging from the application of the MAPS, both for the general government public procurement system as well as for Samruk-Kazyna's procurement system have identified several key areas for improvement the details of which have been highlighted in the relevant sections and volumes of this report. The present section summarizes the critical areas that need to be improved urgently given their impact on the performance of the two procurement systems. However, setting the sequencing to implement the recommended improvement activities to address key weaknesses in the two assessed systems would be left the discretion of the GOK. The validation process would offer the opportunity for the GOK and participating development partners to explore possible ways and means to support the recommended actions plan.

Improvement priorities for the public procurement system.

The MAPS assessment identified the following seven priorities areas for improvement:

- I. **Legal framework Coverage:** the scope of application of the PPL is limited and the lack of uniformity and universality of the legal framework coverage appear not contribute to predictability and savings in the operation of the procurement system. **In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible.** In this respect, consideration should be given to international practices which show that entities like National Bank, and/or legal entities or undertakings established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework.

To better inform such future reforms, the Government should undertake a comprehensive study taking stock of the existing procurement rules applied by each of the excluded entity, assess the performance of these entities whether they achieve value for money while ensuring transparency and fair competition.
- II. **Rules on participation:** Revise the current requirements for the access to e-procurement system and participation to bidding such as the requirement for electronic digital signature and the obligation to furnish a bid security only in the form of an electronic bank guarantee, through an account opened in one of the commercial banks of the Republic of Kazakhstan to ensure proper alignment with the PPL which professes open eligibility to all bidders.
- III. GOK is recommended to consider introducing procedures (including revisions to the Law on e-Document and Digital Signature) to enable potential foreign bidders to obtain digital signature certificates and submit the electronic bid security and pay for the web portal access fee from wherever they are located. This could include measures to allow foreign bidders to receive a digital signature remotely with the help of a local third party.
- IV. **Procurement methods:** Consider amending the legal framework to ensure that the permissible procurement methods provide for proportionality and fitness for purpose to achieve better



value for money and substantial gains in service delivery. Amendments could include (a) making open tender a default method; (b) more clearly specifying the conditions for the use of each procurement method; (c) reducing further the circumstances for the use of single source procurement; and (d) introducing framework agreements.

- V. Evaluation criteria and support to value for money. Improve the current approach for application of evaluation criteria based on allocating conditional discounts to bid prices for meeting additional qualifications to ensure achievement of better value for money procurement decisions.
- VI. Consider improving the use of price and non-price criteria and their evaluation methodologies including combination of weighted quality and price. Revise the relevant provisions of the PPL as recently amended and public procurement regulations (PPR) to bring clarity on various aspects of evaluating bids, including preserving confidentiality of parts of the bid that the bidder does not want to be disclosed to competitors.
- VII. Contract management and performance monitoring: Ensure moving the public procurement system to the next level in terms of quality and performance will require further strengthening of contract management performance measures and monitoring through (a) better definitions by legal framework of roles and responsibilities for contracts management, and (b) setting requirements for measuring contract implementation performance including KPIs.
- VIII. Professionalization: Preparing a public procurement skills gap inventory and a training needs analysis. This would inform capacity building and professionalization of the procurement function, possibility in partnership with local higher education institutions. The establishment of an institutionalized and sustainable procurement capacity-building program would represent a major benefit to Kazakhstan's procurement workforce and civil service in general and would have a positive impact on the overall efficiency of public sector operations.
- IX. Integrity and accountability: Consider targeted measures to address corruption risks in public procurement. Some legal changes, such as revisions to the anti-corruption law as well as revisions to the procurement legal and regulatory framework, could ensure that corruption risks in the public procurement process are adequately captured by the legal and regulatory framework. In addition, practical guidance for procurers on preventing and reporting misconduct could be expanded.

Improvement priorities for Samruk-Kazyna's public procurement system

The MAPS assessment identified the following eight priorities areas for improvement:

- I. **Legal and Regulatory Framework:** It could be explored to what extent a unified public procurement framework for Kazakhstan would be beneficial. This could be beneficial also for Samruk-Kazyna as it could enhance competition and facilitate access for all interested companies to procurement opportunities.

Samruk-Kazyna could consider including missing aspects in its legal and regulatory framework, such as changing the rules in a way to promote sustainable and strategic procurement, clarifying the legal hierarchy of norms and evaluating the need to regulate PPPs. An important measure would also be to review and reduce the number of exceptions for open tendering currently permitted by the law, in order to enhance competition. Additional changes might be needed in the area of regulating bid opening, rules for information retention and for the review function.

- II. **Competition:** To enhance competition, Samruk-Kazyna could make efforts to eliminate preferences and set-asides. Increasing transparency is important as a prerequisite for fair



competition. Aside from increasing trust and enabling civil society to engage in public procurement, procurement information could allow potential suppliers to prepare and improve their submissions, resulting in better outcomes for the contracting authorities.

Samruk-Kazyna should make efforts to increase and diversify their supplier base to ensure access to the best value for money. As part of these efforts, Samruk-Kazyna could also devise activities to train and engage suppliers, while maintaining high integrity standards.

- III. **Strategic procurement practices:** As part of an effort to increase the performance of public procurement, Samruk-Kazyna could undertake efforts to make public procurement more strategic and sustainable, for example by devising a strategy on sustainability in its broadest sense (i.e., balancing the economic, social and environmental effects of public procurement.)

Samruk-Kazyna could conduct performance analysis, using the information from its e-procurement system, and make results publically available. The way information is stored in the e-procurement system could be amended to facilitate analysis. Monitoring of key performance indicators (KPIs) can be a useful way to identify opportunities to increase performance. This area is also amenable to capacity building initiatives.

In implementing these measures, a focus should be places on the market analysis and planning stage, as well as the contract management stage. These were areas that exhibited particular challenges.

- IV. **Contract management and performance monitoring:** Special emphasis in all measures should be given to how contracts are managed. Beyond improving performance, this relates to evidence-based monitoring of contract performance. KPIs should be used to monitor performance of all procurements; analysis should be undertaken and published. The reporting mechanism in the general public procurement framework could be expanded to cover completion of major contracts, including details on payments and other performance aspects such as time and cost overruns. As part of these efforts, attention should be paid to the links between contract implementation and budget execution, streamlining the two wherever possible and limiting cases in which procurements are launched without formal budget allocation.
- V. **Professionalization:** Samruk-Kazyna could expand its successful professionalization efforts by developing a more structured approach to professionalization, including a procurement training strategy which can serve as a basis for structured professionalization programme. The programme should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions and other relevant topics. A full-fledged certification programme for procurers with diversified and targeted offers, linked to career trajectories should be part of this programme.
- VI. **Institutions, tools and strategies:** The current efforts to introduce tiered prequalification processes can be coupled with efforts to centralise those items in the more standardised categories. Considerable economies of scale could be achieved by using modern techniques combined with partial centralisation. Two stage procedures could be more widely used. Samruk-Kazyna's public procurement system suffers from institutional arrangements that limit the institutional independence of crucial actors in the public procurement system. The responsibility for policy setting internal to the holding should be separated from the task of overseeing the appeals, review and audit functions.
- VII. **Integrity and accountability:** Samruk-Kazyna could benefit from a risk-based approach to corruption, identifying specific risks in the area of public procurement and implementing strategies to mitigate these risks. In the area of control and audit, rules need to be clarified and the institutions (see above) structured in a way to allow for effective checks and balances. A



specific debarment system could be introduced that takes into account integrity offenses (possible to link it to the supplier blacklist.)

- VIII. **Civil society & engaging the public:** This aspect is linked to other areas mentioned above and an area of concern for both procurement systems. For Samruk-Kazyna specifically, efforts should be undertaken to increase transparency of its procurement operations. In publicizing more information, Samruk-Kazyna could adopt the Open Contracting Data Standard (OCDS) to increase transparency and facilitate civil society oversight. Finally, civil society could be increasingly involved in more complex procurements.



6. Information regarding Validation

The assessment applied a three-step approach: (i) review of the system by applying assessment criteria expressed in qualitative terms; (ii) review of the system by applying a defined set of quantitative indicators; and (iii) identification of substantive or material gaps. The team employed various ways to collect and analyze the data, including: (i) a desk review of legal acts, regulations and other relevant documents; (ii) an in-country assessment through a mission in April and May 2018; and (iii) a survey conducted with private sector stakeholders, civil society organizations (CSOs), and non-government organizations (NGOs). For the quantitative assessment, the team examined a sample of 150 procurement transactions and contracts. Note that this was only possible for the general procurement system, as access to data and sample cases were not provided by Samruk-Kazyna.

Validation Process

The process of validation

#	Description	Tentative Planed dates
1.	Technical Advisory Group (TAG) review and comments	July 23, 2019
2.	Revised draft report incorporating TAG comments	August 23, 2019
3.	Formal sharing of the draft report (Russian version) with GOK /MOF and SK	September 12, 2019
4.	Presentation of the MAPS key findings to a broad group of stakeholders including government bodies, private sector, NOGs, and donors.	September 24, 2019
5.	Sharing the final report with GoK/MOF and SK and request for approval for the MAPS report publication.	February 28, 2020



Annexes



Annex III: Source Documents

The source documents analysed for this assessment are detailed below.

National Development Plans, Indices, Regional and International Obligations

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Comprehensive Plan of Privatisation for 2016-2020: [https://sk.kz/documents/2018/booklet_eng_2018%20\(002\).pdf](https://sk.kz/documents/2018/booklet_eng_2018%20(002).pdf)

Public procurement legal and regulatory framework

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https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=8

Policy for the Prevention of Conflict of Interests When Engaging Consulting Services:
https://sk.kz/purchases/?temp=full&id=364&iblock=89&PAGEN_1=4

Instruction on Composing and Submitting Reports:
https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=5

The Decision on Certification (Protocol 24/18):
https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=3

Rules on Implementing Control:
https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=3

Rules on the Commission JSC "Samruk Kazyna" on Reviewing Complaints on Procurement:
<https://sk.kz/purchases/normativno-pravovye-akty/pravila-zakupok-tovarov-rabot-i-uslug/9059/>

Rules on Uploading Information onto the Website for E-Procurement of SK and of Organisations Within the Holding: <https://sk.kz/purchases/normativno-pravovye-akty/pravila-zakupok-tovarov-rabot-i-uslug/9062/>

Rules on Engaging Representatives of NGOs and Associations in Evaluation Commissions:
<https://sk.kz/purchases/normativno-pravovye-akty/pravila-zakupok-tovarov-rabot-i-uslug/9060/>

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https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=10



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<https://sk.kz/purchases/?temp=full&id=363&iblock=89>

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Rules on Maintaining the List of Unreliable Potential Suppliers:

<https://sk.kz/purchases/?temp=full&id=363&iblock=89>

Rules on Maintaining the List of Reliable Suppliers:

https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=2

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https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=2

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https://sk.kz/purchases/?temp=full&id=363&iblock=89&PAGEN_1=2

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https://sk.kz/purchases/?temp=full&id=456&iblock=89&PAGEN_1=2

List of Goods, Services, Works Procured from the Qualified Suppliers:

https://sk.kz/purchases/?temp=full&id=456&iblock=89&PAGEN_1=2

Standard on Prequalification of Potential Suppliers:

https://sk.kz/purchases/?temp=full&id=364&iblock=89&PAGEN_1=14

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Standard on Procurement Planning:

https://sk.kz/purchases/?temp=full&id=364&iblock=89&PAGEN_1=3

Standard on Warehouse Management:

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Standard for Procurement Rules:

https://sk.kz/purchases/?temp=full&id=364&iblock=89&PAGEN_1=1

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https://sk.kz/purchases/?temp=full&id=364&iblock=89&PAGEN_1=3

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Annex IV: Additional information on the general public procurement system (Volume 1)

Procuring Entity	Volume of procurement	
	KZT, billion	US\$, billion (at the average rate for 2017 1 \$ = KZT326)
State Public Procurement expenditures	1939 (*)	6,0
Samruk Kazyna Fund	4771 (**)	14,60
National holding company KazAgro	114 (***)	0,35
National IT holding company Zerde	27 (***)	0,08
National holding company Baiterek	1,3 (***)	0,004
National bank of the RK	22 (***)	0,07
Total:	6,874	21

(*) Public procurement Web Portal-2017

(**) Obtained by adding up the volumes of annual procurement plans for 222 companies that are part of the Samruk Kazyna Fund

(***) Obtained by add up the total annual plans of holdings (national companies) and their subordinate companies (if available)

Source: <http://skm.kz/ru/plangz/holdplans/>, <https://www.kazagro.kz/> and subordinate company websites, <https://zerde.gov.kz/>, <https://www.baiterek.gov.kz/>, www.nationalbank.kz/

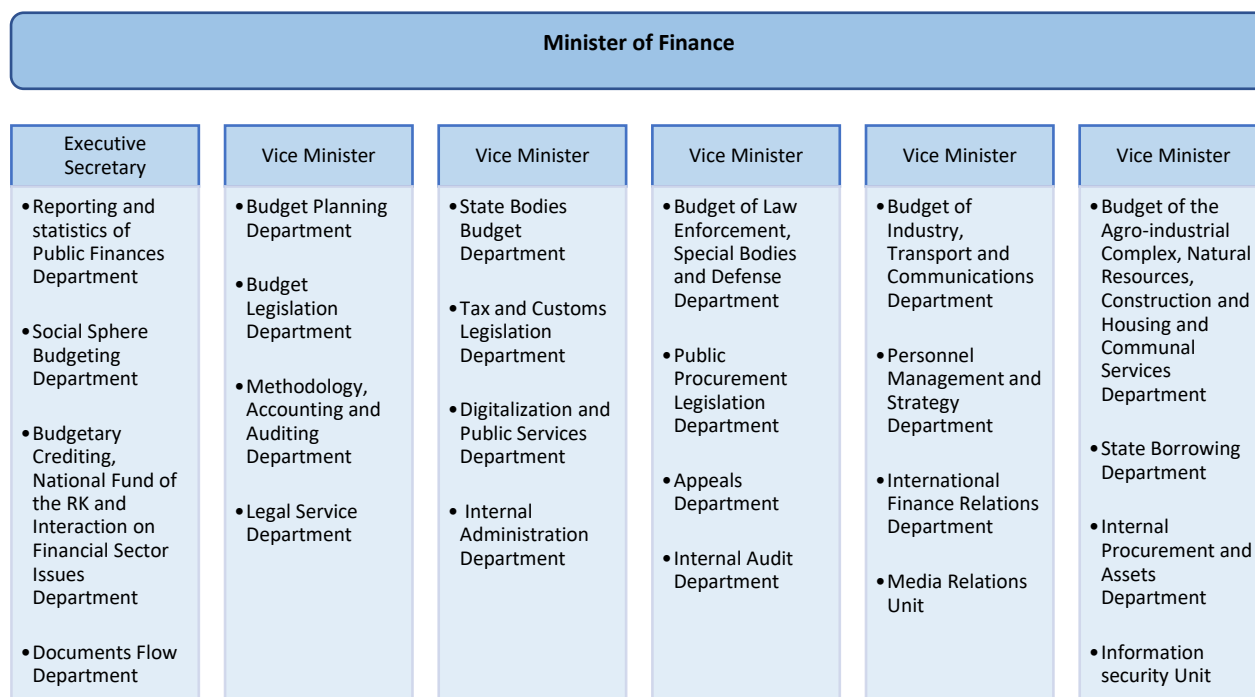
Shares of procurement conducted through public procurement web portal, by method, 2017

Procurement method	Number of contracts	Actual procurement amount (KZT bln)	Actual procurement amount (Eq US\$ ml)	Method share in total procurement (%)
Tender	35,910	259,883	778	13.4
Auction	1,194	10,867	33	0.6
Request for quotations	337,073	71,629	214	3.7
One source	1,799,240	1,585,795	4,748	81.8
Purchases on commodity exchanges	1,366	10,588	32	0.5
TOTAL:	2,174,783	1,938,761	5,805	100

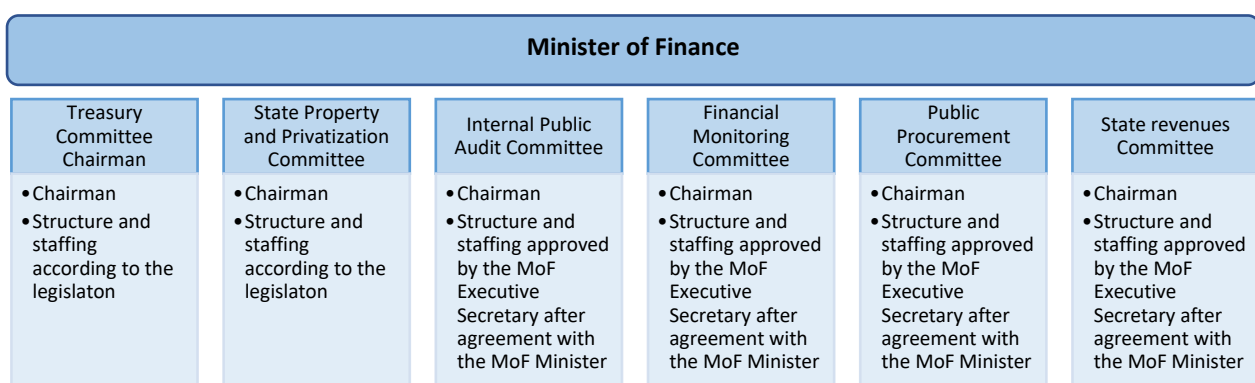
Source: <https://v3bl.qoszakup.gov.kz/ru/rep/rep/index/code/m001>.



The Structure of the Ministry of Finance of Kazakhstan

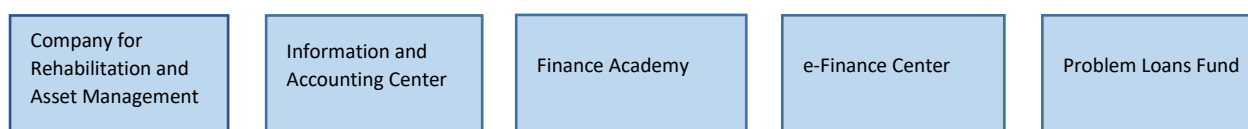


Committees of the Ministry of Finance of Kazakhstan



Ministry of Finance plays the role of the Authorized Body through functions allocated to various entities.

JSCs of the Ministry of Finance of Kazakhstan



Source: Structure of the Central Office of the Ministry of Finance of the Republic of Kazakhstan in the form of a graphic scheme, November 2018, at

http://www.minfin.gov.kz/irj/portal/anonymous?NavigationTarget=ROLES://portal_content/mf/kz.ecc.roles/kz.ecc.anonymous/kz.ecc.anonymous/kz.ecc.anonym/about_ministry/about_ministry/structure_fldr/main_staff



MoF Authorized Body – Organization Structure, Financing and Staffing

Sub-indicator 5(c) Assessment Criteria	Methodology Public Procurement Legislation Department	Control Internal Audit Committee	Single Operator e- Commerce Center JSC	Single Organizer Public Procurement Committee
Unit authority mandate	Identified under Article 16 of the PPL	Identified under Article 18 and Article 47 of the PPL	Identified under Article 17 of the PPL	Identified under Articles 6, 8 and 16 of the PPL
Level/seniority of head of department indicator 5(c)(a)	• Director under authority of Vice Minister (VM) • VM appointed by the MoF • Reports to MoF	• State entity in MoF structure • Chairman appointed by Minister of Finance • Reports to MoF	• 100% of shares of JSC under MoF • e-Finance Center Chairman of Board of Directors is also the VM of MoF	• State entity in MoF structure • Chairman appointed by Minister of Finance • Reports to MoF
Financing for each unit indicator 5(c)(b)	• Republican budget as part of the MoF	• Republican budget according to the by-laws Article 1.11	• Republican budget under direct contracting with MoF	• Republican budget according to the by-laws Article 1.10
Staffing in each unit	• Total employees: 13	• Central office: 89 • Territorial offices: 655	• Total employees: 255	• Total employees: 41

Source: By-Laws of the Ministry of Finance of the Republic of Kazakhstan, Decree of the Government of the Republic of Kazakhstan No. 387, April 24, 2008; By-laws of the Internal Audit Committee of the Ministry of Finance of the Republic of Kazakhstan, Order of the Minister of Finance of the Republic of Kazakhstan No.224, May 11, 2016; By-laws of the Public Procurement Committee of the Ministry of Finance of the Republic of Kazakhstan, Order of the Minister of Finance of the Republic of Kazakhstan No. 76, June 1, 2016; e-Finance Center JSC, Financial Statement and Independent Audit Report, 2017.



Annex V: Quantitative Assessment criteria

Note that due to data availability, quantitative assessment was only possible for the general government system.

Pillar II – Institutional Framework and Management Capacity

Sub-indicator 6(a) – Procuring entities with a designated, specialized procurement function

	Total number of procuring entities	Procuring entities with a designated, specialized procurement function	Total number of procuring entities (%)
2017	23,194	22,121	95

Source: e-Finance Center and MoF, e-mail dated April 17, 2018.

Sub-indicator 7(a)(c) – Publication of procurement information

	Total number of contracts	Procurement plans published (% of total)	Key procurement information published (% of total number of contracts)	Invitation to bid (% of total number of contracts)	Total number of appeals received*	Total appeals decisions posted (%)*
2017	4,645,372	100	100	100	-	-
2018	3,224,198	100	100	100	8549	100

Source: Data from web portal as of July 10, 2018,

<https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>

* Launched in January 1, 2018.

Sub-indicator 7(a)(e) – Share of procurement information and data published in open data format

	Total number of contracts processed through the web portal	Contracts for which procurement information and data published (%)*
2017	4,645,372	100

Source: Data from web portal as of July 10, 2018,

<https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>

* Supports OCDS.

Sub-indicator 7(b)(a) – Uptake of e-procurement

	Total number of procedures	Share of e-procurement procedures in total number of procedures (%)	Total value of procurement procedures (billion KZT)	Value of e-procurement procedures as share of total value of procedures (%)
2017	4,645,372	100	3,504	100

Source: Data from the web portal as of July 10, 2018,

<https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>.



Sub-indicator 7(b)(d) – Use of e-procurement

	Total number of bids submitted	No. of bids submitted online	Share of bids submitted online (%)	Total number of bids submitted online by SMEs*	Share of bids submitted online by SMEs (%)
2017	3,747,793	3,747,793	100	3,672,837	98

Source: e-Finance Center and MoF, e-mail dated April 17, 2018.

* Most local bidders in Kazakhstan are SMEs.

Sub indicator 7(c)(d) –Strategies to Manage Procurement Data

	Total number of contracts	Total value of contracts in millions of KZT (VAT included)	Total number of contracts awarded through competitive methods	Total value of contracts awarded through competitive methods in millions of KZT (VAT included)	Volume of government expenditure in millions of KZT	Public procurement as share of government expenditure	Volume of GDP in millions of KZT	Public procurement as share of GDP
2017	4,179,961	2,874.9	760,136	739,100	12,485.378	23%	53,101.282	5.5%

Source: E commerce Center, <http://stat.gov.kz>

Sub-indicator 9(b)(j) – Selection and contracting

Average time to procure goods, works and services (days)	Share of processes conducted in full compliance with publication requirements (%)
56	100

Source: Master data table on quantitative indicator 9.



Sub-indicator 9(b)(j) – Selection and contracting

Total number of contracts	Average time between advertisement/solicitation and contract signature (days)	Average number of responsive bids	Share of responsive bids (%)
150	56	3	50

Competitive method	Number of processes	Number of successful processes (awards)	Share of successful processes (awards) (%)	No. of failed processes failed under initial procurement method	Share of failed processes (%)	No. of processes canceled	Share of processes canceled (%)	No. of processes awarded within timeframe	Share of processes awarded within timeframe
Open tenders	206,175	66,745	32%	113,462	55	25,968	13	62,765	94
Auctions	7,667	3,464	45%	3,833	50	370	5	3447	99.5
Request for quotations	122,1783	67,1772	55%	516,272	42	33,739	3	-	-

Source: Master data table on quantitative indicators – indicator 9, e-Finance Center and MoF, e-mail dated May 18, 2018.

Sub-indicator 10(b)(a) – Private sector access to public procurement market

	Total no. of suppliers	No. of registered suppliers	Share of registered suppliers (%)	No. of registered suppliers participated and awarded	Share of registered suppliers participated and awarded (%)
2017	416,060	204,390	50%	81 062	40

Sources: web portal <https://www.goszakup.gov.kz/ru/registry/supplierreg>,
<https://blog.kazdata.kz/companies/organizacii-kazaxstana-678-novyx.html>.

Year	Total number of contracts awarded	Total value of contracts awarded	Number of contracts awarded to domestic firms	Value of contracts awarded to domestic firms in million KZT	Share of contracts awarded to domestic firms (%)	Value of contracts awarded to domestic firms (%)	Number of contracts awarded to foreign firms	Value of contracts awarded to foreign firms (KZT million)	Share of contracts awarded to foreign firms (%)	Value of contracts awarded to foreign firms (%)
2017	81, 062	1,938,761	81,040	1,932,768	99.9	99.7	22	5,993	0.1	0.3

Source : <https://v3bl.goszakup.gov.kz/ru/rep/rep/index/code/m001>.



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

Sub-indicator 13(a)(c) – Challenges and appeals

Year	Number of appeals	Number of enforced decisions	Share of enforced decisions (%)	Number of appeals decisions posted on a central online platform	Share of appeals decisions posted on a central online platform
2018*	7,619	6,587	86	6,587	100

Source : <https://goszakup.gov.kz/ru/registry/complaint>.

* Launched on January 1, 2018.

Sub-indicator 13(c)(d) – Decisions of the appeals body*

Status	Number	%
satisfied	3801	44.46
- fully	2191	57.64
- partially	1610	42.36
Denied in satisfaction	3957	46.29
Submitted	176	2.06
Under consideration	615	7.19
Total:	8549	100%

* Just launched in January 1st, 2018

Source: <https://goszakup.gov.kz/ru/registry/complaint>

Sub-indicator 14(e)(d) – Stakeholders support for strengthening integrity in procurement

Year	Total number of suppliers	Suppliers with internal compliance measures	Share of suppliers with internal compliance measures (%)
2017	198,509	-	-

Source: Normative/regulatory function.

Sub-indicator 14(g)(a) – Code of Conduct, Code of Ethics and Financial Disclosure

	Total number of procuring entities	Number of entities with Code of Conduct or Code of Ethics	Share of entities with Code of Conduct or Code of Ethics (%)
2017	23,194	-	-

Source: Normative/regulatory function.



Annex VI: Stakeholders Analysis

The planning of the Kazakhstan MAPS assessment included an identification of relevant stakeholders as the first step, with the objective to engage them as part of the assessment and as part of the MAPS validation process and next reform initiative.

The assessment team undertook the stakeholder's analysis through several avenues served to identify the stakeholders: The Initiation workshop held in Nur Sultan (previously: Astana) in early March 2018, visits to the country in April 2018, and additional research. The identified stakeholders include the following:

1. Government public procurement system

- Authority with the institutional mandate to oversee the assessment: Ministry of Finance through the public procurement legislation department for the assessment of the public procurement system
- Selected contracting entities: line ministerial procurement units: Ministry of National Economy, Ministry of Investment and Development, Ministry of Energy, Ministry of Agriculture, Ministry of Education, Ministry of Health.
- Local government procurement unit: Akimat of Astana city
- Procurement Committee: Single procurement organizer
- Government authorities responsible for budgeting/payment/internal controls: MoF Departments - Internal Control Department, Department of Methodology of Accounting and Auditing, Budget Planning Department, Treasury Committee
- Government audit authorities: Supreme Audit Committee (Accountants Committee)
- Anti-corruption agencies: Anti-Corruption and Civil Service Agency
- Mandated Single operators: E-Finance Centre (ex- E-Commerce Centre)
- Mandated bodies for PPP: PPP Center
- Training institutions: Finance Academy, Academy of Public Administration, "Atameken" business academy

2. "Samruk-Kazyna" procurement system

- Authority with the institutional mandate to oversee the assessment: Procurement Methodology Service for Samruk-Kazyna procurement system
- Selected contracting entities: subsidiaries in the Samruk-Kazyna structure: KazMunaiGas, KazAutoZhol, SK Contract LLP
- Central procurement unit for Samruk-Kazyna: SK Contract LLP
- Authorities responsible for budgeting/payment/internal controls: Samruk-Kazyna Risk Management and Internal Control Department, Samruk-Kazyna Internal Audit Service and Audit Committee, Samruk-Kazyna Procurement Control and Monitoring Service (Procurement Methodology Service and Procurement Monitoring Department), Samruk-Kazyna Accounting and Reporting Department / Samruk-Kazyna Budget Planning Department



- Audit authorities: Samruk-Kazyna Internal Audit Service and Audit Committee
- Anti-corruption agencies: Anti-Corruption and Civil Service Agency
- Other relevant departments in Samruk-Kazyna: Information Technologies Department, Transformation and Special Projects
- Training institutions: Samruk-Kazyna Human Resources Department, Samruk-Kazyna University

3. Private sector, NGO and Media

- Representatives of private sector: National Chamber of Entrepreneurs “Atameken”; Kazakhstan Association of IT Companies, individual contractors
- NGOs/CSOs: NGO “Sange”, Soros, among others
- Media/Web sites: www.zhakon.kz, www.qamqor.gov.kz, www.atameken.kz, www.nur.kz, www.tengrinews.kz, www.kapital.kz, www.sk.kz, www.sk.kz/ru/landing/

The analysis has then covered the examination of the level of interest of the mapped shareholders in the Kazakhstan MAPS exercise and their influence on the validation process and the support to the implementation of the recommended actions plan for futures reforms of the two systems (PPS and SK).

The analysis per stakeholder is as follows:

- Ministry of Finance
 - Leadership in public procurement reform agenda – Authorized body as per PPL
 - Highly interested in PPS improvement and has been engaged in leading the GOK MAPS assessment ‘s steering committee
 - High level of expertise in public procurement
 - Relatively fair level of influence on the other parties directly interested in the assessment exercise and its outcomes
 - Can ensure and provide strong and comprehensive support to the review team at all assessment stages
- Samruk - Kazyna
 - Strong level of expertise in corporate procurement system tailored for the national fund objectives
 - Focus on Samruk-Kazyna procurement system
 - Focus on recommendations and MAPS for the benefit of further improving Samruk-Kazyna’s procurement system
 - High level of influence on the procurement of other companies included in the SK system.
- Contracting entities
 - Operational Expertise in public procurement
 - Direct interest and influence on development of PPS by initiation of proposals to improve PPS



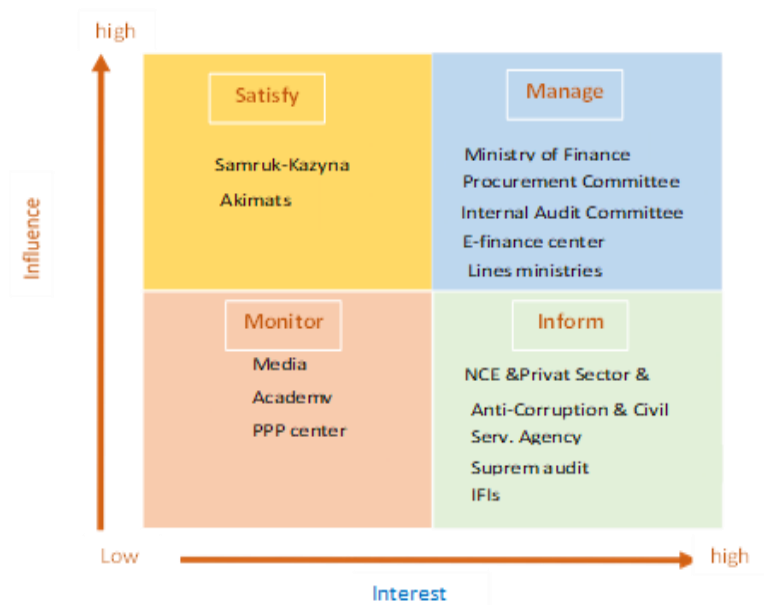
- Data and institutional memory information holders on actual implementation and performance of the PPL as procuring agencies
- Key potential partners for bringing improvements to procurement process under MoF leadership
- Influencing role in validation and implementation of MAPS findings and recommendations
- Akimat of Astana
 - Operational Expertise in public procurement
 - Strong interest in well-functioning and structured PPS
 - High influence on subordinate entities on procurement issues
 - Valuable partner at a local level for MAPS recommendations implementation under MoF leadership
- Procurement Committee
 - Strong practical expertise in PPL implementation
 - High importance for further PPS development
 - Data and information holder on actual implementation of the PPL as agency for centralized procurement
- E-Finance Center
 - Strong expertise in technical aspects of the procurement web portal
 - Main player in bringing improvements to the existing e-procurement system
 - Data and information holder on actual implementation of the PPL
- Supreme Audit Committee (Accountants Committee)
 - High interest in well-established and functioning PPS
 - High influence as audit/monitoring and enforcement body
- Anti-Corruption and Civil Service Agency
 - Strong expertise in general anti-corruption requirements under the legislation and qualification requirements to the civil servants
 - Can Provide good input to the assessment
 - May support developments in procurement process under MoF influence
 - High influence as oversight and accountability enforcement agency being in an inside-outside public procurement stakeholder position.
 - High importance for further PPS development terms of inside-outside public procurement stakeholder dichotomy, they are outsiders to the public procurement process
- Private sector
 - Provided fair opinion on PPS by Monkey survey
 - Ready for development
 - Low influence
 - High interest in a well-regulated PPS with clear rules
- PPP Center
 - Knowledge and expertise in practical application of PPP Law
 - Potential interest in creating the sustainable PPS



- Training institutions/Academy
 - Good academia platform with very limited focus on procurement issues
 - Have an interest in providing information to government leaders, policy makers, and procurement professionals
 - Can play a key role in development of public procurement strategy/training programs under MoF influence
 - Limited influence on reforms in PPS
 - Stronger role in Samruk-Kazyna, with a dedicated procurement focus, stronger influence
- NCE “Atameken”
 - Strong expertise of the PPS from the private sector angle
 - Ready for developments under MoF/GoK influence
 - Some influence on its members
 - Moderate interest in the PPS development
 - Important for the recommendations’ implementation
- NGO/Associations
 - High interest in well-established and transparent PPS and in how the government spends money in terms of getting the best value with integrity
 - Low to medium level of expertise in public procurement
 - Limited influence through the reports, random recommendations, comments on the draft legislation
- Media
 - Potential interest in public procurement oversight
 - Influence on the public opinion

The following figure summarizes the conclusions of the stakeholder’s analysis. This analysis was critical in planning the meetings, interviews, and survey with the identified stakeholders and will be very helpful in the validation process of the assessment outcomes and recommendations for the implementation of the priorities improvements of the both the government general public procurement system and SK procurement system.





	Continued Engagement; increase level of interest for MAPS exercise and its outcomes and recommendation for improvement of the procurement systems
	Manage closely; lead MAPS exercise and decisions on related recommendations for reform of the public procurement system; maintain engagement on a regular basis and strive for sustained relationship and collaboration
	Low priority focus; monitor; communicate broadly to ensure continued update
	Exploit the interest by involvement and discussion/consultation on these stakeholder's area of interest- build coalitions





ASSESSMENT OF KAZAKHSTAN'S PUBLIC PROCUREMENT SYSTEM

2019

Annex 1 & Annex 2
Final Indicators Matrices

Pillar I - Legal, Regulatory, and Policy Framework

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework	The legal and regulatory body of norms complies with the following conditions: (a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	(a) The main laws and regulations that regulate the public procurement in Kazakhstan are well recorded and organized in a hierarchical order. Article 3 of the PPL states that the following, among others, are the key components of the country's public procurement and regulatory framework: • Constitution of the Republic of Kazakhstan dated August 30, 1995 as amended on March 10, 2017; • Civil Code dated December 27, 1994 as amended on January 1, 2018; • Public Procurement Law (PPL) dated December 4, 2015 as amended on December 26, 2018; • The Ministry of Finance defined as the Procurement Regulatory Authority by the Decree of Government of Kazakhstan (No.387 dated April 24, 2008);Public Procurement Regulations No. 648 dated December 11, 2015 as amended on December 29, 2018 by the Ministry of Finance.		Criterion met.		Uniformity and universality of the legal framework coverage contribute to predictability and savings in the operation of the procurement system. In this respect, the exclusion of certain procurement categories conducted by government owned legal entities from the scope of the legal procurement framework should be reconsidered in the next round of reforms with the goal of bringing under its scope, or through a unified separate special legislation, as many of the excluded categories as practically possible. In this respect, consideration should be given to international practices which show that entities like the National Bank, and/or legal entities or undertakings established

		b) It covers goods, works and services, including consulting services for all procurement using public funds.	Article 3 of the PPL also states that if an international treaty is ratified by the Republic of Kazakhstan which stipulates other rules than those stipulated in PPL, the rules of international treaty shall be applied (b) It clearly covers goods, works and services but the consultancy/advisory services are not well defined in terms of methods and procedures. Procurement carried out by State Owned Enterprises (SOEs), including national management holdings, national holdings, national management companies, national companies, legal entities affiliated bodies and national bank and legal entities 50 and more percent of voting rights (stakes in authorized capital) which are owned by the national banks etc. are not subject to the PPL (Article 1.6 of the Law). The amendments to the PPL on December 26, 2018 introduced provision that procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member, is not subject to the PPL (Article 1.9 of the Law). Furthermore, Article 1.4 of the PPL excludes the procurement of state tasks. These tasks are defined as an order to legal		Criterion not met The scope of the public procurement legal framework is quite limited, as it does not cover all procurement of goods, works and services (including consulting services) using public funds. The amendment of the PPL issued in December 26, 2018 added another exclusion to the scope procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member, is not subject to the PPL (Article 1.9 of the Law).	for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions: Government or local government owns more than 50% of the shares, or has more than 50% of the voting rights, or appoints more than half of the members of the supervisory or management bodies, could be subject to the legal procurement framework. To better inform such future reforms, the Government should undertake a comprehensive study taking stock of the existing procurement rules applied by each of the excluded entity, the performance of these entities and whether they actually achieve value for money while ensuring transparency and fair competition.

