



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF MONTENEGRO PUBLIC PROCUREMENT SYSTEM

2024





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MONTENEGRO

Assessment of the Public Procurement System Volume I

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

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CURRENCY EQUIVALENTS

(Central Bank exchange rate effective 1 December 2023)

1 Euro = 1.087 USD

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Montenegrin Fiscal Year: 1 January-31 December

In this document:

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

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



Acronyms and Abbreviations

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



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



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

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Executive Summary

1. Background

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

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

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



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

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

2. Assessment Methodology

The assessment was conducted from November 2022 to December 2023, using the MAPS II methodology and covered the legal, regulatory, and policy framework; institutional framework and management capacity; public procurement operations and market practices; and accountability, integrity, and transparency of the public procurement system, assessed using 14 qualitative (with 55 sub-indicators and 210 criteria) and 15 quantitative indicators, as a mandatory minimum.

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

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

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

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

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



3. Key Findings and Areas of Improvement

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

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

3.1. Strengths and Gaps of Montenegro Procurement System

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

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



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

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

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

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



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

3.2 Key opportunities for improving procurement system efficiency.

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

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

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

Several priority actions are proposed to achieve this strategic objective:

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



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

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

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

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

Several priority actions are proposed to achieve this strategic objective:

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

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



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

Several priority actions are proposed to achieve this strategic objective:

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

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

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



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

Several priority actions are proposed to achieve this strategic objective:

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

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

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

Several priority actions are proposed to achieve this strategic objective:

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



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



4. Proposed Strategic Planning for Implementation of Reforms

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

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

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

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



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



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



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

5. Overview of Compliance

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

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

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

Source: Assessment team

Table 3 provides an overview of the findings of the assessment on the level of sub-indicators. Each sub-indicator is identified depending on the findings (full compliance / gaps identified / substantive gaps identified). This table also shows the red flags identified.

Table 3. Overview of Assessment Findings



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



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



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

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

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



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

Source: Assessment team.



1. Introduction

1.1. Context

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

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

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

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

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

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



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

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

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

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

1.2. Objectives

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

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

1.3. Scope

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



I. Legal, Regulatory and Policy Framework

II. Institutional Framework and Management Capacity

III. Procurement Operations and Market Practices

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

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

1.4. Methodology

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

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

1.5. Assessment Team

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

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

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

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

1.6. Consultations with the Key Stakeholders



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

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

1.7 Validation Workshop

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

1.8. Limitations

There were no substantial limitations in the assessment.

2. Analysis of Country Context

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

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

Economic overview

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



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

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

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

Government

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

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

Political structures, aspects of conflict, corruption

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

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

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



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

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

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

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

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

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

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

Public procurement framework in Montenegro

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



Table 4.

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

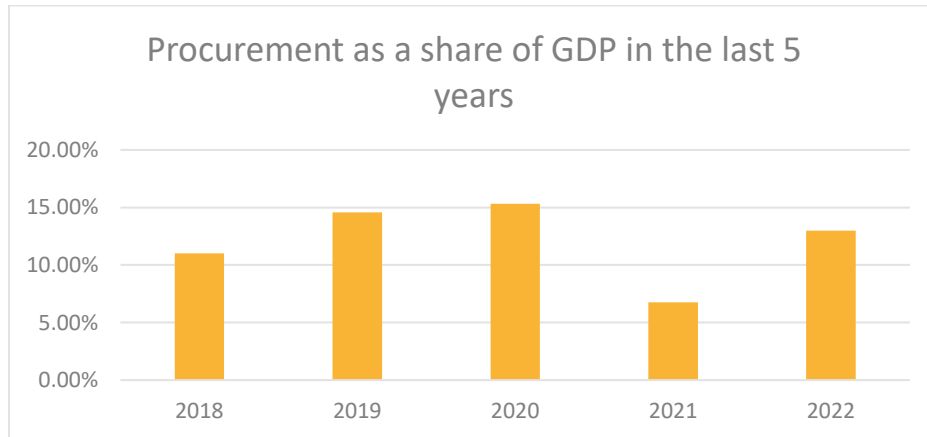
Years	Total value of public procurement	Total value of electricity and coal supply	Total value of purchases
2018	449,373,407.93	85,739,160.97	535,112,568.90
2019	608,224,346.95	107,425,391.96	715,649,738.91
2020	545,150,791.50	97,346,199.40	642,496,990.90
2021	219,680,113.13	112,609,062.06	332,289,175.19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

Source :Data from DPPP Annual Report ,2022.

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

The share of procurement and public procurement represents a significant share of the gross domestic product in Montenegro. In 2022, the share of procurements¹⁵ in GDP amounted to 13 percent, while the share of public procurement in this period amounted to 8.74 percent. Figure 2 below presents a comparative overview of procurement as a share of GDP over the past five years.

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



Source: Data from DPPP Annual Report ,2022.

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

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



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

Key institutions in the domain of public procurement

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

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

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

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

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



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

2.3. National Policy Objectives and Sustainable Development Goals

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

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

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

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



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

2.4. Public Procurement Reform

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

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

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

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

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

¹⁹ Ibid.

²⁰ DPPP Annual Report, 2022.



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

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

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

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

3. Assessment

3.1. Pillar I - Legal, Regulatory and Policy Framework

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

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

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

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



- **Synthesis of the indicator**

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

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

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

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

- **Findings**

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

Scope and coverage of the legal and regulatory framework

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

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

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



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

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

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

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

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

Procurement methods

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

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



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

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

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

Advertising opportunities, rules and time limits

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

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

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



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

Rules on participation

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

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

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

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

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



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

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

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

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

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

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

Procurement documents and specifications

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

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



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

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

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

1) as a performance-related or functional requirement, in a manner that the required parameters are defined precisely enough to enable the bidders to prepare an adequate bid and contracting authorities to properly select the most advantageous bid;

2) with reference to Montenegrin standards, norms and related documents, technical regulations and technical specifications concerning project design, execution of works or utilization of goods which are harmonized with European standards, technical regulations or common technical specifications stating the words “or equivalent”, and when there are no such norms, technical regulations and technical specifications in Montenegro, the contracting authority refers to European standards, technical regulations, common technical specifications, internationally recognized standards and other technical reference systems determined by European standardization bodies.

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

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

Evaluation and award criteria

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

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

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



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

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

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

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

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

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

Submission, receipt and opening of tenders

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



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

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

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

Right to challenge and appeal

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

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

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



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

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

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

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

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

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

Contract management

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



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

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

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

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

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

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



Electronic procurement

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

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

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

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

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

Norms for safekeeping of records, documents and electronic data

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



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

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

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

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

Public procurement principles in specialized legislation

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

(i) Open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue, for the procurement of each procurement subject

(ii) Partnership for innovation, if it has the need for innovative goods, services or works that cannot be satisfied by the procurement of goods, services or works already available on the market



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

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

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

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

- **Gaps**

Substantive gaps

Rules on participation

There are two substantial gaps under this assessment criteria.



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

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

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

Evaluation and award criteria

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

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

Contract management

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



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

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

Norms for safekeeping of records, documents and electronic data

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

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

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

Minor gaps

Scope of application of Public Procurement Law and public access

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

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

Procurement method

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



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

Rules of participation

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

Advertising rules and time limits

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

Evaluation and award criteria

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

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

Submission, receipt, and opening of tenders

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

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



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

Electronic procurement

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

Norms for safekeeping of records, documents and electronic data

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

Recommendations

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

Scope of application of the legal framework

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

Procurement method:

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

Rules of participation

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



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

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

Evaluation and award criteria

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

Submission receipt and opening of tenders

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

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

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

Contract management

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

Electronic Procurement



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

Norms for safekeeping of records, documents and electronic data

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

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

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



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

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

Sub-indicator 1(f) Evaluation and award criteria

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

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

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

Indicator 2. Implementing regulations and tools support the legal framework

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



- **Synthesis of the indicator**

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

- **Findings**

Implementing regulations to define processes and procedures

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

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

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

Model procurement documents for goods, works, and services

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

- open public procurement procedure
- limited public procurement procedure



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

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

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

- Information about the contracting authority
- Data on the procedure and subject of public procurement
- Type of procedure
- Subject of public procurement (type of case, name and description of the case)
- Estimated value of the subject of procurement
- Method of purchase

- Special form of procurement
- The Framework Agreement
- Conditions for participation in the public procurement procedure and special grounds for exclusion
- Criteria for the selection of the most favorable tender
- The manner, place and time of submission of bids and opening bids
- The deadline for making a decision on the selection
- The term of validity of the offer
- Guarantee

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

Standard contract conditions

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

User's guide or manual for procuring entities

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

The following manuals are available for CAs:

- Registration form for Contracting Authority
- On Simple Procurement



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

For the EO the following manuals are made available:

- Bidder Registration Form
- Manual for Bidders.

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

- **Gaps**

Substantive gaps

Implementing regulations to define processes and procedures

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

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

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

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

Model procurement documents for goods, works and services

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

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



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

Standard contract conditions used

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

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

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

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

Minor gaps

User's guide or manual for procuring entities

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

- **Recommendations**

Implementing regulations to define processes and procedures

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

Model procurement documents for goods, works and services

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



Standard contract conditions used

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

User's guide or manual for procuring entities

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

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

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



contracts, and their use is mandatory

2(c)(b) The content of the standard contract conditions couldn't be assessed if it is generally consistent with internationally accepted practice. High risk and not a red flag

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

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

Source: Assessment team.

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

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

- **Synthesis of the indicator**

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

- **Findings**

Sustainable public procurement

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



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

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

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

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

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

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

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

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



Obligations deriving from international agreements

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

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

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

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

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

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

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

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



- **Gaps**

Substantive gaps

Sustainable public procurement

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

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

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

Minor gaps

Sustainable public procurement (SPP)

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

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

- **Recommendations**

Sustainable public procurement

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

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



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

Source: Assessment team.

3.2. Pillar II - Institutional Framework and Management Capacity

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

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

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

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



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

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

- **Synthesis of the indicator**

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

- **Findings**

Procurement planning and the budget cycle

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

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

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



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

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

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

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

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

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



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

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

Financial procedures and the procurement cycle

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

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

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

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



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

- **Gaps**

Substantive gaps

There is no substantive gap identified for this indicator.

Minor gaps

Procurement planning and the budget cycle

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

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

Financial procedures and the procurement cycle

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

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



- **Recommendations**

Procurement planning and the budget cycle

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

Financial procedures and the procurement cycle

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

Summary of substantive gaps and recommendations for Indicator 4

N/A

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

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

- **Synthesis of the indicator**

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

- **Findings**

Status and legal basis of the normative/regulatory institution function



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

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

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

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

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

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

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



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

Responsibilities of the normative/regulatory function

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Avoiding conflict of interest



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

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

- **Gaps**

Substantive gaps

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

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

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

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

Minor gaps

Status and legal basis of the normative/regulatory institution function

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

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



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

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

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

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

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

Avoiding conflict of interest

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

- **Recommendations**

Status and legal basis of the normative/regulatory institution function

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

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

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

Avoiding conflict of interest



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

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

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

Source: Assessment team.

Indicator 6. Procuring entities and their mandates are clearly defined

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

- **Synthesis of the indicator**

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

- **Findings**

Definition, responsibilities and formal powers of procuring entities

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

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

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



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

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

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

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

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

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

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

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



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

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

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

Centralized procurement body

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

Centralized public procurement is applicable for the following categories:

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

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

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



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

- **Gaps**

Substantive gaps

Centralized procurement body

There are two substantial gaps under this assessment criteria.

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

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

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

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

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

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

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

Minor gaps

Definition, responsibilities and formal powers of procuring entities



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

Centralized procurement body

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

- **Recommendations**

Definition, responsibilities and formal powers of procuring entities

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

Centralized procurement body

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

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

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



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

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

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

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

Source: Assessment team.

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

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

- **Synthesis of the indicator**

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

- **Findings**

Publication of public procurement information supported by information technology

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



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

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

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

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

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

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



Use of e-procurement

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

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

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

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

Strategies to manage procurement data

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



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

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

Gaps

Substantive gaps

Publication of public procurement information supported by information technology

There are two substantive gaps under this assessment criteria.

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

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

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

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

Use of e-procurement

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

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



Strategies to manage procurement data

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

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

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

Minor gaps

Publication of public procurement information supported by information technology

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

Use of e-procurement

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

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



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

Strategies to manage procurement data

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

- **Recommendations**

Publication of public procurement information supported by information technology

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

Use of e-procurement

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

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



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

Strategies to manage procurement data

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

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

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



aligned with Open Contracting Data Standards

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

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

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

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

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

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

Enhance data analytical feature for the EPPS.

Source: Assessment team.

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

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

- **Synthesis of the indicator**

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

- **Findings**



Training, advice and assistance

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

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

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

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

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

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

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

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



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

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

Recognition of procurement as a profession

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

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

Monitoring performance to improve the system

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

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

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

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

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



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

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

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

- **Gaps**

Substantial gaps

Training, advice and assistance

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

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

Recognition of procurement as a profession

Two substantive gaps are recognized in this assessment criteria.

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

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

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



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

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

Monitoring performance to improve the system

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

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

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

Minor gaps

Training, advice and assistance

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

Monitoring performance to improve the system

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

- **Recommendations**

Training, advice and assistance

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



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

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

Recognition of procurement as a profession

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

Monitoring performance to improve the system

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

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

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



8(b)(b) There is no evidence that appointments and promotion are competitive and based on qualifications and professional certification.	Medium risk and not a red flag	Enforce the application of PPL in conjunction with public administration rules for staff appointments and promotion.
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Sub-indicator 8(c) Monitoring performance to improve the system

8(c)(a) Lack of a performance measurement system with set indicators that focuses on both qualitative and quantitative aspects and that is followed and reported by each CA.	Medium risk and not a red flag	Prepare an Action plan for 2023-2025 for implementation of Public Procurement Strategy. Develop a comprehensive data capture and performance measurement system integrated with the EPPS. Consider integrating the KPIs into the procurement measurement system. DPPP should established a systematic mechanism to ensure elaboration of reports from inspection and take measures to improve procurement performance based on the findings.
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8(c)(b) There is no evidence to support that information is used to support strategic policy making on procurement	Medium risk and not a red flag	
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Source: Assessment team.

3.3. Pillar III - Public Procurement Operations and Market Practices

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

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



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

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

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

Indicator 9. Public procurement practices achieve stated objectives.

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

- **Synthesis of the indicator**

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

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

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



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

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

- **Findings**

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

Information on the data analysis

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

Information on the sample analysis

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

Information on the survey of economic operators

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

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



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

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

Planning and market research

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

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

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

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



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

Selection and contracting, efficiency of the procurement process

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

Competition

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

Table 12. Number of Bids per Tender and per Lot

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

Source: Data retrieved from EPPS

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

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

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

Source: Data retrieved from EPPS

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



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

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

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

Procurement procedures and approaches

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

Table 14. Procurement Structure by Procedure

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

Source: Data retrieved from EPPS

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

Table 15. Restricted Tenders

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



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

Source: Data retrieved from EPPS

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

Table 16. Types of Contracts Awarded through Restricted Tenders

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

Source: Data retrieved from EPPS

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

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

Quality of the tender documents

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

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



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

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

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

Award criteria

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

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

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

Source: Data retrieved from EPPS



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

Table 17. Weight of Price Criteria in Open Procedure Awards

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

Source: Data retrieved from EPPS

Evaluation and award

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

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

Processing times

The average duration of all the procurement procedure conducted through the EPPS (from initiation, i.e., publication of the tender notice to the contract signature) is 047 days. Processing times differ from one type of procedure to the other (average duration for main stages in table 18 below). These values are close to the overall EU target of 120 days.²⁹ Restricted procedure generally take longer than the other types of procedures (average duration of restrictive procedure is 134 days compared with open procedure

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



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

Table 18. Duration of Contracting Procedures

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

Source: Data retrieved from EPPS

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

Contract management

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

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



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

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

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

Control of procurement procedures

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

Table 19. Common Procurement Irregularities

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

Source: Report of Administration for Inspection Affairs

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



- Gaps

Substantive gaps

Procurement planning: market analysis, procurement procedures and tender documents

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

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

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

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



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

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

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

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

Efficiency of the public procurement system

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

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

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

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



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

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

Record keeping

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

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

Monitoring and improvement of procurement practices

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

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

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

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

Other gaps

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



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

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

- **Recommendations**

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

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

Monitoring and oversight

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



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

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

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

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

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



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

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

Access to public procurement and procurement planning

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

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

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

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



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

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

Guidance, guidelines and capacity development programs

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

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

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



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

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

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

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

Sustainability in public procurement

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

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

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

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



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

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

Contract implementation

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

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

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

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

Record keeping

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



Other recommendations

Contract implementation

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

EPPS

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

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

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

Sub-indicator 9(b) Selection and contracting



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

Sub-indicator 9(c) Contract management

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

Source: Assessment team.

Indicator 10. The public procurement market is fully functional

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

- **Synthesis of the indicator**

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



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

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

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

- **Findings**

Dialogue and partnerships between public and private sectors

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

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

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

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

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

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



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

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

Table 21. Economic Operators in EPPS

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

Source: Data retrieved from EPPS

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

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

Table 22. Contract Awards to Domestic and Foreign Companies

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

Source: Data retrieved from EPPS

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

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



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

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

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

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

Key sectors and sector strategies

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

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

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



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

Substantive gaps

Access to public procurement market

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

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

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

Sectoral performance assessment

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

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

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

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



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

- **Other Gaps**

Dialogue with the private sector

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

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

- **Recommendations**

Access to the public procurement market

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

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

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

Sectoral performance assessment

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



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

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

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

Source: Assessment team.

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

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



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

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

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

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

- **Findings**

Enabling environment for public consultation and monitoring

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

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

³⁶ Official Gazette no. 041/18.



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

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

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

Adequate and timely access to information by the public

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

Direct engagement of civil society

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

- **Gaps**

Consultations

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

³⁷ PPL, Article 9.

³⁸ PPL, Article 13.

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



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

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

Access to public procurement information

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

Direct participation by citizens

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

Substantive gaps

Direct participation by citizens

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

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

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

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

⁴¹ Official Gazette no. 44/12, 30/17.



- **Recommendations**

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

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

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

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

Source: Assessment team.

Indicator 12. The country has effective control and audit systems

The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For the purpose of this indicator, “effectiveness” means the expediency and thoroughness of the implementation of auditors’



recommendations. The assessors should rely, in addition to their own findings, on the most recent public expenditure and financial accountability assessments (PEFA) and other analyses that may be available.

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

- **Findings**

Legal framework, organization and procedures of the control system

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

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

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

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

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



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

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

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

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

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

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

⁴⁵ PPL, Article 47.



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

Coordination of controls and audits of public procurement

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

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

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

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

⁴⁷ Ibid.

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



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

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

Enforcement and follow-up on findings and recommendations

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

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

Qualification and training to conduct procurement audits

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

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

⁴⁹ PEFA 2019.



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

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

- **Gaps**

Legal framework, organization and procedures of the control system

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

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

Coordination of controls and audits of public procurement

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

Enforcement and follow-up on findings and recommendations

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

Substantive gaps

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

⁵⁰ World Bank, PEFA 2019.

⁵¹ Ibid.



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

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

Substantive gaps and recommendations are summarized in table 25.

- **Recommendations**

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

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

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

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

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

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

⁵² Ibid.

⁵³ Ibid.



Indicator 13. Procurement appeals mechanisms are effective and efficient

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

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

- **Findings**

Process for challenges and appeals

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

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

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

⁵⁵ European Commission Country Report on Montenegro, 2023.

⁵⁶ PPL, Article 185.

⁵⁷ PPL, Article 48.

⁵⁸ PPL, Article 188.

⁵⁹ PPL, Article 194.

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



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

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

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

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

A CA is required to i) publish the appeal at EPPS and suspend the procurement procedure within 3 days from the appeal, ii) reject an appeal that it finds unallowed, untimely, submitted by an unauthorized person, or incomplete within 8 days from the appeal, publish such decision on the EPPS/submit it to the appellant within 3 days, and inform the Appeals Body of such decision within 3 days from the date of publishing/informing the appellant, iii) inform the Appeals Body on an appeal that it otherwise rejects in part or in whole within 8 days from the appeal, and iv) adopt an appeal in whole, and subsequently annul

⁶¹ Ibid.

⁶² PPL, Article 192.

⁶³ The Appeals Body documents provided to the Bank team, March 2023. The numbers also include decisions on appeals received in previous years.

⁶⁴ The public procurement contract can be signed 10 days after the Appeals Body has published its decision rejecting the appeal, while a lawsuit against the Appeals Body's decision can be filed within 20 days from the date of publishing.

⁶⁵ PPL, Article 186.



the decision appealed on, issue another decision, change or amend the tender document, or annul the procurement procedure, within 30 days from the appeal.⁶⁶

The Appeals Body is required to reject the appeal as unfounded, or to adopt it in part or in whole and annul the CA's decision, procedure or act it found unlawful within 30 days from receiving the appeal and related documents.⁶⁷ This deadline can be extended by up to 10 days if the Appeals Body determines that it needs to engage an expert witness or obtain opinions from relevant public bodies, or that the documents to be reviewed are extensive. The Appeals Body is required, within 8 days, to reject an appeal that it finds unallowed, untimely, submitted by an unauthorized person, incomplete, or not in order; and terminate the appeal procedure in case the appellant withdraws the appeal. The Appeals Body is required to publish its decision on the EPPS within 3 days.

Independence and capacity of the Appeals Body

The Appeals Body is not involved in any capacity in procurement transactions or in the process leading to contract award decisions. The Appeals Body is independent and professional in performing its duties. Its mandate, composition and organization are defined by the PPL⁶⁸ and operationalized in its internal Book of Rules. It comprises six members and president who acts as a head. The President and the members are appointed by the Parliament based on proposal from the responsible parliamentary committee for a five-year term, with possibility of reappointment, and based on public vacancy. The PPL also prescribes that the president and the members of the Appeals Body cannot perform other public functions, or functions in political parties, and that they cannot participate in an appeal process if there are reasons that bring into question their independence.

To initiate the appeal procedure, an appellant must pay a fee to the Appeals Body's bank account amounting to 1 percent of the estimated value of public procurement and not exceeding EUR 20,000 and provide a proof of payment prior to expiration of the appeals deadline. If the Appeals Body decides in favor of the appellant, the amount paid must be returned to the appellant within 15 days from the date the appeals decision becomes legally valid.

The Appeals Body exercises its legal authority to suspend procurement proceedings and impose remedies. The PPL provides that, within 3 days from the receipt of an appeal, the CA shall publish the notice of receipt of an appeal, and that notification automatically suspends further action by the CA until the appeal has been resolved.⁶⁹ The PPL⁷⁰ defines the remedies which may be imposed by the Appeals Body. Unless the Appeals Body terminates the appeal procedure due to withdrawal of the appeal by the appellant, it has the authority to render one of the following decisions: i) reject an appeal as unallowed (appeal is related to CA's decision or action which cannot be appealed), ii) reject an appeal as untimely (appeal is not submitted within the legal deadline), iii) reject an appeal as submitted by an unauthorized person, or by a bidder who did not provide a valid bid guarantee, iv) reject an appeal as incomplete (no proof of payment of fee is provided), v) reject an appeal as not being in order (if the appellant does not resolve the deficiency which prevents taking action on the appeal), vi) reject an appeal as unfounded (appeal statements are unfounded), or vii) adopt an appeal in whole or in part and annul an unlawful decision, procedure or act of the CA.

⁶⁶ PPL, Article 189.

⁶⁷ PPL, Article 193.

⁶⁸ PPL, Article 198-208.

⁶⁹ PPL, Article 189.

⁷⁰ PPL, Article 192.



The PPL envisages adequate resources for the Appeals Body, including through budget allocations. Administrative support to the Appeals Body is provided by its Secretariat whose head is selected through a public vacancy based on merit.⁷¹ The Appeals Body in principle receives requested operational budget allocations from the government to perform its duties. The members of the Appeals Body and its Secretariat regularly participate in training and local and regional workshops organized by the HRMA, the DPPP, international organizations (such as OECD/SIGMA) and CSOs on topics such as public procurement, e-procurement, state property registration, internal controls and accountability, fraud and corruption, etc. The results of the Appeals Body's internal training needs assessment are used to inform the HRMA's annual training plan. One member of the Appeals Body is the member of the state Working Group on EU Accession Negotiations for Chapter 5 – Public Procurement.