		(c) PPPs, including concessions, are regulated	entities with state participation in the authorized capital for the implementation of budget investments projects and other tasks aimed at ensuring social and economic stability, and/or social and cultural development of the state. The state tasks are estimated approximately US\$1 billion for 2018. (c) PPPs are regulated by the law on PPPs dated October 31, 2015. The Commercial Code, which became effective on January 1, 2016, also includes a chapter on PPPs. The link to the PPP Law is http://kzppp.kz/en/. In addition, the law on concessions dated July 7, 2006 stipulates legal conditions for concessions and regulates social relations arising from the conclusion, execution and termination of concession agreements.		The total government expenditure is US\$ 23.81 billion. 63% of this amount are governed by separate set of rules and regulations such as procurement conducted by the National Welfare Fund SK (including its national managing companies and national companies (most SOEs)), National Bank and others. The consultancy/ advisory services are not well defined in the PPL. Criterion met.		

		(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	(d) All the laws, regulations and other legal documents are available free of charge at the web-portal https://www.goszakup.gov.kz/		Criterion met		
	1(b) Procurement methods	The legal framework meets the following conditions: (a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	(a) Article 13 of the PPL unambiguously describes the procurement methods as follows: 1) tender (open, pre-qualification tender, two-stage tender); 2) auctions; 3) request for quotations; 4) single source; and 5) commodity exchange (a) The conditions for the use of all procurement methods except for open tender are included in Articles 30 (two-stage tendering); 32 (auctions) 37 (request for quotations), 42 (commodity exchange), 39 (single source). According to Article 32, the auction method can be used only for goods. The Public Procurement Regulations further define procedures for each method.		Partially met The PPL does not provide for the associated conditions for the use of open tender. As a result, the procuring entity can opt for a less competitive method, especially for goods, which may affect the extent to which value for money can be achieved in public procurement. Furthermore. It is noted that not all methods are not spelled out in an adequate hierarchical level from competitive to less competitive methods		Consider amending the legal framework to ensure that the permissible procurement methods provide proportionality and fit-for-purpose to achieve better value for money and substantial gains in service delivery through : (i) making open tender a default method, (ii) more clearly specifying the conditions for the use of each procurement method, (iii) reducing the circumstances for the use of Single Source method, (iv) to clarify the procedures applicable to the selection of the firms and individuals taking into consideration the specificity of the consultancy/advisory services, and (v)

		(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity. (c) Fractioning of contracts to limit competition is prohibited. (d) Appropriate standards for competitive procedures are specified.	(b) The prescribed procurement methods include competitive and less competitive procedures. However, while for the procurement of works estimated to cost above the threshold provided in Article 37 (for request for quotations), open tender has to be used, for goods above the threshold provided in Article 37 (for request for quotations), the customer (procuring entity) has two options: open tender or auction. Furthermore, there is a large number of conditions (50) for the use of Single Source method (Article 39). Recent amendments to the PPL has introduced changes require repeated bidding (tender and auction) becomes obligatory if the initial bidding was failed. (c) Article 37.3 of the PPL prohibits fractioning. (d) The standards for open tender procedures are described in the PPL and the regulations. They are found substantially in accordance with international standards.		Partially met. Given that the customer has the option of choosing either open tender or auctions (especially for goods) and the large number of single source criteria, the public procurement system may not be leading to the achievement of value for money. No procedures for selection of firms and individuals. Criterion met Criterion met		introducing Framework Agreements.

	1(c) Advertising rules and time limits	The legal framework meets the following conditions: (a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)). (b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond	(a) The PPL requires all public procurement opportunities to be published in the web-portal https://www.goszakup.gov.kz/. (b) The PPL defines number of days for the customer to publish procurement opportunities including procurement plans and tender notices. The timeframes are as follows: • Procurement plan = 5 working days after approval of the plan (Article 5.3); • Open tender = The deadline for submitting tender applications by the potential suppliers shall be at least fifteen calendar days upon publication of the protocol of preliminary discussion of the draft tender documentation and		Criterion met Partially met. For large and complex goods and works contracts the minimum allowed 15 days for initial bidding and 5 days for repeated bidding may not be sufficient for bidders to prepare quality and responsive bids.		Consider allowing adequate time for bidders to properly prepare bids for large value complex contracts.

		to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited. (c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet	the text of the approved tender documentation. (Article 22) • Auctions = Minimum 15 calendar days. after publication of the protocol of preliminary discussion of the draft auction documentation and the approved auction documentation. (Clause 284 of the Regulation) • Repeated bidding (open tender and auction) = 5 calendar days, according to the PPL amendments on December 26, 2018 • Request for Quotations = Minimum 5 working days prior to the submission of quotations(Article 29 Of the Regulation) The bid submission time can be extended in case of the participation of international firms defined by Article 9 of the PPL or to address relevant clarifications from bidders. (c) Publication of open tenders is available at no cost in the public procurement web-portal and E-Procurement is used by all procuring entities with open access to procurement opportunities by all prospective bidders.		Criterion met		

		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). (d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.	(d) The published information of public procurement contains detailed information for potential bidders. The PPL also add the requirement for potential bidders to comment on the draft tender documents.		Criterion met		
	1(d) Rules on participation	The legal framework meets the following conditions: (a) It	(a) All bidders who have the requisite legal, technical and financial capacity can participate in tenders (Article 9 of PPL).		Criterion met		

		establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions. (b) It ensures that there are no barriers to participation in the public procurement market.	(b) There are no restrictions on participation in a tender process because of nationality. However, international potential bidders are required to establish physical presence in Kazakhstan and to obtain a digital signature certificate. According to the Minister of Finance Order No. 692 On Approval of the Rules for Using the Public Procurement web-portal dated December 28, 2015 and the Rules of the web-portal Potential bidders must obtain in accordance with the established procedure certificates (public and private keys) of the electronic digital signature in the National Certifying Center of the Republic of Kazakhstan, or in the certifying centers of the member states of the Eurasian Economic Union in order to work on a web-portal and (or) participate in		Criterion not met Requirements to obtain the digital signature for foreign bidders to be able to use the web portal requires, among other conditions, to obtain a certificate of the digital signature which needs a preliminary registration in Kazakhstan tax authority which requires physical presence. The requirement introduced by a recent amendment to the PPL has introduced another provision which mandates the		Introduce procedures [including revisions to the Law on e-Document and Digital Signature] to enable potential international bidders to obtain digital signature certificate from wherever they are located. This could include adoption of the approach already followed by SK e-procurement system which allows foreign bidders to receive a digital signature remotely without coming to Kazakhstan by contacting a local private third company that issues digital signatures. Consider introducing procedures that allow the adoption of electronic document bank

		(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.	electronic public procurement. The new amendments to the PPL on December 26, 2018 added another limitation which is the provision of a bank guarantee as a bid security only in the form of an electronic document bank guarantee. Considering that the web portal is integrated only with Kazakhstan banks, foreign suppliers are limited in the possibility of providing bank guarantees issued by foreign banks (Article 25.3.2 of PPL). (c) Article 12.4 of the PPL provides for a bad faith register of suppliers maintained by the Single Organizer (MoF). The reasons for which a bidder can be placed in this register are: (i) winning a tender/auction on the basis of false information; (ii) avoidance of signing a contract by a selected supplier; and (iii) non-performance or improper performance of a contract. For any of the violations mentioned above, a supplier can be included in this register for 24 months. For items (i) and (iii) above, the period of disqualification starts from the date of entry into force of a court decision; and for item (ii) this period begins from the		submission of a bank guarantee as a bid security only in the form of an electronic document bank guarantee. Considering that the web portal is integrated only with Kazakhstan banks, foreign suppliers are limited in the possibility of providing bank guarantees issued by foreign banks. Criterion met.		guarantees as bid security issued by foreign banks.

		(d) It establishes rules for the participation of state-owned enterprises that promote fair competition. (e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	date on which the Authorized Body (MoF) made the decision for disqualification. (d) The PPL does not provide explicit rules governing the participation of public companies. SOEs and private companies are equally eligible to participate in the bidding which promote fair competition. (e) The procurement web-portal is accessible to all potential suppliers, and the qualification criteria to participate in the public procurement is defined in the PPL (Article 9). Article 9 uses the following criteria to qualify potential bidders: (i) legal/civil capacity; (ii) solvency; (iii) not subject to bankruptcy or liquidation; (iv) has sufficient materials, equipment and labor resources to fulfil the contract; and (v) work experience. Potential suppliers from outside Kazakhstan are subject to the same qualification criteria.		Criterion not met. In the absence of the rules governing participants of SOEs in procurement may not lead to fair competition because of SOEs being in a favourable position Criterion met.		Introduce the necessary rules so that both private sector firms and SOEs bid for government tender on the same level playing field and to encourage competition

			<u>3 steps to assess each sub-indicator</u>				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	1(e) Procurement documentation and specifications	The legal framework meets the following conditions: (a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement. (b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.	(a) The PPL defines a minimum, exhaustive list of documents that constitute the tender documents. Article 21 includes detail of a tender documentation (b) Article 21.2.2. describes technical specification with an indication of required functional, technical, qualitative and operational characteristics of the purchased goods, works and services. In such a case, the technical specification shall not contradict the requirements established by the legislation of the Republic of Kazakhstan on technical regulation. The standard tender documentation including the		Criterion met Criterion partially met		For standard procurable items specifications can be developed in a same manner as for the procurement for light and furniture industry

		(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	technical specifications for the light and furniture industry were approved by the Order of the Ministry of Investment and Development of Kazakhstan No. 41 dated January 19, 2018. (c) As per the PPL, technical specification is further regulated in the Law of the Republic of Kazakhstan dated November 9, 2004 No. 603-II "On Technical Regulation" (as amended on January 1, 2018) that requires recognition of standards that are equivalent when neutral specifications are not available. The specifications do not refer to any brand names, or catalogues numbers or names of manufacturers.		Criterion met		
		(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate	(d) PPL Article 22 governs preliminary discussion of draft tender document. In addition, as per the		Criterion partially met Preliminary discussion of draft tender document is a good practice as part of early		Consider clarifying how comments on

		the clarification to all potential bidders (in writing)	PPL, the bidders are allowed to request clarifications and the procuring entities are required to respond in a timely manner.		engagement with bidders/suppliers to take the market constraints and feedback into consideration for achieving fair level of competition and VfM. However, it is not apparent how comments on draft specification is useful for items of repeated use.		draft specification could done for items of repeated use.
	1(f) Evaluation and award criteria	The legal framework mandates that: (a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents,	(a) The evaluation criteria are clearly defined by Chapter 2.7 of Article 21 of the PPL and by <u>para 152-1 of the Rules of Public Procurement</u>. Also, a description of all evaluation criteria is contained in paragraphs 43-52 of the Standard Form for Tender Documentation (Appendix 4 of the Rules of Public Procurement). Article 27.9 the bid prices are automatically opened by the public procurement web portal based on the results of evaluation of the tender applications and verification of their compliance with the qualification criteria and tender documentation requirements.		Criterion partially met The evaluation criteria are based on price and non-price items and appear to be objective. However, the evaluation method based on discount on the bid prices for additional qualifications, etc., and the manner evaluation of bids is carried out do not appear to be consistent with international evaluation practices.		Introduce weighted evaluation methodologies based on price and non-price criteria and on quality and price combination; revise the relevant provisions of the PPL and the PPR to bring clarity on various aspects of evaluation of bids including, confidentiality.

		(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.	(b) Para 152-1 of the Rules of Public Procurement requires that in order to identify a tendered that offers better quality goods, works and services, the procurement organizer shall include the following criteria in the tender documents: • experience in the market of goods, works and services that are the subject of carrying out public procurement; • a document confirming the voluntary certification of the offered goods; • a certified system (certified systems) of quality management; a document confirming voluntary certification of goods made of secondary raw materials obtained from waste products on the territory of the Republic of Kazakhstan; • a certified system (certified systems) of management of the environmental management; • functional, technical, quality and operational characteristics of goods		Criterion partially met The main criterion for evaluation is the price and non-price attributes, social, economic and environmental aspects and risks assessment are taken into account as discounts to evaluated price. Price discounts approach is used. No combined weighted evaluation of quality and cost is applied.		

			and services and (or) the costs for operation, maintenance and repair of the purchased goods. Para 152-1 provides list of possible evaluation criteria. Paragraphs 154 - 166 of the Rules of Public Procurement provide details and percentage for each of the above mentioned evaluation criteria. As part of the PPL amendments dated December 26, 2018 Anti-Dumping Measures (Article 26) is not allowed, with the exception of procurement of services (other than engineering).				
		(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined (d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.	(c) The evaluation process for consulting services is not defined and used in the PPL and concerned regulations. (d) The evaluation criteria are disclosed through the tender documents to the participants. As discussed in (a) above, the evaluation criteria for		Criterion not met There are no specific provisions and procedures for consulting services in the PPL and Regulations and hence no provisions for assessment of the quality and technical capacity. Criterion partially met		

		(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.	open tenders is based on discounts from bid price to determine the winner. (e) PPL Article 5.9 governs the confidentiality of tender prices before the electronic summing up the results of the procurement process. However, participants in a tender can see each other's bids after three working days after preliminary admission report is published on the web-portal.		Criterion partially met Participants in a tender can see each other's bids after three working days after preliminary admission report is published on the web-portal.		
	1(g) Submissio, receipt, and opening of tenders	The legal framework provides for the following provisions: (a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission. (b) Records of proceedings for bid openings are retained and available for review. (c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	(a) The opening of tenders takes place on the web-portal immediately after the closing date of bid submission. (b) Record of bid opening is available in the web-portal (c) As part of the amendments to the PPL on December 26, 2018 Article 5.9 governs the confidentiality aspect of a procurement activity however bids		Criterion met Criterion met Criterion partially met Amendments to the PPL introduced in December 26, 2018 stipulates the bids submitted are disclosed to participating bidders who submitted a bid security after		Potential bidders for each tender should be asked to identify their proprietary information A system should be in place that protects the information provided by the bidder that is of proprietary nature, or commercially or financially sensitive

		(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	submitted are disclosed for other bidders who submitted the bids security after three working days after preliminary admission report is published on the web-portal. (d) PPL Article 5.12 and PPR governs confidentiality of price offers of potential suppliers. Annex 21 Standard Contract on public procurement Article 3 Parties obligations para 4) states that the Supplier shall not disclose the content of the technical documentation provided by the Customer or other persons on the Customer's behalf without prior written consent of the Customer, with the exception of the personnel involved by the Supplier to the performance hereof.		three working days once the preliminary admission report is published on the web-portal. This may be a breach of confidentiality as there is no provision in PPL that protects information provided by the bidder that is of proprietary nature, or commercially and financially sensitive Criterion partially met		

		e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	This information shall be provided to such personnel on a confidential basis and to the extent it is necessary to fulfill the obligations (e) The modality of all tender submission is through the web portal				

	1(h) Right to challenge and appeal	The legal framework provides for the following: (a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity. (b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.	(a) The PPL includes the provision on the right of tender participant to appeal decision and actions taken by the procuring entity (Article 47). (b) The Committee on State Internal Audit under the Ministry of Finance, the Authorized Body is responsible for the review and settlement of the complaints. Procurement Committee is a structural entity under MoF, but it is not Authorized body, responsible for procurement commonly used goods on behalf of public entities (Article 8).		Criterion met. Criterion not met. The IAC is under the same entity (MoF) as the Single Procurement Organizer, and as such, it may be required to review appeals arising from procurement conducted by the Organizer and/or procuring unit under the MoF. This lack of independence may impact the trust among bidders in the review system; The non-appeal functions of IAC may conflict with its appeal function. Specifically, if IAC oversees the ongoing financial control (or compliance audit) of specific procurement transactions, which to some extent makes them part of procurement decisions. Hence, the IAC could not be asked to objectively and impartially review a complaint that may relate to a procurement process which benefitted		Based on international good practice, the complaint review body should not engage in activities which conflict with its other review functions. Therefore, the current arrangements for review of complaints by IAC needs to be revised to ensure a clear level of independence from the MoF.

		(c) Rules establish the matters that are subject to review. (d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body. (e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	(c) The Article 47 of PPL describes the appeals mechanism review. (d) In article 47 of PPL, the bidder's appeal against an award decision can be made within 5 working days from the date the bid evaluation report is posted and the duration of the settlement of complaints is 10 working days by the concerned entity. (e) Yes, all the decisions from the settlement of complaints are published and accessible in the public procurement web-portal. Amendments to the PPL on December 26, 2018 provides the possibility to file a complaint through publicly available information systems, in accordance with the requirements with legislation of Kazakhstan of		before from IAC's financial advice and control. Criterion met. Criterion met. Criterion met.		

		(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	electronic document and digital signature (Article 47.4) (f) As per the article 47 of the PPL, the decision of the authorized body may be appealed (i) to a higher authority (ii) in a court of law.		Criterion met.		
	1(i) Contract management	The legal framework provides for the following: (a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	(a) Contract management functions and responsibilities are not well defined.		Criterion not met. Contract management function remains largely unregulated by the legal and regulatory framework leaving out roles and responsibilities within the procuring entity on aspects such as: monitoring delivery of goods or construction of works, inspection, quality control, supervision of civil works and final acceptance of products, monitoring of contract performance clauses designed to ensure social or environmental standards, review, issuance and publication of contract amendments/variatio		Contract management being the most important phase of the procurement cycle, it is important that contract management functions and responsibilities are clearly defined and enforced. This should be a key feature of the organizational and institutional arrangement of the public procurement function

		(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition. (c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	(b) All public procurement documents contain a draft contract that includes contract conditions, including contract amendment. (c) Article 45 of the PPL governs conditions for contract amendments. These conditions promote competition. Standard contract conditions in the Procurement Regulation stipulate that the Customer and the Supplier shall make every effort to resolve any differences or disputes arise out of or in connection with the Contract by means of direct negotiations. If the Customer and the Supplier cannot resolve any dispute by means of such negotiations, any party can request the resolution of it in accordance with the		management, and claims and dispute resolution. Criterion met. Criterion met.		

		(d) The final outcome of a dispute resolution process is enforceable.	legislation of the Republic of Kazakhstan. (d) Depending on the violation, the relevant legislation, such as civil code, criminal code, administrative, etc. may apply. Court decisions, including those relating to contract disputes, are enforced.		Criterion met.		
	1(j) Electronic Procurement (e-Procurement)	The legal framework meets the following conditions: (a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially. (b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.	(a) PPL Article 13.3 states that "Public procurement is carried out on the public procurement web portal, with the exception of cases provided for by this Law." (b) Full access to the system is provided by: - Article 2.15 a web portal of public procurement is the information system of the government agency that provides a single access point to e-services of the electronic public procurement. - As part of the PPL amendments on		Criterion met. Criterion met.		

			December 26, 2018 Article 17.3 provides paid services for potential suppliers for participation on the web portal. General access to public information on the web portal is free of charge. • Article 24.7. Potential suppliers submitting tender application shall, after three working days once the preliminary admission report have been posted , be granted access to consider the tender applications of other potential suppliers. • Privacy and Authentication is handled by PPL Article 2.22) “a public procurement contract is a civil contract concluded through the public procurement web portal between the customer and the supplier, certified by electronic digital signatures with the exception of those cases stipulated by this Law;”				

		(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	• PPL handle security of data in accordance of the following provisions: • Article 17.5 “ensure that electronic information resources of entities of the public procurement system, posted on the public procurement web portal, are secured;” • Article 17.6) maintain the information content on the public procurement web portal in accordance with the Public Procurement Rules; • Article 17.7) interact with authorized bodies regarding the integration of the information systems of state bodies, state electronic information resources and information security. (c) Interested parties: Article 2.15) a web portal of public procurement is the information system of the government agency that provides a single access point to e-services of the		Criterion met.		

			electronic public procurement;				
	1(k) Norms for safekeeping of records, document	The legal framework provides for the following: (a) A comprehensive list is established of the procurement records and documents related to transactions including contract	(a) The PPL and PPR do not establish list of the procurement records and documents related to transactions including		Criterion partially met PPL and Regulations do not include any specific provision on procurement and contract		Terms and procedures for keeping procurement documents and contract management documents should be specified/instructed in the

	s and electronic data management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access. (b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles. (c) There are established security protocols to protect records (physical and/or electronic).	contract management. (b) Chapter 10.1 of the Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated September 29, 2017 No 263 "On approval of the List of standard documents resulting from the state and non-governmental organizations activities, indicating the storage period" requires to keep electronic and/or physical documents related to procurement process. (c) Articles 17.5. and 17.7, E-Commerce Center is responsible for protocols to protect electronic records and sources of information. Chapter 10.1 of the Order of the Minister of Culture and Sports of the Republic of Kazakhstan dated		management document retention. Criterion met Criterion met	PPL or PPR, to ensure proper contract management, in addition to overall guidance on terms of the Order of the Minister of Culture and Sports No 263

			September 29, 2017 No 263 "On approval of the List of standard documents developed as a result of the state and non-governmental organizations activities, indicating the storage period" requires keeping electronic and/or physical documents related to procurement process. Procurement planes with all amendments and standard tender documents – permanently, time period for the other tender documents vary from 3 to 5 years.				
	1(l) Public procurement principles in specialised legislation	The legal and regulatory body of norms complies with the following conditions: (a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	(a) Public procurement principles apply to all sectors except those on the exception list as stipulated in Article 1 of the PPL.		Criterion partially met There is no evidence that the existing procurement rules applied by each of the exceptions/excluded specific sectors/entities (SOEs) , the performance of these entities and whether they actually achieve the core public procurement principles including value for money,		Consider undertaking comprehensive study taking stock of the existing procurement rules applied by each of the exceptions/excluded specific sectors/entities (SOEs) , the performance of these entities and whether they actually

		(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate. (c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	(b) The application of public procurement principles in PPP is governed separately. Please refer to https://www.procurementnet.org/wp-content/uploads/2017/02/Kazakhstan.pdf (c) Please refer to https://www.procurementnet.org/wp-content/uploads/2017/02/Kazakhstan.pdf Also see Indicator 1.1(c) above		transparency and fair competition. Criterion met Criterion met		achieve the core public procurement principles including value for money, transparency and fair competition.

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures	(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	Public Procurement Regulations No. 648 dated December 11, 2015 expand on the provisions of the PPL. In addition, the following orders of the Minister of Finance provide additional. Details of the rules of procurement: - List of goods, works, services of daily and / or weekly needs dated December 23, 2015 No. 677 - Rules for collecting, summarizing and analyzing reports taking into account information on purchases from domestic producers dated December 28, 2015, No. 693 - Rules for Using the web-portal and the Rules for the Operation of the web-portal in the Event of Technical Malfunction of the Work of the web-portal dated		Criterion met		

			December 28, 2015, No. 692 • On the definition of a single operator in the field of electronic public procurement dated December 21, 2015 No. 668 • List of goods, works, services for which the organization and conduct of public procurement is carried out by a single organizer dated December 21, 2015 No. 669 • Rules for preparation of the annual report on public procurement dated December 25, 2015 No. 688 • Rules for the Formation and Maintenance of Registers in Public Procurement dated December 28, 2015, No. 694 • Rules for retraining and advanced training of employees engaged in public procurement dated December 28, 2015 No. 697 • List of goods, works, services for which public procurement is carried out in a				

		(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place. (c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	competitive tender with prequalification dated February 29, 2016 No. 91 The Law and regulations are clear and accessible and available from the Web Portal → www.goszakup.gov.kz The regulations are updated regularly. Responsibility for maintenance of the regulations assigned to the Single operator, article 17 PPL		Criterion met Criterion met		
	2(b) Model procurement documents for goods, works, and services	(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities. (b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for	Model procurement documents and contracts for goods, works and services, including consulting services are stipulated as part of tender documentation in the PPR. Standard and mandatory set of clauses or templates that reflect the legal framework for goods and works and services are		Criterion met Criterion met		

		competitive tendering/bidding.	included in the tender documentation in the PPR				
		(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	The documents are kept up to date. Responsibility for preparation and updating module procurement documents assigned to the Authorized body, article 16 PPL		Criterion met		
	2(c) Standard contract conditions	(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	The PPR includes standard tender documentation for the most common types of contracts including a draft contract with standard contract conditions		Criterion met		
		(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	The content of the standard contract conditions is consistent with internationally accepted practice		Criterion met		
		(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	The PPR includes standard tender documentation including a draft contract with standard contract conditions		Criterion met		
	2(d) User's	(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the	The user instruction and manual are available for		Criterion met		

	guide or manual for procuring entities	correct implementation of procurement regulations and laws.	customer (procurement units), suppliers (tender participants), and procurement organizer. Link → https://wiki.goszakup.gov.kz/pages/viewpage.action?pageId=327702				
		(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	The user instructions are well maintained by the Single operator of Kazakhstan (Article 17)		Criterion met		
3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.	3(a) Sustainable Public Procurement (SPP)	(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	The concept of Sustainable Public Procurement (SSP) taking into account the social, economic and environmental aspect as per the SDG 12.7 is not clearly mentioned in the policy / strategy documents and the PPL.		Criterion partially met The concept of Sustainable Public Procurement (SSP) taking into account the social, economic and environmental aspects as per the SDG 12.7 is not clearly mentioned in the policy / strategy documents and the PPL, including for complex procurement use of Life Cycle		Consider building in the legal framework adequate sustainability criteria and requirements to ensure value for money throughout the procurement cycle including use of Life-Cycle costing principles and introduction of ESHS criteria in evaluation of complex facilities.

		(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP. (c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle. (d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	Same answer to (b), (c), and (d) below		costing principles in evaluation, incorporation of Environmental, Social, Health and Safety aspects as part of Employer's requirements and use of energy efficient equipment a factor in responsiveness of technical bids. Criterion partially met Criterion partially met Criterion partially met		
	3(b) Obligations deriving from international agreements	Public procurement-related obligations deriving from binding international agreements are: (a) clearly established (b) consistently adopted in laws and regulations and reflected in procurement policies.	and (b) PPL Article 3.2 states that if an international treaty ratified by the Republic of Kazakhstan stipulates other rules than those stipulated in this Law, the rules of the international treaty shall be applied.		Criterion met		

			Also, according to the amendments to the PPL on December 26, 2018 procurement of goods, works, services as part of investment projects financed by international organizations, of which the Kazakhstan is a member, is not subject to the PPL (Article 1.9 of the Law).				

Pillar II. Institutional Framework and Management Capacity

			<u>3 steps to assess each sub-indicator</u>				
<u>Indicator</u>	<u>Sub-indicator</u>	<u>Assessment criteria</u>	<u>Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)</u>	<u>Step 2: Quantitative analysis</u>	<u>Step 3: Gap analysis / conclusions (describing any substantial gaps)</u>	<u>Potential red-flag</u>	<u>Initial input for recommendations</u>
4. The public procurement system is mainstreamed and well-integrated into the public financial management system	4(a) Procurement planning and the budget cycle	The legal and regulatory framework, financial procedures and systems provide for the following: (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	(a) In accordance with Article 5 of the PPL, Annual Procurement Plan is prepared based on relevant budget. The customer (procuring entity) prepares its annual procurement plan in two stages: a preliminary procurement plan upon receipt (by October every year) of information about indicative annual budget allocation and then the final procurement plan upon receipt of final budget allocation approval (by January every year). The annual public procurement plan is approved (refined) by the customer within ten days from the date a relevant		Criterion partially met The procuring entity prepares its annual procurement plan (PP) in two stages: a preliminary PP based on an indicative annual budget notification, and (ii) final PP based on notification of final budget allocation. The PPL provides for the possibility for tenders to be launched without budget allocation approval for the case of two-stage tender procedure. It is not clear when the procuring entity receives budget allocation approval for such contracts. Even if the budget is		It is a good practice to launch tenders only for contracts on the preliminary or final procurement plans, including for two-stage tender. Enhance the feedback mechanism reporting to fully report on completion of major contracts including details on payments and other aspects of execution such as time and cost overruns

		(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	budget (development plan) has been approved (refined.) The annual procurement plan contains full detail on identification code, nomenclature of goods, works and services, methods and deadlines for carrying out public procurement and other details on delivery including any participation by certain categories of potential suppliers (example needs of disabled) as per Article 51 of PPL. Appendix 1 of the Regulation contains detailed format for Preliminary Annual Plan for Goods, Works and services (b) Budget funds are committed to cover the contract amount according to needs as per Article 5. 4 3) and Article 5.10. 2). However as per Article 5. 6, the customer shall have the right to adopt a		allocated after stage one has been completed, some bidders may decide to not participate as they may not want to spend resources on tenders without any firm budget commitment. This practice is not in keeping with the international procurement practice that requires that no unfunded tenders are launched. Criterion partially met		

		performed within the budget period). (c) A feedback mechanism reporting on budget execution is in place, regarding the completion of major contracts.	decision on implementation of public procurement before the relevant budget is approved only in case of conducting public procurement by way of tender with the use of two-phase approach (c) There is a feedback mechanism reporting on the republican budget execution in place as Government and the Accounts Committees reports on republican budget execution are to be presented and approved by the Parliament. However, regarding the availability of feedback mechanism on major contracts' budgets execution, the assessment has concluded that although there is a partial form of reporting on the contract pre-award procurement stages, publicly available on		Criterion partially met There is no specific feedback mechanism that report fully on completion of major contracts including details on payments		

			procurement portal, and the contracts are registered in treasury system and their payments are properly tracked by the system, there is no specific feedback mechanism that report fully on completion of major contracts including details on payments.				
	4(b) Financial procedures and the procurement cycle	The legal and regulatory framework, financial procedures and systems should ensure that: (a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	(a) According to Article 5. 7 purchase of goods, works and services not provided for by the approved (revised) annual public procurement plan (preliminary annual public procurement plan) is prohibited, <u>with exception of</u> some cases of single source (clauses (4), (9), (31), (32) and (35) of the Article 39.3) and Special Procedure (Article 50) which relate primarily to cases involving emergency recovery, national security, or state secrets. Also, the web portal has a		Criterion met.		

		(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders. *	built-in mechanism to ensure the availability of funds (b) The related regulations and procedures on payments are followed and publicly available to all potential bidders		Criterion partially met		
		// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.		The public procurement portal contains some information on the process of payment under contracts. However, this information was not enough to obtain full and accurate data about the delay in payment for each specific transaction. The Treasury and other state bodies also don't monitor the delay in	Web-portal does not provide data on payments delays		Data on time period between invoice and actual payment of each transaction should be monitored by specifically responsible body and publicly available on the web-portal

				payments from the moment of issuing the invoices.			
5. The country has an institution in charge of the normative/regulatory function	5(a) Status and legal basis of the normative/regulatory institution function	(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	The Ministry of Finance (MoF) is the Authorized Body, as described in 1(a) (a). Articles 16 and 18 of PPL specify the normative, regulatory and control functions of the Authorized Body. Under the administrative and financial control of the Authorised body, the methodology function is assigned to the Public Procurement Legislation Department, Control function to the Internal Audit Committee. Technical support of the web-portal was assigned to the Single operator and Centralized public procurement was assigned to the Single Organizers (Article 17 and 8 PPL)		Criterion met.		

	5(b) Responsibilities of the normative/regulatory function	(b)The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility: (a) providing advice to procuring entities (b) drafting procurement policies (c) proposing changes/drafting amendments to the legal and regulatory framework (d) monitoring public procurement	The core functions of normative/regulatory (a-i) are with Authorized Body (namely Public Procurement Legislation Department) and clearly defined in the Article 16. Authorized body through the E-Commerce Center is entrusted responsibilities on managing online platform (k) Article 17 as follows: (a) Providing advice to procuring entities; (b) Drafting procurement policies and (c) Proposing changes/drafting amendments to legal and regulatory framework. This function is carried out by Department of Public Procurement Legislation. (d) The Authorized Body, through the E-Commerce Center, which manages the web portal, carries out monitoring of public procurement (Article 19 of PPL. (e) and (f) web-portal also provides the		Criterion partially met. There is no developed system for training and professionalization of the procurement function		To consider developing a Road map for certification and professionalization of the procurement function

		(e) providing procurement information (f) managing statistical databases (g) preparing reports on procurement to other parts of government (h) developing and supporting implementation of initiatives for improvements of the public procurement system	required procurement information and manages statistical databases. The E-Commerce Center is also responsible for designing and managing centralized online platforms and e-procurement system (g) Based on the results of public procurement monitoring, the authorized body shall submit an annual public procurement report to the Executive Office of the President of the RK and the Government of the Republic (Article 19.3). (h) The Public Procurement Legislation Department is responsible for developing and supporting implementation of initiatives for improvement of the				

		(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement (j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and	public procurement system. (i) The Authorized Body pursuant to Article 16.8 approves rules for retraining and advanced training of employees engaged in public procurement. The recent amendments to the PPL on December 26, 2018 Article 16.11-2, the Authorized body develops and approves methodological recommendations on public procurement issues. E-Commerce Center is a tool for providing trainings and capacity building programmes (j) There is no assigned function for integrity training or professionalization of procurement. There is no developed system for training and professional				

		certification schemes for the profession) (k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate.	education in procurement. (k) Authorized body through the E-Commerce Center is also responsible for designing and managing centralized online platforms and e-procurement system				

			<u>3 steps to assess each sub-indicator</u>				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	5(c) Organisation, funding, staffing, and level of independence and authority	(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.	(a) Normative/regulatory function assigned to the of Public Procurement Legislation Department (PPLD) at the level of departmental director. The PPLD has the core responsibly of		Criterion met		GoK to enforce further the status and independence of PPLD as normative and regulatory body and to not restrict its independency from any authority while discharging its duties including supporting the professionalization of the procurement function.

		(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing. (c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.	the normative and regulatory function Director is appointed by and report to the Minister of Finance. Single operator is responsible for managing online platform . (b) PPLD financing of the department comes through the MoF allocation of the republican budget. MoF allocates proper financing for the Single operator. In addition, amendments to the PPL on December 26, 2018 introduce fees for participation on the web portal (c) PPLD, E--Commerce Centre JSC are appeared to be properly staffed.		Criterion partially met. The level of independence of the normative and regulatory unit appears not to be fully tenable and raises issues about of impartiality and transparency in discharging the procurement normative and regulatory functions. Criterion met		

	5(d) Avoiding conflict of interest	(a) The normative/regulatory institution has a system in place to avoid conflicts of interest. *	The PPLD which has the core responsibly of the normative and regulatory function is appointed by and reports to the Minister of Finance. Also, the financing of the department comes through the MoF allocation of the republican budget. Given PPLD's positioning at the same administrative reporting hierarchy level of MoF organigram as the other three units of the Authorised Body (IAC, E-Commerce Centre, and SPPO), the level of independence of the normative and regulatory unit appears not to adequately established and raises issues about the impartiality and transparency in discharging the procurement normative and regulatory functions. Furthermore, there is no evidence of the presence of any system to avoid conflict of interest within PPLD.		Criterion partially met. The level of independence of the normative/regulatory units is not adequately established by the PPL.		GoK to consider strengthening and consolidating the normative and regulatory functions into PPLD with the appropriate level of independence.

			Internal Audit Committee as part of MoF (the Authorized Body) carries out functions of both control over compliance to legislation as also resolution of complaints. In addition, the Single Organizers of Procurement which carries out procurement above a financial threshold or for those agencies who lack capacity.				
		* 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.		Based on the results of Survey there is a perception that the normative/regulatory institution is free from Conflict of Interest or Col situation is minor (in 72 % of response). However 40% of respondents believe that conflict of interest relates to unclear separation of			

				duties between institutions, 18% of respondent believe that such Col is due to unclear competencies of officials and 40% of respondents relate Col to the situations that an official position is used improperly for private advantage and improper personal gains or official's family or other personal relations (these are integrity related issues as well and discussed further under Indicator 14)			
6. Procuring entities and their	6(a) Definition, responsi	The legal framework provides for the following: (a) Procuring entities are clearly defined.	(a) Article 7 of PPL defines procedure for organizer of public procurement.		Criterion met		

mandates are clearly defined	bilities and formal powers of procurin g entities	(b) Responsibilities and competencies of procuring entities are clearly defined. (c) Procuring entities are required to establish a designated, specialised procurement function with the necessary	(b) The customer directly or through its structural sub-division responsible for carrying out the procedures for organization and conducting of public procurement can act as the organizer of public procurement. The administrator of the budget program may act as the organizer of public procurement for the state institution or state-owned enterprises or legal entity, fifty percent or more of voting shares which are owned by the state have the right to act as organizer of procurement. (c) The customer directly or through its structural subdivision responsible for carrying out the procedures for the		Criterion met Criterion met.		

		management structure, capacity and capability. * (d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. (e) Accountability for decisions is precisely defined.	organization and conducting of public procurement can act as the organizer of public procurement. The customer shall have the right to determine the state institution subordinated to the customer as an organizer of public procurement (d) Decision making authority on each procurement process is delegated to the lowest competent unit within the procuring entity authorized by the Order of the head of procuring entity (e) Procurement framework stipulates accountability for procuring entity. Accountability for decisions is precisely defined for each procuring entity in its By-		Criterion met Criterion met		

			Laws, for procurement unit in the internal regulation of the procuring entity, and for each person involved in the job description. In case of administrative review of procurement decisions Article 16.5 and 16.6 of PPL empowers Authorized Body to reverse decision of public procurement organizer, single public procurement organizer, customers and tender committee which are adopted in violation of legislation before entering into contract which shifts accountability from procuring entity to Authorized Body				

		// 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.		Procuring entities with a designated, specialised procurement function in 2017 is 95% of total number of procuring entities The indicator supports the finding that the procurement function is well organised in Kazakhstan as the PPL requires in Article 7.2 Source: Procurement web-portal, MoF			
	6(b) Centralized procurement body	(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	(a) Recent amendments to the PPL on December 26, 2018 Article 8 of PPL allows for centralized procurement and describes public procurement procedures carried out by the Single Public Procurement Organizers for the purposes of carrying out		Criterion partially met No centralized procurement in terms of framework agreement or specialized procurement. The		An evaluation of the performance of SPPO could help GoK to consider the benefits of establishing a standalone centralised procurement body in charge of consolidated procurement, framework agreement or specialised procurement.