The annual reports of the Appeal Body provide minimal information about the remedy system and could benefit from more data analytics that could serve the process of improving the procurement system.

Decisions of the Appeals Body

The PPL prescribes that the CA must provide to the Appeals Body the appeal and all its annexes, the documentation related to the public procurement procedure, appellant's qualification application, and all bids received. If the CA fails to do this, the Appeals Body will remind it to do so, with a warning that otherwise it will adopt the appeal and annul the procedure.⁷² Interviews with the Appeals Body and the actual review of the five sample cases (see sub-indicator 13(a)) show that the Appeals Body cited evidence reviewed and considered in reaching decisions.

The Appeals Body has legal authority to impose remedies, including prohibit the CA from acting or deciding unlawfully and annul in whole or in part, an unlawful decision, procedure, or act by a CA (see sub-indicator 13 (b)). The Appeals Body in most of cases decided in favor of the appellant (74 percent in 2020, 72 percent in 2021, and 76 percent in 2022). On average 4 percent of the appeals were withdrawn by appellants on annual basis. The number of lawsuits filed to the Administrative Court varied from 32 in 2021 (on 12 percent of the appeals decisions) to 29 in 2021 (on 14 percent of the appeals decisions) and 30 in 2022 (on 16 percent of the appeals decisions). The Administrative Court passed 145 judgments and 14 decisions from January 1, 2020 to December 5, 2023, with annual average slightly declining.⁷³

Requirements for publishing appeal decision are provided by legislation and implemented in practice. However it is noted that decisions of the Appeals Body are published on the website but without the possibility to use any search engines, which limits the accessibility and usability of this important information. CAs are obliged to publish on EPPS a notice of an appeal and a suspension of any further action in procurement process within 3 days from the date of receipt of an appeal, and its decision on the rejection of the appeal, within 3 days from passing the decision.⁷⁴ If the Appeals Body annuls the public procurement procedure, the CA is obliged to publish notice of annulment on EPPS within 5 days from the date of the Appeals Body's decision.⁷⁵ The Appeals Body is obliged to publish its decisions on EPPS and on its website within 3 days from the date of adoption.⁷⁶ The Appeals Body is also obliged to publish notice

⁷¹ PPL, Article 208.

⁷² Article 191.

⁷³ Source: Appeals Body.

⁷⁴ Article 189.

⁷⁵ Article 192.

⁷⁶ Article 193.



on administrative lawsuit filed and the court's decision on its website and on EPPS.⁷⁷ Before the EPPS was established in 2021, the Appeals Body's decisions were published on the Government's public procurement portal. The Appeals Body reports that 100 percent of its decisions are published. It is also supported by evidence that the CAs' decisions are published on the EPPS and that the procurement procedure is suspended in case of appeal.

- **Gaps**

Process for challenges and appeals

To notify the Appeals Body on appeals it rejected in part or in whole, a CA needs to take action in the EPPS. A lack of timely action or no action by the CA may create process delays and impact the appellant's right to appeal. Cases were reported when the Appeals Body learnt about the appeals adopted by the CAs based on appellants' requests for reimbursement of appeals fee.

Independence, capacity and decisions of the Appeals Body

Submission of an appeal is conditioned by payment of fee, and the amount paid is returned to the appellant in case the appeal is upheld. While this practice may discourage frivolous appeals and provide ground for more operational efficiencies, it may also inhibit access for financially unfortunate parties participating in high value procurements.

Available procedures and guidelines on the appeals procedure appear to be insufficient, as evidenced by frequent clarifications and expert opinions provided by the DPPP and the Appeals Body in response to various requests of CAs and private sector.

Substantive gaps

A moderate number of the Appeals Body's decisions are not resolved within the legal timeframe and the resolution of appeals has slowed over the years. The Appeals Body reported resolving 68 percent of appeals within the 30-day legal deadline in 2022, down from 85 percent of appeals in 2021 and 92 percent of appeals in 2020. In parallel, the average resolution time increased from 18 days in 2020 to 23 days in 2021 and 28 days in 2022. Results of a review of sample of 15 Appeal Body's decisions conducted by the team aligns with these results.⁷⁸

Despite an increasing number of appeals being resolved in favor of the appellant, survey results point out that the private sector does not see the appeals system as fair and trustworthy or consistent. Only 20 percent of the respondents who submitted at least one complaint to the Appeals Body agree that the Appeals Body's decisions are consistent, unbiased, and well-informed, while 40 percent disagree with this

⁷⁷ Article 197.

⁷⁸ The results of the review should be taken with caution because the average time between the date of appeal and the date of appeal decision was observed. According to PPL, resolution time runs from the date of submission of complete documentation by the appellant, which is often after the appeals date.



statement.⁷⁹ Similarly, only 24 percent of those respondents find the decision of the Appeals Body to be correct/necessary while 36 percent disagrees with this statement. The respondents had more positive views of the Appeals Body than of the CAs or Administrative Court. Survey results should however be taken with caution as the sample may not be representative.

The survey respondents also perceive the decision-making timeframe on appeals as too long. Only 31 percent of respondents who submitted at least one complaint to the Appeals Body agreed that the decisions of the Appeals Body are taken within a reasonable timeframe. The respondents' perceptions on the decisions of CAs and the Administrative Court were similar (38 percent and 12 percent agreed with this statement on CA's and the Court's decisions, respectively). During the interviews the private sector representatives suggested improving the capacities of both the Appeals Body and CAs to deal with appeals in a credible manner.

There seems to be several bureaucratic or capacity related reasons that are keeping the Appeals Body from reaching its full potential. The Appeals Body operated at limited capacity during 2021-2022 due to the expiration of mandate of its president and resignation of one of its members. Of the 19 positions planned for the Secretariat, 14 are filled. This is because of the retirement of some staff and the Secretariat's inability to recruit new staff until it completes the necessary changes to its internal rulebook and aligns it with the new civil service legislation. Although expert witnesses are engaged in only about 5 percent of the cases, their engagement creates delays because of i) mandatory application of civil procedure rules according to which the expert's opinion is reviewed and commented on by parties through several iterations, and ii) limited availability and access to qualified experts in specific areas. The impact of Covid-19, and technical issues such as a cyber-attack on the Government's IT system also contributed to delayed appeal resolution.

Persistent trends in delayed resolution of appeals paired with substantial caseload increase in 2023 as well as negative perceptions of the private sector pose a risk to the appeals' system effectiveness and efficiency. Given the probability and impact, the risk is estimated as medium, no red flag is warranted.

- **Recommendations**

Process for challenges and appeals

An appeal mechanism for simplified procurements should be designed and implemented.

An adequate control mechanism should be established to ensure that the Appeals Body is automatically informed on appeals rejected in part or in whole by CAs, without having the CA take action in the system.

Produce a commentary on the PPL to enable CAs and private sector better understand the procurement procedures, including on the appeals system.

Independence, capacity and decisions of the Appeals Body

⁷⁹ 43% of surveyed firms submitted at least one complaint related to public procurement to the Appeals Body through the contracting authority. 9% of firms submitted at least one appeal to the Administrative Court against the decision taken by the Complaints Commission.



A comprehensive functional review of the Appeals Body operations should be conducted to determine organizational and capacity gaps and identify measures to improve its performance. Capacity and transparency of work of the Appeals Body should be improved, so that the Appeals Body can be in position to achieve a 100 percent resolution of cases within the legal timeframes. The Appeals Body’s internal capacities should be particularly strengthened in areas where the volume of appeals is the largest, as this would reduce the need for engagement of expert witnesses. The private sector should be sensitized to the Appeals Body work such as through public communication and outreach. Gaps and recommendations for this indicator are summarized in table 26.

Table 26. Summary of Substantive Gaps and Recommendations for Indicator 13

Substantive gap	Risk and red flags	Recommendations
Sub-indicator 13(c) Decisions of the appeals body		
13(c)(b) Slow resolution of appeals and overall negative perceptions of the private sector of the appeals system erodes effectiveness and trust in the appeals system.	Medium and not a red flag	A comprehensive functional review of the Appeals Body operations should be conducted to determine organizational and capacity gaps and identify measures to improve its performance. Capacity and transparency of work of the Appeals Body should be improved, and the private sector should be sensitized to the work of the Appeals Body. The Appeals Body should strive to achieve a 100 percent resolution of cases within the legal timeframes.

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

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

The country has a relatively sound legal and institutional framework for fighting corruption. Prohibited practices in public procurement, accountabilities and penalties for government employees and private firms, and general definitions and provisions on conflict of interest are in place. Provisions on prohibited practices are also defined in procurement documents and adhered to in practice. The Agency for Prevention of Corruption (APC) has a sufficient legal mandate to investigate corruption, while the Prosecutors’ Office and courts are responsible for enforcement. There are accessible and secure channels for reporting corruption and unethical behavior, and a regulatory framework to follow up on disclosures. However, several substantive risks outweigh these strengths, suggesting that the system is not effectively applied in practice. The main ones are the absence of clear definitions of fraud, corruption, and other



prohibited practices in procurement, poor enforcement of laws on corruption, fraud, and other prohibited practices, limited institutional capacities to tackle corruption, absence of special measures to detect and prevent corruption in public procurement or a dedicated training program on integrity in public procurement, lack of established procedure or practice to capture information on beneficial ownership, and lack of systematic use of data on conflict of interest and financial disclosures for decision making. These risks hamper the overall accountability of the country's procurement system and warrant a red flag.

- **Findings**

Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties

Responsibilities of government employees and consequences

The PPL requires CAs to undertake measures to prevent and remove consequences of corrupt practices, specifically to: i) debar from public procurement procedure entities found to have indirectly or directly provided benefits to individuals involved in conducting the public procurement with the purpose of obtaining confidential information or impacting actions, ii) record any such instances and report to DPPP and to relevant state bodies, and iii) conduct risk analysis and control in public procurement.⁸⁰ The PPL sets penalties for offences under these provisions for both the CAs and the responsible persons⁸¹ in form of fines. The Criminal Law envisages imprisonment of individuals who terminate employment contracts to government employees who reported corruption based on a justified suspicion. The Law on Civil Servants and Employees establishes disciplinary liability for public employees and defines disciplinary measures, including suspension from work.⁸²

Responsibilities of private firms and consequences

The PPL prevents from participating in public procurement of works bidders or persons who were involved in drafting inputs for technical specifications, or who participated in technical consultations with CA on the subject procurement.⁸³ Bidders are required to provide a signed statement confirming their authorized person is not in conflict of interest due to the ownership of, or personal relationships or previous engagement with the CA.⁸⁴ CAs are required to debar from public procurement procedure a bidder that attempted to exercise undue influence, that is in a conflict of interest, or that was criminally indicted for bribery or fraud.⁸⁵ The PPL further states that the contract concluded in violation of "anticorruption rule" is null and void, referring to this as the "anticorruption clause."

Conflict of interest and cooling off period for public officials

The Law on Prevention of Corruption provides general definitions and provisions on conflict of interest in performing public duties. The PPL defines that conflict of interest between the CA and a business operator exists if the CA's representative involved in procurement has direct or indirect financial, economic, or other interest that can impact his/her impartiality and independence, providing a detailed description of

⁸⁰ Article 38.

⁸¹ Articles 211 and 212.

⁸² Official Gazette 39/2011, Article 111.

⁸³ Article 42.

⁸⁴ Article 43.

⁸⁵ Article 108.



such cases.⁸⁶ A CA is required to take adequate measures to efficiently prevent, identify and remove conflict of interest in relation to public procurement.⁸⁷ A CA's authorized person, procurement officer, member of a procurement committee, and employees participating in preparation of tender documents and in procurement planning are required to either sign a statement declaring no conflict of interest or inform the CA's authorized person about the existence of conflict of interest prior to beginning of the procurement procedure, and to immediately submit a request for exclusion if the conflict of interest appears during the procurement procedure.⁸⁸ A CA is required to internally record such requests and immediately notify the DPPP and the Agency for Prevention of Corruption (APC).

The Law on Prevention of Corruption⁸⁹ provides for a two-year cooling-off period for former public officials. During this period the official cannot represent the public body in which he/she performed the public function, be in an employment or business relationship with that body, or use the information obtained when performing the public function.

Provisions on prohibited practices in procurement documents

The PPL specifies prohibited practices to be observed by both public officials and business entities. Bidders and qualification applicants are required to submit a self-declaration confirming their compliance with conditions for participating in public procurement and absence of any grounds for their debarment, as defined by the tender document.⁹⁰ The PPL prevents CAs and their authorized persons who were convicted of crime such as fraud, bribery, and corrupt practices, from participating in public procurement.⁹¹ This requirement extends to subcontractors.⁹² The self-declaration form is prescribed by a bylaw⁹³ and contains clear instructions to business entities regarding the provision of data to confirm their adherence to these legal provisions.

Analysis of publicly available sample procurement documents and contracts from EPPS confirms that they include provisions on fraud, corruption and other prohibited practices as specified by the PPL and relevant bylaws. These are reflected in calls for public procurement (under eligibility requirements), tender documents (information on debarment, instructions for completing of the self-declaration form, and anticorruption clause with clear instructions and/or references to relevant PPL provisions), and contracts (an anti-corruption clause). Signed self-declaration statements are also available.

Effective sanctions and enforcement systems

To ensure proactivity in corruption prevention and detection, the PPL requires the DPPP to prescribe the manner of keeping records on conflict of interest and violation of anticorruption rules, the contents of those records, and the methodology for risk analysis in public procurement control.⁹⁴ In line with this

⁸⁶ Article 41.

⁸⁷ Article 40.

⁸⁸ Article 43.

⁸⁹ Article 15.

⁹⁰ Article 111.

⁹¹ Article 99.

⁹² Article 128.

⁹³ Rulebook on Business Entity's Self-Declaration Form, Official Gazette 74/19, 3/23.

⁹⁴ Article 38 of PPL



requirement, the Rulebook⁹⁵ defines in more detail the content and templates for recording violation of conflict of interest, i.e., anticorruption rule, as well as the methodology for risk analysis. CAs are required to report annually to DPPA on any conflict of interest and violation of anticorruption rules. CA's employees who have information about corruption in public procurement are required to immediately notify the CA's authorized person, DPPP, APC, or Prosecutors Office, depending on the case.⁹⁶

The PPL prescribes debarment for bidders who attempt to make an undue influence, are in the conflict of interest, were criminally convicted for offences specified in the law, or did not provide mandatory documents as part of the procurement process.⁹⁷ In addition, CAs may prescribe debarment based on special grounds such as professional misconduct or provision of false data.⁹⁸ Decision on debarment is made by the CA's authorized person based on recommendation from the Procurement Committee and submitted to the bidder via the EPPS. The decision can be appealed on.

Anti-corruption framework and integrity training

The country has in place an adequate institutional framework for detecting and fighting corruption. The APC is a key institution mandated to prevent corruption and promote integrity. It is responsible for establishing the existence of conflict of interest and corrupt practices, undertaking prevention measures, and protecting whistleblowers. The law enforcement responsibility is placed in the Prosecutors' Office (prosecution and overseeing of investigation) and police (investigation). APC acts based on reported cases of corruption as well as ex-officio. If it determines the existence of corruption with elements of criminal acts, it forwards the case to the Prosecutor's Office, and the Prosecutor's Office informs APC on its decision. APC's decisions are final and can be appealed through an administrative procedure. The APC's Council, appointed by the Parliament for a four-year term in office, consists of five-members and is responsible for APC's decisions and the appointment of its director.

To create awareness and fight corruption at national level, APC monitors and supports the development and implementation of institutional integrity plans, proposes legislative changes to prevent corruption, advises on alignment of regulation with international anti-corruption standards, provides training, and cooperates with civil society. As part of this work, APC proposed specific changes to the PPL during the process of its revision. APC plans to work on preparation of the Government's new anti-corruption strategy and on linking the institution's electronic database of cases with the EPPS.

Several mechanisms are in place to detect and mitigate corruption risks in the public procurement cycle:

- Internal control systems are adequate, and the procurement organizational structure provides segregation of roles and responsibilities (see sub-indicator 12(a)).
- Public bodies are required to analyze and mitigate risks in procurement cycle based on the prescribed methodology, which identifies conflict of interest as a risk area and defines mitigation measures to be applied.⁹⁹ Complementary guidance on these aspects have also been developed by the DPPP. Furthermore, public bodies are mandated to maintain records of corruption and report on them (see sub-indicator 14(c)).

⁹⁵Rulebook on Recording and Methodology for Risk Analysis in Conducting Public Procurement Control, Official Gazette 055/20.

⁹⁶ Article 39 of PPL

⁹⁷ Article 108 of PPL

⁹⁸ Article 110 of PPL

⁹⁹ Rulebook on Recording and on Methodology for Risk Analysis in Conducting Public Procurement Control..



- In line with legal requirements and the methodology prescribed by APC, each public body adopted and published its integrity plan, which outlines measures to prevent and detect corruption identified based on the public body's self-assessment of its exposure to corruption and conflict of interest risks. Public bodies report on integrity plans annually.
- APC provides training to public bodies on topics related to corruption and conflict of interest (17 trainings attended by 197 participants were delivered in 2021, and 29 trainings attended by 362 participants were delivered in 2022). Furthermore, the APC staff received training on public procurement.

Annual reports of the APC and the Prosecutor's Office are published and contain comprehensive and detailed statistics on the number, type and outcome of cases processed. The Prosecutor's Office reports provide detailed statistics on the number of criminal charges, investigation orders, investigations, verdicts, indictments, and court verdicts by category of criminal act and by specific Prosecutor's Office (location). These are also available for high-profile corruption, which is defined as a category of criminal act. While there is no category of procurement related corruption defined by the Montenegrin legislation, such corruption is normally processed under the category called "abuse of official power."

The APC provides dedicated support on integrity training. Also, the APC engages in providing anti-corruption awareness raising to citizens and to public bodies, as needed.

Stakeholder support to strengthen integrity in procurement

In general, the country's civil society organizations sector is relatively well developed. Capacities and interest of CSOs vary and many formal and informal coalitions between CSOs and other stakeholders have been established. The environment for the operation of CSOs is relatively conducive, and the role of civil society is generally recognized and promoted. The country's legal and institutional framework provides for effective and meaningful engagement of civil society (see sub-indicator 11(a)). Funding rules for CSOs are also in place, providing the framework for the Government's support.

There are few CSOs that are working on public procurement in Montenegro. Institute Alternativa is active in working on government accountability and transparency, including in public procurement. Its representative also acts as a member of the Government's working group on Chapter 5 of the *acquis*. Network for Affirmation of NGO Sector (MANS) is active in working on corruption issues across sectors, including those related to public procurement. Both these NGOs actively participated in drafting changes to the PPL. Furthermore, MANS established own IT system that enables improved search of procurement data based on the EPPS and submitted over 1,500 information requests to CAs since 2015.

All business entities registered in Montenegro are members of the country's Chamber of Commerce. As such they are required to adhere to the Chamber's Code of Ethics, which sets principles and requirements of ethical behavior with the aim of ensuring transparency and integrity in operations. Compliance of business entities in public procurement is ensured through relevant legal and regulatory framework on financial management, internal control mechanisms and external audit. Over 82 percent of surveyed businesses have internal rules and compliance measures on public procurement in place.

Secure mechanism for reporting prohibited practices or unethical behavior

There are secure, accessible, and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior. The information regarding the suspected



fraud/corruption/prohibited practices cases can be reported to a public body suspected, or directly to APC, in writing, verbally, via mail or electronically. The APC can also initiate the procedure to establish the existence of fraud/corruption/prohibited practices *ex-officio*. The information is kept confidential and anonymous unless the person reporting requests the information to be publicly available.

The Law on Prevention of Corruption provides for protection of whistleblowers' identities and rights.¹⁰⁰ The APC is obliged to protect a whistleblower, and a whistleblower is entitled to protection in cases he/she was or could be harmed because of reporting on corruption. A whistleblower can request protection in writing or verbally. The APC decides on the request based on review of the information provided and notifies the whistleblower within 15 days. If the APC determines that a whistleblower has been or could be harmed, it provides recommendations to a relevant public body. The APC is also required to provide technical support to a whistleblower in case he/she has been harmed and has decided to initiate a court procedure. Finally, a whistleblower has a right to court protection, as well as to a reward in case his/her reporting on corruption has contributed to generating public revenue.

There is an adequate legal and regulatory framework for follow up on disclosures, which is functioning in practice. A public body to which the information is reported by a whistleblower is required to check the accuracy of information, take appropriate action, and inform the whistleblower of the action taken within 45 days. If the public body does not provide feedback or the whistleblower is not satisfied with the feedback provided, the whistleblower can opt to report to the APC. In such a case the APC is required to provide its opinion and in case it determines the existence of fraud/corruption/prohibited practices, recommendations on actions that the public body should take. The public body is required to report to the APC on the actions taken within the deadline specified by the APC. If it fails to do so, the APC will inform the inspectorate or a relevant supervisory body, submit a special report to the Parliament, and inform the public. The public body and the APC are both required to inform the Prosecutors' Office in case the corrupt practices involve allegations of criminal acts, or another relevant institution, depending on the case. These institutions are in turn required to report back to APC on the outcome of the procedure.

Codes of conduct/codes of ethics and financial disclosure rules

The Government's Code of Ethics for Civil Servants and Employees¹⁰¹ prescribes general codes of conduct in areas such as respectful treatment of colleagues and clients, public appearance, data management, etc. A head of a public institution is required to inform the employees about the code and employees are required to report to their supervisors on potential violations of the code. The Law on Government and the Law on State Administration define accountability for decision making and human resources and financial management for ministers and heads of public bodies.

The Law on Prevention of Corruption obliges public officials to report to the APC on their revenues and property,¹⁰² though no such requirement is in place for other officials involved in public procurement. The APC maintains the registry of revenues and property of public officials and discloses the data from the registry on its website, except for sensitive personal data. The APC also maintains the registries on conflict of interest and financial disclosure, which are accessible at APC website. A failure to comply with relevant accountability and financial disclosure provisions results in administrative or criminal penalties.

¹⁰⁰ Articles 58-68.

¹⁰¹ Official Gazette no. 050/18.

¹⁰² Articles 23-27.



The APC has a dedicated department with four employees responsible for research, design and delivery of training to public bodies in coordination with the HRMA (see sub-indicator 14(d)). The training is based on annual training plans and training needs. Public bodies show most interest in training in areas of financial disclosure, conflict of interest, whistleblowers' protection, and integrity.

- **Gaps**

Legal definition of prohibited practices, conflict of interest, responsibilities, and penalties

While the definitions of individual responsibilities, accountability and penalties for the relevant stakeholders are in place, there are no definition of “anticorruption clause” and “anticorruption rule” referred to in legal documents. The definitions of these two terms appear to have been defined previously and to have been removed as part of the recent PPL amendments.

Amounts of fines to responsible government employees who fail to undertake measures to prevent and remove consequences of corrupt practices range from EUR 2,000 to EUR 20,000, which appears to be low relative to potential impact of the offenses.

Provisions on prohibited practices in procurement documents

Definitions of prohibited practices in public procurement for which criminal offences are envisaged, such as fraud, bribery, and corrupt practices, are not provided in legislation. Furthermore, other relevant prohibited practices such as collusive practices, coercive practices, and obstructive practices, are left out from the legislation.

Effective sanctions and enforcement systems

Coverage and treatment of fraud and corruption matters throughout the procurement documentation is incomplete and inconsistent. Regulations on keeping records and reporting on corrupt practices do not provide sufficient explanation of corrupt practices or sufficient guidance and information on the reporting process. For example, the Rulebook on Recording and Methodology of Risk Analysis in Public Procurement prescribes a template for the record of violation of anticorruption rules but provides no guidance on the reporting process. The template contains summary data on the number of notes of violation submitted, the number and type of procurement procedures in which the anticorruption rule was violated and how it was violated, the data on bidders and their employees and CA's employees involved in such procedures, and whether the employee who submitted the note of violation was subject to pressure to prevent reporting on it and how. Furthermore, the template does not include the information on whether the case was reported to relevant institutions and which ones.