		(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	unified and consolidated public procurement. Recent amendments to the PPL also extended centralized procurable items with the distribution of the responsibilities to the regional level. However, this centralized procurement is still very limited to a small number of procurable items. MoF Order No 1127 dated December 29, 2018 approves 3 Lists of items for centralised procurement at the republican level (18 items), regional level (7) and local level (7). Moreover, the framework agreement approach is not applied to these lists of items (b) The procedure for Appointment of the Organizer or Single Organizers defined in Article 8 PPL and detailed in Section 3 of Public Procurement Regulation.		Single Organizers (Committee for Public Procurement and regional Single organizers) is responsible for carrying out unified public procurement on behalf of the customer for a limited list of procurable items. Criterion met		

		of the body have a high-level and authoritative standing in government. (c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.	(c) There is no Central Procurement body but there are Single Organizers of Procurement under Authorized Body works as described under 6(a) above.		Criterion partially met.		

			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
7. Public procurement is embedded in an effective information system	7(a) Publication of public procurement information supported by information technology	The country has a system that meets the following requirements: (a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance. (b) There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.	(a) The web portal on the internet is a media of wide circulation. More readily available than a newspaper. This dedicated web-portal I (web site) which is relevant, timely and complete. The web-portal is helpful to interested parties to understand the procurement process and requirements to monitor outcomes, results and performance. The web site is https://goszakup.gov.kz/ (b) Yes, there is an integrated information system which is centralized provides up-to-date information and is easily accessible to all interested parties. Recent amendments to the PPL on December 26, 2018 introduces fees for participation in electronic public procurement on the web portal from January 1, 2019 at the Single operator approved tariff level. There is no cost for procurement entities register and use the system. The system is also integrated with many other systems for interoperability, include the Tax system, licensing system, commercial		Criterion partially met The web-portal does not publish information about the actual date of payment for the relevant invoices. Criterion met.		Ensure the publication of payment dates by integrating with the information system E-Treasury and commercial banks.

		(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.	banking systems, debarment system, justice system and court decision system. There is an inherent cost for foreign companies who do not participate in the tenders because they have legal representation in Kazakhstan enable to get the electronic digital signature. (c) PROCUREMENT PLANS: According to the law, unclassified (non-military) procurement plans are published within 5 working days after their approval on the web site. Therefore, all procurement plans are published, 100%. The procurement plans are published on the main page of the web-portal and can be viewed by anyone. The procurement plan is published at the beginning of the procuring year, before those tenders are initiated. It should be noted that procurement plans are currently approved offline. INFORMATION RELATED TO SPECIFIC PROCUREMENTS: e-Procurement system publishes the advertisements and the procurement method, type of procurement (goods/works/services), organizer of the procurement and the address of the procurement entity. Additionally, it should be noted that the bidding document, draft contracts and technical specifications are published. Furthermore, the clarifications are published. The e-procurement system publishes contract awards and contract		Criterion partially met.		

			implementation information, including the amendments, final payment for executed contracts and appeals decisions. The preliminary evaluation report is public. The final minutes of the evaluation report is also published. The details of the contract are published, include winner and procurement entity and the signed contract. Additionally, amendments are published. Invoices are published on the web-portal (e.g. https://www.goszakup.gov.kz/ru/egzc/contract/cpublic/akts/6447996). However, information on the actual date of payment for the relevant invoices is not published. The publishing of appeals started as of January 1, 2018. There is the ability to filter your search for appeals decisions and register complaints here: https://goszakup.gov.kz/ru/registry/complaint. LINKAGES TO RULES: Yes, the web-portal provides linkages to rules and regulations as there are links to the PPL and the PPR on the web-portal. Furthermore, the rules and regulations are programmed into the system to provide validation for user input. For example, for the single source procurement the list of possible justifications by law is listed in the system. Updates to the system are regularly made reflect changes to the rules and regulations.				

		(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).	(d) Comprehensive information is published on the web-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 which is in accordance with legal and regulatory framework.		Criterion met		
		(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*	(e) The information is published in an open and structure machine-readable format, using identifies and classifications. In fact, the e-procurement system of Kazakhstan publishes their data in partial Open Contracting Data Standard format in JSON files on their web site. https://goszakup.gov.kz/ru/developer/ows. However, current version of the Open Contracting Data Standard excluded report visualization option. 8 out of 40 statistical forms have been developed, and the remaining forms will be developed.		Criterion met		
		(f) Responsibility for the management and operation of the system is clearly defined.	(f) The eCommerce Center has clear responsibility for the management and operation of the system. It is regulated by article 17 in the PPL.				

		// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c): • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). Source: Centralised online		Assessment criteria (c): • As for the year 2018, the percentage the procurement plans published is 100% of the total number of required procurement plans. This indicator supports further the finding that the web-portal also provides full, timely and accessible			

		portal. * Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralised online portal.		information on all procurement plans • The information system provides all key information on specific procurement for 100% of contracts. It is to mention, that the web-portal includes in its structure information for payments, however this information is not currently accessible for public for all contracts • Based on the data for			

				last 3 years, the web-portal has published 100% of invitations to bids out of total number of contracts • For 2017 the web-portal provides 100% of the contract award information for all published contracts • Web-portal provides most of details related to contract implementation (milestones and completion) for 2017. It is to mention,			

				that the web-portal includes in its structure information for payments, however the information on the actual date of payment for the relevant invoices is not published. • Annual procurement statistics for procurement plans and contracts are published for 2017 and available aggregated in real time with free accesses in			

				visual format on the web-portal. However, the detailed Annual Report on public procurement, prescribed under the Article 19 PPL) is not publicly available. • Appeals system launched on the web-portal in January 2018 and captures 100% of the appeals decision with the timeframe specified in the PPL.			

				7(a) Assessment criterion (e): • 100% data in the e- procurement web- portal is published in open data format, as it supports OCDS. Source: Procurement web-portal, MoF			

			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	7(b) Use of e-Procurement	(a) E-procurement is widely used or progressively implemented in the country at all levels of government.* (b) Government officials have the capacity to plan, develop and manage e-Procurement systems. (c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems. (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market	(a) e-procurement (through the procurement web portal) is widely used in the country at all levels of government, including national, regional, sub-regional and municipal levels. (b) eCC does training for government offices. For example, for the MoF they train 100 staff during 2017. There are video instructions and manuals and technical support. (c) eCC does training for procurement staff of procurement entities. There are video instructions and manuals and technical documents for procurement staff and external users to guide through the procurement process on the web-portal. (d) Most of the vendors who participate are SMEs. Previously the Tax system captured characteristics of vendors and there was the ability to view if a vendor was an SME. So two years ago when this		Criterion met Criterion met Criterion met. Criterion met		

		increasingly dominated by digital technology.* (e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	information was captured, it was noted that 98% of the vendors participating were SMEs. Currently, there isn't a flag in the system for SMEs and the Tax system no longer captures this information, therefore there no data for 2016 and 2017 on SME participation. (e) Not Applicable as there is an e-procurement system which is used 100% of the time for all procurement transactions.		Criterion met		
		// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system. * Recommended quantitative indicators to substantiate assessment		<u>In accordance with Article 43.4 of the PPL, some contracts are concluded outside the web-portal without the use of electronic procedures.</u> Since statistics on the number and amount of public procurement procedures outside the			

		of sub-indicator 7(b) Assessment criterion (d): - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) Source: e-Procurement system.		web-portal are not published, the share of electronic procedures in the total volume of public procurement procedures is not possible. Source: e-Procurement system. 7(b) Assessment criterion (d): As per the PPL bids submitted online is 100%. Bids submitted online by micro, small and medium-sized enterprises currently is estimated at 98% of the total bids. Source: e-Procurement system, MoF			
	7(c) Strategie	(a) A system is in operation for collecting	(a) The e-procurement system in operation collects data on		Criterion met		

	s to manage procurement data	data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology. (b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements. (c) The reliability of the information is high (verified by audits).	procurement of goods, works and services, including consulting services. Please note, archiving functionality has not been introduced, therefore all the data for all transactions are in the e-procurement system. The volume 88 Terabytes is the capacity of the database. Contracts will be stored for 75 years. (b) E-Procurement System can provide information to the MoF, including information on the annual report and the ability. Please note, these reports for the MoF are not made public, but are used to create annual reports which are public. (Please note that there is an EBRD project for Data Analytics which will make data analytics public.) (c) ECC has two types of security. The first is physical, there are two data centers (one main data center and one back data center). The second type of security is Organizational type of security, the database is oracle the solution is open source. State technical service under National Security Committee conduct quarterly security vulnerability tests of the e-procurement. Updates and tests of the system are made every three years by the NSC for the gustation of the e-procurement system, so they meet the standards of Kazakhstan information security.		Criterion met Criterion met		

		(d) Analysis of information is routinely carried out, published and fed back into the system. *	Please note that prices of potential bidders are encrypted by special software. An external audit was performed 2016. The eCC realizes that external audits should done yearly, but time and cost are a factor. Again, the last external audit was in 2016, before the gustation three-year test before the NSC. This should be updated and some qualitative analyses can be added once the final result of the independent review of the system (the ongoing 3rd party review of the system by ADB) is available (d) As per PPL Article 19 monitoring system is required annual monitoring and submission to the Government of Kazakhstan. However, this information is not public on the web-portal. Also, initial data on contracts number and value for the analysis is available on the web-portal in a real time.		Criterion partially met		
		// 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		Out of total number of contracts, items inclusive (4,179,961) value of contracts is KZT			

		expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. Source: Normative/regulatory function/E-Procurement system.		2,874.9mln. KZT including VAT. In 2017 public procurement share of government expenditure (KZT12.5 Trillion) is 23%. Public procurement share in GDP (KZT53 Trillion) is 5.5%. According to the Annual report available on the web-portal, total value of contracts awarded through competitive methods in 2017 fiscal year is KZT 744.8mln (equivalent US\$2,285mln., where the exchange rate 1USD=326KZT)			

				• Source: e-Procurement system, MoF, Statistics Agency			

			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
8. The public procurement system has a strong capacity to develop and improve	8(a) Training, advice and assistance	There are systems in place that provide for: (a) substantive permanent training programmes of suitable quality and content for the needs of the system.	(a) There is no evidence of a substantive permanent training program. One of key training providers in the country, Finance Academy, only has three modules related to public procurement out of 165 modules that mostly on audit and financial management. The mission was informed that there was not enough demand that justify the extensive training program on public procurement. The e-commerce provided training for over 20,000 participants over 500 hours of training per year. However, e-commerce only provides one subject: theory and workshop on the use of the web portal.		Criterion partially met There is a gap in public procurement training and certification for key actors. Most training provided is on the techniques of the web portal There is no recognition system to the function of public procurement in the Government system Lack of an overall strategy for sustainable mechanism for		GoK to consider preparing a “skill gap inventory” and a training need analysis. The results of these exercises could be used in designing, developing and delivering training programs with adequate content and frequency suitable for public and private stakeholders. In addition, to ensure that only qualified and skilled staff work on procurement, a testing and certified /accreditation system is necessary. Share MOOC modules of public procurement with the methodology unit of MoF Encourage MoF to develop sustainable procurement capacity building and professionalization of the procurement function training mechanism with the possibility of partnership with local higher education institutions.

		(b) routine evaluation and periodic adjustment of training programmes based on feedback and need. (c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public. (d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	(b) Due to lack of a programmatic training on public procurement, there is no evidence of a routine evaluation and adjustment of training program. (c) The Authorized body and e-commerce provides advisory service and help desk focusing on the use of the web portal (d) There is no evidence of a well-integrated strategy in developing the capacity of key actors. The system is automated		building public procurement capacity and professionalization of the procurement function. Criterion partially met Criterion met. Criterion partially met.		
	8(b) Recognition of procurement as a profession	The country's public service recognises procurement as a profession: (a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	(a) There is no evidence of a recognition of procurement function in the government system. Staff of the procurement units have various background, but mostly legal		Criterion partially met There is no tie-up with any institution for regular professional training on procurement		See above

		(c) Appointments and promotion are competitive and based on qualifications and professional certification. (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	(b) There is no clear professional certification (c) There is no evidence of a substantive permanent training program on public procurement		and contracts management There is no certification program with a professional body /institution including on e-Procurement. Criterion partially met. Criterion partially met		
	8(c) Monitoring performance to improve the system	(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects. (b) The information is used to support strategic policy making on procurement. (c) Strategic plans, including results frameworks, are in place and used to improve the system.	(a) Since there are no systematic and sustainable training programs, there is no evidence of a training performance measurement system. (b) No evidence (c) No evidence (d) Not clear		Criteria a-c partially met. There is no performance measurement system to focus on qualitative and quantitative aspect		Need to introduce a performance measurement system based on indicators that, that focuses on both quantitative and qualitative aspects.

		(d) Responsibilities are clearly defined.					

Pillar III. Public Procurement Operations and Market Practices

			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
9. Public procurement practices achieve stated objectives	9(a) Planning	(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	(a) Procuring entities determine and analyze their needs for goods, works and services beginning in the first half of the previous year and prepare their annual budget proposals as part of the planning and budgeting process for the next fiscal year (Article 5). However, there is no specific provisions in PPL and Regulation or any manual or guidance note that provide guidance on how to carry out market research. In practice this is usually limited to obtaining prices directly from suppliers and using historical unit prices from past contracts and from price databases maintained by the		Criterion partially met. The current PPL and regulation do not provide for a structured approach to procurement planning to inform the best methodology to approach the market and select optimal procurement methods that support achievement of optimal procurement outcomes. The assessment has concluded that generally, procuring entities conduct some		Improving further the quality and performance of Kazakhstan public procurement system would require adoption of more upfront strategic approach including proper and systematic market analysis to inform optimal procurement strategies and planning. This market analysis should guide adopting Single Source in exceptional cases and not through an extensive listing of exclusions in PPL. Strengthening the strategic role, the country public procurement system and improving its quality and performance would

			Ministry of Finance on the web-portal. There is no formal requirement by the PPL to undertake any analysis for the identification of optimal strategic approaches for needs assessment and identification of optimal procurement approaches. <i>However, it is worth mentioning that in its article 22, the PPL provides for a mandatory preliminary public discussion, by way of the web portal, of the draft tender documentation by potential suppliers and publication on the web portal of the minutes of preliminary discussion of the draft tender documentation. This best practice is to be praised as it allows for “early-engagement” with potential market/suppliers to seek their feedbacks on the draft tender documents in terms of scope, technical specifications,</i>		form of needs analysis but on the basis of no proper and systematic market study or analysis. No detailed guidance /manual to provide instructions to procurement entity on practical application of need assessments and its linkage to market research. Inadequate and non-systematic market research for procurement may not help achieve value for money, fit for purpose and overall efficiency. This gap is substantial and has been supported by the quantitative assessment of indicator 9(b)(j) which has revealed that 32% only of all processes under open tender lead to contract		require further consideration for sustainable procurement including the integration of sustainability criteria throughout the whole procurement cycle from identification of needs, definitions of specifications to contract administration.

			<i>evaluation criteria, and qualification requirements. The objective is to adjust the procurement approach to the actual market and ensure better chance for fair level of competition and achievement of value for money.</i>		award. This situation has resulted in tolerating poor procurement planning and acquisition of goods, works and services that may not yield optimum competitive, and efficient, and value for money outcomes. This situation gets worsened due to provision of Article 5 clause 9 that permit purchasing without a procurement plan for cases of two-stage bidding. There is no sustainable public procurement policy in the country that integrate country specific sustainability criteria throughout the whole procurement cycle from		

		(b) The requirements and desired outcomes of contracts are clearly defined.	(b) Annual budget proposals (See above) discuss program objectives, identify needs in terms of goods, works and services and their purpose for the programs. For large value and complex projects, feasibility studies are carried out, which, among	identification of needs, definitions of specifications to contract administration. Few sustainability related criteria are included in the PPR but are very limited and unbalanced and does not include social related aspects of procurement outcomes. Criterion partially met. The introduction of weighting system would allow to differentiate the qualitative criteria in terms of their importance or relevance in	

			others, identify good, works and services contracts and discuss their outcomes. Fine tuning of these needs takes place when the procuring entity prepares a preliminary procurement or development plan upon receipt (tentatively by October) of information about indicative annual budget allocation and then the final procurement or development plan upon receipt of final budget allocation approval (by January).		meeting the procurement objectives and outcomes of each specific procurement.		
		c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	(c) There is no sustainable public procurement policy in the country that integrate country specific sustainability criteria throughout the whole procurement cycle from identification of needs, definitions of specifications to		Criterion partially met. Furthermore, the use of a fixed percent discount for bids exceeding the sustainability-related requirements, is not appropriate. Some of the requirements are		

			contract administration. However, Article 21.4 of the PPL refers to the PPR for few but limited criteria that can be considered as sustainability related criteria. Article 5.2 of the PPL requests procuring entities that while planning shall proceed from the priority of acquiring innovative and high-tech goods, works, and services. Also, Article 152-1 of the PPR formulates provisions to guide determination of sustainable criteria: • Criteria for the suppliers' qualification to demonstrate - voluntary certification of the offered goods in accordance with the legislation of the Republic of Kazakhstan on technical regulation; - certified system (certified systems) of quality management in accordance with the requirements of national standards; - confirming voluntary certification of goods		general are not specifically related to the nature of the subject procurement and its outcomes.		

			made of secondary raw materials obtained from waste products on the territory of the Republic of Kazakhstan; - certified system (certified systems) of management of the environmental management in accordance with the requirements of national standards and (or) the conformity to the standards of environmentally friendly products in accordance with the legislation of the Republic of Kazakhstan on technical regulation; • Functional, technical, quality and operational characteristics of goods and services and (or) life costs cycle (operation, maintenance and repair of the purchased goods); The Regulations provide for a procedure to apply and evaluate above criteria through discounts-based evaluation system used for open tenders (as stipulated in the PPL (Articles 21, 27) and detailed in the Procurement Regulations				

			(clause 156-166)), which allows, among others, a fixed percent discount for bids exceeding the sustainability-related requirements if specified in the technical specifications. However, there is no sustainability-related criteria for social aspects of the procurement outcomes				
	9(b) Selection and contracting	(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	(a) For complex procurement contracts, the PPL (Articles 13, 30) provides for two stage tender of the situations which includes difficulties to formulate detailed specifications of the goods, works and services and to determine their technical and other characteristics (Article 30 PPL). However, there is no clear procedure in the PPL. According to the amendments to the PPL on December 26, 2018 two stage tender carried out		Criterion partially met. The open tender with prequalification does not provide for a separate prequalification process (notice, applications, and their evaluation) to determine potential bidders having the required qualification, experience, staff and management capacity, financial capacity, etc.). This may, therefore, not		Introduce criteria and procedure for pre-qualification as a separate exercise before tenders are launched for complex and high value contracts. A comprehensive regulatory framework would require development and introduction of separate and complete standard tender documents for the three main goods, works and services as well as for specialized sectoral procurement and with suitable and balanced terms and conditions.

			according to the List of goods, works and services approved by the Authorized body in case of two stage tender. This list is not available. Stage one is used to screen out the bidders who do not comply with the procuring entity's requirements (128 PPR). The PPL also provides for open tender with prequalification, as stipulated in the PPL (Article 31) and detailed in the Procurement Regulations (clauses 184-220). Recent amendments to the PPL on December 26, 2018 Article 2.4-1) stipulates that from July 1, 2019 of the PPL will define Qualification body, approved by the Authorized body, which is responsible for the "prequalification selection" of the "potential suppliers" and maintaining of the List of		help achieve the objective of prequalification which is to prequalify suppliers and contractors for complex and high value contracts to make the procurement process more efficient and effective. Except for the light and furniture industry there are no specific sectoral standard tender documents for specialised/sectoral procurement such as ICT goods, information systems and services. PPL does not provide for any civil society role during the procurement process		Strengthen general confidentiality clauses provisions and introduce appropriate procedures to manage specific confidentiality clauses Improving the quality and performance of the country public procurement system would require further development of sustainability and rated evaluation criteria Include appropriate provisions in the PPL and Regulation that incentivise contractors for better performance.

			“prequalified suppliers.” In all procurement methods but specifically in open tender bids eligibility, qualifications and experience of a bidder are examined before bid prices are opened and considered. Article 9 of the PPL requires that potential bidders must have legal capacity (firms), Civil capacity (individuals), solvency, not subject to bankruptcy or liquidation proceedings, required relevant materials and labour resources, and work experience. Recent amendments to the PPL on December 26, 2018 has introduced a provision that in case of equal bid prices after discounts, the winner will be identified as the one with the highest tax payments amount in Kazakhstan for the previous four years. This tax payments amount is available		(discussed further in indicator 11) The lack of provisions to safeguard and protect confidentiality of sensitive commercial information submitted by bidders to support their offer is a substantial gap and a serious reputational damage to the public and private sector trust in the ability of the current public procurement system to secure and protect confidentiality of the information of proprietary nature or commercially or financially sensitive contained in the bid. The evaluation system using		

		(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	through the information system of the state revenue authority (para 172 PPR). (b) A specific standard tender document exists which is separately used in open tenders for each procurement category, goods, works and services. These standard documents are annexed to the Regulations and are used in practice in the web-portal. There are no specialized sectoral standard tender documents.		conditional discount techniques for non-price criteria or additional qualification appears not appropriate compared to the technique of weightage of technical and financial requirements and may not lead to value for money. Criterion partially met. Sustainability conditions should be included as contract conditions Absence of incentives for better contract performance limits contractors their efforts to		

		(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	However, for furniture (table, cabinet, coat-hanger, ect) and light industry (kitchenware, gloves, bed sheets, ect) simplified specific tender documents are developed and published on the web-portal as mentioned in 1 (e) (b). Given that the public procurement system is electronic, broad participation of interested bidders is encouraged, especially domestic bidders. (c) The procurement web-portal as currently used allows to select, document procurement methods at the planning stage as well as any modifications and justify at the final stage, especially for the single source, and in accordance with the provisions of the PPL (article 13 and Chapters 4, 5, 6, 7). – In cases involving		required performance. Criterion met.		

		(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed. (e) Throughout the bid evaluation and award process, confidentiality is ensured.	Single Source (Article 43 clause 4) there is no requirement of concluding a public procurement contract through the web-portal. (d) Information on the procedures for bid submission, receipt and opening are all provided in standard procurement documents, integrated to the web-portal. Bid submission, receipt and opening are done automatically/electronically with a high level of transparency. However, civil society's role in bid opening process is almost absent. (e) The electronic procurement system has built-in mechanisms to ensure confidentiality. In open tenders, received and opened bids, after evaluation, are made available to the other		Criterion met. Criterion partially met.		

			participating bidders. The latter have access to all the content of the bids of their competitors including any sensitive/strategic/technology innovation confidential information. This is not in line with international practice and the corresponding requirement for safeguard of confidential information provided any bidders to support their offer. It was reported during the assessment that this practice has seriously undermined the thrust if the confidentiality of the system and has led to a situation where some bidders will “copy” proposals of their competitors in subsequent similar tender processes.				
		(f) Appropriate techniques are applied, to determine best value for money based on the	(f) The PPL provides for some non- price				

		criteria stated in the procurement documents and to award the contract. (g) Contract awards are announced as prescribed.	criteria (Article 21.4). The Regulations (Article 162-166) indicates some techniques to evaluate these no price criteria in the form of conditional discounts in accordance with the criteria provided for in the tender documentation (Articles 153 -166). The bidders whose bids, after bid opening, have been determined to have met, qualification, experience, technical and other requirements as specified in the tender documents, get their prices discounted for offering experience, certificates, etc. additional to the requirements. (g) All contract awards are announced on the web-portal as prescribed in the PPL and Regulations except for contract awards SS procured		Criterion partially met. Criterion partially met.		

		(h) Contract clauses include sustainability considerations, where appropriate. (i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance. (j) The selection and award process are carried out effectively, efficiently and in a transparent way. *	under the current legal framework are not announced in the procurement web-portal. As per Article 43 of the PPL, contracts awarded following the single source method situations provided for by Clause 3 of Article 39 and Article 50 are not conducted in the web portal and hence the award decisions are not posted in the web portal. (h) Current Contract conditions do not include any sustainability considerations. (i) Contract conditions do not include incentives for exceeding performance levels but sanctions for poor or non-performance are included. (j) Although not all state public procurement governed by the PPL is conducted through the procurement web-portal, the use of the latter has		Criterion not met. Criterion not met.		

			contributed to improve transparency and competition. However, the analysis of the assessment of quantitative indicators below reveals some key issues with respect to the performance of the system in terms of effectiveness and efficiency.				
		*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j): - average time to procure goods, works and services number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) Source for all: Sample of procurement cases.		Based on the analysis of a sample of 150 contracts (goods, works and services) procured under competitive process: • average time to procure goods, works and services is 56 days. This average number compares to relatively satisfactory	Assessment of quantitative indicators revealed a serious performance issue of the implementation of the current public procurement framework in terms of effectiveness and efficiency of procurement processes following open tender. This is illustrated by the very high ratio (68%) of failed processes which paved the paths for an additional use of non-competitive		Review of the current provisions to address the root cause of identified poor performance of the PPS

				y with international best practice and support achievement of efficiency principal under the PPL mainly due to introduction of e-procurement system. • average number of bids that are responsive is 3 (50%.) • share of processes that have been conducted in full compliance with publication requirements is 100%.	methods such as single source		

				• For year of 2017 and out of 206,175 total procurement processes: - Successfully awarded 66,745 that is 32% - Failed 113,462 that is 55% - Cancelled – 25,968 that is 13% Awarded within defined time frames- 62,765 that is 94%. 32% only of all processes under open tender lead to contract award. As			

				per PPL this allows failed and canceled processes (68%) to apply non-competitive methods such as single source Source: 1. sample of 150 contracts selected from the web-portal, E-Commerce Centre;			

			3 steps to assess each sub-indicator				
Indicator	Sub-indicator	Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	9(c) Contract management	(a) Contracts are implemented in a timely manner. * (b) Inspection, quality control, supervision of work and final acceptance of products is carried out.* (c) Invoices are examined, time limits for payments comply with good	(a) Supporting analysis of the assessment of qualitative indicator is provided below. (b) The Law on Public Procurement does not regulate contract management in terms of inspection, quality control, job control, except for signing and amendments for contracts. Final acts of acceptance of products requires electronically under the Article 43.26. The role of the expert commission, created for a specific tender in accordance with the PPL, if needed, is limited to the preparation of an expert opinion on the compliance of applications of suppliers of the technical specification. (c) The PPL and Regulations provide for obligation of customer executives verify invoices,		Criteria a) to g) partially met. The current public procurement legislative and regulatory framework has insufficient focus on contract management procedures, tools and performance monitoring indicators. This is a substantial weakness of the current system, and its negative impacts are illustrated in the results of analysis of the assessment of the quantitative indicators below The absence of a system to regularly analyse the procurement data		Moving the country public procurement system to the next level in terms of quality and performance would require the strengthening of the contract management, legal, regulatory, technical and procedural tools, and performance measurement aspects and practises Attainment a better and systematic monitoring and assessment of the performance of the country's public procurement system would require an efficient mechanism public procurement of data collection and analysis on a regular basis to inform GoK on the performance of the system; deciding corrective actions, and share results with all concerned stakeholders , including citizens.

		international practices, and payments are processed as stipulated in the contract. (d) Contract amendments are reviewed, issued and published in a timely manner.*	completion/delivery certificates before submitting them to the Treasury or bank for payments. All contracts of customers who are state institutions must be registered with Treasury. Accordingly, payment invoices for contracts not registered with the Treasury are not available. Some of the stakeholder's interview informed of occurrence of some delays in payments. At the same time, there is no requirement to register contracts for customers who are not state institutions (SOEs) and operated through banks (not Treasury). (d) Article 45 of the PPL provides grounds for contract amendments. Contract management being the responsibility of a customer, the department assigned this responsibility issues contract amendments in accordance with contract provisions. The PPL, however, makes it clear that contract amendments		collected by the web portal and use the results of these analysis for informing different parts of the government especially those responsible for taking mid-course corrective actions is a missed opportunity Involvement of the civil society and citizens positively impact performance of public procurement as these stakeholders can play external oversight role over efficiency and effectiveness of benefits of public private reaching the citizens.		Enhance the involvement of civil society and citizens in public procurement planning, management and monitoring of outcomes

		(e) Procurement statistics are available, and a system is in place to measure and improve procurement practices.	shall remain within the approved budget allocation for a contract. All amendments to the contracts are published and available on the web-portal in the register of contracts. (e) PPL Article 19 requires authorized body to issue annual public procurement report. In May 2018, the web-portal implemented statistics functionality for web-portal participants, annual procurement plans, contracts and complaints. Also, in the "Reporting" section of the web-portal home page there are statistics of annual plans and statistics of annual volumes of purchases in terms of methods. However, the web-portal does not include and post procurement statistics to the following : (i) procurement of goods, works and services permitted under single source method cases				

		(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.	provided for by Clause 3 of Article 39 and Article 50 and which are not conducted through the web portal, and (ii) procurement statistics related to the key steps of two stage tendering procedure that are conducted off the e-procurement system. Furthermore, even though the web portal collects procurement statistics, it is not systematically used to measure performance of the public procurement system. (f) The key stakeholders including the procuring entity, supplier, the authorized body, including committee on internal audit, which deals with complaints, have opportunities for direct involvement in public procurement. However, such opportunities are not adequately afforded to and used by civil society and citizens.				

		(g) The records are complete and accurate, and easily accessible in a single file.*	(g) All procurement records are maintained on the web portal and are secure and accessible to all interested parties. Some procuring entities maintain hard copies of procurement records.				
		// 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 %) Source: Sample of procurement cases* Recommended quantitative indicators to substantiate assessment of sub-indicator 9(c) linked to different assessment criteria above as follows: • For assessment criterion (a): time overruns (in %; and average delay in days)		Based on a sample of 150 contracts (goods, works and services) procured under competitive process: - share of contracts with complete and accurate records and databases is 100%. It is to mention, that the information for payments is not currently accessible for public for all contracts (a) The sample of 150 selected contracts showed the time overrun. Average delay is 61 days for 150 sampled contracts with overruns. This indicator supports the findings on the weakness of contract management procedures and practice. This indicator supports also the findings on	The deficiency of the contract management practice is being assessed as a substantial gap given its impact on obtaining value for money and timely achievement of the procurement objectives and corresponding GoK efficient service delivery goals. This indicator supports the finding that no or insufficient involvement of civil society in the process of procurement planning, procurement process management and monitoring of		

		• For assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %) • For assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).		the poor performance of the public procurement system particularly in terms of efficiency and value for money (b) quality-control measures and final acceptance are carried out as stipulated in the contract in 100%. However, the current web-portal does not capture all milestones for contract management stages. (c) invoices for procurement of goods, works and services are paid on time in % of total number of invoices. The assessors faced a limitation of data availability for analysing this indicator. The procurement web-portal does have data on e-invoices submission and the steps of e-invoice management except the actual date of the e-invoice payment. As the	contract managements and outcomes		

		• For assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %) • For assessment criterion (f): percentage of contracts		actual payment is done by the Treasury, appears that the integration of this element between the Treasury and public procurement web portal. The assessors have tried to approach this indicator from based on few contracts within the 150 contracts sample. The indicator on the timely payment of invoices has been assessed to be around 71%. (d) contract amendments are 66.7% out of total number of contracts; Average increase of contract value is 3%. This average is within the commonly recognized satisfactory ratio (15% or less) (e) based on the sample there is no evidence of direct involvement of civil society in			

		with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.		planning phase; bid/proposal opening; evaluation and contract award, and contract implementation.			
10. The public procurement market is fully functional	10(a) Dialogue and partnerships between public and private sector	(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.*	(a) The Government does encourage open dialogue with the private sector especially through the National chamber of entrepreneurs "Atameken" and industry associations, IT companies, NGOs, etc. Recent amendments to the PPL on December 26, 2018 has introduced a provision which assigned the Authorized body responsible for the integration of the government procurement system with NCE Atameken information system (Article 16.11-1)). It also consults them on changes to the public procurement system, including laws and regulations. Such consultations are done in the form of public hearings. MoF did post		Criteria a) and b) partially met. NCE could strengthen further its role in improving the framework and in ensuring continued capacity building to its members. A better-informed private sector contributes to the efficiency and effectiveness of a public procurement system. There is room for improvement for partnership with private sector to enhance its capacity to participate in government tenders.		NEC, alone or jointly with MoF, to develop and launch a program of procurement training of private sector contractors and service providers of goods, works and services in availing themselves of government business opportunities through quality participation.

			on its Ministry web site the minutes of the public hearing of the draft amendment to the current PPL and held a public hearing in October 2017. The web site of the Kazakh Parliament has also posted the same project amendment of the PPL under the section project of laws. However, this participation appears to be relatively selective as being based on the Public Council Law which regulates the composition of such public forum and the designation of the professional associations that are authorized to participate in the subject matter dialogue and consultations. Recent amendments to the PPL on December 26, 2018 has introduced a provision that from July 1, 2019 Atameken will participate in development “prequalification suppliers List” (Article 31.2)				

		(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.	(b) The government has very few programs to build private sector's capacity to participate in public procurement. E-Commerce Centre provides set of trainings, mostly technical. However, NCE Atameken through its headquarters in Astana and branches in all regions organise training seminars and makes its services available to its members via the internet, telephone, etc. All businesses, including foreign ones based in Kazakhstan, requires by law to become a member of the NCE Atameken. NCE Atameken closely collaborates with the government to protect the interests of its members.				
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of openness and effectiveness in engaging with the private		Based on Survey Results, it can be concluded that about 54% of responses confirmed that the government does not consults with private sector before making changes in the legislation			

		sector (in % of responses). Source: Survey.		and regulations in procurement Around 83% responded that in a varying degree the government consults with private sector before making changes in the legislation and regulations in procurement.			

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)		
	10(b) Private sector's organisation and access to the public procurement market	(a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts. *	(a) For the last two years the overall number of active private sector companies has not dramatically changed. According to the official statistics currently, there are private sector comprises of about 1.1 million (1.145.994) active companies compared to 1.2 million (1.185.163) in 2016. However, number of active small companies increased by 3.6% in 2017 as against 2016 (208.742 in 2017 and 189.637 in 2016). This shows that the private sector in		Criteria a) and b) partially met. The findings of the assessment of the quantitative criteria in Pillar I, indicator 1(d)(b) show that 99.7% of procurement participation and contract award went to local market (contractors, suppliers, and consultants. Also, the systemic constraints discussed in Step 1 may be affecting private sector access to procurement market as is evidenced by average number of bid received (2 to 3) per tender, and in higher prices that the GoK might be paying for fulfilling its needs in goods, works and services. However, the assessment shows also that almost 100% of		Remove/resolve the constraints discussed in Step 1.

		(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.	the form of small companies is growing in Kazakhstan, although not in proportion and quality to the government's needs for goods, works and services as shown by the average number of bids received. Nevertheless, the private sector plays a vital role in meeting government procurement needs. As the results of ongoing GoK efforts, private sector's access to public procurement market has improved particularly through some measures such as streamlined tender procedures and the early engagement with potential market and bidders		procurement opportunities and corresponding contracts went to local private sector firms.		

			through public discussion of draft tender documents. Nevertheless, the private sector continues to face systemic constraints such as the difficult conditions of access to financing and the lack of the local banking system incentives towards development of SMEs • The procuring entity's lack of know-how in specifying its needs and Use of old technical standards • Budgeted contract prices with a fixed ceiling offered by the procuring entity not consistent with the prevailing market prices • Excessive use of the single source method for goods, works and services. • In many cases the Government does not allow advance payments under				

			the contract. However, recent amendments to the PPL on December 26, 2018 has introduced a provision that advance payment is allowed for the contracts with design and estimate documentation up to 30%. The supplier should provide bank guarantee on advance payment amount. • The private sector participants have inadequate capacity to prepare good quality bids.				
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a): • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are		10(b) (a): • number of registered suppliers as a share of total number of suppliers in the country is 50%. • in 2107 share of registered suppliers that are participants and awarded contracts is 40% of total number of registered suppliers. • in 2017 total number of contract that went to domestic firms is 81,040 that is 99.9% of total contracts. The value	Based on results of survey, need for all procurement through web-portal and one rule, organizer of public procurement to follow rules of timing for every procurement steps, changes to procurement framework difficult to follow by private sector, lack of training from the government,		

		participants and awarded contracts (in % of total number of registered suppliers) total number and value of contracts awarded to domestic/foreign firms (and in % of total) Source: E-Procurement system/Supplier Database. * Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.		of these awarded contracts is KZT 1,932,768 mln (equivalent of US\$ 6 bln) The total number of contracts awarded to foreign firms is 22 corresponding to 0.1% in number and 0.3 % in value (KZT 6,194 mln equivalent of US\$ 16 mln). These two indicators support the assessment findings in Pillar I, indicator 1(d)(b) that the requirement of the Public Procurement web-portal for physical presence in Kazakhstan of international potential bidders to obtain digital signature certificate for participation in a tender, contradicts with the PPL provisions on eligibility. Therefore, it restricts competition and does not enable achievement of value for money. Due to constraints faced by foreign bidders in obtaining a digital signature this could be construed as a barrier to participation. Source: procurement web-portal, MoF https://goszakup.gov.kz/en/registry/supplierereg) 10 (b) (b) Based on results of private sector Survey on presence of good market conditions for the private sector to participate in public procurement it can be concluded that about 52% of responses still find that the changes to the procurement framework difficult to follow	division of contracts into lots (70% respondents identify that it violates public procurement rules and 80% believe that it is not a fair distribution of risk , non-timely acceptance of goods, Internal Audit Committee not always provides a legitimate and fair response to complaints		

				95% out of all respondent's experience difficulties in following up on changes in the procurement framework. Notification system should be improved and personalized by industry. Governmental/public information should be freely available for any interested party. Information should not be conditionalized by selected companies which provides support in public procurement to less experienced once More than 53% of responses really have not the resources to keep up with the changes made to the legislative framework 58% of responses do not know about any program in training private sector to help in keep pace with procurement reforms • None of the respondent's comments identified the government as a provider of the training programs on changes in procurement. • NCE Atameken and other providers identified as training providers by 33% of the surveyed suppliers. • However, almost 70% does not know of any trainings. Why more than 2/3 of the respondents do not know about this opportunity? Lack of advertisement and/or lack of initiative from the private sector. Is it easy to get aware about these trainings? Participation fee, content It can be concluded that more than 70% of responses are not aware about capacity			

			building programs being run by the government for private contractors and for SMEs 30% shows that such programs do exist. However, why 70% does not know? Lack of information/resources/interest from the private sector. This 70% of companies could become more competitive if they get aware and attend capacity building programs for SMEs (Same could be applied for the conclusion above on the training programs on reforms in procurement) About 72% of responses have not ever participated in such a program or training or information session Competitive advantage for those companies which participated According to the answer above, 30% which knows about capacity building programs, but 28% which actually participated. So 2% knows, but does not participate It can be concluded that the condition on the public procurement market is the least (19.7%) that the contracting provisions help to fairly distribute risks (specifically those risks associated with contract performance). The degree of compliance with all other conditions on the public procurement market exceeds 31%, except for the condition of division contracts into lots, which is 59%. Except Risk distribution and Division into lots conditions, by each condition 70% of the respondents identify that such			

			condition does not met in the public procurement, another word, which believes that the conditions as violates. For the fair risk distribution, the percentage even higher – 80% Regarding What conditions should be improved regarding the conditions in the public procurement market as far as private companies / bidders are concerned? Regarding improving the conditions in public procurement market, the relevant answers on the open text questions are the following: • Revise and improve value for money criteria • Introduce responsibility of customers for payment period, incorrect submission of specifications to the web-portal, non-timely acceptance of goods and for late delivery of invoices and signature of acts • Procurement organizer should always follow the rules of timing for every procurement step, including publication on the web-portal • Corruption • Provide an advance payment for manufacturers of domestic goods • All procurement should be carried out through electronic system under one legislation, no procurement under separate laws • Honest distribution of risks associated with the implementation • Transparency			

				Qualified consideration of complaints. The Internal Audit Committee does not always provide a legitimate and fair response to complaints that higher authorities is required.			
	10(c) Key sectors and sector strategies	(a) Key sectors associated with the public procurement market are identified by the government. (b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.	(a) There is no formally identified key sectors. . A preliminary move towards having identified key sector is being considered such the ICT under AVAS 1000. (b) It appears that risks that placing all the key sectors in Samruk Kazyna poses to sector markets have not been assessed by the government; nor has it assessed the opportunities it would create to require Samruk Kazyna to adopt more procurement competitive procedures and fair access the local qualified private sector players to their procurement		Criteria a) and b) partially met. In the absence of a risks/opportunities assessment, the GoK may not be informed of the negative impact of the lack of enhanced, quality and performing procurement system of Samruk Kazyna and /or the implication of its exclusion from the application of the PPL. Under the recent amendments to the Law on December 26, 2018 procurement of all SOEs will be regulated by unified rules approved by the Government, SK is excluded form this and will continue to use its internal rules.		Carry out an assessment of risks and lost opportunities for the sector procurement market because of the exclusion of Samruk Kazyna from the PPL.

			opportunities.				

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

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
11. Transparency and civil society engagement foster integrity in public procurement	11(a) Enabling environment for public consultation and monitoring	(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	(a) According to the Law on Legal Acts and the Entrepreneurship Code, participation of representatives of the National Chamber of Entrepreneurs of the Republic of Kazakhstan and accredited associations of private business entities is mandatory in the development of normative legal acts affecting the interests of private business entities. Based on interviews with NCE "Atameken" representatives,		Criteria a) to c) partially met. PPL, Regulations and related legislation do not provide direct and sufficient level of civil society involvement in public procurement		Capacity building for CSOs and NGOs in monitoring public procurement should be established. The PPL, Regulations and other related legislation would need to provide for fair level of public oversight and monitoring of Kazakhstan public procurement system functioning

		(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor	the Chamber members had an active role in consultation process. However, interviews with representatives of CSOs and NGOs showed that their participation is minimal. In addition, NCE “Atameken” represents interest of the private sector As mentioned in sub-indicator 10 (a) (a) resent amendments to the PPL on December 26, 2018 instructed from July 1, 2019 Atameken will participate in development “prequalification suppliers List” (Article 31.2) (b) Except for Atameken’s activities, no such programs exist.				and performance. Deep involvement of civil society with public oversight institutions would advance overall social accountability e.g. prior to large scale or environmentally and socially sensitive procurement

		and improve public procurement. (c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	(c) There is evidence, that Atameken's comments and feedback is taken account. However, no such evidence as regards to CSOs and NGOs.				
	11(b) Adequate and timely access to information by the public	(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	(a) All the documents related to public procurement legislative and regulative framework in Kazakhstan fully and freely available in the web-portal. All stakeholders have adequate and timely information on the procurement process at any stage as described in 7(a). Government procurement plans, tender opportunities, and contract awards are all published on-		Criterion partially met. Specific data research and collection require time and effort. The data on the resolution of complaints does not include the details of the individual complaints results, while the annual statistics provide no breakdown as between goods, services and works (PEFA 2018). Absence of data on overall public procurement expenditure in the country		The E-procurement system's statistical query function could be strengthened to enable research and access to aggregated data which should be based on complete information on public procurement expenditure in the country using public funds

			line. E-procurement system and the web portal provide adequate and timely access to information to the public and potential bidders. However, specific data research and collection require time and effort. PEFA report (2018) also notes that data on resolution of procurement complaints does not include the details of the results individual complaints, while the annual statistics provide no breakdown as between goods, services and works. Further as described under Indicator 7 e-Procurement covers 29% of overall public procurement expenditure				Data on the resolution of complaints could include the details of the results of individual complaints

	11(c) Direct engagement of civil society	(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).	(a) PPL Article 4 lists transparency and openness as one of the procurement principles. • Planning phase – PPL does not provide citizen engagement at the planning stage • Bid/proposal opening – PPL and the Regulations have no specific provision on the opening since opening done automatically and the legislation was revised to reflect electronic nature. Citizens are not involved to the bid/proposal opening procedure, evaluation and contract award as observer. However, PPL art. 28 provides for publishing of tender results on the web portal. • Evaluation and contract award (observation) - PPL and the Regulations have no specific provision on the		Criteria a) and b) partially met. The PPL and Law “On Public Councils”, does not include specific provisions on control and monitoring over public procurement. Public Councils are also criticised by civil society representatives as being restrictive and non-transparent when it comes to the composition and selection of members. There is scattered evidence of direct participation of citizens in procurement processes through monitoring. Examples include sporadic civil society reports and press items, that provide basic analysis of publicly available information on public procurement. No consultation with public in the planning process e.g. prior to large –scale or environmentally and		The legal/regulatory and policy framework needs to be improved to allow citizens to participate in different phases of a procurement process, as appropriate. Following regulatory changes, e-procurement system needs to be upgraded to allow for direct participation of citizens in procurement processes through consultation, observation and monitoring in particular in planning process prior to large –scale or environmentally and socially

			observation of the evaluation and contract awards. Citizens are not involved to the evaluation and contract award as observers. Contract management and completion (monitoring) – as mentioned in Pillar 1 1(i) the PPL does not provide requirements for contract management. However, PPL art 22 provides for interested potential bidders hearings for technical specifications to be used and conditions of the forthcoming tenders in the planned tenders. Such hearings however include only potential bidders, no special provision for civil society There is no special provision for civil society engagement in procurement processes. The Law on Public Control was		socially sensitive procurement. Citizen's not officially involved in monitoring of performance and contract completion, for example through the application of innovative techniques such as geotagging or in the context of social audits		sensitive procurement and in application of innovative techniques such as geotagging or in the context of social audits.

		(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.	originally planned to be developed as part of implementation of the Anticorruption Strategy 2015-2025. It was then replaced by the Law "On Public Councils", which does not include specific provisions on control and monitoring over public procurement. The Agency of Civil Service and Anticorruption implements a Project "Citizens' control", under which a conference "On the Results of Monitoring Public Procurement of Local Government Authorities for Overstating Procurement Prices" was conducted in 2017. (b) There is limited evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring				

12. The country has effective control audit systems	12(a) Legal framework, organisation and procedures of the control system	The system in the country provides for: (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies.	(a) The country's laws and regulations overall provide for a comprehensive control framework.		Criterion partially met. Having the functions of External Audit (SAI) and Internal Audit as well as the Financial Control (financial inspection) in a single law ("Law of the Republic of Kazakhstan on State Audit and Financial Control",) to some extent duplicates functions and creates certain lack of clarity between the proper segregation of roles and functions between the external and internal audits as well as financial control (inspection). While the main objective of the external audit (SAI) should be expressing an opinion on the government financial statements, the internal audit is designed to add value and improve organizations' operations (including risk management, control and governance processes).		It is recommended to consider a possibility to gradually move to having separate laws on public sector external and internal audits in compliance with international good practices.

		(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	(b) The PPL establishes that the compliance with this law is controlled within the powers established by the “Law of the Republic of Kazakhstan on State Audit and Financial Control” of November 12, 2015 #392-V (hereinafter referred to as the Audit Law), according to which the controls are carried out by responsible public external and internal audit and control bodies. Unlike in generally accepted practices, the internal and external public		Unsegregated of roles and functions between the external and internal audits as well as financial control Criterion met.		

			audits as well as financial controls are covered by a single law. The institutions, policies and procedures as defined in the Law are in place and operational. The Audit Law stipulates that the system of state audit and financial control includes External and Internal audit and control agencies as following: External Audit and Financial Control: (i) Accounts Committee for Control over the Republican Budget Execution (the country's Supreme Audit Institution) as the supreme financial control body (Accounts Committee), (ii) Revision Commissions at local level				

			(regions and cities), Internal Audit and Financial Control: (iii) authorized body for Public Internal Audit, and (iv) Internal Audit Services (hereinafter referred to as IAs) of central state bodies (e.g. line ministries), local executive bodies of regions and cities. According to the legislation, the authorized body on Internal Audit bears the key responsibility for compliance audit, including compliance with the Public Procurement Law, and for desk/online reviews, that mostly cover compliance with procurement procedures. It should be noted that large portion of				

			procurement audits are conducted through desk/online review of the web-portal by the staff of the Committee of the Public Internal Audit of the MoF. The authorized body for Public Internal Audit is the Ministry of Finance (the MoF) and is represented by the Department of Methodology of Accounting and Auditing of the MoF, and The Committee of Internal Public Audit of the MoF. The latter (previously known as Financial Control Committee) is responsible for (i) coordination of IAs activities and control over compliance of IAs with the				

			standards and code of conduct of internal audit and financial controls, (ii) provision of methodological and consultancy supports to IAs; (iii) analysis of IAs reports; and (iv) evaluation of effectiveness of IAs. In addition, it is the only public internal audit body that is authorized to conduct unplanned audits/reviews of complaints received, including procurement related complaints. . The existing control framework overall adequately covers procurement operations, meanwhile it should also be noted that in				

		(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	practice public procurement audit is conducted as part of the compliance and performance audit but not separately. (c) The internal control/audit mechanisms are in place, including proper reporting to management on compliance, effectiveness and efficiency are in place. The overall basis for internal control system over budget expenditures are established by the Budget Code identifying the controls during budget preparation and execution processes, expenditure classification framework. The Budget Code also outlines the accounting and		Criterion met.		

			financial reporting systems for public bodies, and specifies the use of Treasury Single Account for budget execution. It should be noted that there are specific internal controls that relate to procurement, including those exercised via authorization and approval mechanisms as well as monitoring via procurement web-portal. As for the internal audit and reporting on that, those on procurement are not separated. It should be noted that while controls exercised are adequate for risk mitigation, those sometimes result in longer				

		(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	decision-making processes. (d) While the Accounts Committee as the Supreme Audit Institution (SAI) is charged with responsibility to conduct procurement audit as part of the compliance and performance audit, as confirmed by SAI, it is mainly performed by the Committee of Internal Public Audit of the MoF as desk/online review. Decisions on whether to include procurement procedures as part of field compliance and performance audits is taken on the risk-based approach.		Criterion met.		
		(e) review of audit reports provided by the	(e) Audit reports prepared by the		Criterion met.		

		SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	Accounts Committee are subject to quarterly review by the Parliament in compliance with the article 44 of the Audit Law. Requirements of the Legislature, reflected in the Resolution of the Government on Approval of the Reports of the Government and the Accounts Committee, are mandatory for implementation and have the status of laws.				
		(f) clear mechanisms to ensure that there is follow-up on the respective findings.	(f) Implementation of recommendation s is monitored permanently. In some cases, special meetings of working groups, or so-called “hours with the Government” are conducted.		Criterion met.		

	12(b) Coordi nation of control s and audits of public procur ement	(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	(a) The internal control system over budget expenditures is established by the Budget Code identifying the controls during budget preparation and execution processes, expenditure classification framework.		Criteria a) to d) are met.		

		(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.	Those are also detailed in Rules of the Ministry of Finance on Budget Execution and Cash payments dated December 4, 2014. (b) There are no separate procedures or manual for state procurement audit. The procedures/standards for compliance and performance audits are described for external public audit and financial control in the Rules on External Public Audit and Financial Control and Procedural Standards for External Public Audit and Financial Control approved by the Normative Decrees of the Accounts Committee and Rules for Public				

		(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are compiled with.*	Internal Audit and Financial Control approved by the Decree of the Government. These documents refer to Financial and Compliance Audits, the Performance audit standards and norms are being developed at the moment. (c) Audit, both internal and external, is conducted based on the List of Entities to be Audited that is prepared on the assessed risks basis annually. Thus, it can be the case that an audit of one and the same entity can be conducted once in several years, unless it is assessed as a risky one. However, the Committee of				

		(d) Clear and reliable reporting lines to relevant oversight bodies exist.	Public Internal Audit of the MoF has the right to conduct unplanned audits/reviews based on claims or orders received. (d) The Law prescribes clearly the reporting lines of internal and external audit. The Internal Audit function is reporting to the Government, while the External Public Audit is reporting to the legislature and the President. The PEFA 2018 suggests a score of “A” for PI-25 on internal controls over non-payroll expenditures.				
		* Recommended quantitative indicator to substantiate		From a strict definition of specialized procurement audits, exclusively compliance			

		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.		and performance procurement audit, the ratio is zero (0%) However, considering the regulations requirement, desk reviews by the Internal Audit Committee cover 100% of procurement transactions The report of the Accounts Committee on the Key Results of the Accounts Committee for 2017 were only 1% of files found to be non-compliant (compare to 4.2% in 2016), although the number of audited objects increased by 38 in 2017. The PEFA for Kazakhstan 2018 states that: “the fact that two-thirds of the financial violations found in 2017 had already been subject to recovery confirms that audit findings are respected and acted upon”			
	12(c) Enforcement and follow-up on findings and recommendations	(a) Recommendations are responded to and implemented within the time frames established in the law.*	(a) Rules for Public Audit and Financial Control approved by the Normative Decree of the Accounts Committee of November 30, 2015, #17-NK require that recommendations provided during public audit are mandatory for execution for all state bodies and		Criteria a and b are met.		

		(b) There are systems in place to follow up on the	officials, to which they are addressed. Such recommendations are communicated in the form of resolutions and orders, with specified deadlines for implementation. Before issuance, audit recommendations and implementation deadlines are discussed and agreed with an audited entity's representatives. All recommendations are included into so-called "control list" of the public audit bodies to be monitored constantly. (b) In the process of implementing recommendations, an entity is reporting on				

		implementation/enforcement of the audit recommendations.	appropriate actions taken and supports this by relevant documentation. Provided information is reviewed by the public audit bodies to evaluate quality of implementation based on completeness, reliability and adequacy of information provided. As soon as a recommendation is found to be implemented completely and with due quality, a decision is taken to remove it from the "control list". Periodic reports of the public audit bodies disclosed on their websites include information on % of implementation				

			of orders and recommendations.				
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.		Over 96% of public external audit recommendations issued in 2017 were implemented timely. The share of internal audit recommendation implementation on procurement was over 92% in 2016 and 2017. Source: PEFA 2018			
	12(d) Qualification and training to conduct procurement audits	(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*	(a) With the adoption of the Law on State Audit and Financial Control, the Accounts Committee as a Supreme Audit Institution took a step-in development of the Curriculum/Program for certification and training of Public Auditors. This		Criteria a) to c) are met.		

		(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by	Program’s modules were initially developed by the Republican State-Owned Enterprise “The Centre for Research of Financial Violations” and later on passed on to the Organization of Education that is authorized to deliver the training and provide certificates. Such Organization is selected on competitive basis and currently it is the Financial Academy. (b) Certification of public auditors takes place in accordance with the Rules of Certification for public auditors approved by the Regulation of the Accounts Committee #22NK of				

		procurement specialists or consultants.	December 15, 2015. It is conducted in 2 sages: (i) testing of knowledge (certification exams); and (ii) interview. After successful fulfilment of both stages, the National Certification Commission, after interviewing the candidates, may issue one of three types of certificate: (i) Public Auditor of Top category; (ii)Public Auditor; (iii) Public Internal Auditor in one of the audit types: audit of financial statement, compliance or performance audit. There are specific work experience and as educational background requirements for the candidates.				

		(c) Auditors are selected in a fair and transparent way and are fully independent.	Unlike public internal auditors, who have narrow specialization and are required to pass only the exam related of their specialization, the Public Auditors are required to pass exams for all types of audit (financial, performance and compliance). (c) The structure of the above Commission is approved by the Chairman of the Accounts Committee and comprises of the 7 members under the Chair of the Accounts Committee Head, also includes the Minister of Finance, members of both Chambers of Parliament and representative of the Presidential Administration.				

			It was noted that no separate module on public procurement, but rather a set of questions on “Law of the Republic of Kazakhstan on Public Procurement” are included into the Compliance Audit module of Certification Exams.				
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution. * Recommended quantitative indicator to substantiate assessment of sub-		Public procurement is one of the modules that is included into mandatory certification of public auditors. All auditors should pass those modules to get a certificate. In addition, in compliance with the qualification requirements for civil servants all public auditors have to take trainings, including that in procurement once in 3 years. Since the Law of State Audit and Financial Control was adopted in 2015, majority of public auditors did not take any trainings since certification. On the other hand, it can be said that 100% of public auditors are trained in procurement as procurement is a mandatory module in the certification and qualification improvement module.			

		indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.					

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
13. Procurement appeals mechanisms are effective and efficient	13(a) Process for challenges and appeals	(a) Decisions are rendered on the basis of available evidence submitted by the parties. (b) The first review of the evidence is carried out by the entity specified in the law.	(a) Article 48.1.4) states clearly that the appeal may be supported with documents confirming grounds for complaint. However, the PPL does not provide clear provisions whether appeal decisions are rendered based on the evidence submitted by the parties. (b) The first review of the evidences for appeal is done by the authorized body which is Internal Audit Committee. It is to mention the according to the PPL amendments		Criterion partially met. Insufficient provisions on supporting evidence for complaints decisions The PPL does not define persons eligible to comply, time frame for complaints on other grounds rather than a contract award. Criterion met.		Clear definition of grounds of complaints and the timing would help to avoid unreasonable and out of time complaints

		(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *	to the PPL on December 26, 2018 adds clarity to the timeliness of filing the complaint. Claim should be filed within 5 days from the day when the decision to award the contract have been posted 10 days are allowed for the review as a desk review according to the Law on Audit. (c) Recent amendments to the PPL on December 26, 2018 in case of disagreement with the Authorized body decision the potential supplier may appeal to the higher authority (Article 47.7). As the result of consideration of the appeal the Authorized body		Criterion partially met.		

		(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.	shall make a decision to either refuse or cancel the results of public procurement. (Article 47.6). (d) PPL stipulate 5 days for file the appeal and 10 business days for the review and answer by the authorised body. Form the interviews follows that this timeframe does not cause the delays in the process. A potential supplier's complaint may be dispatched and then uploaded to the web portal or filed with the authorized body through the publicly available information systems, in accordance with the requirements with legislation of Kazakhstan of		Criterion partially met.		

			electronic document and digital signature using an electronic digital signature which helps to avoid unduly delay the procurement process. Also, the web-portal automatically renews the term of the contract, in case of absence of the authorized body decision in the period established by law. Recent amendments to the PPL on December 26, 2018 has introduced the provision that stipulates the potential suppliers cannot appeal of the tender documentation if there were no comments under the preliminary discussion as described in Article 22 PPL. Also, according to the amendments to the PPL on December 26,				

			2018 only supplier who paid a bid security of the tender may file a complaint related to the tender.				
		// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body. * Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.		13(a) (c) The total number and percentage of the enforced decisions are 4208 and 45.3 respectively between January 1, 2018 and July 3, 2018. Source: web-portal			
	13(b) Independence and capacity of the appeals body	The appeals body: (a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	(a) The Internal Audit Committee (Appeal body) does not involved in any capacity in procurement transactions or in the process		Criterion met.		

		(b) does not charge fees that inhibit access by concerned parties	leading to contract award decisions (Article 16. 5) and 6)) (b) Recent amendments to the PPL on December 26, 2018, has introduced that potential suppliers pay fee for the participation, but there is no additional fee for the appeals submission in its handling the appeals the Committee is not charging any fees		Criterion partially met.		
		(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available	(c) The complaints resolution system is established in the PPL and the Regulations and are available to the public (Articles 47 and 48). Web-portal provides Instructions provides a		Criterion met.		

		(d) exercises its legal authority to suspend procurement proceedings and impose remedies	detailed guidance by: • Suppliers' Manual, namely Filing a complaint (appeal) by the supplier; • Instructions for providing answers to a complaint, suspension of the conclusion of a contract (on the basis of a complaint) (d) The authorized body shall, no later than one working day from the date the appeal has been received, send the customer a notification of the conclusion of the public procurement contract being suspended (Article 47.5). The web-portal automatically suspend the tender process for 10 working days from the compliance submission date. Once the		Criterion met.		

		(e) issues decisions within the time frame specified in the law/regulations*	decision is made the procurement web-portal system automatically cancel the procurement.		Criterion partially met.		
		(f) issues decisions that are binding on all parties	(e) No, there are instances when the Committee does not issue the decisions within the timeframe. However, the authorised body issues decisions in prescribed time for near 95% of complaints once they assigned to the relevant authorised body by remits. (f) The decisions of the authorised body are binding for the parties. The results of consideration of the appeal received the authorized body shall make a decision to		Criterion met.		

		(g) is adequately resourced and staffed to fulfil its functions.	either refuse or cancel the results of public procurement (Article 47.6). (g) The Committee is sufficiently resourced and staffed. This is mainly due adoption of the web-portal for the submission of complaints, issues of decisions and infusibility. However, further capacity enhancement would increase effectiveness of the procurement process		Criterion met.		
		// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c):		13 (b) (e) Complaints data January 1, 2018 till June 15, 2018, including: - Complied with timeframe - 7568 - Not executed within the time line – 149 (less than 2%)			

		- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.		Not responded with in the time line - 155 (less than 2%)			
Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
	13(c) Decisions of the appeals body	Procedures governing the decision-making process of the appeals body provide those decisions are: (a) based on information relevant to the case.	(a) As described at 13 (a) (a) above, each claim should contain general information on the appealing and appealed entities, substance on violation(s) of the public procurement legislation. If necessary, the appeal may be attached with documents confirming grounds for it.		Criteria a to d partially met		

		(b) balanced and unbiased in consideration of the relevant information.* (c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*	(b) Out of 37% of appealing bidders were captured in the survey, 63% believe that system is trustworthy and fair, 62% believed that appeal decisions are consistent. In support of these data following was stated (c) The authorised body suspends the public procurement contract and based on the results of consideration of the appeal received shall make a decision to either refuse or cancel the results of public procurement. Decision of the authorised body could be				

		(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*	challenged in the court of Kazakhstan. (Article 47.8). (d) The PPL and the Regulations do not stipulate time limits for the authorised body for publishing the decisions. All claims, including submitted by hands, their status and decisions are published on the web portal and publicly available. The web-portal provides data on considered claims as "Satisfied," "Partially satisfied," and "Denied." Different filters and colour codes are introduced for selection and analysis				
		// Minimum indicator // *Quantitative indicator to		13 (c) (c)	Identified gaps based on survey:		To improve the perception of the public and large bidders

	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.* 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.* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed;	Complaints data January 1, 2018 till June 15, 2018, including: <table><tr><th>Status</th><th>Number</th><th>%</th></tr><tr><td>Satisfied:</td><td>3801</td><td>44.46</td></tr><tr><td>-fully</td><td>2191</td><td>57.64</td></tr><tr><td>-partially</td><td>1610</td><td>42.36</td></tr><tr><td>Denied in satisfaction</td><td>3957</td><td>46.29</td></tr><tr><td>Submitted</td><td>176</td><td>2.06</td></tr><tr><td>Under consideration</td><td>615</td><td>7.19</td></tr><tr><td>Total:</td><td>8549</td><td>100%</td></tr></table>	Status	Number	%	Satisfied:	3801	44.46	-fully	2191	57.64	-partially	1610	42.36	Denied in satisfaction	3957	46.29	Submitted	176	2.06	Under consideration	615	7.19	Total:	8549	100%	(a) It can be concluded that about 66% of responses felt the decision of the procurement entity was unfair but they did not believe the appeal system was sufficiently trustworthy to embark in an appeal (b) It can be concluded that almost 84% at different degree are not satisfied with the public procurement appeals system Identified reasons for avoiding to file a complaint based on the survey: (a) The decision-making process on the complaint delays, as a result, there is little time to fulfil contractual obligations (b) Corruption. In advance it was known who is lobbying and who is behind. The state body is always "Right." Decisions are not in a favour	community on the complaints mechanism the Authorised body should take more action. Business Outreach with private sector to develop action plan and act upon the suggestions, and to correct the perception
Status	Number	%																										
Satisfied:	3801	44.46																										
-fully	2191	57.64																										
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Total:	8549	100%																										

		decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.			of private companies. All public procurement laws are against an entrepreneur (c) The authorized body does not inspire confidence, as it is guided by opinion and not by normative acts. There is no consistency in the decision-making process, for the same situation two contradictory decisions could be made. (d) The requirements are not clearly spelled out. Risks on the contract are not distributed fairly, the supplier is over liable, while the customer in more comfortable conditions (e) The authorized body does not		

					have the competent employees to monitor the procurement procedure. On required improvement in the challenge and appeals system the Answers on open text are the following in the Survey: - Efficiency, fairness and time of appeal system. Simplification of filing complaints procedure and shortening of the time for consideration of complaints. Clarifications on time - Responsibility for deliberately appealing, which is not constructive and aimed at delaying the decision-making process - Corruption - Competence of employees - Well established judicial		

					system. The authorized body should know that the wrong decision would be appealed at judicial level - Inform suppliers that such a system exists (c) Business representative as a member of appeals body		
14. The country has ethics and anticorruption measures in place	14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties	The legal/regulatory framework provides for the following: (a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	(a) Kazakhstan has ratified the United Nations Convention against Corruption (May 4, 2008), United Nations Convention against Transnational Organized Crime (June 4, 2008), the Council of Europe Convention on Laundering, Identification, Seizure and Confiscation of the Proceeds from Crime (May 2, 2011). Kazakhstan is also part of the "Istanbul Action Plan to Combat Corruption", a sub-regional mutual assessment program launched within the OECD AntiCorruption Network in 2003. Kazakhstan has made		Criteria a) to c) not met Kazakhstan's anticorruption legislation still needs to be improved to fully meet international standards and comply with recommendations of the 3rd and 4th round of monitoring of the Istanbul Anti-Corruption Plan. The definition of Conflict of Interests is not yet in line with international standards, and mechanisms for implementation of norms and sanctions for violations of rules of conflict of interests need to be		Kazakhstan's anticorruption legislation needs to be brought in compliance with international standards, as recommended by 3rd and 4th rounds of monitoring of the Istanbul Anti-Corruption Plan. PPL needs to include definitions of fraud, corruption and other prohibited practices in procurement. Definitions and provisions concerning conflict of interest need to be broadened in line with the recommendations of the 4th round of monitoring of the

			good progress in bringing national anticorruption legislation in conformity with basic provisions of international anti-corruption agreements. However, there are still several gaps that are discussed in detail in the “gaps” section. The public procurement legal and regulatory framework does not include provisions on anti-corruption measures, except for Article 4 that includes prevention of corrupt practices as one of general principles. There is, however, a separate anti-corruption law (Law No410-V of 18 November 2015) which contains definitions of prohibited practices, conflict of interest, and associated responsibilities, accountabilities and penalties:		strengthened. There is also no mechanism to control enforcement of the post-employment restrictions or a cooling-off period. Restrictions with regard to gifts are scattered among several laws and require additional clarification and awareness raising. Provisions for protection of whistle-blowers need to be strengthened. Anti-Corruption Law fails to regulate properly public relations in the area of countering corruption in the private sector. Public Procurement Law does not include definitions of fraud, corruption and other prohibited practices in procurement, and provisions on anti-corruption measures. There is no provision for the cooling off period for former public officials.	Istanbul Anticorruption Plan. Cooling-off period for former public officials need to be introduced.

			Corruption - illegal use of official (job related) authorities and related opportunities by persons occupying a responsible public office, persons authorized to perform public functions, persons equated to persons authorized to perform public functions, and officials for the purpose of obtaining or extracting in person or through intermediaries of property (non-property) benefits and benefits for themselves or third parties, as well as bribing these individuals by providing benefits and advantages; Corruption offense - an unlawful guilty act (acts or not acting) with signs of corruption for which administrative or criminal liability is established by law; In addition, Criminal Code (No226-V of 3 July 2014) includes				

			detailed description of fraud and corruption offences including misappropriation or embezzlement of entrusted property, fraud, different types of economic crimes, misuse of official status, excess of power or duties, unlawful participation in entrepreneurial activity, preventing lawful entrepreneur activities, accepting or offering bribes, official forgery, inaction by the authorities. (Articles 189 (clause 2) of part three), 190 (clause 2) of part three), 216 (clause 4) of part two), 217 (clause 3) of part three), 218 (clause 1) of part three), 234 (clause 1) of part three), 247, 249 (clause 2) of part three), 307 (clause 3) of part three), 361, 362 (clause 3) of part four), 364, 365, 366, 367 , 368, 369, 370, 450, 451 (clause 2) of part two) and 452).				

		(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.	(b) Criminal Code contains provisions for the individual responsibilities, accountability and penalties for government employees. Thus, misuse of official status is fined from 2,000 MCI to 6,000 MCI or punished by restriction of liberty or imprisonment for a term of two to six years depending on the status of a civil servant. The same act carried out in the interest of a criminal group is punished by an imprisonment of four to eight years. Excess of power or duties is fined from 3,000 MCI to 5,000 MCI or punished by restriction of liberty or imprisonment for a term of three to eight years. Receiving a bribe is punished by a fine of 50 to 80 times bribe value or imprisonment for a term of three to seven years with property confiscation and the revocation of the				

			lifetime right to hold certain offices or pursue certain activities. Giving a bribe is punished by a fine of 20 to 50 times bribe value or by imprisonment for a term of up to three to fifteen years with or without property confiscation and with the revocation of the lifetime right to hold certain offices or pursue certain activities. The Criminal Code also contains similar provisions for the individual responsibilities, accountability and penalties for commercial and other organizations in Chapter 9. Definition and provisions concerning conflict of interest are stipulated by the Anticorruption Law and Civil Service Law as follows: Conflict of interest - a contradiction between the personal interests				

		(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	of persons occupying a responsible public office, persons authorized to perform public functions, persons equated to them, officials and their official powers, in which the personal interests of such persons may lead to improper performance of their official functions. In the situations of a conflict of interest civil servants are prohibited from performing their official functions, should take actions to prevent and resolve conflict of interest situations, and should inform their management in written of a potential or actual conflict of interest situation (Art 15 of the Anticorruption Law and Art 51-52 of the Civil Service Law). (c) There is no provision for the cooling off period for former public officials.				

	14(b) Provisions on prohibited practices in procurement documents	(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents. (b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework	(a) Neither PPL nor Anti-corruption specify the mandatory requirement and instructions on how to incorporate provisions on prohibited practices in procurement and contract documents. However, there is only a very limited stipulation in the standard bidding documents/declaration (Appendix 4 to the tender documentation) where the bidder is requested to confirm that (s)he is not in any of conflict of interest situation as defined in in Article 6 of the PPL. (b) The current Procurement and contract documents do not include provisions on fraud, corruption and other prohibited practices. This requirement is not specified in the legal/regulatory framework		Criteria a) and b) not met The legal/regulatory framework does not specify the mandatory requirement for procurement documents to include provisions on anti-corruption. Hence, the current Procurement and contract documents do not include provisions on fraud, corruption and other prohibited practices.		The PPL and standard tender documents should be amended to specify the mandatory requirement for procurement documents to include provisions on anti-corruption.