There is no system in place for managing suspensions and debarments. There are no lists of debarred persons or similar lists, and no mechanism for automatic debarment of ineligible bidders. Apart from increasing the risk of corrupt practices, this creates operational inefficiencies as CAs are required to check eligibility of all interested bidders under each single procurement procedure.

Anti-corruption framework



While the Prosecutor's Office prepares and publishes compiled statistic on legal proceedings and convictions related to high-profile corruption and abuse of official power, such data is not available specifically for procurement-related corruption, as such corruption is not treated as a distinct criminal act.

Stakeholder support to integrity

Very few CSOs exercise effective social audit and control in public procurement. This can largely be attributed to limited capacities of the CSOs sector. Furthermore, in absence of adequate financial support from the Government, CSOs tend to focus on areas of work that increase their likelihood of obtaining financial support from international donors, and these areas normally do not include public procurement. The procurement environment has no procedure to encourage the involvement of CSOs. As a result, there are limited practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.

Private sector perceives CSOs contribution as limited. Only 18 percent of the survey respondents agreed with the statement that CSOs actively provide oversight and social control in public procurement, 6 percent reported some cooperation with CSO, while only 1 percent reported regular and well-established cooperation with CSOs.

Business entities generally lack internal rules, regulations and procedures on various integrity and anti-corruption aspects of their operations, such as on conflict of interest/breach of integrity by employees (41 percent), giving gifts and hospitality (27 percent), and handling corruption reports and protection of whistleblowers (21 percent). Only 31 percent of businesses have anti-corruption or integrity plans in place.

Codes of conduct/codes of ethics and financial disclosure rules

Accountability provisions and requirements for financial disclosure are in place for public officials, but not for all employees directly or indirectly involved in procurement activities or decisions. While the PPL prescribes specific duties of heads of public bodies and procurement staff, it does not clearly define their accountability for decision making.

Since no mandatory code of conduct in areas of public finance management (PFM) or procurement is in place, no relevant penalties for violation of such provisions could be established.

No regular training programs related to code of ethics and no regular training programs for the private sector whatsoever are in place. 92 percent of surveyed businesses reported that they have not attended any training related to anti-corruption or integrity in public procurement. However, the 8 percent of the respondents who did receive such training all found it useful.

Finally, the team could not access any of the registries maintained by the APC at its website or at the website of the agency which previously managed the registry as referred to by the APC's website.¹⁰³

Substantive gaps

Legal definition of prohibited practices

¹⁰³ Internet search at <https://www.antikorupcija.me/me/registri/> from August 10, 2023.



The PPL and relevant bylaws do not provide a clear definition of fraud, corruption, and other prohibited practices in procurement. While the Law on Prevention of Corruption¹⁰⁴ defines corruption as “any abuse of official, business, or social position or influence with the aim of acquiring personal benefit or benefit for the others,” the PPL does not refer to that law or definition. Definition of “corrupt activities” could only be implied from the list of specific measures that CAs are required to undertake to prevent and remove consequences of corrupt practices.¹⁰⁵

Absence of clear definitions of fraud, corruption, and other prohibited practices in procurement, as well as the definition of “anti-corruption rule” and “anti-corruption clause” creates legal ambiguities. This prevents effective compliance and sanctioning, thereby hampering overall accountability of the procurement system. Since this action is not dealt only within procurement system a red flag is warranted.

Effective sanctions and enforcement system

There is little evidence that the system for reporting corruption in procurement is effectively applied. Interviewed CAs find the PPL provisions and available regulations sufficiently clear, and state that they apply them in practice. However, they report no cases of such violation in practice and no single case of corrupt practices was reported to DPPP in 2022. Only 34 percent of private sector respondents agree that the normative/regulatory institutions enable the conflict of interest to be identified and avoided.

External reports, including those of the EC, as well as the interviews with CSOs conducted under the assessment, point to poor enforcement of laws on fraud, corruption and other prohibited practices, as well as a lack of a credible criminal justice response, in particular in relation to investigations, prosecutions and final convictions on high-profile corruption. While the available reports of criminal justice and other institutions do not provide data on procurement-related cases of fraud or corruption (see sub-indicator 14(d)), statistics on prosecution and convictions related to cases of “high-profile corruption” and “abuse of official power”, which mainly relate to procurement, point to poor enforcement. As an illustration, in 2020, Prosecutor’s Offices handled 476 criminal charges related to abuse of official power. While this represents a 10 percent increase compared to 2019, it still represents a mere 3 percent of the total Prosecutor’s Offices’ caseload. Only 12 indictments were proposed based on these charges, one indictment was ordered, and one investigation was conducted, while 120 charges remained unresolved in that year. Similarly, courts processed only 40 indictments and passed only 6 convictions, leaving 30 indictments unresolved. Furthermore, courts upheld only 1 of the 6 complaints that Prosecutor’s Offices filed against court decisions. Considering all the above the risk is high and the taking into account that addressing the gap goes beyond the procurement system therefore the red flag is warranted.

Anti-corruption framework

While Montenegro has in place a comprehensive institutional framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to implement their mandate, the system does not appear to be effective when it comes to corruption in public procurement. While the total number of cases of suspected corrupt practices reported to APC (including those related to public procurement) has been increasing over the past three years, the procurement-related cases averaged to only 10 percent of the total cases processed, and APC determined the existence of corrupt practices in only three such cases (1 percent of total cases processed by APC). Though APC performance improved over the past years, its capacity to tackle corruption appears to be limited. APC lacks the technical competence and budget to deliver its mandate

¹⁰⁴ Official Gazette no. 53/14, 42/17.

¹⁰⁵ As described in Article 38.



and only 55 out of 75 of its staff positions are currently filled. Furthermore, the private sector opinion about the effectiveness of anti-corruption framework is unfavorable. Only 20 percent of surveyed businesses perceive anti-corruption measures for public procurement as effective, 30 percent of respondents are neutral, while 51 percent disagree or strongly disagree with the statement that the anti-corruption measures are effective.

Apart from general mechanisms for detecting and preventing corruption risks specified above, there is no special mechanism in place for detecting and preventing corruption in procurement. Similarly, no dedicated and regular integrity training program on public procurement is in place exposing the procurement system to high risks of corruption. Considering the multiple stakeholders engaged the gaps cant be addressed within the procurement system only. As such a red flag is warranted

Codes of conduct/ codes of ethics and financial disclosure rules

There is no legal requirement for CAs to have a mandatory code of conduct in areas of PFM or procurement. While none of the interviewed CAs reported having any codes of ethics, the internet search suggests that some institutions and SOEs do have them, however they do not address the areas of PFM or procurement. Similarly, the Government’s Code of Ethics for Civil Servants and Employees does not deal with PFM or procurement. Furthermore, it applies only to central government employees (including PFM and procurement staff) but not to employees in local self-government units or in state-owned enterprises, which also act as CAs.

There is no established procedure or practice to capture information on beneficial ownership. There is no system in place to ensure that the data from APC’s registries on conflict of interest and financial disclosure are systematically used by decision makers. As such the impact of this deficiencies on procurement practices is consider to have a high risk and a red flag is warranted due to the fact that I implies legal regulations that are beyond only procurement system.

A summary of substantive gaps and recommendations for this indicator is provided in table 27.

- **Recommendations**

Legal definition of prohibited practices, conflict of interest, responsibilities, and penalties

- Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement into PPL and relevant bylaws (such as procurement manual) ensuring consistency with the definitions provided in the Law on Prevention of Corruption. Related to this, clarify and better define the “anticorruption rule” and “anti-corruption clause.”
- Consider adjusting the amounts of penalties for violation of anti-corruption rules so that they more adequately reflect the potential impact of offenses.

Provisions on prohibited practices in procurement documents

- Consider providing a comprehensive list of prohibited practices along with their clear definitions as part of the next PPL revision.

Effective sanctions and enforcement systems



- Ensure an overall, comprehensive, and consistent treatment of fraud and corruption matters throughout the legislation, regulation, and procurement documentation, and ensure that it is applied in practice.
- Improve the regulation on keeping records and reporting corrupt practices to define more clearly types of corrupt practices and the reporting process and to improve the quality of information recorded.
- Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report on cases of corruption and other malpractice and strengthening working relationship among the relevant agencies (DPPP, APC, Prosecutor’s Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.
- Develop a system to ensure effective and consistent application of legal provisions on suspension/debarment. This includes developing and regularly updating publicly available lists of debarred entities and introducing procedures and infrastructure to ensure automatic and transparent debarment of entities from relevant lists.
- Systematic action should be taken to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacity and integrity of law enforcement agencies, and raising public awareness and support.

Anti-corruption framework

- Review factors that help preventing corruption and improve them, both in the legal framework and practice. This can include campaigns targeting the youth and the mid-level career officers demonstrating how corruption robs them of the opportunities that other fellow Europeans enjoy, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it.
- Ensure that statistics on corruption related legal proceedings and others are compiled and published.
- Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the EPPS.
- Incorporate public procurement integrity training session in the public financial management training program or as a standalone program delivered on regular basis.

Stakeholder support to strengthen integrity in procurement

- Strengthen capacity of CSOs to exercise social audit and control in procurement through training, coalition building, stronger support from international partners, and stronger collaboration with government and private sector. Improvements need to be made to foster CSOs’ participation in drafting bylaws, strengthen cooperation and consultation between the state institutions and civil society, and improve free access to information.
- Strengthen capacity of private sector to improve integrity in public procurement. Chamber of Commerce and DPPP should work together to promote adopting internal compliance measures by business entities to support integrity and ethical behavior in public procurement.

Codes of conduct/codes of ethics and financial disclosure rules

- Consider developing codes of conduct / codes of ethics applicable to staff and officials working in PFM area.



- Ensure provisions on penalties for non-adherence to financial disclosure rules are included in relevant regulation.
- Consider expanding accountability provision to cover all involved in procurement activities and decisions.
- Ensure provision of regular training on ethics. Such training can be jointly organized by APC and HRMA or DPPP. The Chamber of Commerce and DPPP should work together to establish regular training programs on-anticorruption and integrity for business entities.
- Ensure that conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

Table 27. Summary of Substantive Gaps and Recommendations for Indicator 14

Substantive gap	Risk and red flags	Recommendations
Sub-indicator 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties		
14(a)(a) Absence of clear definitions of fraud, corruption, and other prohibited practices in procurement creates legal ambiguities, thus preventing effective compliance and sanctions.	High and a red flag	Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement to PPL and relevant bylaws (such as procurement manuals) ensuring consistency with the definitions provided in the Law on Prevention of Corruption. Related to this, clarify and better define the “anticorruption rule” and “anti-corruption clause.”
Sub-indicator 14(c) Effective sanctions and enforcement systems		
14(c)(b) Despite the normative/regulatory framework in place, the system of reporting corruption in public procurement is not effective in practice.	High and a red flag	
14(c)(d) Available evidence and reports suggest very poor enforcement of laws on corruption, fraud, and	High and a red flag	Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report on cases of corruption and other



other prohibited practices.	malpractice and strengthening working relationship among the relevant agencies (DPPP, APC, Prosecutor’s Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.
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Sub-indicator 14(d) Anti-corruption framework and integrity training

- | | | |
|--|---------------------|--|
| 14(d)(a) Anti-corruption framework is not effectively implemented and corruption measures for public procurement are perceived as ineffective by the private sector. | High and a red flag | Systematic action should be taken to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacity and integrity of law enforcement agencies, and raising public awareness and support. |
| 14(d)(d) There is no special mechanism in place for detecting and preventing corruption in procurement. | High and a red flag | Review factors to help preventing corruption and improve them, both in the legal framework and practice. This can include campaigns targeting the youth and the mid-level career officers demonstrating how corruption robs them of the opportunities that other fellow Europeans enjoy, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it. Consider developing an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system. |
| 14(d)(e) There is no dedicated and regular training program on integrity in public procurement. | High Red flag | Incorporate integrity training session in the public financial management training program or as a standalone program delivered on regular basis. |

Sub-indicator 14(g) Codes of conduct/codes of ethics and financial disclosure rules

- | | | |
|---|---------------------|--|
| 14(g)(a) There is no legal requirement of practices of adopting codes of conduct of ethics in the | High and a red flag | Consider developing codes of ethics applicable to staff and officials working in PFM area. |
|---|---------------------|--|



areas of PFM or procurement.

14(g)(e)	There is no established procedure or practice to capture information on beneficial ownership. Data on conflict of interest and financial disclosures is not systematically used for decision making.	High and are flag	Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.
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Source: Assessment team.

4. Consolidated Recommendations

➤ Improve Competition

Carry out an in-depth study of existing specific legislation, licensing, standards, and other requirements which might impact the competition in public procurement. Analyze the introduction of lists of approved economic operators (i.e., prequalified) in key sectors and the potential for aggregation of procurement demand to enhance competitiveness and achieve economies of scale. Analyze the reasons for cancellation to identify the appropriate measures to improve performance at system level and at sectoral or category level.

Improve dialogue between economic operators and line ministries to learn more about the issues which prevent economic operators from taking part in public procurement processes. Develop tailored capacity building programs for economic operators to increase capacity to compete in public procurement.

Publish procurement plans early in the planning process, improve portfolio planning and carry out market engagements to increase transparency of the procurement activities and facilitate the understanding of interested parties, including the civil society and the economic operators.

Directorate for Public Procurement Policy (DPPP) to promote the use of all available procurement procedures, inform about their advantages and disadvantages, as well as provide practical examples to encourage authorities to be more open to their application. Implementation of those procedures in pilot projects of complex sectors or procurements may provide insights into how they could work in the Montenegrin environment and result in increased competition levels in the long term.

➤ Legislation and Strategy

The legal framework should be amended to include: (i) process for reaching decisions on administrative debarment as well as other legitimate exclusions (e.g., prohibition of commercial relations by law, adherence to UN Security Council or international agreements that limit participation to members of the



agreement.)

Public Procurement Law (PPL) should further develop and define functions and responsibilities for managing contracts.

There should be established security protocols to protect records (physical and/or electronic).

The regulations would need to be consolidated as a set of regulations readily available in a single accessible place and the DPPP should elaborate a single users' manual.

The legal framework should allow for challenging award decisions for simple procurement.

Develop a sustainable public procurement (SPP) strategy as part of the Public Procurement Action Plan for 2023-2025.

➤ **Access to Public Procurement and Procurement Planning**

Consider carrying out a wide-ranging review of the barriers that prevent economic operators' access to the procurement market. The analysis shall go beyond public procurement to look at the different other legislative frameworks applicable to all economic operators or in a specific sector. The said analysis would as well help identify the most appropriate procurement approaches to contemplate.

Consider introducing a requirement and provide tools and templates to support needs analysis and market research and define optimal procurement strategy based on the value and complexity of the procurement and define best practices. Contracting authorities (CAs) should be encouraged and supported to conduct market research in all cases and market consultations in specific, complex cases, not only to document price estimates, but to ensure that the specifications are clear and that the market is able to respond to the procurement requirements. When used appropriately, market consultations have proven potential to enhance value for money, promote professionalism, support innovation, increase competition and reduce the risk of complaints and corruption.

Carry out analyses at system level of the modification of the total procurement budget against the procurement plan (actual vs. initial estimate) to understand the reasons for which procurement budgets are significantly increased during the course of the year. Similarly, this might reveal if the same is an isolated matter or if it is a systemic issue.

Review procurement categories at system level to help define priorities (for example, centralization of purchases) and determine the appropriate procurement strategy . This type of assessment should also identify capacity and additional resources required.

Use e-procurement data (i.e., by estimating the supply positioning matrix) to highlight the sectors where procurement risks are the highest, and that would therefore benefit from a collaborative approach between the private and the public sectors. The analysis of the e-procurement data shows that there is great potential to conduct sector analysis to inform procurement and sector strategies. The supply positioning matrix is a useful tool for such analysis as it would inform where market consultations are most relevant.

➤ **Guidelines and Bidding Documents**



Develop standard tender documents, including standard contract conditions, for each type of contract to ensure the predictability of applicable terms and conditions and a balanced approach in the allocation of rights and obligations between the parties. A suitable set of contractual conditions would offer a mechanism for dispute resolution, payment terms in line with national provisions, and instruct when and how contract amendments should be made. The tender documents may be supplemented by technical notes and instructions on how to prepare them, in particular, on setting qualification, selection, and award criteria, technical specifications, minimum set of contractual conditions, and different templates to be filled in by the bidders (technical and financial offer, as a minimum). Additional sets of standard tender documents for the most frequently purchased items are also recommended.

The DPPP is advised to develop guidance and tools to conduct market research and consultations, to explain what each would entail and to present their benefits and best practices in addressing the market.

Promote the use of different modalities of procurement procedures, such as competitive dialogue, competitive negotiation or the partnership for innovation, their advantages, and disadvantages, specifying practical examples that would promote greater openness among authorities and implement pilot projects in complex sectors or procurements.

Review/amend/supplement guidance on establishing the estimated value of the procurement, including the immediate consequences of the artificial split of contracts, which may help reduce the total value of direct purchases.

Consider moving away from the lowest-price method towards inclusion of qualitative criteria to focus on the merits of the technical offer and its intended benefits rather than on the price only. Life-cycle costing is one of the most used factors that may be considered by contracting authorities and that promotes, as well, sustainable procurement. Its implementation would involve issuance of guidance, methodologies, and training in various sectors. DPPP should monitor the trend in using qualitative criteria, over time, and work to augment their application.

➤ **Electronic Procurement System**

Upgrade the functionalities of Electronic Public Procurement System (EPPS) to capture, contract management, payment procedures and contract management data.

Development of an E-procurement Strategy

Enhance the interfaces and interoperability of EPPS with the supporting government services to facilitate the efficiency and consistency of data, particularly with the **central register of companies**, tax, budget/treasury authorities, and banks

Enhance capacities of DPPP to ensure business continuity.

Enhance data analytical feature for the EPPS.

Based on a spending analysis of Contracting Authorities, the Ministry of Finance (MoF) should review the list of activities under centralized procurement to enhance the efficiency of centralized purchasing.

➤ **Sustainable Procurement**

Develop an SPP strategy as part of the Public Procurement Action Plan for 2023-2025. Work with the private sector to ascertain readiness of the market to respond to sustainability requirements. Monitor



bidding documents to inform the development of instructions and methodological guidance combined with key performance indicators (KPIs); implement pilot projects, extensive training, and promotion of the approach among CAs and encourage hands-on activities to illustrate how to establish criteria.

Include sustainability considerations in the standard contract conditions and monitor their application over time, in particular ensuring coverage of green procurement, social inclusion of people with disabilities and promotion of enterprises for social economy and energy efficiency in procurement.

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

➤ **Capacity Building and Professionalization**

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

Incorporate integrity training session in the public financial management training program or as a standalone program delivered on a regular basis.

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

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

Perform training programs dedicated to civil society to raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists, and journalists to monitor procurement procedures. Organize regional seminars and roundtables bringing together the civil society and the local government to explore practical issues faced by local authorities when conducting public procurement.

➤ **Strengthen Contract Implementation Function**

Make available additional guidance to contracting authorities on measurement of results based on quality, time and price, stakeholders' management, risk management and remedial actions to improve internal processes. Issue instructions on how to conduct the evaluation of performance at procurement portfolio level, and its benefits, to document lessons learned and define measures for improvement.

Evaluate and plan internal resources of contracting authorities to ensure appropriate expertise for contract supervision and performance evaluation of the contractor.

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



Capture all relevant information in the e-procurement or the interconnection of the system with any existing databases or structures in order to identify any systemic issues and the associated measures to Improve contract implementation.

Publish, systematically, summarized reports that would show the efficiency and effectiveness of the public procurement system, on the entire procurement cycle, to foster increased transparency and trust.

➤ **Monitoring and Oversight**

Ensure regular control and consultative hearings on State Audit Institution (SAI) reports. Based on the outcome of such hearings, develop more substantive parliamentary conclusions in relation to the implementation of SAI recommendations.

SAI should start conducting specialized procurement audits and performance audits focused on public procurement. Continuity of such audits should be ensured to enable effective implementation of the audit recommendations. Consider developing a procurement audit manual specific to the country.

➤ **Complaint Review Mechanism**

Consider introducing provisions in the PPL and/or Procurement Manual and the Appeals Body's Book of Rules dealing with the basis for the Appeals Body's decision making. Include specific provision in the PPL dealing with binding nature of decision and introduce an appeal mechanism for simplified procurements. Improve the capacity and transparency of work of the Appeals Body and sensitize the private sector.

Define in the law procedures for submission and resolution of complaints, namely request for review procedures, and publish them in an easily accessible manner (i.e., online, for example, on EPPP or DPPP website.)

➤ **Anticorruption and Ethics**

Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement in relevant bylaws, and in procurement manual, ensuring consistency with current definitions provided in the PPL and the Law on Prevention of Corruption.

Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report cases of corruption and other malpractice and strengthening working relationship among the relevant agencies (DPPP, APC, Prosecutor's Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.

Take systematic action to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacity and integrity of law enforcement agencies, and raising public awareness and support.

Review factors to prevent corruption and improve them, both in the legal framework and in practice. This can include campaigns targeting the youth and mid-level career officers displaying how corruption deprives them of opportunities, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it.



Develop an integrated anti-corruption strategy and use of modern technologies in detecting corruption. Several can be embedded in the e-procurement system.

Develop codes of ethics applicable to staff and officials working in public finance management (PFM) area. Establish a clear reporting structure on issues of malpractice and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report cases of corruption and other malpractice, and strengthening working relationship among the relevant agencies.

➤ **Transparency**

Ensure that conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.

Encourage and support participation of CSOs and their watchdog function as well as citizen's participation. Consider introducing provisions on CSOs' role and participation in the procurement system as part of the next revision of the PPL.

Conduct a review of the reasons for contract amendments and verify if these were made in accordance with the legal provisions. Make public the information on contract amendment and issue regular reports and statistics on the number, value, and scope of contract amendments to help address the issue of trust as described by the private sector. Consider the use of e-procurement system to gather data.

5. Strategic Planning

The set of consolidated recommendations above, which respond to the findings of the assessment and the results at the level of sub-indicators reveals the major areas of strength and weaknesses of the public procurement system in Montenegro. Those recommendations serve as overall guidance for crafting elements of a phased, multiyear strategy to address the strategic planning process. The Table 3 on the overview assessment sets up each of the substantive gaps and red flags per pillar, which shall inform the strategic planning. Pillar I and Pillar II, Legal, Regulatory and Policy Framework and Institutional Framework and Management Capacity, respectively, account for 57% of the substantive gaps of the assessment, while Pillar IV, Accountability, Integrity, and Transparency of the system comprises 25% and Pillar III, Public Procurement Operations and Market Practices constitutes the remaining 18% of those substantive gaps summarized as below:

Pillar I. Legal, Regulatory and Policy Framework

The scope of the PPL excludes simple procurement of goods, services and works with an annual estimated value up to 8,000 euro and goods and services with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 25,000.00 euro; works with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 40,000.00 euro. When added, simple procurement may represent a rather significant value of overall public procurement expenditures, and as such, it merits inclusion within the PPL. Potential use of e-catalogues can be considering for simple procurement.



Likewise, the legal framework should be amended to include a process of reaching decisions on administrative debarment as well as other legitimate exclusions (e.g., prohibition of commercial relations by law, adherence to UN Security Council or international agreements that limit participation to members of the agreement.)

Contract management in its full range is not defined either in the PPL or subsequent by-laws. The existing regulation is insufficient to cover the full contract management cycle including functions and responsibilities for managing contracts, monitoring of contract performance clauses designed to ensure social or environmental standards, or issues associated with management of disputes, inspection, quality control, supervision of work and final acceptance.

There are important gaps as regards model procurement documents, major among them the lack of standard conditions of contract that were compulsory prior to 2019 when PPL amendments eliminated the crucial requirement. Equally important is a comprehensive set of user's guide or manual for procuring entities that would cover operational aspects of the procurement process that is also lacking. And, albeit Public Procurement Strategy aiming to promote green and sustainable procurement, there is no evidence that Montenegro has a sustainable public procurement strategy.

Pillar II. Institutional Framework and Management Capacity

On the topic of Procurement planning and the budget cycle, there are no effective controls to ensure that all commitments are systematically captured in the FMIS and, as a result, CAs may exceed the budget amount if incurring commitments in excess of funds warranted to them. Reliance on centralized procurement should increase and efficiency enhanced under the auspices of a dedicated Central Purchasing Body with diverse core functions and managed independently from public existing institutions.