Indicator	Sub-indicator		3 steps to assess each sub-indicator				
		Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag	Initial input for recommendations
	14(c) Effective sanctions and enforcement systems	(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	(a) Procurement legislation does not contain specific provisions obliging procuring entities to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities. There are, however, established procedures for dealing with such cases. Namely, PPL Article 6 states that prohibited practices specified in paras 1 and 2 of Art 6 can be detected at any stage of procurement, and in that case an authorised body, state audit or financial control bodies should inform the procuring entity of the detected case of a prohibited		Criteria a) to d) not met The register of bad faith suppliers does not include special provisions for corruption and prohibited practices.		A requirement that procuring entities report allegations of fraud, corruption and other prohibited practices to law enforcement authorities needs to be introduced, and a clear procedure is put in place for doing this. - A system for suspension/debarment on the grounds of corrupted acts need to be established - Clear system for suspension/debarment based on corruption convictions need to be established and consistently applied The criteria for bad faith suppliers need to

			practice in 5 working days in written. The PPL Art 27 specifies also that in case of detection of unlawful actions during the ongoing procurement process, the concerned bidder is expelled from the tender process. In the cases when the unlawful action is detected at a contract implementation stage, the contract is subject to suspension until investigation results are issued. Anti-corruption Law also obliges individuals, public associations and other legal entities to report on the facts of committing corruption offenses known to them in the order established by the legislation of the Republic of Kazakhstan (Article 23). State social order on 2016 stipulates that NGOs representatives will record allegation of abuse of power or				include anticorruption provisions

		(b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.	overstated prices in public procurement (b) Law enforcement authorities follow up reports received from the State Internal Audit Committee regarding the detection of prohibited practices specified in Article 6 of the PPL during the contract implementation stage. The PPL does not include any explicit grounds for debarment on the basis of fraud or corrupted act by the company. The same is for Anti-corruption law. However, in case of identifying as a result of the control measures, violations of the public procurement legislation the MoF sends the entity being under control binding instructions and improvement notice to eliminate violations identified after				

			conducting an in-house audit; or applies to a court with an action of invalidation of public procurement contracts that have entered into force and have been concluded in violation of the legislation of the Republic of Kazakhstan, except for public procurement contracts, under which the obligations have been properly executed; 3) suspend transactions against codes and accounts of entities being under control, opened with the central budget implementation authority, as well as against bank accounts (except for correspondent accounts) of entities being under control in the manner prescribed by legislative acts of the Republic of Kazakhstan (PPL Chapter 4, Article 18). When identifying as a result of the control measures the fact of actions (or inactions)				

		(c) There is a system for suspension and /or debarment that ensures due process and is consistently applied.	by the unit under control, that contain the elements of a crime (including corruption), the MoF and bodies for the state audit and financial control shall, within five working days from the date of revealing such fact, provide the information about the commitment of a specified action (or inaction) and the supporting documents of such fact to the law enforcement agencies. (c) The Ministry of Finance runs a black list of companies and individuals, who may be included in it based on fraudulent information provided in the course of procurement procedures, decline of signing public contract upon award or due to poor performance on the signed contracts. The register of bad faith participants of public procurement is compiled based on the				

		(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by	decision of the authorized body to recognize potential suppliers as bad faith participants of public procurement. The suppliers included in the register of unfair participants of public procurement shall not be allowed to participate in public procurement within twenty-four months from the date of entry into force of the court decision on recognition of them as unfair participants of public procurement. The decision to include a potential supplier or a supplier in the register of unfair participants of public procurement may be appealed by them in compliance with the legislation of the Republic of Kazakhstan. (d) Regarding effectiveness of anti-corruption measures percentage of favourable opinions by the public on the effectiveness of				

		application of stated penalties.*	anticorruption measures is: 62.5%				
		* 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.	More than 38% of responses consider that companies are expected to give a gift to secure a contract in the public sector	According to the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, 2,452 corruption offenses were registered in 2017, which is 13% less than in 2016 (2807 in 2016). Of the 1,146 individuals involved in corruption, 828 were transferred to the court, which is 13% more than in 2016. In 2017, 19 heads of central state bodies and their subordinate organizations were exposed, 98 - regional, 152 - city and district bodies			

		- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). Source: Survey.					
	14(d) Anti-corruption framework and integrity training	(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.*	(a) The Legal framework includes: The Anticorruption Law (2015), the Law on Civil Service (2015), the Criminal Code (2014). The policy includes: Anticorruption Strategy (2015-20125), The Action Plan on Anticorruption (2015-2017 and 2018-2021), Annual Anticorruption Report Institutional framework includes: Agency of Civil Service Affairs and Anticorruption responsible for the legislative framework, design and implementation of the anticorruption policy, corruption risks analysis, monitoring of corruption, formation		Criteria a) to d) partially met. Corruption risk analysis is a new mechanism, that has not yet evolved into a systemic measure. (d) no special measures directed at corruption in procurement. These cases are treated as part of general efforts. (e) there are no dedicated training programs on integrity in procurement.		Corruption risk analysis and mitigation should gradually evolve into a systemic measure with public procurement being a regular focus While corruption risk analysis is published, the reports on mitigation of those risks should also be prepared and published online. Anti-corruption framework should include special measures for the detection and prevention of corruption associated behaviour in public procurement Dedicated training program on integrity in

		(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.	of anticorruption culture. Anticorruption Bureau responsible for detection, suppression, disclosure and investigation of corruption criminal offenses • General Prosecutor's Office – • Ethics officers in central and local governmental agencies (b) There is no special mechanism for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle. However, with the adoption of the new Anticorruption Law in 2015, the Agency of Civil Service Affairs and Anticorruption is tasked with performing external risks analysis, including identifying corruption risks in legislation and regulations and				procurement should be developed and conducted on a regular basis.

			corruption risks in operational activities of public bodies, organizations and quasi-state sector. The first external risk analysis was conducted in 2017 when 16 areas (tax, customs, health, education, etc.) were analysed including public procurement. The risk analysis revealed that most common public procurement related corruption risks are: • large share of single-source selection; • absence of transparency in decision-making by tender commissions (observers or independent experts do not participate in the procurement process); • tailoring technical specifications for particular suppliers; • elevated prices; • equal and easy access to procurement documents by potential bidders is				

			not provided properly. 12 risk mitigation plans were approved based on the risk analysis for different governmental agencies. In 2018, the external analysis will focus on vertical analysis of three public functions: public control and oversight, permits' system, public services. Internal corruption risks analysis is conducted by public bodies, organizations and quasi-state sector, and the synopsis are published on the Agency's website http://kyzmet.gov.kz/ru/kategorii/analiz-i-minimizaciya-ustranenie-korruptcionnyh-riskov In 2017, the Ministry of Education, Ministry of Culture and Sport, Emergency Committee of the Ministry of Interior, Kazagro national management holding				

		(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	conducted their internal corruption risks analyses. The results of the risk analyses inform three-year Anticorruption Action Plans. (c) The web-portal “Qamqor” managed by the Committee of Law Statistics and Special Accounts under the General Prosecutors Office provides access to the statistics on corruption-related legal proceedings and convictions. Qamqor.gov.kz The information can be extracted on annual (Form#1) and monthly basis (Form#3). The aggregated statistics is included in the Annual National Anticorruption Report published on the Agency of Civil Service and Anticorruption website http://kyzmet.gov.kz/sites/default/files/pages/nacdoklad_rus-compressed.pdf				

		(d) Special measures are in place for the detection and prevention of corruption associated with procurement. (e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.	(d) No special measures directed at corruption in procurement. These cases are treated as part of general efforts. (e) There are no dedicated training programs on integrity in procurement. There are general integrity training programs offered at the university level and the Academy of Public Administration. There is also 2 hours session on integrity in public procurement and procurement in quasi-governmental sector offered as part of a larger course on integrity for the Corp A officials entering the service for the first time. The first training specifically dedicated to the integrity in procurement is planned for July 2018.				
		* Recommended quantitative indicator to substantiate assessment of sub-	Based on results of survey, <i>it can be concluded that percentage of</i>	<u>EBRD Life in Transition Report 2016</u>: 41 per cent of interviewed Kazakhs think that there was less corruption in 2016 than four years before the survey.			

		indicator 14(d) Assessment criterion (a): - percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.	<i>favourable opinions by the public on the effectiveness of anticorruption measures is 62.5%</i> Based on results of Survey to enhance effective anti-corruption measures, top three priorities by the respondents were as under: • First Priority: - Price should not be the only criterion, rather competency, conformity to certain criteria, experience in similar services - Transparency - Raise the salaries of the government officials so that it would not be interesting to take bribes - Clearer division of powers between ministries and departments - Declarations for suppliers to confirm their compliance with	<u>National Anticorruption Report 2018</u>: Public trust towards state anticorruption policy increased from 52% in 2013 to 57.9% in 2015 and 73.4% in 2017.			

			anti-corruption rules - Rule of law and responsibility at all levels - One web-portal, one rule - Provide information and regular trainings on public procurement and issues related to corruption and how to reduce corruption to private sector • Second Priority: - Conduct training in public procurement for government officials and private sector participants - More flexible procurement mechanisms, depends on the type of procurement and amount of contract - Eradication of paper workflow - Increase quality of tender documentation - Wise and responsible attitude of all parties involved in the process				

			• Third Priority: - Increase effectiveness of communication with interested organizations about changes in procurement legislation - Strong public procurement monitoring - Strong enforcement system - Increase citizens' awareness				

Indicator	Sub-indicator	Assessment criteria	3 steps to assess each sub-indicator			Potential red-flag	Initial input for recommendations
			Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)		
	14(e) Stakeholder support to strengthen integrity in procurement	(a) There are strong and credible civil society organisations that exercise social audit and control.	(a) There is no civil society organisation with the specific focus on public procurement. Some NGOs to different extent monitor public procurement as part of budget execution processes either in specific sectors or on a subnational basis. Government of Kazakhstan is increasingly creating opportunities for the public to participate in decision-making and monitoring of budget execution, including public procurement. Public Councils are seen as the main instrument for civil society organizations to influence governmental agencies' operations, including development of ministerial and municipal budget		Criteria a) to d) partially met. There are no CSOs specialised in exercising social audit and control. This can be in part due to lack of financing for such activities, in part due to the lack of enabling environment. The Law on Public Councils do not include provisions on the Council's role in procurement		consider social orders and special capacity building activities for CSOs and NGOs for exercising social audit and control. Consider extending the functions of Public Councils to procurement monitoring Encourage suppliers and business association to sign the Anticorruption Charter and in cooperation with Atameken consider increasing the Charter's status Explore opportunities of including anticorruption provisions into the Law on Self-Regulated Organizations

			programs and their implementation. Annual reporting meetings of ministers and heads of subnational/municipal governments, or akims, with the public is another opportunity for the civil society to inquire about the agencies'/akimat's spending of public resources. National Action Plan on Promoting Interaction between Non-Governmental Organizations and the State for 2016-2020 includes several activities that promote civil society's active role in anticorruption policy, public monitoring of social projects' implementation, evaluation of social orders. Civil society can also participate in the legislative drafting process using the "Open Legal Acts", whereby they can comment on proposed changes to legislative drafts, including those				

		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.	related to the public procurement system. However, these measures have not yet resulted in meaningful role of civil society organisations as third-party monitors. There are still no clear channels for engagement and feedback in procurement processes. (b) There are only fragmented evidences of civil society attempts to shape and improve integrity in public procurement. Although large volume of procurement information is made available to public, NGO representatives have reported to the Assessors that queries of any information beyond the published data are not satisfied in most instances. The results of monitoring are not taken into consideration or for action by state bodies.				

		(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*	(c) Business associations support integrity and ethical behaviour in public procurement. Thus, NCE “Atameken” established an Anticorruption Council that cooperates with the Agency of Civil Service and Anticorruption and other governmental agencies and quasi-governmental organizations in promoting ethical behaviour and promoting public-private dialogue on anticorruption. On 16 June 2016, NCE Atamaken also adopted the Anticorruption Charter of Entrepreneurs of Kazakhstan which comprises fundamentals and postulates a concept of doing corruption-free business, as well as voluntary commitments aimed at introduction and implementation of additional mechanisms of				

			prevention of corruption. The Charter is open for signing by all companies and business organizations, as well as profile associations. The Ministry of National Economy also adopted a Model Corporate Governance Code for joint-stock companies with state participation. According to Chapter 2 of the Model Code ("Principles of the Corporate Governance of the Company. Definition and Principles"), corporate governance should build upon fairness, integrity, responsibility, transparency, professionalism, and competency. Underlying the Code are the following fundamentals: division of powers, protection of shareholders' rights and interests, efficient governance of the Company on the part				

			of its Board of Directors, sustained development, risk management, internal control and audit, corporate conflict and conflict of interest regulation policy, principles of transparency and objectivity in disclosing information about the Company's operation. The Code is non-binding and was sent to all the joint-stock companies with state participation, i.e. a total of some 757 companies and 600 daughter companies. The system of monitoring includes assessment of corporate governance in accordance with the Methodology of Introduction of Corporate Governance Best Principles and Standards and the Annual Report to the Government on the compliance results. In addition, the National Council on Corporate Governance has been				

		(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*	established with a view to formulate proposals for developing and implementing a unified policy in this area and further improving the system of corporate governance in the Republic of Kazakhstan. (d) The Ministry of National Economy has developed the Corporate Governance Code for joint-stock companies with state participation and about 757 companies and 600 daughter companies are join the document				
		* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil service organisations (CSOs), including national offices of international CSOs) actively providing oversight	Based on results of Survey, <i>it can be concluded that about 85% of responses are not aware of any CSO actively providing oversight and social control in public procurement. Further, there is</i> negative reputation around public procurement created by Mass Media in public minds.	On 16 June 2016, NCE Atamaken adopted the Anticorruption Charter of Entrepreneurs of Kazakhstan which comprises fundamentals and postulates a concept of doing corruption-free business, as well as voluntary commitments aimed at introduction and implementation of additional mechanisms of prevention of corruption. The Charter is open for signing by all companies and business organizations, as well as profile associations.			

		and social control in public procurement. Source: Survey/interviews. * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.	Real examples of corruption at a high governmental level, quality of GWS of public procurement. There is no vision how CSO can help to control/ improve public procurement system. The Results of Survey pointed out following obstacles for CSO participation: • Economic and legal literacy of population should be increased • Absence of civil society or Low social activity • There is no normative framework allowing civil society to be heard • No access to information • Complex bureaucratic system - it requires lawyers' participation; such costs are probably beyond the power of civil	It is envisaged that the Charter should form a basis for the development and adoption of three model Codes (Business Ethics Code; Procurement Good Practice Code; and Corporate Governance Code¹²³), 22 policies and templates (concerning insider information, evaluation of corporate governance, risk management, etc.), and two ratings (the shadow turnover and perception of corruption ones)			

			non-profit organizations • Corruption and impunity for wrong decisions • No interest of all parties in public procurement development • Mistrust No data available on suppliers with internal compliance measures (total number of suppliers in 2017-198,509)				
	14(f) Secure mechanism for reporting prohibited practices or unethical behaviour	(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.	(a) There are several channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour with varied levels of security, accessibility and confidentiality. They include: - by writing to the Anticorruption Bureau (the address is provided on the website of the Anticorruption Bureau)- secure, accessible, but not confidential		Criteria a) to d) partially met. Protection of whistle-blowers is not very effective		Legal provisions for the protection of whistle-blowers should be strengthened The types of cases, where anonymous reports are accepted, could be extended.

		(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	- using E-gov Portal. Electronic signature is required – secure, not accessible to those with no internet access Call-center 1424, which provides free consultations to citizens on anticorruption issues, as well as receives reports on potential corruption cases. The Call-center operates from 9.00 to 18.30 during the working week, from 9.00 to 13.00 on Saturdays. All other calls are recorded. – accessible, confidential, secure (b) Anonymous reports are not accepted, except in cases when such a report contains information about crimes being prepared or committed, or about a threat to state or public security and which is subject to immediate redirection to state bodies in accordance with their competence.				

		(c) There is a functioning system that serves to follow up on disclosures.	The information on this channels is given on the Anticorruption Bureau’s website, as well as at the signboards at the entrance to every governmental office. Information on whistle-blowers is protected by the Law on state secrets. However, according to the reports by civil society organizations, citizens do not fully believe in the protection of their confidentiality and are afraid of informal punishments. There is a system of monetary encouragements of whistle-blowers. (c) Every report received by the Anticorruption Bureau by any information channel is registered in the Bureau’s informational system. The reports are then filtered based on its criminal/non criminal nature. Criminal cases are registered in the Book of Information				

			Records, directed to the respective territorial unit, registered in the Single Register of Pre-trial Investigation, after pre-trial investigation directed to respective bodies or written-off. Non-criminal cases of civil law nature are sent back to the reporter with a respective explanation. Complaints regarding pre-trial investigations are directed to the prosecution. In all cases the reporter/complainant is informed of the decision in written.				
	14(g) Codes of conduct /codes of ethics and financial disclosure rules	(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*	(a) There is a Code of Ethics for civil servants approved by the Presidential Decree on December 29, 2015. There are no particular provisions for those involved in PFM or procurement. However, the Code sets out general behaviour standards that include inter alia opposing		Criteria a) to e) partially met. There are no particular provisions in the Code of Ethics for those involved in PFM or procurement. Conflict of interest statements, financial disclosure forms and information on		Code of Ethics needs to be revised to include specific provisions on those involved in PFM Conflict of interest statements, financial disclosure forms and information on beneficial ownership need to be systematically filed and made

		(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*	actions that are detrimental to the interests of the state, impeding or decreasing the effectiveness of the functioning of state bodies; abstaining from the use of official position to influence the activities of state bodies, organizations, civil servants and other persons when solving personal issues, and prevent misdemeanours and other offenses for which disciplinary, administrative or criminal liability is provided by law. (b) The Code does not specify accountability for the decision making. This, as well as specific financial disclosure requirements, are specified in the Law on Civil Service.		beneficial ownership are not accessible.		available to the public.

		(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	(c)The code of Ethics is of mandatory nature, but the consequences of any failure to comply are of disciplinary nature, not administrative or criminal. Ethics Councils replaced Disciplinary Councils in 2016 with the refocusing of its activity from hearing of disciplinary cases to prevention of corrupt behaviour. Ethics Councils are tasked with developing recommendations based on corruption risks assessments and anticorruption monitoring. In 2017, the Ethics Councils held 176 hearings, where 1130 questions were discussed. Of 1130 cases, 253 questions related to the breach of civil service and anticorruption legislation, 94 questions related to the findings of corruption risks assessments, 545 disciplinary cases.				

		(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures. (e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.	(d) According to the Code of Ethics, every civil servant has to study the Code of Ethics before commencing its service. All civil servants at least once every three years have to go through a training program at the Academy of Public Administration, which includes a session on ethics. 11172 (or 12%) civil servants went through professional development training in 2017. The annual target is 10%. (e) Civil servants should inform their management in written of a potential or actual conflict of interest situation as per Article 51 of the Law on Civil Service. ACSAC launched a project on Prevention and Resolution of Conflict of Interest Situation, whereby 7 cases of Col situation were detected. However, the team				

			could not locate evidence that this information is systematically filed, moreover it is not accessible by the public. Financial disclosure forms are filed by every civil servant, but they are not accessible. Civil servants are encouraged to publish their declarations, but the mandatory disclosure will be effective starting 2020 only. Beneficial ownership information is submitted to HR units, and is not accessible by the public. These are general requirements, not specific to procurement cycle.				
		* 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	Ethical code of civil servants of the Republic of Kazakhstan was approved by the Decree of the President as amended on 1.06.2017 applies to employees in the field of procurement (Total number of	14(g) (a) 0%. All procurement entities have a mandatory code of ethics, but with no particular provisions for those involved in PFM, including procurement 14 (g) (b) – 100% of civil servants (including public procurement officials) have filed financial disclosure forms			

		ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities). Source: Normative/regulatory function. * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b): - officials involved in public procurement that have filed financial disclosure forms (in % of total required by law). Source: Normative/regulatory function.	procuring entities 23,194) Civil servants are encouraged to publish their declarations, but the mandatory disclosure will be effective starting 2020 only.				

Methodology for Assessing Procurement Systems (MAPS)

Samruk Kazyna

Indicator Matrix

(a) Pillar I. Legal, Regulatory, and Policy Framework

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

1(a) Scope of application and coverage of the legal and regulatory framework
The legal and regulatory body of norms complies with the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Poten- tial red- flag?	Initial input for recommendations
(a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	Art. 1 (6) of the Procurement Rules1 lays down the institutions responsible for the adoption of different norms regulating public procurement of SK. It specifically states, "List of unreliable vendors and List of reliable vendors of the Holding shall be approved by Executive Authority for procurement in the manner determined by the Management Board of the Fund. Registers of goods producers, organizations of persons with disabilities (individuals - persons with disabilities engaged in entrepreneurial activity) of the Holding shall be approved by Executive Authority for procurement in accordance with procedures specified by the Management Board of the Fund. Procedure and forms of reporting provided by the Contracting Authority on procurement, rules for determining the market prices of goods, rules of posting information on the procurement on the website of the Contracting Authority and the website, determined by the Fund, the procedure for processing applications for potential suppliers (vendors), Instruction on implementation of e-procurement and the Regulations on the Fund’s Committee for consideration of complaints on procurement shall be approved by the Management Board of the Fund”. The fundamental law is the law No. 550-IV of February 2012 (“On the Sovereign Wealth Fund”), article 19 of which provides the basis for the fund to develop its own public procurement rules.		Criterion partially met The hierarchy of norms is not explicitly specified in the legal and regulatory framework as such. Some conclusions can be made on the hierarchy of norms depending on the status and role of the institution adopting the norms.		Clarify the hierarchy of the legal and regulatory framework within the different legal instruments.

1 Full title: Rules on Procurement of Goods, Works and Services of the Joint Stock Company “National Wealth Fund Samruk Kazyna” and Organisations 50% and more Voting Shares of which Directly or Indirectly Belong to Samruk Kazyna with the Right of Ownership or Trust Management

(b) It covers goods, works and services, including consulting services for all procurement using public funds.	Yes. Art. 1 of the Procurement Rules (in the definitions we can find works, services and goods) and Annex 1 relates to the procurement of consulting services. The Procurement Rules (regulating the purchase of goods, services, works) states that it covers procurement at the expense of the resources of the SK and its subsidiaries. In accordance to Art. 41 of the Budgetary Code of Kazakhstan, the state budget means can be directed to SK for the realisation of socio-economic programs in the scope of the state order. These funds are not spent in accordance to the Public Procurement legislation. In accordance with point 138 (5) in case of state order, single sourcing can be organised based on the collegial executive body/supervision council of the contacting authorities.		Criterion met		
(c) PPPs, including concessions, are regulated.	PPPs are not covered.		Criterion partially met PPPs are not covered.	X	PPPs should be covered by the Procurement Rules or by a separate dedicated piece of legislation
(d) Current laws, regulations and policies are published and easily accessible to the public at no cost	Yes, the regulations and policies are published in the official website of the SK and are accessible free of charge.		Criterion met		

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	The procurement methods are listed under Art. 15 (1-5) of the Procurement Rules and are the following: 1. tender (open, closed, two stage (open and closed two stage); 2. price quotation; 3. commodity markets; 4. single sourcing; 5. centralized trading of electric energy. There is no specific hierarchical structure (i.e. open procedure is not acknowledged as the preferred option) and the Contracting Authority chooses the method itself (Art. 17) but there are conditions for the usage of the methods. There is a threshold cap for the usage of the price quotation and the cases of the single source procurement are laid down in Art. 136-140. Also, specific types of procurement are regulated in the Annexes to the Procurement Rules (consultation services, procurement by the Subsoil Users of the Holding, procurement from the qualified suppliers and procurement for the realization of the category strategies).		Criterion met		

	Closed procurement is used in case the procurement subject contains state secrecy (Art. 92). Two-stage tendering is organized in case: 1. It is difficult to formulate the technical characteristics and specifications for the procurement of goods, services and works, and 2. there is a need to get acquainted with the different means of satisfying the need and choosing the best of them. (Art. 95)				
(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.	Art. 15 (1-5) of the Procurement Rules provides a good mix of competitive and non-competitive methods. In addition, there is a special procedure named "attestation", which is essentially a pre-qualification for the purchase of consultancy services. It should be mentioned though that there is a very long list of grounds for single sourcing described in points 136-140 of procurement policies. Single sourcing can be used: • following a decision by the management of the contracting authority (e.g. in case the procurement was cancelled), • in case of the decision of the collegial executive body of the contracting authority (e.g. in case of procuring new technologies from the owner of such technologies) • through direct contracting (e.g. in case of procurement of pharmaceutical products when the life of the patient is under the threat). (b) Interviews with Samruk-Kazyna representatives revealed that only 20% of all the single sourcing is done due to cancellations, the rest of 80% is based on one of the grounds mentioned in points 136-140.		Criterion partially met The list of the grounds for the usage of single sourcing is too large, which artificially limits the competition in many markets. As has been submitted in 2016 about 87% of the procurement of SK has been single sourcing. This is a concerning number taking into account the volume and the available procurement budget of SK.		Reduce the number of cases where single sourcing is permitted.
(c) Fractioning of contracts to limit competition is prohibited.	Art. 99: "To apply methods of request for price quotations, annual volumes of procurement of homogeneous types of goods, works and services, planned for the relevant calendar year, may not be split into parts, those not exceeding four thousand-fold monthly calculating indicator, established by the law on the republican budget for the relevant fiscal year. This requirement shall not be applied when Contracting Authority purchases goods, works and services necessary for functioning of his branch (representative office) thereof, subject to procurement on behalf of the Contracting Authority directly by this branch (representative office) hereof".		Criterion partially met There is no general prohibition on the splitting of the contracts in order to avoid competition. The only such norm refers to the cases of the request for		Include a general rule on the prohibition of splitting the contract in order to avoid the application of a more competitive procurement method.

			quotation. In addition, there is a waiver from this rule in case the procurement is carried out for the branch by the branch acting on behalf of the contracting authority. Usually there is a general prohibition on the splitting of the contract in order to avoid the application of more competitive methods. International tools/treaties also contain such norms. For example, Art. 12 of the UNCITRAL Model Law from 2011, Art. II:6 of the WTO GPA and Art. 5 of the EU Directive 24/2014/EU.		
(d) Appropriate standards for competitive procedures are specified.	Even though the contracting authorities are given discretion to choose the procurement procedure (Art. 17 of the Procurement Rules), they have to obey to the requirements of the legislation setting conditions for the usage of the procurement procedures.		No gaps are identified.		

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?
(a) The legal framework requires that procurement opportunities are publicly	Yes. For open tenders, the contracting authority after the approval of tender documentation and at least 15 calendar days in advance to the bid submission deadline, shall publish a notice on periodic		Criterion met	

advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).	media with the frequency of publication not less than three times a week and also publish the notice and the tender documents on the web-site of the Contracting Authority and procurement organizer as well as web-site determined by the Fund. For closed tenders, no information is published and potential suppliers are informed by invitations (Art. 93-94). For price quotations, the Contracting Authority/ procurement manager no later than within 5 working days prior to the deadline for submission of price quotations shall be obliged to post on the website of the Contracting Authority and on a website determined by the Fund, a notice containing information on: 1) planned procurement through request for price quotations - name, brief characteristics, as well as required volume, terms of payment, terms, place and conditions of delivery of goods, execution of works and rendering of services (technical specifications that shall comply with requirements of sub-item 2) of item 37 of the Rules to be attached, if necessary), term of a procurement contract conclusion with a potential vendor, recognized as the winner; 2) requirements for the form and content of the information about conflict of interest (in implementing procurement of consulting services); 3) first day for submission of price quotations by potential vendors; 4) venue, date and time of opening of envelopes with price quotations; 5) draft procurement contract; 6) information on sums allocated for procurement of goods, works or services without VAT, which are subject of the request for price quotations; 7) requirements in terms of formalization of envelopes with price quotations". (Art. 101). For two-stage tendering rules applicable to open tendering (in case not stated otherwise) are applicable, meaning that the deadline for the submission for the first stage is at least 15 calendar days (Art.98). For the second stage the submission should be in no more than 60 calendar days since concluding the 1st stage". For closed two-stage tender no deadline is envisaged (the invitations are sent out to potential suppliers).			
(b) Publication of opportunities provides sufficient time, consistent	As is mentioned under point a) the Policy provides for the deadlines for each procurement method.		Criterion met	

with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.				
(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).	Yes, see point a). The website where the opportunities are publicised is the following: https://zakup.sk.kz/#/ext The general public can see the main elements of the tender, but in order to get the details the interested parties need to register using the e-signature, which implies costs. Complications related to this are analysed under other indicators.		Criterion met	
(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.	Yes. Art.37 of the Procurement Rules details the information that the tender documentation should contain and Art. 45 relates to the content of the announcement (for open tender). For two stage tendering, the rules as the open tendering apply and for price quotation, the information to be published is laid down in Art. 101. The amount of the information required to be published is enough to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.		Criterion met	

1(d) Rules on participation

The legal framework meets the following conditions:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	The legal framework does foresee participation based on qualification and provides rules on eligibility and exclusions. However, the delineation between eligibility criteria vs selection criteria and technical specifications is not clear.		Criterion not met Eligibility and qualification criteria are not clearly delineated. For example, point 49 of the Procurement Rules require submitting documents related to the registration of the company. The same point also asks to submit technical specification, qualification criteria (in case required by the contracting authority for the procurement above KZT 75 mln), etc.		A clear distinction between the eligibility and qualification criteria should be given. Clearly define and delineate the eligibility and qualification criteria. The legal and regulatory framework could contain a clear definition of the different types of criteria and their use, and should be clearly delineated according to their use in the public procurement process. .
(b) It ensures that there are no barriers to participation in the public procurement market.	The legislation contains set-aside for “in-house” suppliers, as well as companies of disabled persons and the goods’ producers included in the list of Holding. In addition, each 1% of local content will provide provisional discount of 0,15%, local goods will have the discount of 5%, companies for disabled and the ones in the Holding are not providing bid security, advance payment security and contract performance security. The suppliers can be included in the lists of companies of disabled persons, of goods’ producers, of unreliable and reliable suppliers (blacklist and whitelist). In case the bidder is in white list, it receives provisional discount of 1%.		Criterion not met The assessment team acknowledges all the progress made in relation to elimination of the preferential treatment of local suppliers and goods in line with the WTO requirements. This said, it should be noted that still all of the complex rules on participation, different lists, pre-qualification,	X	SK could aim at eliminating all the exclusionary practices such as set-asides and provisional discounts; this can be done gradually. Access to the procurement markets of different goods,

	Pre-qualification process can also inhibit constraints on the access to the market especially for the standardised goods, services, works for which pre-qualification in accordance to international best practice is not required. Procurement rules applicable to the holding's subsoil users (i.e. the largest mining and oil and gas companies in Kazakhstan) favour domestic suppliers of goods, works and services with the highest local content (each 1% of local content will result in a provisional discount of 0.15% of the offer price).		provisional discounts, set-asides and preferences complicate the access of the suppliers into the market. The interviewed suppliers have mentioned that it is practically impossible for some of them to supply to SK. Market distortion as a result of such actions is obvious, especially taking into account the importance and size of the procurement of SK.		services and works should be streamlined both for the domestic and foreign suppliers..
(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.	No provision on exclusion for criminal or corrupt activities was found. The <i>Rules on Forming, Maintaining and Approving the List of Unreliable Potential Bidders of the Holding</i> states seven grounds for the inclusion of potential bidders in the list in which case they will not be able to participate to procurement procedures for 18 months. In case of repetition of the misconduct, for 3 years. The grounds include: provision of false information about the mandatory contract award criteria, avoidance of signing the contract in case of being awarded the contract, not provision of contract award and/or advance payment security, the court decision about non-performance or improper performance of the contract, etc. The decision on the inclusion in the list is taken by the SK Contract and can be appealed to the Fund.		Criterion not met Criminal and corrupt practices are not seen as a basis for the exclusion from participation.		Such activities as criminal and corrupt practices should be grounds for ad-hoc or temporary exclusion from participation to procurement procedures. It can be suggested to add this ground in the Rules on Forming, Maintaining and Approving the List of Unreliable Potential Bidders.
(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.	The state owned enterprises in the Holding receive special treatment as they are covered by the so-called 'in-house' procurement rules, i.e. there is no procedure organised for the procurement of goods, services, works that could be obtained from the subsidiary companies in the Holding (Point 137 (4) of the Procurement Rules). There are no specific rules related to the participation of other SOEs.		Criterion not met The "in-house" procurement closes specific markets for the suppliers.	X	In-house procurement distorts competition. This is also the case when taking into account the number and coverage of the areas by the subsidiary companies of the Holding. Even

					though as mentioned during the interviews, since February 2018 there is a list of goods, services, works to be procured 'in-house' (about 409 categories), the list should be decreased as much as possible in order to open the market for competition.
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	Point 49 of the Procurement Policies lays down the information to be submitted by the suppliers. This includes all the necessary documents (or links to official sources) to prove that the bidder is a registered legal or natural person carrying out entrepreneurial activities, technical specifications, documents proving the right to claim provisional discounts, list of subcontractors, meeting the requirements of qualification criteria (in case claimed and the value is above KZT 75 mln), documents about the absence of conflict of interest, etc.		Criterion met		

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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.	Yes. Art. 37-40 regulate the content of tender documentation and Art. 45 sets up the mandatory information that needs to be included in the tender announcement. It can be stated that the information required to be publicised is relevant and sufficient for the suppliers to submit bids.		Criterion met		
(b) It requires the use of neutral specifications, citing international	Yes. Art.37 (2): "technical specification on the procured goods, works, services with the description and required functional, technical, qualitative and operational		Criterion partially met		It is advised to eliminate the exclusion from the

norms when possible, and provides for the use of functional specifications where appropriate.	characteristics of the procured goods, works, services"; Art. 37 (29): "The Bidding documents are prohibited to indicate trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and name of the manufacturer, as well as other characteristics that determine the identity of purchased goods, works and services to the individual potential supplier or manufacturer, except when it is carried out procurement of: 1) goods and services for addition, modernization, re-equipment, as well as for further technical support, maintenance and repair work, including routine repairs (if necessary) of the basic (fixed) equipment; 2) goods in accordance with the project (project-estimate) documentation, which has the positive endorsement of the state expertise".		There are two exclusions from the prohibition to use specific trademarks one of which is logical as it refers to the cases where the already procured equipment needs repair, modernisation, etc. The second ground cannot be considered legitimate as it refers to the cases where the goods are procured in accordance to the estimates that received positive endorsement of the state expertise.		prohibition to use the trademarks, trade names, service names, patents, utility models, industrial designs, appellations of origin and name of the manufacturer in case the procured goods are in accordance with the project (project-estimate) documentation, which has the positive endorsement of the state expertise.
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	Yes. Art. 37 (2): "the technical specification has to contain (if any): - stating of technical standards, including national or non-governmental standards of the Republic of Kazakhstan approved by non-profit organizations of producers of the Republic of Kazakhstan; - stating of the specifications and technical documentation (if necessary); - the design and budget documentation approved in accordance with the established procedure or its necessary section in implementation of works procurement. If technical specifications indicate a reference to the technical conditions, standards and other normative-technical documents that are not registered on the territory of the Republic of Kazakhstan, Contracting Authority / Procurement Manager must include these documents in the tender documents or to provide them electronically or on paper within three (3) days at the request of potential suppliers".		Criterion met		
(d) Potential bidders are allowed to request a clarification of the procurement	The tender documentation is put for public discussion not later than 10 working days before the date of the tender documentation approval. Within 5 working days of publication of draft tender documentation, the suppliers		Criterion met		

document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	can submit their comments as well as the requests for clarifications (Art. 44). Within 5 working days, the contracting authority has to give clarification and publish the received comments as well as decisions taken. Also, in accordance to Art. 37 (21), tender documentation should lay down the conditions for meeting with potential suppliers on the explanation of provisions of tender documents (if the tender documentation provides for meetings with potential suppliers), as well as the means by which potential providers may seek clarifications on the content of tender documentation.				

1(f) Evaluation and award criteria

The legal framework mandates that:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents,	Point 37 (10) of Procurement Rules: “description of all mandatory criteria for evaluating and comparing the applications of potential vendors to participate in tendering, affecting conditional decrease of prices”. The bidders are asked to submit relevant documents confirming the applicability of criteria for the evaluation and comparison referred to in item 39 of the Rules to the application (if the potential supplier claims the application of the criteria that affect the provisional discount). Point 70 of Procurement Rules states that the winner of the open tender is the supplier who has submitted the lowest price taking into account all the criteria envisaged in the tender documentation.		Criterion met		While evaluation criteria and possible cases of provisional discounts are clearly described in the legislation, they should be also included in the tender documentation.
(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.	No. For open tender in accordance to Art.70 the winner of open tendering shall be selected on the basis of the lowest conditional price calculated with account of criteria usage set out in bidding documents. For the first stage of two stage tendering the selection of suppliers is based on the basis of submitted technical characteristics and specifications of purchased goods, works and ways of satisfying Contracting Authority’s needs. There is no provision on the award criteria. For the price quotation, the lowest submitted price is used as the award criteria (Art. 111).		Criterion not met The non-price criteria are not used as contract award criteria. In future the LCC is going to be used for the procurement in accordance with category management (in case of implementation of an approved pilot category procurement strategy). Hence, the usage of LCC is pending. There is no other		The usage of the LCC in the future somehow predetermines also the usage of the non-price criteria in the evaluation of the bids but as far as LCC is not fully implemented, we cannot verify to what extent non-

			indication of the future possible usage of criteria other than the price.		price criteria are taken into account. In any case and independent of the usage of the LCC in case of category management, it is recommended to lay down specifically that the price as well as non-price criteria can be used in all procurement procedures. In addition, it is advised to require from the contracting authorities to envisage the way the evaluation criteria are combined and their relative weight in the tender documentation.
(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	For the procurement of consultancy services attestation (pre-qualification) is conducted to assess technical abilities of the suppliers (experience, suggested staff). The list of pre-qualified suppliers is published and the contracting authority is asked to procure from the suppliers included in the list. The contract is awarded to the supplier proposing the lowest price.		Criterion met		
(d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the	No. The non-price/quality criteria are not used for evaluation.		Criterion not met The law does not foresee the use of any non-price or quality criteria for the evaluation of tenders. In		The usage of LCC in the future somehow predetermines also the usage of the non-price criteria in

procurement documents.			the future, LCC is going to be used for the procurement in accordance with category management (in case of implementation of an approved pilot category procurement strategy). Hence, the usage of LCC is pending. There is no other indication of the future possible usage of criteria other than the price.		the evaluation of the bids but as far as LCC is not fully implemented, we cannot verify to what extent non-price criteria are taken into account. In any case and independent of the usage of the LCC in case of category management, it is recommended to lay down specifically that the price as well as non-price criteria can be used in all procurement procedures. In addition, it is advised to require from the contracting authorities to envisage the way the evaluation criteria are combined and their relative weight in the tender documentation.
(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not	There is no specific prohibition on the disclosure of the information on the examination, clarification and evaluation of bids. In case of e-procurement, there is such thing as "preliminary consideration of bids" in which case the bidders that have paid bid security (in case of such requirement) are allowed to bring their bids in conformity with the requirements of the Art. 49. As all the procedures are carried out electronically this rule effectively covers all transactions.		Criterion not met The bidders that paid bid security (in case such requirement exists) in e-procurement procedures can bring their bids into conformity with the requirements. This		The bidders should not be allowed to amend their bids after the bid submission deadline.

officially involved in the evaluation process.			means that the participant is well - informed about the non-compliance of its own bid and is given a chance to rectify the situation. On the one hand, this procedures helps the suppliers to qualify even if there are preliminary non-conformities in their documents. This ultimately enhances competition. On another hand, there is a large risk of corruption as the bidders are allowed to amend their documents even after the deadline for submission has passed.		