E-Procurement is fundamental to the efficient and effective functioning of Public Procurement. Functions from support to the development and the review of model procurement documents and standard contract conditions to facilitating contract implementation, such as publication of progress reports, billing and payment information, are all core to a rigorous e-procurement system and should be added. Despite system's benefits, EPPS full reliance on an outsourced firm for all technical issues represents a potential risk. There should be a specific e-procurement strategy, and support to open data standard and data analytics features.

The assessment uncovered substantive gaps under organization, funding, staffing, level of independence and on the capacity of the procurement system to develop and improve. Additionally, procurement is not recognized as a profession and there is no evidence of job categorization and career path or that career development is based on performance. And on the topic of keeping track of execution, there is a lack of a comprehensive data capture and performance measurement system with set indicators that would focus on both qualitative and quantitative aspects integrated with the EPPS and that is followed and reported by each CA.

Pillar III. Public Procurement Operations and Market Practices.

Despite constituting the smallest share of the substantive gaps, it is Pillar III that explicitly assesses whether the PPS furthers competition. To that end, it is important to note, however, that several of the substantive shortcomings under all four pillars (rather than those under Pillar 3 only) are closely associated with barriers to **competition**. The shortcomings include, among others, opaque rules of



participation, evaluation, and award criteria, absence of model procurement documents and standard contract conditions. The single bid rate increased from 60% in 2021 to 71% in 2022 while the average number of bidders per lot decreased from 1.7 to 1.5. Market research and market consultations are rarely carried out, being conducted in case of new or complex procurements which are not known to the contracting authority. Although tender documents are publicly available, their quality and lack of predictability in terms of applicable contract conditions and the high percentage of potential bidders who decide not to apply due to problems with the tender documents are issues which require further investigation by the Montenegrin Government. Additionally, the highly complex administrative process during contract execution and the delays in payments are key obstacles that may explain the low competition levels. Legal gaps hamper citizen engagement in public procurement despite the fact that their engagement would enable a more transparent and consultative process. Under accountability, integrity and transparency, the private sector reported not seeing the appeals system as fair and trustworthy or consistent.

Pillar 4. Accountability, Integrity and Transparency

The PPL and relevant bylaws do not provide a clear definition of fraud, corruption, and other prohibited practices in procurement. There is little evidence that the system for reporting corruption in procurement is effectively applied. There are reports of cases of such violation in practice and no single case of corrupt practices was reported to DPPP in 2022. Reports and feedback from SCO point to poor enforcement of laws on fraud, corruption and other prohibited practices, as well as a lack of a credible criminal justice response, in particular in relation to investigations, prosecutions and final convictions on high-profile corruption.

The institutional framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government does not appear to be effective when it comes to corruption in public procurement. There is no legal requirement for CAs to have a mandatory code of conduct in areas of PFM or procurement and the Government's Code of Ethics for Civil Servants and Employees does not apply to PFM or procurement reporting to central government. There is no established procedure or practice to capture information on beneficial ownership. There is no system in place to ensure that the data from CPA's registries on conflict of interest and financial disclosure are systematically used by decision makers.

Slow resolution of appeals and overall negative perceptions of the private sector of the appeals system erodes effectiveness and trust to the appeals system. A comprehensive functional review of the Appeals Body operations should be conducted to determine organizational and capacity gaps and identify measures to improve its performance. Capacity and transparency of work of the Appeals Body should be improved and the private sector should be sensitized of the Appeals Body work. The Appeals Body should strive to achieve a 100% resolution of cases within the legal timeframes.

The proposed planning process covers a period of 5 years (2024-2029) and considers the prioritization of actions into three levels (i) immediate actions- within 2024 (ii) short term (2025-2026) and (iii) medium to long term (2027-2029).

Prioritization exercise for selected topics that resonate through the findings of the assessment as requiring immediate attention (FY2024), are related to legal, regulatory and policy framework, and strengthening contract management function. and the efficiency and effectiveness of the control bodies.



During the period 2025-2026 the government could tackle enhancement of the e-procurement system, production of User's guide or manual for procuring entities, address simple procurement shortcomings, enhancing the efficiency of centralized purchasing and address competition challenges.

During the medium to long term period capacity development and professionalization in public procurement, and monitoring performance to improve the system, competition challenges and ethics and anticorruption measures can continue to be further addressed.

The identified areas of improvements in respective Pillars have informed a detailed set of actions that contribute to achieving five key Strategic Objective:

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

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

Strategic objective #2. Enhance EPPS capabilities and its impact on public procurement efficiency.

Current challenges of the system can be addressed by prioritizing the interventions required. Most crucial is developing IT expertise within DPPP ranks to lessen dependency on external contracting agency while ensuring the establishment of a business continuity team, followed by enhancing the functionalities of the EPPS to capture payments, and support publication of crucial information, such as, evaluation reports and contract management data. Regular high-quality reporting of system performance is an important step, which also needs a strong, strategic overview that focuses on evidence of what is being achieved through public procurement and what scope there is to achieve more. The development of the monitoring mechanism, based on a system of performance indicators and interconnection of data sources will strengthen DPPP's monitoring function. A thorough review of the different practices at system level, in specific sectors or authorities will provide insights into potential ways to increase efficiency. Conducting spend analysis at country level to identify the most appropriate procurement strategies for different procurement categories will also inform the development of centralized procurement with a focus on revamping its capabilities and efficiency.

Strategic objective #3. Strengthen competition in public procurement by resolving perceptions of collusion, lack of predictability of applicable contract conditions, lack of transparency and openness.

Competition levels are low in Montenegro and addressing anticompetitive practices calls for a set of measures ranging from examination of high entry barriers to determine whether they can be eliminated, fostering a regulatory environment that promotes competition in certain key sectors, for example licenses and standards requirements, and moving from qualification criteria and/or requirements designed to



favor certain firms, as noted by the survey respondents. The analysis of EPPS data indicates that this issue of low competition may be beyond the powers of Contracting Authorities and that the Government of Montenegro should support Contracting Authorities by developing national, regional, or sectoral programs to enhance trust in the public sector, in an effort to foster private sector participation. Additionally, the entire procurement process merits revision and completeness; from the planning process, commencing with the assessment of the needs, the market, the sectors, and the capabilities of those carrying out procurement work to strategies for contracting. Procurement documentation must include all related information that potential bidders would need to be fully informed in advance, including the contract conditions. Contract management practices need to be recorded, monitored and reported consistently.

Strategic objective # 4. Impulse professional development and continuous capacity building of key stakeholders.

Capacity building and professionalization of public procurement requires a broader and more inclusive outlook that would embrace, in addition to civil servants, private sector, non-governmental organizations, and civil society for a more efficient public procurement system and to contribute to improved monitoring of public procurement market. It is essential to professionalize public procurement and recognize it as a specific function, with procurement positions defined at different professional levels and job descriptions with requisite qualifications and competencies specified. Training should be adequate and available to procurement staff and line managers at CAs. Both workload and capabilities of staff must be measured and systematically evaluated.

Strategic objective # 5. Review of the efficiency and effectiveness of the control bodies, actively promote accountability, integrity, and transparency in the procurement process and streamline the control function.

The system of reporting corruption in public procurement as described in the normative and regulatory framework has yet to become fully effective in practice. Clear definitions of fraud, corruption and other prohibited practices in procurement should be inserted in relevant by-laws. There needs to exist a mechanism for detecting and effectively preventing corruption in procurement, because despite current framework, with responsibilities assigned to various government agencies, general private sector opinion about the effectiveness of anti-corruption measures is unfavorable. The legal regime should add a requirement or practice of adopting codes of conduct or ethics in areas of PFM or procurement. Encourage and support participation of CSOs and their watchdog function as well as citizens' participation.

As a first step in the implementation of the reforms in public procurement, the Government of Montenegro may consider the following proposed action to be included as part of the Strategy for Public Procurement and respective Action Plans. based on the priority level the proposed actions are categorized in three groups:

- (i) Immediate action within 2024
- (ii) medium term action within 2025-2026
- (iii) long term actions within 2027-2029.

Table 28: Proposed actions to implement the Strategic Planning of 2024 –2029



Proposed action	Priority Level	Responsible institutions	Timeline
Pillar I.			
The Public Procurement Legal Framework achieves the agreed principles and complies with applicable obligations			
The legal framework to include process for reaching decisions on administrative debarment and respective role of DPPP in conduction administrative debarment process	High	DPPP	2024
The legal framework further develops and define functions and responsibilities for managing contracts.	High	DPPP	2024
The rulebook that regulates simple procurement to ensure the protection of rights of participants in public procurement by including appeals for simple procurement	High	DPPP	2024
Review the current coverage of the procurement regulation and prepare a consolidated set of rules to cover the whole procurement cycle and complement with separate regulations specific processes. Elaborate guidance notes for Contracting Authorities on the use of different ratio of thresholds between price and quality considering the type of contracts and apply a differentiated ratio based on the features of works, goods or services contracts.	Medium	DPPP	2025-2026
Elaborate template of procurement for different types of procurements under works, goods and services and ensure the option of customizing based on different selection methods within this type of procurement documents. Templates would be supplemented with a minimum set of contract clauses or standard contract conditions for works, goods, and services consistent with internationally accepted practices.	Medium	DPPP	2025-2026
Develop a SPP strategy as part of the National Public Procurement Strategy and include relevant actions to implement SPP as part of the Public Procurement Action Plan for 2023-2025	Medium	DPPP	2025-2026
Pillar II. Institutional Framework and Management Capacity			
Conduct data analysis to identify opportunities for aggregation of demand and enhance the efficiency of centralized purchasing. Analyze the benefit of establishing a dedicated Central Purchasing Body outside existing public institutions which have diverse core functions of activities under centralized procurement in order to enhance the efficiency of centralized purchasing.	Medium	Ministry of Finance	2025 - 2026
Develop EPPS strategy to support open data standard and data analytics features, sustainability, capacity building for in-house expertise, communication, and governance frameworks.	High	DPPP	2024
Upgrade the functionalities of the EPPS to support publication of crucial information on the tendering and contract	Medium	DPPP	2025-2029



management processes, capture data on contract management, craft dedicated debarment, complaints and appeal mechanism sections, and enhance efficiency of centralized purchasing based on a spend analysis. Details are provided in the EPPS Module Assessment Report.			
Revision of the legal framework on civil servants and state employees includes provisions to ensure that procurement is recognized as a specific profession and establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.	Low	Ministry of Finance	2027-2029
Perform training programs targeted to private sector and civil society to raise awareness about public procurement standards and rules, as well as strengthen the capacity of local NGOs, local activists, and journalists to monitor procurement procedures.	Medium	DPPP	2025-2029
Develop a monitoring mechanism, based on a system of performance indicators and interconnection of data sources.	Medium	DPPP	2025-2026
Pillar III. Public Procurement Operations and Market Practices. Access to public procurement and enhance competition			
Perform wider review of the barriers which prevent economic operators to access the procurement market (survey with economic operators to address the entire market/per sector and an assessment of the existing specific sectoral legislation, standards and other requirements which impact the competition in public procurement.	High	DPPP and Contracting Authorities	2024
Conduct sectoral analysis to review procurement practices and competition levels (key contracting authorities, key procurement categories, etc.) and portfolio analysis and develop outcome-oriented procurement strategies (key contracting authorities).	High	DPPP and Contracting Authorities	2024
Conduct market engagement and market analysis at government level and with specific focus on complex projects.	Medium	DPPP and Contracting Authorities	2025-2026
Pillar IV. Accountability, Integrity and Transparency of PPS			
Conduct a comprehensive review of the Appeals Body to identify organizational and capacity gaps and identify measures to improve its performance.	High	CPRPP	2024
Review of the efficiency and effectiveness of the control bodies and, where needed, streamlining the control function	High	Ministry of Finance	2024
Introduce clear definitions of fraud, corruption, and other prohibited practices in procurement to PPL and relevant bylaws, and a comprehensive list of prohibited practices (including coercive, obstructive and collusive	Medium	DPPP, Agency for Preventing Corruption	2025-2026
Develop an integrated anti-corruption strategy and allow the use of modern technologies in detecting corruption, of which, many can be embedded in the EPPS.	Low	DPPP, Agency for Preventing Corruption	2027-2029
Introduce requirement for Cas to have a mandatory code of conduct in areas of PFM or procurement Ensure that the Government's Code of Ethics for Civil Servants and Employees	Medium	DPPP, Agency for Preventing Corruption,	2025-2026



applies to PFM or procurement reporting to central government along with integrity training.		Contracting Authorities	
Provide training and guidance to staff on how to report on cases of corruption and other malpractice and strengthen working relationship among the relevant agencies (DPPP, CPA, Prosecutors Office, Inspection) including through e-links and incorporate procurement integrity training in the public financial management training program or as a regular standalone program	Medium	DPPP, Agency for Preventing Corruption	2025-2026 2027-2029
Amend Law on Free Access to information to enable unrestricted access to relevant public information, in line with the EU Acquis	Medium	DPPP	2025-2026
Strengthen capacity of CSOs to exercise social audit and control in procurement through training, coalition building, stronger support from international partners, and stronger collaboration with government and private sector.	Medium	DPPP, Agency for Preventing Corruption	2025-2026 2027-2029
Strengthen accountability by introducing periodic specialized procurement audits, ensure effective parliamentary oversight and follow up of SAI's recommendations. Prepare a procurement audit manual.	Medium	SAI	2025-2026 2027-2029

6. Validation

This assessment was launched on November 1, 2022. The fact-finding meetings were conducted on January 23-February 1, 2023. The annexes provide an overview of stakeholders that were interviewed during this mission, as well as a list of the most pertinent source documents consulted as part of the analysis.