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	The process of the bid opening is regulated in detail in Art. 54-62 but Art. 54 rules that the bids are opened in the day, time and venue mentioned in the tender documentation. Point 64 of the Instructions for e-procurement, reiterates the above mentioned Articles. There is no rule on the immediate opening after the deadline.		Criterion partially met Bids are not required to be opened right after the opening deadline but rather on a date and time envisaged in the documents.		Require the bids to be opened immediately after the deadline for submission. With the e-procurement, it will be much easier, as the software will open the bids automatically. The authorities just need to set the date, which should be the same as the one for the submission.
(b) Records of proceedings for bid	Art. 61: "Not later than 3 (three) working days following the day of the meeting of Tender commission, the Contracting		Criterion partially met		Have a clear retention policy for

openings are retained and available for review.	Authority and Procurement Manager shall post on their website and website determined by the Fund the text of signed minutes of opening of envelopes with applications for open tendering". No specificities on the retention policy. The Law "On National Archival Fund" refers to the archiving of documents that essentially have some value for the country. Procurement documentation is not covered as such.		There are no specific rules on the retention and future accessibility of the records of proceedings for bid opening.		not only the records of bids opening but also for all documents created during the procurement procedure.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	Yes. Art. 51 (para 2): "Secretary of the Tender Commission shall be responsible for storage of applications submitted by potential suppliers to tender for the period from the date of their adoption and prior to their transfer by the Contracting Authority / Procurement Manager in the established procedure to archive for safekeeping. The Contracting Authority / Procurement Manager in order to eliminate the possibility of access to the tender applications of persons who do not have these special powers must provide the Secretary with the necessary conditions for their storage (room, safe deposit box with the right and ability to access of the Secretary)". In case of e-procurement, the bids are opened automatically at the day and time envisaged in the documents.		Criterion met		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	The legislation contains provisions on the handling of information containing state secrets. In accordance to Art. 92 of the Procurement Rules, a closed tender is held in case of procurement of goods, works, services, related to state secrets. In addition, procurements related to state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) which contain proprietary information of limited distribution, as defined by the Government of the Republic of Kazakhstan, do not fall under the requirements of paragraph 44 of the Procurement Rules, which refers to the requirement of preliminary discussion. It is important to highlight that this indicator includes also the trade secrets and know-how and there is no specific prohibition of the non-announcement/protection of such sensitive information. Instead, in case of the implementation of the state assignment and procurement of services for the listing of shares, this information might not be reflected in the procurement plans and might not be publicised at all in case this will entail breach of commercial or state secrecy. Art. 58 (1) lays down the information to be		Criterion partially met There is no specific prohibition of the non-announcement/protection of sensitive information from a business / trade perspective.		Prohibit the publication of sensitive information, which includes the state, commercial, bank, trade secrets as well as information related to know-how.

	announced by the Secretary and it is of a rather technical character (the submitted documents, prices, etc.).				
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	Yes. Art. 48-54 provides all the details of the submission and receipt of the tenders (documentation required, requirements for the envelope, obligations of the Secretary to register and maintain the security of the received bids, etc.).		Criterion met No gaps are identified.		

1(h) Right to challenge and appeal

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	Yes. Art. 146: "Potential vendors (suppliers) have the right to appeal the decisions and actions taken by the executive body of the Contracting Authority, as well as other persons, including members of the tender, the expert commissions, and an expert, in accordance with the laws of the Republic of Kazakhstan. Complaints may be also submitted for consideration to the Contracting Authority or the authorized body for procurement". Point 3 of the Regulation for the Examination of the Pleas from the Suppliers states that the suppliers have the right to complaint against the actions (inactions) of the contracting authorities, organisers of the procurement, operators of e-procurement, tender commissions.		Criterion met.		
(b) Provisions make it possible to respond to a challenge with administrative review by another body,	In the subsidiary companies of the Holding units, persons entrusted with the conduct of procurement, control and monitoring should also carry out the review. The suppliers can refer to the Authorised Body (Procurement		Criterion partially met The control and review functions are mixed and entrusted to a single unit of the Fund. Point 144		Clearly differentiate the control and the review functions.

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.	Methodology and Control Unit of the Fund) for the review as a second tier. In addition, a Commission is created to review the complaints against the decisions of the Authorised Body by the suppliers and the contracting authorities. A subsidiary company of the Holding, in case the reasoning of the supplier is considered legally correct, has the right to cancel the results of the procurement or make additions and /or amendments in the respective documents. The Fund, as a result of the review can submit to the management of the subsidiary company of Holding mandatory instructions on the planned and conducted procurement procedures as well as on the elimination of violations. The suppliers are also entitled to refer to the court in case they are not happy with the response from the Fund.		states that the unit in the Authorised Body (Procurement Control and Monitoring Department) is dealing with the procurement complaints as well as the monitoring and analysis of procurement. The procurement (controlling, monitoring) units in the subsidiary companies are not independent from the procuring entity but the Authorised Body (except for the procurement for its own needs) and the Commission could be considered to be independent		Provide for an independent body created specifically to hear the complaints from aggrieved suppliers.
(c) Rules establish the matters that are subject to review.	Yes. In accordance to point 2 of the Regulation for the Examination of the Pleas from the Suppliers: “the complaint is a request from a person about the restoration of his violated rights or the protection of his/her rights, freedoms or interests; about the elimination of illegal actions or inactions of officials, tender commission members and other employees of the Fund or of the subsidiary companies”. The Commission can review the complaints against the decisions of the Authorised Body by the suppliers and the contracting authorities.		Criterion met		
(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.	Point 12 of the Regulation for the Examination of the Pleas from the Suppliers states that complaints for the review of which there is no need for information from other bodies, subsidiary companies of the Holding, are reviewed in 15 calendar days since the day of submission. In case there is a need of additional information from other bodies, subsidiary companies of Holding, the decision should be taken within 30 calendar days since the submission. In case there is a need for additional examination or check, the deadline can be extended for up to 30 calendar days about which the complainant is informed. In case the questions raised in the complaint require longer period, the complainant is being informed about it. The decision is taken by the Commission within 5 working days after the receipt of the materials in the Fund. Related to the deadline for the submission of the complaint there is no specific standstill period requirement but point		Criterion not met There is no explicit provision on the deadline for the submission of challenge, even though point 125 requires the contract to be signed not earlier than 10 calendar days after the signature of the protocol on the results. The problem is that the protocol is published in 3 working days after the signatures, which means that the suppliers will learn the results three days later. There is only one provision in the Rules on Control (Art. 38 (4)) which states that the	X	Regulate the deadlines for the submission of complaints for each institution (subsidiary company of the Holding, Fund and Commission). Regulate the suspension of the procurement procedure in case of complaints.

	125 of Procurement Policies state that the contract cannot be signed earlier than 10 calendar days and later than 25 calendar days since the signature of the protocol on the results.		controllers conducting unplanned checks <i>can</i> require to suspend the procurement process until the control activity is over. This provision does not relate to the review process and the suspension depends on the discretion of the controlling body. The suppliers need to know how many days they have for the submission of the complaint in each stage. In case there is no suspension of the procedure, the contract might be awarded and even implemented while the process of review is still going on.		
(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	The complainant is informed about the results of the final decision on the review. After the review of the Commission, the Authorised Body sends the appropriate letter to the subsidiary company of the Holding.		Criterion not met No publication of the decision is envisaged.		Publish the decision the same day it is taken.
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	Yes. The suppliers are entitled to refer to the court in case they are not happy with the response from the Fund.		No gaps are identified. Criterion met		

1(i) Contract management

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,	The Procurement Rules set out the process of signing the contract setting the deadline to this end for both the contracting authority and the supplier as well as the sequence of steps for the conclusion of the contract (point 125) but there is nothing on the contract management phase itself. The only provision dealing with the contract management stage is point 127 of the Procurement Rules		Criterion partially met Currently, the procurement legislation contains no provision in that regard.		It will be necessary to see whether and how the new standard on Contract Management is implemented.

	obliging the Contracting Authorities to pay the Suppliers within 30 working days from the date of signature of the delivery-acceptance acts. The new standard on Contract Management that is approved but not implemented yet provides provisions on the acceptance of goods, services and works, payment to the supplier, monitoring of the contract implementation, etc.				
(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	Yes. Art. 131-133 clearly define the exhaustive list of cases that can give rise to contract amendments. They can be said to provide economy (change of the price in case the prices went down) and not to limit the competition as in accordance to At. 135 it is forbidden to amend the draft or the concluded contract in a way that change the conditions of the procurement procedure except for the cases envisaged under Art. 131-133. In case the procurement is conducted in accordance with the Special Regulation (for the attestation of potential suppliers for the provision of services) ² , other cases of contract amendments might be envisaged. In this regard it was submitted that the Fund's Commission agrees on amendments and additions made only to the procurement contracts on consulting services to support the implementation of the Transformation Program of the Fund, approved by the decision of the Board of Directors of the Fund dated September 17, 2014, which were concluded according to the Special Regulation.		Criterion partially met The provision about contract amendments in case Special Regulation is used is too vague and it would be better to define clearly those cases. As is submitted, the amendments to the contracts signed in accordance to the Special Regulation supporting the implementation program are approved by the Fund's Commission. No further details of any other possible amendment were found.		Clearly define in the legislation the cases for the contract amendments when Special Regulation is used.
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	No provision on the dispute settlement during the contract implementation phase. The future standard on Contract Management also does not contain such norms. The Commission for the review of the complaints is not entitled to review claims related to the already signed contract (point 9(1) of the Regulation on the Commission "SK" for the Review of the Complaints Related to Procurement). Point 3 of the Regulation for the Examination of the Pleas from the Suppliers states that the suppliers have the right to complaint against the actions (inactions) of the contracting authorities, organisers of the procurement, operators of e-procurement, tender commissions. There is no mentioning about the contract management disputes.		Criterion met According to interviews, once the contract is signed, the parties to it can refer to court in case of disputes. Reserving the dispute resolution at the contract management stage to the court is not contradicting international best practice. However, no provision to this end was found in the legislation.		Provide a provision on the dispute settlement during the contract management stage, including the enforceability of the adopted decisions to this end. In case the resolution of such disputes is entrusted to the courts, this should

² This special Regulation is an annex to the general policy for the conduct of procurement procedures. The attestation of consultants for the provision of services is essentially a pre-qualification procedure.

	It has been revealed during the interviews, that once the contract is signed, the parties to it can refer to court in case of disputes.				be clearly mentioned in the appropriate legislation.
(d) The final outcome of a dispute resolution process is enforceable.	No provision on the final outcome of the dispute settlement during the contract implementation phase. It can be assumed that as the contract management disputes are under court jurisdiction, they are properly enforced.		Criterion partially met No provision on the final outcome of the dispute settlement during the contract implementation phase. It can be assumed that as the contract management disputes are under court jurisdiction, they are enforced.		

1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	Paragraph two of clause 15 of the Rules of Procurement states that "procurement by means of a tender, request for quotations, and by a single source method is carried out by electronic procurement." In addition, point 3 of the Instructions on the Organisation of the E-Procurement mandates to carry out the open tendering (including two-stage tendering), request for price quotation and single sourcing by using electronic means. Moreover, the procurement via open tendering and request for price quotation can include also e-auction.		No gaps are identified. Criterion met		
(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.	Full access to the system is provided by: • RP Clause 2. The system is the information system of the Fund, which ensures electronic procurement in accordance with the Procurement Rules and the Instruction for electronic procurement (IEP); • IEP Clause 5. The procedure for registration of Participants, as well as the powers of Users in Appendix 1 to the Instruction on electronic procurement. Regulations on the procedure		Criterion partially met While the Regulation of e-Procurement includes security protocols to protect records, there is no specific provision on the security of data when using the e-procurement system and no provisions on the interoperability of the used technologies. It has		Most probably there are standards for keeping the data secure but no such provision was found in either Procurement Rules or the Instructions for Electronic Procurement. It is

	for the operation of the System are set out in Annex 2 to the Instruction on electronic procurement. (c) How does the RP handle security of data? • not found in the rules		been submitted by the SK authorities during the interviews that the security is a major issue as there have been several attacks, during one of which the system has been down for 1.5h.		advised to include such in one of the above-mentioned documents.
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	Interested parties: Paragraph two of clause 15 of the Rules of Procurement states that "procurement by means of a tender, request for quotations, and by a single source method is carried out by electronic procurement." Thus, the legislation clearly defines the procurement procedures to be carried out electronically and the interested parties are aware of the procedures and processes. In addition, all the changes and amendments to the legislation is published online,		.		

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

The legal framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(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.	In accordance to point 5 of the Procurement Rules the documents, relating to the ongoing/finished procurement procedures should be kept in the unit responsible for the organisation and implementation of the procurement procedures. The term for keeping the documents should be set in accordance to the norms related to the record-keeping and/or the file registration of the contracting authority.		Criterion partially met There is no list of specific documents to be kept in the records. The policy for the access and public inspection are not described in the legislation.		Specify the list of documents to be kept in records. These documents should cover the whole procurement cycle and provide the assessors/controllers with meaningful information about each procurement transaction.
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating	No further information is available on the retention policy of the documents. As has been mentioned under point a) above, the policy is decided by each contracting authority. However, according to order 263 of September 29, 2017 "On approval of the List of standard documents formed in the activities of state and non-governmental organizations,		Criterion partially met There is no specific document retention policy compatible with the statute of limitations in the		Adopt a unified data retention policy for the Fund and the subsidiary companies of the Holding, which will

and prosecuting cases of fraud and corruption and compatible with the audit cycles.	indicating the period of storage", issued by the Ministry of Culture and Sport, foresees unlimited retention of the documents related to the strategic development of national holdings and other organisations with a state participation (point 159). Section 10 refers to the retention of the documents related to procurement and contains an exhaustive list of documents created throughout the procurement cycle that need to be retained (from 3 years to an unlimited period).		country and prosecuting cases of fraud and corruption and compatible with the audit cycles.		contain norms on the policy for the access and public inspection.
(c) There are established security protocols to protect records (physical and/or electronic).	In accordance to point 51 of the Procurement Rules, the Secretary of the tender committee is responsible for the safekeeping of the tenders from the moment of their acceptance to the submission into the archive. The contracting authority in order to eliminate the possibility of access to the tender applications of persons who do not have these special powers must provide the Secretary with the necessary conditions for their storage (room, safe deposit box with the right and ability to access of the Secretary). For electronic procurement point 63 of the Regulation of e-Procurement states that the system places the received bids in an externally inaccessible repository until the deadline for the opening of bids. Point 64 envisages that the tenders are automatically opened after the deadline and access to the content is given to the members of the evaluation commission, to the Secretary, other bidders participated in the procurement procedure and the Authorised Body.		Criterion met.		

1(l) Public procurement principles in specialized legislation

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	Currently, the procurement legislation for all the entities within the Holding is the same. All the procurement policies and guidelines have equal effect for all subsidiary companies. The holding is planning to pass in the near future to the so-called category-management in which case the basic principles will be set in standards while the detailed procurement rules will be drafted by each subsidiary company in accordance to the area of activity. The category management is seen as a new tool for the transformation		Criterion met		

	team to improve the procurement system and to introduce advanced methods of procurement. It is envisaged to pass to this type of procurement in 2018-2019 as the project is still in piloting phase.				
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	PPPs and concessions are not covered by the procurement legislation.		Criterion partially met PPPs and concessions are not covered by the procurement legislation.	X	Regulate PPPs and concessions.
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	PPPs and concessions are not covered by the procurement legislation.		Criterion partially met PPPs and concessions are not covered by the procurement legislation.		

(c) 2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	Yes. The main legislative act relating to the procurement process of the Fund and subsidiary companies of the Holding is the Procurement Rules, supplemented by different regulations related for example to the conduct of e-procurement, compilation of the black list, list of local producers, etc.		Criterion met No gaps and contradictions are identified.	
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	Yes. The norms are grouped in regulations as per the area they are regulating. Can be accessible free of charge from the following web site: https://sk.kz/purchases/ .		No gaps are identified. Criterion met	
(c) Responsibility for maintenance of the regulations is clearly established, and the	Yes. The Authorised Body (Procurement Methodology Unit) is entrusted with the methodological management of the procurement process. The monitoring of the official web site shows		No gaps are identified. Criterion met	

regulations are updated regularly.	that the regulations are updated regularly and all the updates are published.			

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	The tender documentation is formulated in the e-procurement system (point 53 of the Instructions of e-procurement). This means that there are model procurement documents even though there is no direct mentioning.		Criterion not met There is no specific mentioning of model procurement documentation. It will be good if such are approved by the secondary/tertiary legislation. Access to the e-procurement system would help to assess the availability and quality of such documents. As of December 2018, the assessors were unable to verify the existence or quality of model procurement documents.	X	It is advised to approve model procurement documents as a secondary or tertiary legislation
(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.	Yes. Point 37 of the Procurement Rules envisages the mandatory set of information to be reflected in the tender documentation. Point 45 sets the information to be included in the contract notice.		No gaps are identified in the legislation. As no access to the e-procurement system was provided, the availability of the mandatory information in tender documentation. As of December 2018, the assessors were unable to verify the existence or quality of templates or standard clauses.		
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	Due to the lack of access to model procurement documents, this question cannot be answered.		Due to the lack of access to model procurement documents, this question cannot be answered.		

2 (c) Standard contract conditions

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations

(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	No such conditions are envisaged by the current legislation but the future standard on Contract Management states that the standard contracts should be developed taking into account the established business practices in the respective areas, as envisaged by the sectoral regulation of procurement. It should be noted that recently, the contract management standard has been approved which is a very good step forward. Due to the recent adoption, implementation cannot be assessed at this stage; the outcome of the implementation will be crucial to observe.		Criterion not met It will need to be seen whether and how the standard on Contract Management is implemented in practice.	X	Provide at least the minimum information to be included in the standard contracts.
(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.	As part of the recently approved contract management standard, standard contracting conditions were introduced. However, the assessment team did not have access to the standard contracting conditions and were unable to assess their content.		The assessors did not have access to the standard contracting conditions to evaluate them.		
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	As mentioned in assessment criterion (a), the standard contracting conditions were recently introduced and according to the authorities, the procurement documents include the standard contract condition. However, the assessment team did not have access to procurement documents to assess them with regards to the inclusion of standard contract conditions.		No access to the procurement documents.		

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	Yes. SK Contract has prepared guidelines for the users of the e-procurement system. In addition, there are video tutorials explaining how to register, how to submit a bid, etc.		No gaps are identified. Criterion met		
(b) Responsibility for maintenance of the manual is clearly	SK Contract is responsible for the development and installation of the e-procurement platform (point 145 of the		Criterion partially met		Clearly assign the task of

established, and the manual is updated regularly.	Procurement Rules) but there is no clear responsibility for it to maintain the manuals.		No clear responsibility for the maintenance of the manuals is established even though it can be assumed that the SK Contract is undertaking this task.		maintenance of the manuals.

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

3(a) Sustainable Public Procurement (SPP)

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	There is no policy/strategy to implement SPP in support of broader policy objectives for SK's contracting units. However, some criteria related to ecology, health, etc. are taken into account for the pre-qualification procedure.		Criterion partially met This indicator requires an overarching strategy or a policy for the implementation of SPP within the broader national policy scope; such a strategy was not identified for SK. The limited use of some criteria, like ecology for the pre-qualification procedure, cannot satisfy the requirements of the current indicator.	X	It can be stated that SPP is not considered a tool to obtain broader policy objectives for SK. Taking into account the portfolio companies and their areas of activities, it is advised as a first step to draft a general strategic document describing the importance and ways of implementation of the SPP, tools for the facilitation and monitoring of the implementation, ways of incorporation into the different stages of the procurement cycle, etc. Capacity building activities

					will also be necessary to familiarise the contracting authorities and the suppliers with the new policies on the SPP. At later stages, the incorporation of the SPP in technical specifications, contract award criteria and standard contract terms should be mandated coupled with the creation of specific tools for the monitoring/control over implementation.
(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.	There is no SPP implementation plan and no tools to operationalise, facilitate and monitor the application of SPP.		Criterion partially met No SPP implementation plan and no tools to operationalise, facilitate and monitor the application of SPP		
(c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.	While the procurement rules do not include a specific reference regarding the inclusion of sustainability considerations at all stages of the procurement cycle, the new standard for pre-qualification envisages a qualification criteria named “Ecology, Safety and Protection of Labour”. This new standard has yet to be approved. There are 6 levels of pre-qualification depending on the complexity of the procurement subject and the exact qualification requirement changes depending on the level. Thus, the ecology (protection of environment) is considered as a pre-qualification criterion, but is not taken into account in other stages of procurement (e.g. contract award).		Criterion not met Qualification criteria related to the protection of the environment and labour standards are taken into account as a pre-qualification criterion in accordance to the new Standard. No other stage of procurement cycle includes norms on sustainable procurement, and no		Consider modifications to the procurement rules to allow for sustainability criteria to be incorporated at all stages of the procurement cycle.

			other aspects of sustainability are taken into consideration.		
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.	There is no general requirement to have a well-balanced approach to the usage of sustainability criteria. Only the standard for pre-qualification differentiates among the levels of pre-qualification requirements depending on the complexity of the procurement subject.		Criterion partially met There is no general requirement to have a well-balanced approach to the usage of sustainability criteria.		Consider including a general requirement to have a well-balanced approach to the use of sustainability criteria.

3(b) Obligations deriving from international agreements

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) clearly established	The international obligations of Kazakhstan related to public procurement such as the Treaty on the Eurasian Economic Union, the Enhanced Partnership and Cooperation Agreement with the EU do not apply to Samruk Kazyna. In case of the EAEU, it covers the procurement activities from the state budget and other means in case so envisaged by the national legislation of the Member States. In PPL of Kazakhstan, the procurement of SK is explicitly excluded. For the EPCA, the SK is not listed as a covered entity, which effectively excludes it from the coverage of the agreement. This has been decided through negotiations. As mentioned during the interviews, the Fund has been involved in the negotiations of both the Treaty on the EAEU and the WTO (when KZ was acceding to it) to present the interests of the Fund. Currently, Kazakhstan has an obligation to start negotiations with the WTO GPA Parties with the aim to join it. It is yet to be seen whether SK will be covered as Annex 3 entity or will be excluded, as was the case with the EPCA.		Criterion met		
(b) consistently adopted in laws and regulations and reflected in procurement policies.	N/A. See answer to point a) above.		N/A		

(e) Pillar II. Institutional Framework and Management Capacity

(f) 4. The public procurement system is mainstreamed and well integrated into the public financial management system

4(a) Procurement planning and the budget cycle

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	Yes. Art. 2 (7) of the Procurement Rules: "The decision on procurement shall be made by the Contracting Authority on the basis of approved procurement plan(s)"; Art. 2 (9): "Procurement Plan shall be approved by the first head of the Contracting Authority or other person authorized by him within 20 (twenty) working days from the date of approval of production program and (or) investment program, and (or) budget and (or) development plan, and (or) a business plan and should correspond to the form specified by the Management Board of the Fund"; Art. 2(10): "Long-term procurement plan shall be approved by the decision of the first head of the Contracting Authority or other person authorized by him within 20 (twenty) working days from the date of approval of production program and (or) investment program, and (or) budget and (or) development plan, and (or) a business plan and should correspond to the form specified by the Management Board of the Fund. The Contracting Authority shall have the right to make changes and amendments to the approved plan of long-term procurement within the production program and (or) investment program and (or) budget and (or) development plan and (or) a business plan as needed".		No gaps are identified. Criterion met		
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).	Yes. In some cases, the authorities can start procurement process before the budget is officially allocated but the contract is not signed until the official approval of the budget. In the eyes of policy makers, this approach is intended to save time to ensure that the necessary goods/services/works are supplied without delays. According to stakeholders, it is very rare that the appropriate means are not allocated, and the contract is not signed. However, this approach is not in line with international good practice.		No gaps are identified. Criterion met		While no gap is identified, consider ensuring that funds are committed or appropriated to cover the contract before starting the procurement process, in line with international good practice.

(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.	The contracting authorities shall provide monthly reports about the contracts for the procurement of goods, services, works to the Authorised Body until the 10 th of the month following the month for which the report is submitted (Point 6 of the Instructions on the Composition and Provision of Reports about Procurement). No specific feedback mechanism reporting on budget execution as a whole is envisaged. The specific feedback mechanism on budget execution usually takes the form of an (annual) report; this report allows to detect and remedy the mismatch between the planned and actual expenditure.		Criterion partially met Only reporting on individual procurement plans and contracts is regulated while there is no specific mechanism for reporting on the budget execution as a whole.		It is advised to require contracting authorities to submit a report on budget execution for a specific period (trimester, year, etc.), aggregating information from the reporting for individual reporting. As monthly reports are already conducted, requiring this aggregated approach will not be time consuming or onerous. The aggregated reports will clearly show how the funds were allocated and spent within a specific period of time.

4(b) Financial procedures and the procurement cycle

The legal and regulatory framework, financial procedures and systems should ensure that:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	While the law foresees a procedure in which tenders are only launched once funds have been certified, some tenders are solicited based on a preliminary budget when the approximate allocation is known. The contracts are signed once the budget is approved. This procedure is called "preliminary procurement" and is conducted in exceptional circumstances.		Criterion partially met Samruk-Kazyna considers the procedure of preliminary procurement as a potential opportunity to save time and resources in exceptional circumstances. As reported, usually, the budget is allocated as envisaged.		Consider revising procedures to ensure that the certification of the availability of funds takes place before the solicitation of tenders/proposals

			However, in case the funds are not allocated as envisioned, the resources for the organisation of procedure are wasted. In addition, the potential supplier with whom the contract should have been signed is also carrying a risk, associated with the costs of preparing the tender and the availability to deliver within short notice. As a result, suppliers will lose trust in the procurement system of SK and will no longer participate in procurement procedures. This, in turn, affects competition and ultimately the value for money that SK is able to realise through its procurements. Bidders might be incentivised to increase their asking price in order to account for losses incurred to projects that do not actually materialise.		while ensuring that procurements can occur in a timely manner.
(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*	The current procurement legislation does not contain any information about invoicing but point 127 of the Procurement Rules is indicating that the payment should be made within 30 working days after the signing of the act of delivery. In practice, the interviews revealed that the suppliers are usually paid late and after passing through a heavy bureaucratic process. Sometimes, because of late payments, they cannot pay their own subcontractors or suppliers and have to pay fines. The future standard for Contract Management in its Article 10 also states that the payment should be made not later than 30 working days after signing the delivery act.		Criterion not met Currently, there are cases where invoices are not paid in time, which is harming the financial standing of the suppliers.		Introduce the e-invoicing module, which will automatically disburse the money once the delivery act is signed in the system or uploaded. Reduce the bureaucracy of the whole process of payment.
// 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.		No access to data granted.	The assessment team did not have access to data to substantiate the assessment using the quantitative assessment criterion.		Recommendation as above.

(g) 5. The country has an institution in charge of the normative/regulatory function

5(a) Status and legal basis of the normative/regulatory institution function

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	Yes. Points 144 and 145 of Procurement Rules lay down the powers of the unit in the structure of the Authorised Body (Procurement Methodology and Control Department) and of the daughter company (SK Contract) dealing with procurement.		Criterion met No gaps are identified.		

5(b) Responsibilities of the normative/regulatory function

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) providing advice to procuring entities	Art. 144 (1) of Procurement Policies refers to methodological management but does not specifically state the advising to the procuring entities. Also in accordance to 145 (1) the daughter company is “coordinating the procurement process in the subsidiary companies of the Holding”.		Criterion partially met In practice, the Procurement Methodology Service provides advice to procuring entities. However, there is no legal basis for this activity, leaving uncertainty about what kind of services can be expected and demanded by contracting authorities.		Clearly define the powers to advise authorities and to amend and draft new legislation.
(b) drafting procurement policies	Yes. Art. 144 (1).		No gaps are identified. Criterion met		

(c) proposing changes/drafting amendments to the legal and regulatory framework	Art. 144 (1) of Procurement Policies refers to methodological management which most probably involves also the amendments and drafting of the legislation. In practice, this responsibility is indeed exercised by the Procurement Methodology Service.		Criterion partially met. The responsibility to propose changes and draft amendments to the legal and regulatory framework is not explicitly mentioned in the legal and regulatory framework, even though the Procurement Methodology Service is exercising it in practice.		It can be advised to specifically mention the power to amend and draft new legislation to bring the legal and regulatory framework in line with practices.
(d) monitoring public procurement	Yes. Art.144 (3).		Criterion met. No gaps are identified.		
(e) providing procurement information	Art. 145 (5) refers to the collection, aggregation and analysis of the reports in the area of public procurement submitted by the subsidiary companies in the Holding to the Authorised Body. In case of need, it can also check the validity of the data, materials and information on procurement submitted.		Criterion partially met There is no specific power to provide procurement information.		Prescribe the following powers: provision of procurement information, preparation of reports for other parts of the government (SK), support of professionalization .
(f) managing statistical databases	Yes. Art. 145 (5).		No gaps are identified. Criterion met.		
(g) preparing reports on procurement to other parts of government	Art. 145 (5) refers to the collection, aggregation and analysis of the reports in the area of public procurement submitted by the subsidiary companies in the Holding to the Authorised Body. In case of need, it can also check the validity of the data, materials and information on procurement submitted.		Criterion partially met. There is no specific power to prepare the reports to other parts]of government.		
(h) developing and supporting implementation of initiatives for improvements of the	As has been mentioned, the methodological management is one of the powers of the structural unit of the Authorised Body. In addition, it also agrees on the goods/services/works to be included in future category management. The daughter company is responsible of the e-procurement,		No gaps are identified. Criterion met.		

public procurement system	comprises and manages the lists and registers envisaged by the Procurement Rules.				
(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement	Art. 145 (2): The daughter company organises seminars and trains the employees of the subsidiary companies in the Holding.		Criterion partially met. No specific <i>integrity</i> program is envisaged, according to interviews.		Introduce specific <i>integrity</i> program in the training sessions prepared for the staff dealing with procurement.
(j) supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	Certification rules for procurement specialists in SK have been approved by the decision of the Fund's Board dated August 14, 2018 protocol 24/18. This decision is currently being implemented. Overall, there is an increasing emphasis on professionalising the procurement workforce in SK.		No gaps are identified. Criterion met.		
(k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate	Yes. Art. 145 (6)		No gaps are identified. Criterion met.		

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and	The normative/regulatory function is entrusted to the Procurement Methodology and Control Department of the Fund. The head of the Board of Directors of SK is the Prime Minister of Kazakhstan ex officio. The current head of the management was deputy Prime Minister twice during his career. It can be safely concluded that the Fund and its management have high-level standing in the government.		No gaps are identified. Criterion met.		

authoritative standing in government.					
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.	The financing of the SK comes from its own means increasing its independence. The government can direct funds to SK for the realisation of socio-economic programs in the scope of the state order only.		No gaps are identified. Criterion met.		
(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.	The two units of the SK (Procurement Methodology and Control) were merged in the beginning of the 2018. Thus, the newly created department is entrusted with regulatory, review and control functions which enhance its authority vis a vis the subsidiary companies. As has been reported during the interviews, there is a shortage of staffing within the Department.		Criterion partially met. According to stakeholders, staffing of the Procurement Methodology and Control Department is not adequate to the functions entrusted to it. This might affect the quality of delivering the assigned tasks.	X	Ensure adequate staffing of the Procurement Methodology and Control Department.

5(d) Avoiding conflict of interest

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.* * 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.	There is a code of corporate conduct, which is the same for all the functions across the Fund. In addition, the Board of Directors of Samruk Kazyna has approved the "Policy for the Prevention of Conflict of Interests When Engaging Consulting Services" (October 2014), where it is envisaged that the employees of the contracting authorities need to report any case of conflict of interest. At an institutional level, the control and review functions are within the same unit (Procurement Methodology and Control Department) of the Fund. The powers among the regulatory authority and the contracting authority is separated (except for the cases of procurement for the own needs of the regulatory body). The Fund in this case can be considered the regulatory body while the subsidiaries are the contracting authorities. Government in case of the SK is the sole shareholder. There is an agreement between the SK and the Government on the cooperation first paragraph of which acknowledges the need of delineation of the powers		Criterion not met. This seems to refer only to cases where consultants are involved. It would be better if all the employees for all procurement procedures would be asked to report conflict of interests. On another hand, at an institutional level the review and control functions are carried out by the same department.		It would be better if all the employees for all procurement procedures would be asked to report conflict of interests. Delineation of the functions of review and control is advised.

	of the Government as the sole shareholder and the powers related to state regulation. Interference of the Government, its employees and other officials of state bodies into the operational activities of the Fund can be allowed only if prescribed so by Law, acts and orders of the President of Kazakhstan.				

(h) 6. Procuring entities and their mandates are clearly defined

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procuring entities are clearly defined.	Yes. In accordance to Point 2 of the Procurement Rules, the contracting authorities are the Fund or subsidiary companies in the Holding.		No gaps are identified. Criterion met.		
(b) Responsibilities and competencies of procuring entities are clearly defined.	Yes. The Procurement Rules lay down in detail the rights and obligations of the contracting authorities.		No gaps are identified. Criterion met.		
(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.* // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c): - procuring entities	Yes. The contracting authorities are required to have a separate structural unit responsible for organizing and carrying out procurement procedures (point 5 of Procurement Rules). The recently adopted certification rules approved by the decision of the Fund's Board dated August 14, 2018 (protocol 24/18) require the Fund to certify the capacities of procurement specialists of the Fund and of subsidiaries hence making sure the staff dealing with procurement has all the necessary capacities and capabilities.	No information about the number of contracting authorities in Samruk-Kazyna was available to the assessors.	Criterion partially met. In order to verify this indicator the assessors need to have access to the quantitative indicators related to the number of procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).		Gather statistics and information about the procurement units within SK.

with a designated, specialised procurement function (in % of total number of procuring entities). Source: Normative/regulatory function.					
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.	In accordance to the interviews, the procurement unit collects requests containing needs of the responsible units, organizes the procurement procedure. The deliveries are accepted by the responsible unit. Payment is done from the treasury after the final check of the invoice. Thus, several units are involved in the procurement process.		Criterion partially met. While de facto, decision-making power is delegated, the assessors were unable to identify specifications about delegation of decision making authority in the legal and regulatory framework. As a result, responsibilities, authorities and expectations are not clearly defined, and it remains unclear what kind of decisions procuring entities at lower levels are able to take without approval by higher levels of the organisational hierarchy and where they have to consult. The assessment criterion also requires that risks undertaken by each of such units is associated with the inherent risks and involved monetary sums, which was not found by the assessors.		Describe in the legal and regulatory framework the rights and obligations of the procurement unit and responsible units with regards to decision making, also addressing delegation to the lowest competent level. It is also recommended to adopt a risk-based approach, balance the necessity for approval with the involved risk and monetary sums.
(e) Accountability for decisions is precisely defined.	Yes. Point 148 of the Procurement Rules: “The employees of the contracting authorities, including the head, responsible for procurement, members and secretary of the tender commission, experts and/or members of the expert commission, the head of the structural unit responsible for organizing and carrying out the procurement procedures, the persons responsible for compiling and reporting on procurement issues shall be personally liable for breach of the Rules. The procedure to prosecute employees for violation of Rules shall be defined on the basis of an internal document,		No gaps are identified. Criterion met.		

	approved by decision of the contracting authorities, establishing measures and the degree of responsibility in accordance with the laws of the Republic of Kazakhstan".				

6(b) Centralized procurement body

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.	Point 21 of the Procurement Rules: "When carrying out Central procurement: 1) the Fund shall have the right to act as a single procurement organizer for organizations within the Holding; 2) the Fund shall be entitled to determine a single procurement organizer for all or several organizations of the Holding based on the decision of the Management Board of the Fund. The procedure for centralized procurement is performed in the order defined by the Management Board of the Fund". In accordance to Annex 2 to the "Rules on the Organisation of Centralised Procurement of Goods, Works and Services", centralisation refers only to cars and services for the estimation of property. The recently adopted concept of category management contains elements of centralisation as the SK subsidiaries on the first organisational level within the holding centralise the procurement of the subsidiaries on the second level. Thus, this approach can be considered as contributing to increased efficiency due to centralisation.		Criterion partially met. Even though the regulation on centralised procurement exists, during the interviews it became Criterion partially met. obvious that centralisation is not considered to be the most beneficial tool for procurement and the list of goods, services and works to be procured centrally is not going to increase. Framework agreements are not used.		Make full use of the "Rules on the Organisation of Centralised Procurement of Goods, Works and Services" and further increase the use of centralised purchasing, by further centralising (on the level of the holding or within the subsidiaries), as well as by utilising a wider range of tools like framework agreements, dynamic purchasing systems and e-catalogues.
(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following: • Legal status, funding, responsibilities and	No centralised purchasing body exists. Either the Fund or the subsidiary company in the Fund will carry out the centralised procurement. In practice, it is the Fund.		N/A		

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.					
(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.	No centralised purchasing body exists.		N/A		

(i) 7. Public procurement is embedded in an effective information system

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	SK e-procurement system is on the Internet and is in wide circulation of media, more readily available than a newspaper. Additionally, information on the platform has been on television advertising. SK also has a media plan and publishes tenders in newspapers and journals. The platform has dedicated websites that are relevant, timely and complete. Electronic procurement sites help interested parties understand the procurement process and the requirements for monitoring the results. Websites: http://www.zakup.sk.kz, http://skm.kz, http://pko.skc.kz/ Foreign suppliers can access the platform by a signature from GAMMA Technology, which is associated with a fee.		Criterion not met. It is difficult for foreign companies to register in the system, which is the prerequisite for viewing tender opportunities. To be register, certain requirements have to be met – either for the company to be registered in Kazakhstan, or an alternative mechanism associated with a fee (see also assessment criterion (b) about costs for registration below.)	X	Make it easier for foreign companies to register in the system without the need to have legal representation in Kazakhstan for the electronic digital signature. For example, travel to KZ could be avoided by having documents checked in a KZ Embassy in the home country of a bidder and by

					having a video call which could serve as the in-person meeting. In addition, the mechanism for companies not incorporated in Kazakhstan could be offered for free (see below assessment criterion (b))
(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.	There is no single centralized integrated information system, purchases are conducted on one site, market analysis on another, prequalification procedure on another site. Accessing organizations are granted access on a fee basis at the approved tariffs. For suppliers, registration, access and participation in procurement are free of charge. However, some services, for example the prequalification procedure, are provided for suppliers on a fee basis. The system is integrated with a black list of suppliers. At the same time, the system is not yet integrated with some other public systems, such as the taxation system, the justice system and the court decision system. Participation of foreign companies in tenders requires the opening of a legal representation in Kazakhstan with a view to obtaining an electronic digital signature. The law foresees official communication (including tender documentation) in Kazakh or Russian language.		Criterion not met. There is no single integrated website for the procurement information and procedures. It remained unclear to what extent these platforms are integrated. Participants need to register using e-signature in case they want to access tender documentation and/or to participate. In addition to the difficult registration process, there is an inherent cost for foreign suppliers to register: they either must have a legal representation in Kazakhstan to receive an electronic digital signature (which is free), or apply for a signature from GAMMA Technology. The latter is not for free (about EUR 130 for one year). While this is not a prohibitively large fee, it places the foreign suppliers in a disadvantaged position in	X	Create a single integrated web site with a single database for all procurement transactions. This will serve as a basis and will ease the passage to open format. Competition and as a result value for money could be increased by facilitating access of foreign suppliers. Aside from reconsidering the registration fee, it could be beneficial to publish tender documentation for complex or large tenders in English, to enable

			comparison to domestic suppliers.		international bidders to participate more easily.
(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. // 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	PROCUREMENT PLANS: According to the rules, unclassified (non-military) procurement plans are published in the System (requiring access) in real time by means of an electronic digital signature within 20 (twenty) working days from the date of approval. Procurement plans are published on the main page of the site https://zakup.sk.kz and can be viewed by anyone. The procurement plan is published at the beginning of the purchasing year before the bidding. The participants of the holding company publish long-term and yearly procurement plans. Procurement plans are approved automatically in the system. The procurement plans are published well before the tenders are advertised, as there is a process for approval of procurement plans and then tenders. INFORMATION RELATED TO SPECIFIC PROCUREMENTS: The electronic procurement system publishes advertisements and the procurement method, the type of procurement (goods / works / services), the procurement organizer and the address of the procurement organization. In addition, it should be noted that the tender document, draft contracts and technical specifications are published. In addition, explanations are published. Final reports of the evaluation report are published. The e-procurement system does not publish contracts and information on the implementation of the contract, amendments to contracts, final payments for completed contracts and appeals. LINKAGES TO RULES: Yes, the e-procurement site provides links to rules and regulations, as there are links to rules and instructions for e-procurement in the "Regulations" section of the link https://zakup.sk.kz/#/ext/regulation.	7(a) Assessment criteria (c): • procurement plans published (in % of total number of required procurement plans) ○ 2016 – not public ○ 2017 – not public ○ 2018 – _____ (report # not public) ○ This comes from the information and analytical portal http://skm.kz/ru/plangz/holdplans/ • key procurement information published along the procurement cycle (in % of total number of contracts): ○ contracts are not published • invitation to bid (in % of total number of contracts) ○ 100% invitation to bids are all published ○ Invitations to bid is 100% of total number of contracts. • contract awards (purpose, supplier, value, variations/amendments) are not published for unauthorized users	Criterion not met. Tender documentation, contract awards, procurement statistics are not open for the wider public. In the absence of the access to the e-procurement system, it was not possible to verify that this information is published for the authorised users even though the legislation requires mandatory publication of some of this information (contract notice, contract award, etc.).	X	In order to enhance the transparency of the procurement process, it is advised to give access the wider public to the procurement documentation, e.g. tender documents, evaluation reports, contract award decisions, contracts, statistics, etc. This will allow the NGOs and citizens to act as a watchdog and to take part of the monitoring function. In addition, this will enhance the competition and will be a tool to combat corruption.

cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendment s) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). Source: Centralised online portal.		• details related to contract implementation (milestones, completion and payment) are not published • annual procurement statistics ○ Annual procurement statistics is not available on the web site. • appeals decisions) are not published			
(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).	Yes, the concept of open contracting is supported. Comprehensive information is published on the online portal at each stage of the procurement process, including a full set of bidding documents, evaluation reports, complete contract documentation, including technical specifications and implementation details that comply with the regulatory framework. However, part of the information is available only to registered users.		Criterion partially met. Most of the information mandatory to be published is accessible to registered users only All procurement information is available in Kazakh and Russian languages only. No English translation of any procurement document was found. While this is fully in accordance with the legal and regulatory framework, additional value for money and increased transparency could be achieved by publishing selected information in English in addition to the full documentation that remains available in Russian and	X	Ease the process of obtaining the e-signatures (see above). Publish selected documents in one of the WTO languages (English, French, Spanish) to facilitate transparency and access. As a results, foreign suppliers would be able to gain an understanding of whether they are interested in

			/ or Kazakh to facilitate participation by international bidders, as suggested by international best practice. For example, WTO GPA, Art. VII:3 states that “a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages”. ³		procurement procedures in Kazakhstan and increase their knowledge about Kazakhstan’s procurement market.
(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).* * Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e): - Share of procurement information and data published in open data formats (in %). Source: Centralised online portal.	SK has plans to provide information in a structured way for NCE Atameken and other interested parties as part of the development of e-procurement 2.0. At the moment, though, the publication of data in the Open Contract Data Standard format has not yet been implemented.	7(a) Assessment criterion (e): No data in the e-procurement portal is published in open data format.	Criterion not met. Data is not published in open data format.	X	In order to have the above-mentioned advantages open format can be used. It provides for the publication of a data in a structured, classified format allowing an easy search in accordance to several indicators. The data should be published for the public in general and not only for selected counterparts and the government.
(f) Responsibility for the management and operation of the system is clearly defined.	Yes, Samruk Kazyna Contract has clear responsibility for the management and operation of the system. It is regulated by clause 145 in the RP.		No gaps are identified.		

³ WTO official languages are English, French and Spanish.

7(b) Use of e-Procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) E-procurement is widely used or progressively implemented in the country at all levels of government.* // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement - number of e-Procurement procedures in % of total number of procedures - value of e-Procurement procedures in % of total value of procedures Source: e-Procurement system.	Yes, the electronic procurement system is widely used in all companies that are part of the Samruk-Kazyna holding structure, at all levels of government.	7(b) Assessment criterion (a): uptake of e-Procurement number of e-Procurement procedures in % of total number of procedures 100% All procurement is done through the e-procurement system value of e-Procurement procedures in % of total value of procedures 100% All procurement is done through the e-procurement system Source: e-Procurement system.	No gaps are identified. Criterion met.		
(b) Government officials have the capacity to plan, develop and manage e-Procurement systems.	Corporate University Samruk-Kazyna conducts regular trainings for Contracting Authorities and suppliers. There are video instructions, manuals and technical support. Please note that Government officials do not use the system.		No gaps are identified. Criterion met.		
(c) Procurement staff is adequately skilled to	The Corporate University provides training for purchasing staff of procuring entities. There is no formal certification		No gaps are identified.		

reliably and efficiently use e-Procurement systems.	program to use the e-procurement system. In spite of the fact that within the procurement process on the electronic procurement portal there are video instructions and manuals and technical documents for purchasing personnel.		Criterion met.		
(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.* * 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 %) Source: e-Procurement system.	Most of the vendors who participate in public procurement in general are SMEs. There are no up to date numbers for Samruk-Kazyna available. Previously, the tax system captured characteristics of vendors in the general government procurement system and there was the ability to view if a vendor was an SME. That means that two years ago, when this information was still captured, it was noted that 98% of the vendors participating in general government procurement were SMEs. Currently, there are no markers in the system for SMEs and the tax system no longer captures this information, therefore there is no data for 2016 and 2017 on SME participation.	7(b) Assessment criterion (d): bids submitted online (in %) 100% bids submitted online by micro, small and medium-sized enterprises (in %) There is no current, quantitative information relating to procurement by Samruk-Kazyna. For context, previous estimates for the general public procurement system stated that 98% of bids were submitted by SMEs. Source: e-Procurement system.	Criterion met. There is no longer quantitative evidence that SMEs are actively participating in the procurement procedures of SK.		Consider developing a means of tracking SME participation in Samruk-Kazyna procurement procedures.
(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.	Not applicable as there is an e-procurement system, which is used 100% of the time for all procurement transactions.		No gaps are identified as SK is using e-procurement. Criterion met.		

7(c) Strategies to manage procurement data

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag ?	Initial input for recommendations
(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.	Yes, the e-procurement system in operation collects data on procurement of goods, works and services, including consulting services.		No gaps are identified. Criterion met.		
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.	The e-procurement system can provide information to the parent organization of the fund, including information on the annual report and its capabilities; it also provides analysis of trends and levels of participation and efficiency and economy of procurement and compliance. There is a BI system for this type of functionality. Please note that these reports are not published. For the subsidiary companies, they can view their own information in the e-procurement system.		Criterion partially met. As is revealed during the interviews, the BI system is used to support the data collection and analysis. No annual procurement report could be found online. In order to verify this indicator to the full extent, the assessors would require access to a report compiled and analysed based on the data from the e-procurement system. Additional information on how exactly the BI system works in SK would be welcome to substantiate the analysis.		Publishing annual procurement reports, introducing aggregated data for the procurement of the Fund and the subsidiary companies of the Holding, could be beneficial. Thus, the results of the work of the BI system would become visible and usable by public in general.
(c) The reliability of the information is high (verified by audits).	External audits are held annually. External third party (Russell Bedford) audit vulnerabilities of the system. They are engaged when they launch new systems. They do not do yearly security audits. They are not public. They are also checked by the government agencies especially IT agency. Last audit was 2017 where the focus was to check the compliance of law on private information. The audit was not published. The IT agency received recommendations, which were addressed. For data safety they have two data centres (main and BCC).		No gaps are identified. Criterion met.		

(d) Analysis of information is routinely carried out, published and fed back into the system. * // Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d): • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. Source: Normative/regulatory function/E-Procurement system.	The analysis of information is regularly conducted and provided to the parent organization of the fund.	(j) 7(c) Assessment criterion (d): • total number and value of contracts ◦ data requested from SK, but not provided • public procurement as a share of government expenditure and as share of GDP ◦ data requested from SK, but not provided • total value of contracts awarded through competitive methods in the most recent fiscal year. ◦ data requested from SK, but not provided	Criterion partially met. Quantitative analysis was not possible due to a lack of access to data / the e-procurement system.		

(k) 8. The public procurement system has a strong capacity to develop and improve

8(a) Training, advice and assistance

There are systems in place that provide for:

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) substantive permanent training programmes of suitable	SK Contract is tasked with the training of the subsidiary companies of the Holding and organises seminars related to procurement. There are no permanent training programmes		Criterion partially met.		The fund could establish clear rules on substantive,

quality and content for the needs of the system.	and as became clear from the interviews, the trainings are carried out on an ad-hoc basis. Corporate University SK also aims at training and enhancing the qualification but their programs relate to all the activities of the Holding, not only, but including procurement. In addition, new rules on certification have been adopted in August 2018. These rules do not contain any reference to permanent training programs, but regulate the certification process and procedures.		Even though SK has recently adopted Rules on Certification, the document does not speak to substantive, permanent trainings as required by the assessment criterion.	permanent training programmes as part of the efforts to certify procurers. This is important to establish clear expectations and requirements for procurers. In doing so (also taking into account the findings for the following assessment criteria), the Fund could start with a training needs assessment of all its employees involved in procurement transactions. Based on the results, procurement training strategy should be developed which in its turn will serve as a basis for the permanent training program. The program should include special modules on integrity and ethics, participation of SMEs, control and audit of procurement transactions, etc.

(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.	No routine evaluation as there are no permanent training programmes.		Criterion partially met. SK does not provide for permanent training programmes, consequently, there are no routine evaluations and adjustments of these training programmes.		SK should put in place a permanent training program which should be routinely evaluated and amended based on the needs of the stakeholders.
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.	As detailed by the authorities, the Procurement Methodology Service provides advisory services through a telephone hotline and offer to respond to questions within a short turnaround time via email. In addition, Samruk-Kazyna Contract LLP maintains a call centre, a support service for issues related to e-procurement 2.0.		Criterion partially met. It is our understanding that the support is provided to contracting authorities only while the indicator includes the suppliers and public in general. No advisory service is available to suppliers or the public.		Provide for the advisory services not only for contracting authorities but also for suppliers and for the public in general.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	While there are current efforts to certify SK's procurement workforce, the assessors did not find any indication of more general strategy on procurement capacity in SK. The recently adopted Rules on Certification do not refer to a training strategy and instead focus on the certification process and procedures.		Criterion partially met. No training strategy exists.		

8(b) Recognition of procurement as a profession

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	Procurement is not recognized as a function. There is no specific grading system for procurement officers but there is one for the HR in general.		Criterion partially met. Procurement is not recognized as a profession.		Recognise procurement as a function and provide for different professional levels with the requisite qualifications and competencies specified.

(b) Appointments and promotion are competitive and based on qualifications and professional certification.	The new rules on certification describe in detail who should pass the certification and how this should be organised. The rules have been approved recently by Board Decision on 14 August 2018 (protocol 24/18).		Criterion partially met. The introduction of a certification mechanism is an important step towards the professionalisation of procurement staff. However, the new framework does not speak to the question whether and how the certification translates into appointment and promotion decision, as foreseen by this assessment criteria. Beyond the new certification programme, the assessors found no information on how appointment and promotion decisions are made.		Use the changing context created through the certification programme to make appointments and promotions more competitive. Appointments and promotions could be based on the results achieved by the procurers during the qualification and certification programme.
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	In accordance to the Decision on Certification (Protocol 24/18) the certification is once every two years for procurement officials. The Decision refers only to the certification and does not rule on the further actions based on the results. No specific continuous development programme is provided for the procurement officials based on the certification results.		Criterion partially met. No specific Continuous Development Program is envisaged for the staff based on the certification results.		Provide for a CDP for the staff involved in procurement activities.

8(c) Monitoring performance to improve the system

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red-flag?	Initial input for recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	Point 8 of the Procurement Rules: "Procurement plan for the planning period shall be formed based on production program and (or) investment program and (or) budget and (or) development plan and (or) business plan. The procurement plan(s) concerning goods is (are) formed in terms of the nomenclature of goods. ". As reported by SK, according to this rule and the Corporate Governance Code of the Fund, decisions are based on historic procurement data of the fund. However, there is no specific performance measurement system in SK.		Criterion not met. As noted by the authorities, a KPI system has been established in all subsidiaries of the Fund. However, no details of the system were made available to the assessors to ascertain whether a performance measurement	X	Develop the details of a specific performance measurement system that focuses on both quantitative and qualitative aspects. Information from such system should

			system according to the assessment criterion exists.		be used to take policy decision on the future development of the procurement system of SK. This will also be a useful tool to check the results of the transformation program and its effect on the Fund and subsidiary companies of the Holding.
(b) The information is used to support strategic policy making on procurement.	As noted by the authorities, the KPI system has been established in all subsidiaries of the Fund. However, it is unclear how the KPI system is used for strategic policy making.		Criterion not met. No information was provided on how the established KPI system relates to the strategic policy-making.		
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	The plans of SK involve the production program, the investment program, the budget, a development plan, and a business plan. It seems that the development plans might be seen as strategic plans but the assessors did not find any information to indicate how these plans relate to procurement and the improvement of the procurement system.		Criterion partially met. It is not clear whether the strategic plans are used to improve the procurement system and how exactly KPIs are related to strategic plans.		
(d) Responsibilities are clearly defined.	According to the authorities, the KPI system has been established in all subsidiaries of the Fund. However, it is unclear how the responsibilities are defined/allocated when using the KPIs.		Criterion partially met. It is unclear whether and how the responsibilities are defined when using the KPI system.		

Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives

9(a) Planning

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	It became clear during the interviews, that needs analysis and market research are not carried out in SK or in its subsidiaries. This is substantiated by reviewing limited cases available online.		Criterion not met. According to stakeholders, needs analysis and market research are not carried out. No access to sample cases or similar data from the e-procurement system to analyze the actual practices was provided to assessors. Limited cases from second-tier organization KazAutoZhol also prove that market	X	Make the needs analysis and market research as a mandatory stage of the procurement cycle before the procurement planning. This will enhance

Sample cases were requested but not received from SK. This section is based on the interviews during the fact-finding mission, as well as the requirements of the legislation. Some sample cases from the second-tier subsidiary KazAutoZhol were found online. Even though those cases are appropriately analysed, and findings are reflected in Indicator 9, they cannot be indicative of the SK procurement. The assessors analysed a set of cases based on the assumption that SK procurement rules apply to KazAutoZhol because shares of KazAutoZhol were given to Kazakhstan Temir Zholi (a first tier SK subsidiary) for trust management.

Aside from cursory review, cases chosen for the analysis of the Indicator 9 are the following: 1. Open tender for the procurement of works related to the intermediate-level maintenance of the roads of republican importance of Aktyubinsk and Western-Kazakh regions (N of announcement - 369498-1). 2. Open tender for the procurement of works for the renovation of vehicles (N of announcement 369472-1). 3. Price quotation for the procurement of diesel (N of announcement 369432-1). 4. Price quotation for the procurement of technical control (inspection) services of highway roads (announcement N 369421-1). 5. Price quotation for the procurement of GPS receiving set (N of announcement 369420-1).

			analysis has not been conducted.		the market intelligence and will provide an overview of the available goods, services, work as well as their market prices. It should be also noted that market research should not become preliminary negotiations with specific suppliers. Safeguards to minimise the corruption risk should be in place. In addition, training on how to conduct market analysis could be provided.
(b) The requirements and desired outcomes of contracts are clearly defined.	As there was no access to signed contracts, the clear definition of outcomes cannot be verified. There are also no standard contract terms in order to assess general contract terms. It should be mentioned that the draft contract terms from KazAuthoZhol found online clearly define requirements and the desired outcomes of the procurement procedure.		Criterion not met. No access to signed contracts in order to verify the clear definition of outcomes. Limited cases from second-tier organisation KazAutoZhol contain only template documents which clearly define all the desired		Ensure that contracts include clear requirements and desired outcomes.

			outcomes of the procurement process.		
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	Criteria related to sustainability are not used as award criteria. The main criteria is the lowest price. This is substantiated by reviewing limited cases available online.		Criterion not met. Criteria related to sustainability are not used as award criteria.	X	Start using sustainability-related elements in procurement process. The elements might be included in technical specifications as mandatory requirements, as contract award criteria and/or as contract terms.

9(b) Selection and contracting

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	For complex procurement pre-qualification procedure is used which includes technical audit. The limited cases accessed online did not have a pre-qualification stage, even though some of them can be considered complex. This might be the result of KazAutoZhol's usage of its own Instructions for the procurement of goods, services and works.		Criterion not met. The assessment team did not have access to a sample of procurement cases from SK; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms. Several cases from KazAutoZhol did not reveal usage of multi-stage		Ensure that multi-stage procedures are considered for complex procurements.

			procedures for complex procurement.		
(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	There are no SBDs approved by SK as a secondary or tertiary legislation, but as all the transactions are carried out online, it is assumed that there are e-documents to be used when forming procurement documentation and bids. It is also submitted that standard contract terms should be introduced with the implementation of the Standard on Contract Management.		Criterion partially met. Standard Bidding Documents are not approved on a legislative level but it is assumed that due to the usage of e-procurement for all procurement procedures, some form of standardized documents exist. No standard contracts or contractual terms are in force currently.		Approve the SBDs at a secondary or tertiary level.
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	Contracting authorities choose procurement procedures based on the requirements of Procurement Rules. No approval of the Fund is required. The Procurement Rules provide a wide array of methods suitable for complex or simple procurement. The analysed cases do not contain a justification for the chosen method in accordance with the purpose.		Criterion not met. According to statistics located in previous analysis, the vast majority of procurement cases is conducted using the single source method. ⁶		Ensure that the choice of procurement procedure is documented and justified.
(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing	Procedures for bid submission and other phases of procurement are clearly defined in Procurement Rules. After the deadline for the bid submission, the access to see all the submitted bids is granted to members of the evaluation commission, Authorised Body, secretary of the evaluation commission, potential suppliers participating to the procedure. Members of Atameken get access as part of evaluation commission for tenders over KZT 250 mln.		Criterion not met. The assessment team did not have access to a sample of procurement cases of SK; three out of five cases from KazAutoZhol did not contain tender documentation. No information was found on the involvement of civil		Ensure that procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with.

⁶ See OECD Anti-Corruption Network Eastern Europe and Central Asia (2017), Anti-corruption reforms in Kazakhstan. 4th round of monitoring of the Istanbul Anti-Corruption Action Plan <https://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>

bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	Representatives of unions and associations are included in tender commissions as observers for procurement over KZT 75 mln. Three of the five cases analysed did not contain detailed information on bid submission, receipt and opening. In addition, no information was found on the involvement of civil society or the representatives of the bidders.		society or the bidders in the procurement process.		
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	After the deadline for the bid submission, the access to see all the submitted bids is granted to members of the evaluation commission, Authorised Body, secretary of the evaluation commission, potential suppliers participating to the procedure.		Criterion partially met. According to stakeholders, there are several stakeholders besides the evaluation commission that have access to the bids. This enhance transparency of procurement procedures but could undermine confidentiality.		Consider reviewing access to submitted bids to ensure an appropriate balance between transparency and confidentiality.
(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.	The quality-related or sustainability criteria are not used to award the contract in accordance to current legislation. The lowest price is the sole criterion. On another hand, the future Category Management Standard requires the usage of LCC. All procurement contracts analysed were awarded using the lowest price criterion.		Criterion not met. None of the five cases from KazAutoZhol contained quality-related criteria or sustainability considerations. All cases were awarded using the lowest price criterion.		Where possible and appropriate, consider the use of quality or sustainability-related criteria to achieve the best value for money.

(g) Contract awards are announced as prescribed.	Contract award notice should be published in media, on the web site as well as sent to the bidder who was awarded the contract within three working days of signing the contract award decision (protocol on the results). In all cases analysed the contract award notice with justifications was published.		Criterion met. In all cases analysed the contract award notice with justifications was published. The assessment team did not have access to a broader sample to procurement cases from the SK holding.		

(h) Contract clauses include sustainability considerations, where appropriate.	Sustainability is not prescribed as a contract term.		Criterion not met. Sustainability is not prescribed as a contract term.		Include sustainability in the standard contracts to be drafted after the Contract Management Standard enters into force.
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	In accordance to Procurement Rules, the Contracting Authorities are entitled to withhold fines when returning the contract performance guarantee in case the supplier has violated the terms of the contract. The assessed cases confirm this. If the contract is implemented properly, the suppliers can possibly enter the so-called "white-list" which gives them a provisional discount in future procurement procedures. This however, does not mean that the suppliers are given an incentive to exceed the levels of performance. Rather, they are awarded for the proper execution of the contract.		Criterion partially met. No incentives for exceeding the performance levels are envisaged.	X	Provide the suppliers with the incentives (monetary and others) to exceed the required levels of performance.
(j) The selection and award process is carried out effectively, efficiently and in a transparent way. * *Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b)	Where the selection of the winner and award of the contract is carried out in accordance to the Procurement Rules, it can be stated that overall the process is efficient and transparent. It is not possible to conclude on the efficiency and effectiveness of the procurement processes based on the cases accessed cases due to the lack of the following data: - no signed contracts were found online, so the average time to procure cannot be calculated:		Criterion not met. The assessment team did not have access to a reliable sample of procurement cases or aggregated data; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.		

Assessment criterion (j): - average time to procure goods, works and services - number of days between advertisement/solicitation and contract signature (for each procurement method used) - average number (and %) of bids that are responsive (for each procurement method used) - share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames) Source for all: Sample of procurement cases.	- no aggregated data or report was found online to conclude on the average number (%) of responsive bids, share of the well-implemented processes or the number (%) of successfully awarded contracts. Out of five analysed cases, for the first case 4 out of 7 lots were cancelled as no bidder had required qualification. Out of the remaining 4 cases 3 were cancelled (no qualified bidders or no bids submitted).				

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Contracts are implemented in a timely manner.* Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days)	According to stakeholders, the majority of contracts are implemented on time. If not, the Contracting Authority is imposing fines on the suppliers, which it withholds from the paid contract performance guarantee. The timely implementation of contracts cannot be verified due to the lack of access to signed contracts and other documents of the contract management phase.		Criterion not met. The assessment team did not have access to a sample of signed procurement contracts; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.		
(b) Inspection, quality control, supervision of work and final acceptance of products is carried out.* Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as	As revealed during the interviews, the responsible unit is entrusted with inspecting the deliveries to be in accordance with the contract. If accepted, delivery-acceptance act is signed which is a basis for the payment.		Criterion not met. The assessment team did not have access to a sample of contract management documents; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.		

stipulated in the contract (in %)					
(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. 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).	The interviews revealed that the suppliers are usually paid late and after passing through a heavy bureaucratic process. Sometimes because of late payments, they cannot pay their own subcontractors or suppliers and have to pay fines.		Criterion not met. According to stakeholders, suppliers usually receive the payments later than it is envisaged in the contract. It was not possible to assess the actual timeliness, as the assessment team did not have access to procurement documents.	X	Introduce e-invoicing that will make the disbursement of funds automatic.
(d) Contract amendments are reviewed, issued and published in a timely manner.* Recommended quantitative indicator to substantiate assessment	Procurement Rules lay down exhaustive cases of allowed amendments to draft and already signed procurement contracts (points 131 and 133). There is no provision on publication of the amendments.		Criterion not met. The assessment team did not have access to a sample of signed contracts and respective amendments;; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.		

criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)					
(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.	SK sends reports on procurement activities to the Government. The assessors were able to locate limited procurement statistics, while more detailed statistics were not located. It is unclear whether such statistics exists for registered users.		Criterion not met. No statistical information was found online.	X	Publish aggregated statistical information (on trimester, semester and annual basis). The data should be accessible to general public.
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.* Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society:	As is discussed under indicator 11(c), Atameken (the Chamber of Commerce of Kazakhstan) and the representatives of unions and associations are engaged in different stages of procurement procedure except for procurement planning and contract management phases. However, the assessors were unable to ascertain the actual use of the possibilities provided by the law. The accessed five cases also did not make reference to the involvement of relevant stakeholders.		Criterion partially met. In accordance to the legislation, civil society organisations are not engaged in planning and contract management phases. Involvement is restricted to procurement above certain value as described in indicator 11 (c). The assessors were unable to verify the involvement of civil society in practice.	X	Engage civil society organisations in all stages of procurement process.

planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.					
(g) The records are complete and accurate, and easily accessible in a single file.* // 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 %) Source: Sample of procurement cases*	It was not possible to access the records of procurements, as the information is available for registered users only. Limited information and documents from second-tier subsidiary "KazAutoZhol" were found online. The website is user-friendly, and the documents are easily accessible.		Criterion met. The assessment team did not have access to a sample of procurement cases from SK or its first-tier subsidiary; therefore, it was not possible to evaluate this assessment criterion and verify the implementation of norms.		

10 The public procurement market is fully functional

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a)	Representatives of non-governmental organisations and associations (unions) are included in the tender commission as an observer in case of procurement of goods/services/works with the value of more than KZT 75 mln. The unit of the contracting authority authorised to carry out procurement procedures sends out the notice to NGOs and associations (unions) requesting nominations. Not all information received by such observers should be disclosed to third persons unless in cases directly envisaged by the legislation of the Fund or the Republic of Kazakhstan. As detailed by the authorities, the Fund also has a working group to improve the procurement system, approved by order of the Chairman of the Board of the Fund. The Working Group includes representatives of the Fund, subsidiaries of the Fund, as well as representatives of Atameken. No further formal mechanisms for the dialogue with the private sector are envisaged, especially related to the consultations when formulating changes in public procurement system. The only ethics and integrity rule relates to the non-disclosure of confidential information.		Criterion partially met. No further formal mechanisms for dialogue with the private sector, especially related to the consultations when formulating changes in public procurement system, are envisaged.		Envisage a consultation mechanism with the civil society organizations when amending the procurement system.

Assessment criterion (a): - perception of openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.					
(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.	The suppliers receive trainings in the Corporate University of Samruk Kazyna, as are the contracting authorities. The course relates to the Procurement Rules and other regulatory documents regulating procurement activities. The web-site of SK also contains training courses on the use of an electronic platform. The Fund conducts free procurement webinars, and also provides an e-learning procurement training program. No specialised programs for the SMEs are envisaged.		Criterion partially met. No specialized programs for the SMEs are envisaged.		When preparing permanent training programs, inclusion of SMEs should be one of the taught modules alongside with the integrity module.

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) The private sector is competitive, well-organised, willing	As was mentioned during interviews, SK is working to build a close relationship with suppliers. The new procedure of pre-qualification can be said to be used for this purpose. There are		Criterion not met. No quantitative data has been provided to help assess the openness of the procurement markets and		Even if SK will decide to move forward with the creation of

and able to participate in the competition for public procurement contracts.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a): • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) • total number and value of contracts awarded to domestic/foreign firms (and in % of total) Source: E-Procurement system/Supplier Database.	three levels of pre-qualification each with two sub-levels starting with the easiest procurement (office supplies, etc.) and ending with complex procurement for specific purposes and activities. Creating a pool of own suppliers can have both advantages and disadvantages. Suppliers will build capacity and will provide better quality services/works. This is advantageous especially for complex procurement taking into account the specific areas the companies within the Holding are working in. However, such measures will preclude the entry into the market of new suppliers that will miss the necessary qualification and after some years, the contracting authorities will depend on the incumbent suppliers losing the bargaining power. This indicator is about the practice; assessors interviewed several suppliers. Most of them did not participate in SK procedures and one has informed that they tried but SK has its 'own suppliers'.		the participation rate of domestic and foreign suppliers.	the pool of its own suppliers, it should not preclude the entry into the market of new (more efficient) suppliers. In the long run, this strategy will be beneficial for SK, as it will not depend on specific suppliers.

(b) There are no major systemic constraints inhibiting private sector access to the public procurement market. * Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b): - perception of firms on the appropriateness of conditions in the public procurement market (in % of responses). Source: Survey.	The Procurement Policy does not put excessive qualification criteria but it contains set-aside for “in-house” suppliers, as well as organisations for disabled. In addition, each 1% of local content will provide provisional discount of 0.15%, local goods will have the discount of 5%. Pre-qualification process can also inhibit constraints on the access to the market especially for the standardised goods, services, works for which pre-qualification in accordance to international best practice is not required. Foreign suppliers can participate to procurement procedures but they will have to compete with local companies having preferences. The ones that do not have representations in Kazakhstan can use GAMMA Technologies that provides e-signatures to use in the system for some fee (around EUR 130 for 1 year). The foreign companies wishing to receive free e-signatures have to have a representation in Kazakhstan, which is connected to costs. During the interviews, an information was received that currently there are 15 non-residents registered in the system. As has been already mentioned, SK is trying to create a pool of its own suppliers.		Criterion not met. Local preferences, “in-house” procurement as well as preferences for disabled peoples’ organisations can create market access barriers.	X	Opening up the market for foreign suppliers will increase the competition and allow for better value for money. All of such policies should be well weighted and thought through so as not to hinder the access of new and foreign companies.

10(c) Key sectors and sector strategies

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag?	Initial input for recommendations

(a) Key sectors associated with the public procurement market are identified by the government.	The subsidiary companies in the Holding are the ones in a key market starting from oil and gas companies to national air carrier and post. It thus can be stated that key markets are identified by the state and grouped in one Holding. With the rollout of the transformation program, the sectorial approach to procurement will be more visible as the subsidiaries will be asked to have their own procurement rules following the specific needs of the sector they operate in (gas, oil, post, etc.). These policies have to be based on 7 standards one of the central of which is the standard for category management. In accordance to it, procurement subjects have to be divided in 3 categories – I, II and III depending on their importance for the subsidiary company, possibility to achieve cost efficiency, etc. For each of these categories a strategy should be developed except for III category for which this is not mandatory.		No gaps are identified. Criterion met.		
(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.	Taking into account the strategic importance of the areas the companies in the Holding are active in, it has been decided that the procurement should be organised in categories taking into account the analysis of spending for that category, market, future needs of supplies, life cycle costing, etc. In accordance with the Rules on Category Management, the procurement category group should send a request to NCE “Atameken” to provide information on the market of Kazakhstani suppliers by procurement category when analysing the external environment and developing procurement strategies. At the stages of strategy development and implementation, procurement category groups conduct preliminary face-to-face negotiations. Thus, potential suppliers are contacted in order to provide information about their own activities		In general, no gaps are identified. Criterion met.		

	but the decision on the categories is taken by the Fund or the subsidiary companies in the Holding. Risk and strategic management of specific categories of procurement are assessed but the suppliers are not engaged in support of procurement objectives. In fact, the Fund and subsidiary companies in Holding use them to have an understanding about the structure and maturity of the market, which later can affect the decision on categories.				

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

11. Transparency and civil society engagement foster integrity in public procurement

11(a) Enabling environment for public consultation and monitoring

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag?	Initial input for recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	In accordance to the representatives of civil society, there has been no consultative process when formulating amendments to the procurement system of SK. NGOs that were interviewed as part of the fact-finding did not hear about or were not invited to such communicative procedures. The SK in its turn has explained that such communication is carried out via Atameken (The National Chamber of Entrepreneurs) in accordance to the Agreement on Cooperation between the Atameken and SK. Point 3.1.3. of the above-mentioned Agreement states that the representatives of Atameken are included in the working group on the drafting and improving the legislative acts of the Fund. According to stakeholders, Atameken includes 99% of the business community of Kazakhstan.		Criterion not met. Atameken is a Chamber of Commerce and cannot be considered an organisation of civil society; aside from Atameken, no civil society organisations have been consulted. In addition, it is reported that Atameken had ties with the government. On 13th of June 2018, an agreement between the Government and Atameken has been signed according to which the government has withdrawn its membership. Notwithstanding this, it is submitted, “the Government and the National Chamber of Entrepreneurs have big joint plans for future	X	Include widerlayers of civilsociety into the consultative process relatedto the amendments of the procurement system.

			cooperation".		
(b) Programmes are in place to build the capacity of relevant	SK Corporate University organizes courses on the legislation regulating the procurement area. Civil society organizations are free to take the course. Interviews with the representatives of civil		Criterion partially met. In accordance to the information received from counterparts, the participation to the		Spread the information about the trainings

stakeholders to understand, monitor and improve public procurement.	society organizations revealed that they were unaware of such trainings.		trainings organized by SK Corporate University is open to anyone including civil society. Unfortunately, the interviews revealed that the civil society representatives had no information about such opportunity.		organized by SK Corporate University. Have specific training days for the representatives of civil society.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	The Fund has a working group to improve the procurement system, approved by order of the Chairman of the Fund Board. The Working Group includes representatives of the Fund, subsidiaries of the Fund, as well as representatives of the NCE "Atameken" representing various business structures.		Criterion partially met. Beyond this working group, assessors did not identify consultations with civil society representatives. It remained unclear to what extent the comments and feedback of civil society is taken into account.		After the consultation process, consider the comments and suggestions of civil society and incorporate them as much as possible. In case the comments are not considered, provide for a written justification.

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Requirements in combination with actual	While there are rules on access to information, the actual practices remained unclear.		Criterion not met. Legal requirements mandate the publication of information for the	X	Establish practices to ensure all stakeholders have adequate and timely access to information.

practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	In accordance to points 24 (2) and (3) of the Procurement Policy the notice and tender documentation of the open tender should be published on the website of the contracting authority, the organiser of the procurement as well as the web-site of the Fund. In addition, these should be published also in paper-media that is published in the territory of whole Kazakhstan with the frequency of not less than 3 times per week. Similar provisions are envisaged for the request for price quotation (point 101), two-stage tendering (point 96) and attestation for consulting services (point 13 Annex 1). The information about the results of the tender also should be public (points 75, 116, 136). In addition, there is the mechanism of the so-called preliminary discussion of tender documentation. According to this procedure, following the publication of tender documentation, interested bidders can comment on the terms stated in the bidding documents. This is a laudable first step to enhance transparency in the public procurement system. The Regulation on e-Procurement lays down the requirements for the registration of the civil unions or associations in the e-procurement system. As there is no access for the experts of the OECD to the e-procurement system, it was not possible to verify what associations or unions have registered.		stakeholders to be able to monitor procurement procedures. However, the assessors were unable to verify the full extent of the published information and who has access. There does not seem to be one access point that provides information about public procurement in a sufficient level of granularity. There is no means to verify how many and what kind of associations have been registered so far.		

11(c) Direct engagement of civil society

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flags?	Initial input for recommendations

(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring).	The representatives of unions or associations are included in the tender commission as observers for the tenders above the value of KZT 75 mln. The Contracting authority provides the representatives with the following: i. the documentation regulating procurement procedures; ii. procurement plans in which the representatives are included. iii. information about people responsible for the organisation of the procedure; iv. information about the organisation of tenders in which the representatives are included. Though it is not explicit, it can be deduced from the above mentioned that the representatives are not included in the planning phase. Rather they participate in bid opening, evaluation, and contract award. The contract management and completion (monitoring) also seems to be outside the scope of such engagement. Representatives of Atameken are also included to the tender commissions of open tenders for the procurement of above KZT 250 mln. They are also included in the assessment of projects in the scope of the realisation of the Program for the support of modernisation of the existing and creation of new products in 2014-2022. The Atameken representatives are participating in the review of the project design and estimate documents, technical and economic substantiations, technical specifications and bids		Criterion partially met. Formally, the legal/regulatory and policy framework allows the representatives of civil society and the National Chamber of Commerce to participate in the procurement procedures. In case of civil society, this engagement is in the phase of bid evaluation and contract award while Atameken also participates in the documentation drafting process for setting the minimum and maximum local content requirements. Civil society and Atameken are not engaged in procurement planning and contract management phases. It remained unclear to what extent the participation really takes place.	Engage the representative s of civil society in all stages of procurement process.

	for participation to the investment and other projects in order to set the minimal and maximal indicators of the local content.				
(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.	As is mentioned under indicator 11 (c) (a), SK procurement legislation contains several provisions on the participation of unions and associations as well as of Atameken. As opposed to this, the interviewed representatives of civil society organizations were not aware that they could participate to the tender committee activities of the Fund. They did not receive any invitation from the Fund to participate to the activities of tender commissions.		Criterion partially met. Civil society organizations interviewed never receive an invitation to participate to the bid evaluation and contract award procedures. It turns out, they were not even aware that such regulation exists.		Make sure various civil society organizations are included in the consultations related to the procurement system as well as in different stages of the procurement process as observers.

12. The country has effective control audit systems

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) laws and regulations that establish a comprehensive control framework,	The Law N 392 –V “On State Audit and Financial Control” dated 12 November 2015 in its Art. 1 (7) mentions the entities in the quasi-public sector as objects of state audit and financial control, meaning that the Law applies to the latter. In		Criterion partially met. The only regulation that was found online was the Rules on Implementing Control. The rest of the information was received		Publish all the laws and regulations related to internal and

including internal controls, internal audits, external audits and oversight by legal bodies	addition, the Rules on Implementing Control have been approved by the Decision of the Council of Directors of Samruk-Kazyna as Annex6 to Protocol of the Council of Directors N 85 dated 29 October 2012 (amended on 27th of October 2017). According to interviews and information provided by Samruk-Kazyna, each subsidiary has its own internal audit regulation while the Procurement Methodology and Control Department acts as an external auditor. According to information provided by Samruk-Kazyna, the highest audit institution within Samruk-Kazyna is the Audit Committee on the level of Samruk-Kazyna's board of directors. The Audit Committee consists solely of independent directors. It is the Audit Committee that handles results of audits throughout Samruk-Kazyna. In addition, Samruk-Kazyna has a Special Committee, consisting of representatives from the Holding management, the Ministry of Finance and Kazakhstan's Accounts Committee. The remit of the Special Committee is more related to follow up on the holding's operations from a general impact and efficiency perspective. That means that the Special Committee focuses more on performance monitoring for operational decision-making rather than audits to tackle violations. The Special Committee is interested in investment programs, transformations, business processes and does not look specifically at procurement transactions. The external audit of the Fund is usually carried out by one of the "Big 4" audit firms, selected via tendering.		as commentary during the interviews.		external control activities.
(b) internal control/audit mechanisms and functions that ensure appropriate	The Rules on Implementing Control envisage that there are two types of control activities: planned and not planned. Planned control is carried out taking into account analysis of the procurement activities for the previous period of work,		Criterion partially met. It should be mentioned that even though the Rules on Implementing Control contain provisions		Publish internal audit regulations and manuals. Make sure they are

			compliant with this		

oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	including the detected violations in the course of unplanned control activities. In case the subsidiary company has a credit rating from one of the major credit rating agencies and achieves an 85-100 rating in the area of corporate governance, this subsidiary does not have to repeat control activities. Unplanned control is carried out in case there is such a request from the (potential) suppliers, members of the tender commission, experts; as a result of monitoring of the web-sites of the Holding to check whether the procurement rules are followed; in accordance to materials submitted by the subsidiary companies for the category management implementation; by the order of the Authorised person of the Fund⁷, when a) information has been received through the hot line; b) the management, internal audit of the subsidiary company or a unit of the Fund requests so; c) an information has been received through media (TV, Internet, etc.). After the control is carried out, an instruction mandatory for the implementation is directed to the subsidiary company by the Authorised Body (Fund) which shall include recommendations on the elimination of the reasons and conditions resulting in the violation. Recommendations should also contain suggestions on the elimination and prevention of violations in future, compliance with corporate documents, and an increase of effectiveness of concrete directions of activities of the subsidiary company.		indicator, this is considered to be already an external audit, not an internal one. As has been mentioned, each subsidiary company has its own internal audit unit and regulation.		providing for a reporting to management on compliance, effectiveness and efficiency of procurement operations.
(c) internal control mechanisms that ensure a proper	The planned control can take up to 30 calendar days and the Authorised Body should inform about its start at least 7 working days in advance.		Criterion met. The provided deadlines are reasonable and support		

⁷ In accordance to point 2 of the Rules on Implementing Control, the Authorised Person of the Fund is a person whose obligations include the coordination of the procurement implementation activities in the subsidiaries.

balance between timely and efficient decision-making and adequate risk mitigation	The control can be prolonged in case of need but not for more than 15 calendar days. The unplanned control activities can take up to 30 calendar days and can be prolonged, in case needed, for not more than 15 calendar days.		decision-making.		
(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	The Procurement Methodology and Control Department is exercising the external audit function over the subsidiaries in the holding, in cooperation with the Special Committee (see above.) Within the functions of the Special Committee under the Fund Board (which includes the representatives of the Accounts Committee), an impact analysis of portfolio companies' mergers on the national economy or its specific sector is carried out. Within this analysis a procurement process can be considered in general terms (for example, the execution of the Procurement Plan). While being a member of the Special Committee, the full role of this vis a vis Samruk-Kazyna remained unclear: whether the Accounts Committee's oversight is limited to this participation in the special committee, or whether the Accounts Committee can act independently of this Special Committee to exercise a full supervisory function that an SAI should have. In an interview for a press release by Samruk-Kazyna, the Managing Director for Government Relations Nurlan Rakhmetov mentioned that the State Committee for the Control over the Execution of State Budget has gained the right not only to control the absorption of state budget but also the effectiveness of the asset management. In his opinion, Samruk-Kazyna should be audited as a commercial company based on the international standards for audit		Criterion partially met. It is unclear to what extent the Accounts Committee independently and fully exercises an oversight function over Samruk-Kazyna, or it is doing so only as a member of the Special Committee. There is no further information on how (or if) the Accounts Committee periodically audits the procurement function of SK (and/or of the subsidiaries). No information was provided to suggest that risk assessments are conducted or used to manage external audits of Samruk-Kazyna. The Procurement Methodology and Control Department or the Special Committee cannot be considered a sufficiently independent institution to provide external audit and oversight.	X	Clearly describe the role of the Accounts Committee in exercising external control over the procurement transactions of SK. In case the Accounts Chamber has no role besides as a member to the created special committee, also clearly state that in the legislation.

	and this is different form the audit of state bodies. ⁸				
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	No review of specific audit reports by the SAI is envisaged. At least once in three months, the Head of the Accounts Committee submits information on the work of the Committee to the President. The Accounts Committee also submits for the discussion and approval of the Parliament an annual report on the execution of the republican budget. The Head of the Committee also provides information on the work of the Committee to the Parliament not less than once in three months.		Criterion partially met. No review of specific audit reports by the SAI is envisaged.		In case the Accounts Committee is involved as an external auditor, provide for a review of the audit reports.
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	After the control is carried out, a mandatory instruction on the implementation is directed to the subsidiary company by the Authorised Body (Fund) which shall include recommendations on the elimination of the reasons and conditions resulting in the violation. Recommendations should also contain suggestions on the elimination and prevention of violations in future, compliance with corporate documents, increase of effectiveness of concrete directions of activities of the subsidiary company. In case the instructions are not carried out or are carried out partially, the requested documentation is not submitted or is submitted partially, the submitted information is false, the deadline for the implementation of the instructions is missed the employees of the contracting authority, including the manager controlling the procurement activities, head of the unit responsible for the organisation of procurement procedures, carry personal responsibility.		No gaps are identified. Criterion met		

⁸ See https://sk.kz/press-centre/news/17601/?sphrase_id=51074

	The aggregated results of the control activities are basis for the Authorised Body to draft suggestions on the effective usage of money, prevention of ineffective use of money, development of the system of procurement and the normative basis, etc.				

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential flag?	Initial input for recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	As has been mentioned during the interviews, there are internal audit manuals for each subsidiary company which are not public.		Criterion partially met. This is an oral explanation as the manuals are not public.	X	Publish internal audit manuals.
(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.	As has been mentioned during the interviews, there are internal audit manuals for conducting procurement audit that are not public.		Criterion partially met. This is an oral explanation as the manuals are not public.		Publish internal audit manuals.

(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.* * 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.	The planned control activities are carried out in accordance to the annual plan. The schedule for scheduled audits is determined based on the level of the subsidiary within the Samruk-Kazyna holding structure, past procurement activity and results of past audits (e.g., unscheduled audits.)		There is no information about the actually carried out internal audit as this is done within each subsidiary.		Establish that the internal audit is carried out at least annually in each subsidiary of the Holding.
(d) Clear and reliable reporting lines to relevant	Internal audit units can ask the Procurement Methodology and Control Department to carry out an unplanned control in their subsidiary		Criterion partially met. The reports on external audit are submitted to the management of the	X	Provide for a clear hierarchy for the

oversight bodies exist.	company. Also, in accordance to point 144 the Department is cooperating with internal audit units of the subsidiaries. Instructions are sent to the subsidiaries and the management required to be acquainted and sign the act of control within 3 working days of receiving it. In case the manager does not sign it, an act about this fact is being comprised. In case the subsidiary does not agree with the results of the planned control or if, during an unplanned control, violations affecting the results of the procurement procedure have been detected, the audit materials are sent to the Fund's Special Committee. The Special Committee can then send an instruction to the subsidiary on the suspension of the contract award for not more than 10 working days and on the cancellation of the results of the procurement before the conclusion of the contract.		subsidiary company of the Holding where the control activities are carried out as the Procurement and Control Department is an external audit body. No information on the internal audit reporting lines.		reporting of internal audit findings to the management.

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a) Recommendations are responded to and implemented within the time	The fact that the managers have personal responsibility for the correct and timely implementation of the instructions leads to the assumption, that the deadlines are generally respected.		Criterion partially met. Due to the lack of data this cannot be verified.		

frames established in the law.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.	Due to the lack of data this cannot be verified.				
(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.	The system on the follow up on the implementation of the audit recommendations is not clearly described in the Rules on Implementing Control. It is mentioned that in case the instructions are not carried out or are carried out partially, the requested documentation is not submitted or is submitted partially, the submitted information is false, the deadline for the implementation of the instructions is missed the employees of the contracting authority, including the manager controlling the procurement activities, head of the unit responsible for the organisation of procurement procedures, carry personal responsibility. The way of holding persons liable is described in a specific internal document of the contracting authority which envisages sanctions		No gaps are identified. Criterion met.		

	in accordance to the legislation of the Republic of Kazakhstan. The aggregated results of the control activities are basis for the Procurement Methodology and Control Department to draft suggestions on the effective usage of money, prevention of ineffective use of money, development of the system of procurement and the normative basis, etc.				

12(d) Qualification and training to conduct procurement audits

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red	Initial input for recommendations
(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.* * Recommended quantitative indicator to substantiate assessment of sub-	There are no specific training programs for procurement auditors. They receive the same training as general civil servants.		Criterion partially met. No specific training program for procurement auditors exists.		Provide for specific training programs for internal and external auditors.

indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. Source: Ministry of Finance/Supreme Audit Institution. * Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.					
(b) The selection of auditors requires that they have adequate knowledge of the	There is no specific requirements for the employees of the Procurement and Control Department related to the function of the audit. The selection is carried out via usual HR procedure.		Criterion partially met. There are no specific knowledge/background requirements for the auditors.		Provide for requirements related to the knowledge of procurement

subject as a condition for carrying out	The fact that the Procurement and Control Units are in the same Department, means that the			for auditors that will be entrusted to

procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	controllers (external auditors of SK) will get support from their procurement colleagues, but it also limits the independence of the audits.				audit procurement transactions.
(c) Auditors are selected in a fair and transparent way and are fully independent.	The auditors of the Control Unit of the SK are usual employees of the Fund. The selection is carried out via usual HR procedure. The external auditors for the Fund are usually selected from Big4 via public tender.		As submitted during the interviews, the HR procedures are transparent and merit based. No gaps identified. Criterion met		

13. Procurement appeals mechanisms are effective and efficient

13(a) Process for challenges and appeals

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) Decisions are rendered on the basis of available evidence submitted by the parties.	The aggrieved suppliers are required to submit to the Fund and/or the subsidiary companies of the Holding all necessary information and documentation related to the actions/inactions of the contracting authority. The Fund has the right to ask and receive all the documents, oral and written explanations from the subsidiary company of the Holding in order to resolve the case.		No gaps are identified. Criterion met.		

(b) The first review of the evidence is carried out by the entity specified in the law.	The first review is carried out either by the Fund or by the subsidiary company of the Holding depending on the procurement procedure being challenged. This has been specified in the Rules on Reviewing the Requests from the Potential Suppliers, Suppliers of the JSC SK and Organizations 50 or More Voting Shares of which Directly or Indirectly Belong to the Fund on the Right of Ownership or Trust Management (approved by the decision of the Management N 29/12 dated 5 July 2012 amended with Protocol 12/16 dated 18 April 2016).		No gaps are identified. Criterion met.		
(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. * // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.	The question whether decisions are final and enforceable, and which bodies are issuing these, remained unclear. Rules to this effect were not located in regulations available to the assessment team. In case the complainant is not happy with the decision of the subsidiary company of the Holding, the supplier can refer to the Authorised Body (Department of Procurement Methodology and Control). The Fund has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations. If still unhappy, the suppliers can refer to the Fund's Commission on Public Procurement Complaints created to review <i>inter alia</i> the complaints against the decisions of the Authorised Body. In case there is a complaint against the decision of the Commission on Procurement Complaints, it is possible to have the second hearing of the Special Committee in case there is an order of the Chairman of the Management Board. The Authorised Body sends out respective letters to the subsidiary of the Holding based on the conclusions of the Commission on Procurement Complaints (clause	No quantitative information was provided.	Criterion partially met. There is only a small provision about the mandatory nature of the decisions of the Fund when reviewing the decisions of the subsidiary companies of the Holdings. There is no such provision about the decisions of the Special Committee		Envisage the mandatory nature of the decisions of the Commission.

* Recommended quantitative indicator to

substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. Source: Appeals body.	24 of the Provision on the Fund's Commission on Complaints). However, the provision does not specify the enforceability of the decisions or of the mentioned letters. The Suppliers also have the right to refer to the Court in case not being satisfied. The court of course has its own means to enforce its decisions.				
(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.	Point 12 of the Regulation for the Examination of the Pleas from the Suppliers states that complaints for the review of which there is no need for information from other bodies, subsidiary companies of Holding, are reviewed in 15 calendar days since the day of submission. In case there is a need of additional information from other bodies, subsidiary companies of Holding, the decision should be taken within 30 calendar days since the submission. In case there is a need for additional examination or check, the deadline can be extended for up to 30 calendar days about which the complainant is informed. In case the questions raised in the complaint require longer period, the complainant is being informed about it. The decision is taken by the Commission on Procurement Complaints within 5 working days after the receipt of the materials in the Fund. Related to the deadline for the submission of the complaint there is no specific standstill period requirement but point 125 of Procurement Policies state that the contract cannot be signed earlier than 10 calendar days and later than 25 calendar days since the signature of the protocol on the results. The results of the contracting authority on the preliminary discussion of the tender documentation can be contested in accordance		Criterion partially met There are some deadlines envisaged for the complaint to be launched but they are not complete and do not refer to all the stages of the complain process. Thus, it is unclear how many days the supplier has in order to ask for a review in the Authorized Body or afterwards in the Special Committee. The deadline for the Authorized Body to come to a conclusion is not very specific and can be potentially extended for an unlimited period. In addition, there is no specific provision on the suspension (continuations) of the procurement process. As there are several levels of the complain process, it is necessary to have clear deadlines for both the suppliers to launch a complaint and the authorities to issue a	X	Clearly define the number of days allowed to complain in each stage of the complain process. In addition, the deadline for the Authorized Body to decide on the case should be clearly established with limited possibilities of prolongation. Provision on (automatic) suspension should be provided in the legislation.

	to the rules regulating the control function in SK. No specific time frame is envisaged for such complaint to be launched.		decision, as well as to clearly set up rules for the suspension (continuation) of the procurement process.		

13(b) Independence and capacity of the appeals body

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	The first review is done by either the subsidiary company of the Holding or the Fund itself. This means they are reviewing their own decisions or the decisions of other units in the subsidiary company. The other levels (Commission on Procurement Complaints, court) can be said to enjoy more independence even though in case of the review by Commission on Procurement Complaints the working organ is still the Department of Procurement Methodology and Control. Representatives of Atameken are also invited to participate to the work carried out by the Commission on Complaints but this does not mean that such participation renders the Commission automatically independent.		Criterion not met It cannot be stated that the first instance appeals body is independent as it is reviewing its own decisions. Other levels are more independent though they still do not meet the standard of independence set up by the international best practice. Only the independence of court can be asserted.	X	Create a body independent of the Fund and subsidiary companies of the fund entrusted with the review function.
(b) does not charge fees that inhibit access by concerned parties	No charges are paid for the review.		No gaps are identified.		

(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c): - appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %). Source: Appeals body.	The rules for submission and resolution are envisaged in two documents: i. Rules on Reviewing the Requests from the Potential Suppliers, Suppliers of the JSC SK and Organisations 50 or More Voting Shares of which Directly or Indirectly Belong to the Fund on the Right of Ownership or Trust Management (approved by the decision of the Management N29/12 dated 5 July 2012 amended with Protocol 12/16 dated 18 April 2016); ii. Regulation on the Commission of JSC SK for the review of complaints related to procurement (approved by the decision of the Management N29/12 dated 5 July 2012 amended with Protocol 12/16 dated 18 April 2016). Both documents are publicly available.	No quantitative information to establish this assessment criterion was accessible.	No quantitative information about the timeframe within which cases are resolved was accessible to the assessment team.		
(d) exercises its legal authority to suspend procurement	The Subsidiary company of the Holding, in case the reasoning in the complaint is considered to be legitimate, has the right to cancel the results of the procurement or to include additions and/or amendments in the appropriate		Criterion not met No provision of the suspension of the procurement process and no specific remedies. As decisions are not		Prescribe (automatic) suspension in the legislation.

proceedings and impose remedies	documentation on its own initiative. After hearing the case the Fund has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations. The Special Committee takes a decision that is the basis of the letter from the Fund directed to the subsidiary company of the Holding. No provision of the suspension of the procurement process and no specific remedies. According to the authorities, a system of automatic suspension is currently being developed to be included in the e-procurement system. So far, the work has not been finished. In addition, there is a need to prescribe in legislation when is the automatic suspension possible and only after develop a tool for the implementation of the legal requirements.		published, nor were they made available, the assessment team was unable to verify the activities of the appeals body.		
(e) issues decisions within the time frame specified in the law/regulations*	Even though there are some rules on the deadlines for taking a decision, due to the absence of data, the assessors were unable to verify the application of these provisions.		Cannot be verified.		
(f) issues decisions that are binding on all parties	It remained unclear to what extent decisions by the Procurement Methodology and Control Department are binding for subsidiary companies. The Fund, after hearing the case, has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations. In the Rules on the Implementation of the Control, it is also mentioned that the Fund might <i>request</i> the subsidiary company of the Holding to cancel the results of the procurement before the conclusion of the contract in case the Special		There is no explicit provision requiring the decision to be mandatory. However, for example in the Rules on the Implementation of the Control it is mentioned that the Fund might <i>request</i> the subsidiary company of the Holding to cancel the results of the procurement before the conclusion of the contract in case the Special Committee has		

	Committee has decided so. Moreover, in such case the results of the procurement should be reconsidered. This is the case when the management of the subsidiary company does not agree with the results of the planned control activities or the unplanned control detected violations affecting the results of the procurement procedure.		decided so in which case the results should be reconsidered. The Fund in its own turn can also give instructions to the subsidiary companies of the Holdings related to the planned or implemented procurement procedures.		
(g) is adequately resourced and staffed to fulfil its functions.	The Procurement Methodology and Control Department is responsible for the methodology, control and the review functions.		According to stakeholders, the Procurement Monitoring and Control Department will need more staff to fulfil different entrusted functions. These indications are credible, given the high workload and increasing number of diverse tasks for the Procurement Monitoring and Control Department. However, they cannot be verified due to the absence of data on the number of complaints reviewed by the Fund/Special Committee and the structure/staffing of the Department.		Hire highly qualified staff to help the Department to fulfil its functions of methodological guidance, review and control.

13(c) Decisions of the appeals body

Procedures governing the decision making process of the appeals body provide that decisions are:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red -	Initial input for recommendations

				flag?	
(a) based on information relevant to the case.	In case the issue is not described or the complaint is received from the anonymous source, the complaint is not taken for the review. The relevant issue is described and documents are provided by the complainant. Afterwards if the review is carried out already by the Fund, the latter can request all the relevant information and documentation from the subsidiary company of the Holding (contracting authority). Experts and consultants can also be engaged in the process. Whether in practice the decisions are taken based on the submissions from the parties and experts that are relevant for the case cannot be verified due to the unavailability of data.		Not met Cannot be verified due to the unavailability of case files.		
(b) balanced and unbiased in consideration of the relevant information.* <i>Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c)</i> <i>Assessment criterion (b): - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).</i> <i>Source: Survey. -</i>	According to interviews, the responsible bodies to consider available information and are generally balanced and unbiased in their judgement. However, given that no access to case-related files was possible, the analysis of this criterion has to remain limited.	It was not possible to conduct a survey with suppliers.	Criterion not met The institutional structure limits the extent to which decisions of the appeals body can be really considered unbiased and balanced: This is because the appeals body is part of the management structure of Samruk-Kazyna for day-to-day operations; in fact, the appeals function is fulfilled by the Department in charge of setting rules on public procurement and also exercising the audit function (see above.)	x	Consider revising the institutional structure to separate the appeals body and the management structure.

share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey.					
(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.* <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.</i>	The subsidiary company of the Holding, in case the reasoning in the complaint is considered legitimate, has the right to cancel the results of the procurement or to include additions and/or amendments in the appropriate documentation on its own initiative. After hearing the case the Fund has the right to send to the management of the subsidiary companies of the Holding mandatory instructions about the planned and concluded procedures as well as the elimination of the detected violations. The Commission on Procurement Complaints takes a decision that is the basis of the letter from the Fund directed to the subsidiary company of the Holding. In the Rules on the Implementation of the Control it is also mentioned that the Fund might request the subsidiary company of the Holding to cancel the results of the procurement before the conclusion of the contract in case the Special Committee has decided so. Moreover, in such case the results of the procurement should be reconsidered. No provision on specific remedies in the Rules on the Examination of the Pleas or in the Rules on Commission JSC SK. The content of the decision is not published.		Criterion partially met The subsidiary company by its own will can cancel the process or make necessary amendments in the documents. The decisions are not published and no data was provided in order to understand the type of remedies issued.		Describe the remedies the Fund and the Special Committee are entitled to take against the contracting authority violating the procurement regulation.

(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.* <i>// Minimum indicator //</i> <i>*Quantitative indicator to substantiate assessment of sub-indicator 13(c)</i> <i>Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralised online portal.*</i>	Decisions are not published as there is no legal obligation to do so.	Decisions are not published.		X	Publish the decisions.

14.The country has ethics and anticorruption measures in place

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	Definition of corruption is given in the Law “On Resistance to Corruption” (Art. 1 (6)). Bodies of the quasi-public sector, including Samruk Kazyna are subject to the above –mentioned Law. There is no specific definition of corruption in procurement area.		Criterion partially met There is only a general definition of corruption found in the Law “On Resistance to Corruption” (Art. 1 (6)).		Consider developing a more specific definition of corruption in procurement.
(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.	There are criminal and administrative penalties for corrupt practices by government employees (e.g. Art. 189 (3) (2), Art. 364-370 of the Penal Code and Art. 676-681 of the Administrative Code) as well as special articles related to the violation of public procurement rules (Art. 207 of the Administrative Code). The future legislation that is currently being discussed in the Parliament envisages amending the Administrative Code and adding Art. 207 -1 which prescribes responsibility for the violations of procurement rules of the national holdings, national companies and organisations 50 and more voting shares directly or indirectly belong to the national holding or national company. This means that the violation of procurement rules of Samruk Kazyna will also invoke administrative penalties in case the proposed amendments will be adopted. As was mentioned by the Vice-Minister of Finance Mr. Beketaev in his speech in		Criterion partially met Currently there is no responsibility or penalty envisaged by the legislation of Kazakhstan for the violation of the procurement rules of SK. Once the amendments to the Administrative Code will be adopted, there will be responsibility for the seven most sensitive violation of the procurement rules with reduced sanctions.		Ensure that Samruk Kazyna’s corporate governance procedures adequately define individual responsibilities, accountability and penalties for fraud, corruption and other prohibited practices for violations not covered by the amendments to the Administrative Code.

	the Mejilis, the violation for the procurement rules of the quasi-public sector is envisaged only for seven main sensitive administrative violations with reduced sanctions, as the state does not want to get involved in the corporate governance.				
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	Procurement Policies contains the definition of the conflict of interest of the tender commission members as well as lays down provisions describing the steps in case such situation arises. It also regulates the cases where there is a conflict of interest with the consultant while also referring to the Corporate Standard on the Conflict of Interest when Involving Consultants. No information about the cooling-off period for the former officials was found.		Criterion partially met No information about the cooling-off period for the former officials was found.		Prescribe a cooling off period for former officials.

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and	Consultants are required to submit a written statement about the absence of the conflict of interests in accordance with the form annexed to the <i>Policy on the Prevention of the Conflict of Interest when Engaging Consultants</i> . The Contracting Authority is obliged to ask for the mentioned written form through the contract notice and draft contract in case of the open tender, closed tender, two-stage tender (open and closed) and request for price quotation. In case of single sourcing such form should be submitted before the conclusion of the contract.		Criterion partially met The policy seems to refer only to the cases of the procurement of consultancy services while provisions on the incorporation of the prohibited practices in procurement documentation should have a wider scope and should include all types of		Ensure the incorporation of prohibited practices in the documentation of all types of procurement.

contract documents.	The employees of the contracting authority also have to disclose any information about the (potential) conflict of interest in written.		procurement no matter the value or the method.		
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	It was not possible to find any provision requiring to mention in the procurement and contract documents the prohibition of fraud, corruption and other such practices. As there is no access to procurement documentation, the assessors could not verify that the documentation does not contain such provisions also in practice.		Criterion partially met The legislation does not require the inclusion of a provision on the prohibition of corrupt and other such practices in the procurement documentation. In addition, due to the lack of access to procurement documentation, this could not be verified.		Establish processes or formal requirements that procurement and contract documents include provisions on fraud, corruption and other prohibited practices.

14(c) Effective sanctions and enforcement systems

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	The state bodies are required to conduct internal analysis of corruption risks as a result of which measures are undertaken for the elimination of causes and conditions supporting the conduct of corrupt practice. The external analysis of corruption risks is conducted by the authorized state body (Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption). Violations can be reported through 1.) common letters; 2.) e-complaints on the portal; 3.) hotline (supported by Deloitte). There was no information found about specific <i>procedure</i> for reporting corrupt practices to law enforcement authorities.		Criterion not met There was no information found about specific procedure for reporting corrupt practices to law enforcement authorities.		Describe a procedure using which the contracting authorities can report the cases of corruption/fraud to law-enforcement agencies.

	As revealed during the interviews, in case there are elements of criminal or administrative misconduct, the law-enforcement agencies are intervening.				
(b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.	No such evidence was found, as there is no specific system for the reporting of corrupt practices by procuring entities.		Criterion not met No such evidence was found, as there is no specific system for the reporting of corrupt practices by procuring entities.		
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	As has been already analyzed in Indicator 1 (d) there is no debarment or suspension for the conduct of corrupt practices.		Criterion not met As has been already analyzed in Indicator 1 (d) there is no debarment or suspension for the conduct of corrupt practices.	X	One of the grounds for debarment should be the involvement in corrupt practices.
(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.* <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c)</i>	The interviews revealed that there have been several cases of corruption scandals mainly involving the management of the Fund as a result of which those involved were dismissed. No such scandal has taken place during the last two years. Other sources such as newspapers provide information about a corruption scandal involving former minister of National Economy Kuandik Bishimbayev (also Quandyk Bishimbaev). The prodigy completed an elite education programme sponsored by Kazakhstan's president Nazarbayev and held high-ranking posts at a young age, including a position on the board of Samruk-Kazyna from 2011-2013. In 2018, Bishimbayev was convicted for corruption (accepting bribes while he was the head of SOE	It was not possible to conduct a survey with suppliers as no access to Samruk-Kazyna's suppliers was granted.	Criterion partially met It seems that the law on corruption works, as there are several high-level corruption scandals those involved in which were sanctioned.		

<i>Assessment criterion (d):</i> - <i>Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).</i> <i>Source:</i> <i>Normative/regulatory function/anti-corruption body.</i> - <i>Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.</i> <i>Source:</i> <i>Normative/regulatory function/anti-corruption body.</i> - <i>Gifts to secure public contracts: number of firms admitting to unethical practices, including making</i>	Baiterek) and is currently serving a 10-year prison term.⁹				

gifts in (in %). Source: Survey.					

14(d) Anti-corruption framework and integrity training

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red - flag?	Initial input for recommendations
(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.*	Elements of Kazakhstan's anti-corruption framework are outlined in the law "On Resistance to Corruption" (2015). The law prescribes that external analysis of corruption risks should be carried out by a body designated by the Government of Kazakhstan in agreement with the Administration of the President. To that effect, an Agency of the Republic of Kazakhstan for Public Service and Resistance to Corruption has been created in 2016 as a result of reorganisation of the Ministry of Public Service. The Law also prescribes anti-corruption measures to be undertaken by the public bodies, including the quasi-public sector bodies, as well as financial disclosure requirements for natural persons and employees of public sector. The Agency has 10 departments in accordance to geographical division of the country.		No gaps are identified. Criterion met.		

<i>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):</i> <i>- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).</i> <i>Source: Survey.</i>					
(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.	In case of public procurement, the Agency of the Republic of Kazakhstan for Public Service and Resistance to Corruption is monitoring the possible artificial increase of the prices by contracting authorities, legislative gaps that might give rise to corruption opportunities and proposes measures to increase transparency. For the monitoring of prices, it uses the e-procurement system and in case the price is found to be 30% or higher than the market price, the Agency sends a recommendation to reduce the price. Though the recommendation is not mandatory, the CA usually follow it. This mechanism does not cover procurement of SK. The SK is conducting internal analysis of corruption risks as a result of which measures are undertaken for the prevention and elimination of corrupt practices.		Criterion not met. There is no specific mechanism in place to combat corruption in the procurement of SK.	X	The Agency should be given right to monitor possible artificial increase of the prices by contracting authorities and the Fund and legislative gaps that might give rise to corruption opportunities as a result of which measures to increase transparency should be proposed.

(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	No such statistics was found.		Criterion not met. No such statistics was found.	X	Compile and publish reports on anti-corruption measures, detected cases of corrupt practices and convictions.
(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	No special measures were identified for the procurement of SK.		Criterion not met. No special measures were identified for the procurement of SK.	X	Anti-corruption legislation should fully cover also SK. In addition, and even without legal requirements, specific measures could be implemented by SK to counter corruption preventively, i.e. identify and mitigate risks before they arise, instead of detecting corruption after the fact through audits. Preventive measures to counter corruption related to procurement

					can have many different forms and can include training, risk analysis, four-eyes-principles, among others (see OECD Recommendations on Public Integrity.)
(e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.	No special integrity training is offered. The Corporate University of Samruk-Kazyna covers anticorruption within a 3-day course on the general presentation of the Fund, describing the violations and how to avoid them. No specific course on ethics or integrity in procurement is envisaged.		Criterion not met. No specific course on ethics or integrity in procurement is envisaged.		Establish special integrity training programmes and ensure the procurement workforce regularly participates.

14(e) Stakeholder support to strengthen integrity in procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) There are strong and credible civil society organizations that exercise social audit and control.	There is no dedicated civil society organization providing an oversight of the procurement transactions of public procurement or SK procurement. All the organizations interviewed during the fact-finding mission were dealing with procurement <i>inter alia</i> . Moreover, it seems that public procurement is in the attention of the civil society organizations more than the procurement of SK. It might be related to the fact		Criterion not met. No evidence was found that the civil society organizations are exercising social control and audit of the procurement of SK.	X	Allow the civil society organizations to access procurement information and to exercise social audit and control.

	that the e-procurement portal of SK seems to be more closed than the one for public procurement. Also, the state organizes tender procedures awarding contracts to the NGOs for conducting specified monitoring activities. The effectiveness of such monitoring is under doubt but it is worth mentioning that no such equivalence exists in SK.				Support capacity building of such organizations and take their recommendations into account.
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.	No clear channels for the civil society organizations to engage in the monitoring of procurement transactions of SK.		Criterion not met. There was no evidence of third-party monitoring of procurement of SK.	X	Establish clear channels through which the civil society organizations will engage in monitoring of procurement transactions of SK. Publishing procurement related information for public scrutiny could be the first step.
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.* * Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e)	There is no dedicated civil society organization providing an oversight of the procurement transactions of public procurement or SK procurement. All the organizations interviewed during the fact-finding mission were dealing with procurement <i>inter alia</i> . There is no ample evidence that the civil society organizations are involved in shaping and improving the integrity in procurement of SK.		Criterion not met. There is no ample evidence that civil society is an active player in shaping and improving the integrity in procurement of SK.	X	Support the creation of NGOs dedicated to organizing social control over procurement transactions. Allow such NGOs access to information and data.

<i>Assessment criterion (c):</i> - number of domestic civil service organisations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement. <i>Source:</i> <i>Survey/interviews.</i>					
(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g. through internal compliance measures.* <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e)</i> <i>Assessment criterion (d):</i> - number of suppliers that have internal compliance measures in place	Suppliers are requested to sign a form on the absence of conflict of interest or to inform about the existence of such in a written form. Representatives of Atameken (the National Chamber of Entrepreneurs) are participating to the open tenders with the value of KZT 250 mln as members of tender commission. The Policy for the prevention of the Conflict of Interest when Engaging Consultants states that the Contracting Authorities should try to engage consultants that are committed to respect high standards of professional, business and ethical conduct. In addition, consultants have to sign the Policy and agree to comply with its norms as well as the requirements of the internal documents of professional organizations and the legislation of the Republic of Kazakhstan.		Criterion partially met. There are some measures in place where the suppliers and business associations can be said to be involved in the support of integrity and ethical behavior of the procurement of SK.		Consider developing more extensive measures and engagement with suppliers and business associations to actively support integrity and ethical behavior.

(in %). Source: Supplier database.					

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

Assessment criteria	Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)	Step 2: Quantitative analysis	Step 3: Gap analysis / conclusions (describing any substantial gaps)	Potential red-flag?
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	Art. 24 of the Law “On Resistance to Corruption” states that the employee of the organization that knows about corrupt practices informs the management of the organization or the authorized body for the resistance to corruption. Management of the organization, the authorized body for the resistance to corruption had to take measures concerning the submitted information. The person who has informed about the corrupt practice or has resisted it in some other way is under the protection of the state and is being encouraged (in monetary terms). In addition, the SK has a hot line through which it accepts complaints and other information including about procurement. This can be done anonymously. As has been already mentioned, the information from suppliers can also be basis for control activities.		No gaps are identified. Criterion met.	
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	The data about the person who has submitted information on corrupt practices is considered a state secret and is made available only in cases prescribed by Law “On State Secret”. Disclosure of such information entails liability envisaged by the above-mentioned Law.		No gaps are identified. Criterion met	

(c) There is a functioning system	The information received through the hot line is passed to the department of compliance-control for further investigation.		No gaps are identified. Criterion met.	

that serves to follow up on disclosures.				

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

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Potential red flag?	Initial input for recommendations
(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.* <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):</i>	As has been revealed during the fact-finding mission, SK has a code of corporate conduct where there is one general provision on procurement. In accordance to it, the suppliers should be selected based on their qualifications, merit and competitiveness. This is the only (fairly vague) provision found in relation to procurement. Some ethical norms are contained in the Policy for the Prevention of the Conflict of Interest when Engaging Consultants. Those relate to the professional conduct and ethics in situations where conflict of interest might arise but only in cases of engaging consultants.		Criterion partially met. SK has a code of corporate conduct, which contains only one small sentence on procurement: “The suppliers should be selected based on their qualifications, merit and competitiveness”. No other, more specific provision was detected. However, the assessment criterion asks for “particular provisions” regulating the conduct of procurement or public finance officials.		Include specific provisions in the Code of Corporate Conduct requesting ethical and corrupt-free behavior from officials involved in public financial management, including procurement.

- 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.					
(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.* <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g)</i> Assessment criterion (b): - officials involved in public procurement that have filed financial	No such provision is found in the Code of Conduct. The Law “On Resistance to Corruption” contains provisions on the financial disclosure requirements. In accordance to it, people holding responsible public office and their spouses, officials and their spouses, persons entrusted with the implementation of public function and people equated with the persons entrusted with the implementation of public function shall submit declaration on income and assets. By 31st of December each year the declarations of <i>inter alia</i> the management of quasi-public sector should be publicized.		Relevant provisions on financial disclosure could be found in the Law “On Resistance to Corruption”. No gap was identified. Criterion met.		

disclosure forms (in					

% of total required by law). Source: Normative/regulatory function.					
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	Yes and the subsidiary companies of the Holding are required to draft similar codes. The non-compliance will lead to firing the person. In case there are elements of violation of administrative or criminal legislation, appropriate sanctions might follow.		No gaps are identified. Criterion met.		
(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.	No regular training programs are envisaged to ensure sustained awareness and implementation of measures.		Criterion partially met. No regular training programs are envisaged to ensure sustained awareness and implementation of measures.		In the scope of the permanent training program, include also a module on the financial disclosure rules, anti-corruption measures in force and integrity in general.
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and	No disclosure of beneficial ownership is envisaged. Information from financial disclosure forms for specific categories of employees, including the management of quasi-public sector, is published annually. In case a member of the tender commission has a conflict of interest, he informs about it the Secretary who makes appropriate notes in the protocol of the results (point 30 of the Policies to		No disclosure of beneficial ownership is envisaged.	X	Ensure the disclosure of beneficial ownership of at least the suppliers awarded the contract in a specific tender procedure.

utilised by decision makers to prevent					

corruption risks throughout the public procurement cycle.	Conduct Procurement). The Protocol is published.				