Initial recommendations and findings were shared with the Directorate for Public Procurement Policy (DPPP) on November 21, 2023.

A validation workshop for procurement stakeholders was held on November 30, 2023. The organizations represented during the validation workshop included:

1. Directorate for Public Procurement Policy (DPPP)
2. Ministry of Finance
3. State Audit Institution
4. Administration for Inspection Affairs
5. Agency for Prevention of Corruption
6. Commission for the Protection of Rights in Public Procurement Procedures
7. Administration for Cadaster and State Property
8. Chamber of Commerce
9. Administration for Capital Projects
10. Ministry of Public Administration
11. Institute Alternativa (NGO)
12. Montenegrin Electric Distribution System – CEDIS
13. Ministry of Energy and Mining



14. Post Office of MNE
15. Investment and Development Fund
16. Secretariat of Prosecutor Council
17. EBRD
18. EIB

Stakeholders had the opportunity to share their comment during the workshop and in writing. Written comments were received from:

- DPPP
- Commission for the Protection of Rights in Public Procurement Procedures
- State Audit Institution (SAI)
- Administration for Inspection on Public Procurement

All comments were duly integrated in the report or addressed with a written response as specified in the minutes of the Validation Workshop.

The final version of the assessment was prepared in December 2023 and shared with DPPP for endorsement before continuing with the quality review process. DPPP endorsed the revised version of the MAPS report on January 12, 2024.

The report was submitted for MAPS Secretariat endorsement on March 14, 2024 and comments to the report were provided in May 8, 2024. The assessment team has provided a revised report to MAPS Secretariat on August 4, 2024. The revised report was endorsed by ATAG and no objection to publish the report was granted on September 3, 2024.



Annexes

Annex 1. Concept Note

Annex 2. Assessment Team

Annex 3. Letter of Request from the Government of Montenegro

Annex 4. Indicator Matrix

Annex 5. List of Documents Reviewed

Annex 6. Stakeholders Analysis and list of Stakeholders Consulted.

Annex 7. Minutes of the Validation Workshop

Annex 8. Sampling Methodology for Selected Contracts and Results of the Review





CONCEPT NOTE

Assessment of Montenegro Public Procurement System following MAPS (ID: P180121) Montenegro(EUROPE AND CENTRAL ASIA)



BASIC INFORMATION

Activity Information

Project ID	Product Line
P180121	Advisory Services & Analytics
Short Name	Full Name
Montenegro MAPS assessment	Assessment of Montenegro Public Procurement System following MAPS
Project Status	Completion Fiscal Year
Active	2024

Processing

Is this a Reimbursable Advisory Service (RAS)?

No

What kind of task description is needed?

Concept Note with a Review (Track 2, including Programmatic and Core/Extended core)

Is this a Programmatic activity?

No

Is this a joint Bank-IFC activity?

No

Accountability

Region	Country, Regional or World
EUROPE AND CENTRAL ASIA	Montenegro
Requesting Unit	Team Leader
ECCWB(7001)	Tanvir Hossain, Orjana Ibrahim
Responsible Unit	
EECRU(9295)	
Practice Area (Lead)	Contributing Practice Areas
Governance	Macroeconomics, Trade and Investment

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CONTEXT : STATEMENT OF PROBLEM

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I. Context (Brief description of context)

Country context

Montenegro is a small upper-middle-income country in the Balkan peninsula that aspires to achieve the living standards of the European Union (EU). Montenegro's population is about 622,000 and is aging and shrinking. Nearly 25 percent of the population live in the capital, Podgorica, while 40 percent live in rural areas. In 2021, Montenegro's gross domestic product (GDP) per capita was US\$9,367, while its GDP per capita in purchasing power standards was 47 percent of the EU average.

Economic overview

During 2015-2019 Montenegro's economy grew strongly, primarily supported by robust investment in infrastructure, tourism, and energy. Between 2015 and 2019, the GDP grew at an average annual rate of 4 percent, reaching 5.1 percent growth in 2018, the strongest in a decade. The construction of the first section of the Bar-Boljare highway, the largest and most expensive infrastructure project in Montenegro's history, has supported GDP growth since its implementation started in 2015. Public investments were accompanied by strong private investments in tourism and energy facilities, resulting in total gross investments reaching a 10-year high of 32 percent of GDP in 2018. Supported by booming tourism, increased lending, and buoyant labor market conditions, private consumption has grown significantly, averaging 4.6 percent annual growth over the period of 2015-2019. Montenegro's employment rate increased from 44 percent in 2015 to a record high of 49 percent of the working-age population in 2019. The unemployment rate declined to a record low of 15.1 percent in 2019 and youth unemployment fell for the first time to 25 percent. As a result, the poverty rate, measured as income per capita below US\$5.50 per day in revised 2011 PPP, fell from 20 percent in 2013 to 14.7 percent in 2019. Rural and low-income households were also able to benefit from this boom period. The income of the poorest 40 percent of the population grew by an annualized average of 4.7 percent between 2013 and 2017, higher than the income growth of 3 percent for the whole population

The strong economic growth between 2015-2019 was reversed by the COVID-19 crisis, which has exposed and exacerbated Montenegro's vulnerability to shocks. Montenegro was among the hardest hit countries by COVID-19 in the world. This health crisis affected emerging markets through multiple channels including underutilization of human and physical capital, lower commodity prices, a drop in tourism, capital outflows, credit rationing, and high uncertainty. Montenegro was particularly affected by the sharp decline in tourism, a critical driver of growth, with tourism receipts accounting for a quarter of GDP. At the same time, lack of monetary policy, limited fiscal buffers, and high public debt amplify the country's vulnerability to external shocks.

While still recovering from the pandemic, the economy is facing renewed headwinds. Growth remains very strong, estimated at 6.9 percent in 2022, led by private consumption and a tourism recovery. Inflation surged to new highs, but its adverse impact on the cost of living was largely mitigated by an increase in real disposable income. In the first eight months of 2022, inflation averaged 11 percent, peaking in August at 15 percent. The fiscal deficit is estimated to widen to 4.9 percent of GDP in 2022, due to the forgone revenues of the recent tax reform and increased social spending. The labor market shows continuous improvement with a 30 percent increase in employment in Q2 2022. The activity rate rose to 59.5 percent in Q2 from 46.8 percent a year ago, while in the same period the unemployment rate fell to 14.6 percent from 17.1 percent in Q2 2022. Growth is expected to moderate to 3.4 percent in 2023 and further to 3.1 percent in 2024, as private consumption growth slows. The fiscal deficit is projected at 4 percent of GDP in 2023 and 2.7 percent of GDP in 2024, unless additional



measures compensate for the decline in revenues as a share of GDP. As a result, public debt is expected to stay high at 73 percent of GDP.

Governance

Governance and institutional weaknesses more broadly continue to hinder the necessary reform policies to reduce the Montenegro's vulnerabilities. EU membership remains the top priority and has been driving the reform process. Montenegro has been working to align its legislation and institutional setup with EU standards. Yet, translating the new framework laws into effective implementation is lagging. This continues to be a challenge due to the instability of the government - the government collapsed twice in 2022, the second one in August. There is a need to strengthen transparency, stakeholders' participation, and the government's capacity to implement reforms. Slow institutional progress results in partial policy implementation, policy reversals, public sector inefficiencies, and concentrated ownership of business activity. Moreover, the political environment is characterized by high polarization which makes it more difficult to reach consensus and build more inclusive institutions.

Public Financial Management as an integral part of the Government development agenda

Montenegro is making progress to ensure integrity in the management of its public resources. The Global Competitiveness Report (2019) ranks Montenegro 73rd out of 141 countries, while Freedom House improved its rating in 2021 to "partly free" from its 2020 rating of "hybrid regime". In its 2022 Montenegro report, the European Commission assessed there was limited progress overall in the area of the rule of law, with no progress made in judiciary, as the implementation of key judicial reforms is stagnating while concerns remain over the institutional performance of the Judicial and Prosecutorial Councils.

Montenegro's constitutional and legal framework is designed to ensure independence of the State Audit Institution (SAI), in line with the INTOSAI standards. The SAI's first performance audit was published at the end of 2014. The SAI has improved its institutional capacity in terms of management and auditing staff and is implementing its 2018-2022 strategic development plan. Most of its auditors are certified and have access to internal and international training, including quality control and assurance, ethics and integrity, according to an adopted training catalogue. The rulebook on the procedures for taking the exam of state auditor was amended in September 2020 and the manuals for preparing the exam were updated. In 2020, the SAI adopted a human resources management strategy and an action plan for the period 2021-2025. On the impact of audit work, SAI reports are public and its cooperation with media and nongovernmental organizations is improving. However, the implementation of its recommendations needs to improve. The Government set up a formal mechanism to follow up on external audit recommendations, but it lacks transparency, and no time limits are in place for addressing weaknesses. Parliament's capacity to ensure effective scrutiny over the whole budgetary process, including SAI audit reports and recommendations, needs to be improved.

Internal audit is governed by the Public Internal Financial Control (PIFC) Law, in line with the international standards. Montenegro's strategic framework for PIFC is partially in place. Reforms for governance and internal controls are embedded in the public financial management (PFM) and public administration reform (PAR) strategies, with new strategies elaborated for the period 2022-2026, but still pending adoption. The legislative and operational framework for internal control and internal audit is in place, covering also local government entities and state-owned enterprises. The government adopts annual reports on the implementation of the PFM and PAR strategies, as well as annual consolidated reports on governance and internal controls in the public sector of



Montenegro. Internal audit rules, standards and practice are in line with international standards. A vast majority of institutions at central and local level have established an internal audit unit. Those who have no separate internal audit unit, in accordance with the Law on governance and internal controls in the public sector, benefit from supervision by other units, so that full budget coverage is ensured. The 2014 law on budget and fiscal responsibility provides for a centralized budget inspection function to act on reports or suspicions of fraud and corruption in financial management. However, the positions in the budget inspectorate have been vacant to date.

Public Procurement Framework in Montenegro

Procurement reforms: The Public Procurement Law (PPL) was adopted on 17 December 2019 and its implementation began on 7 July 2020. It was adopted with the aim of further harmonization with the EU Directives within the accession negotiation process between Montenegro and the EU, in particular with Directives 24 and 25, which were significantly amended in 2014. However, up until 2019, public procurement reform process in Montenegro have been a continuous process of back and forth, with no major breakthrough. Amendments to the Public Procurement Law adopted in 2015 made a good bases for enhancing reforms (as assessed by the European Commission, SIGMA and domestic civil society), but those made in 2017 reversed the process completely, while constituting severe backsliding in terms of transparency and competitiveness. These amendments, among other, introduced insufficiently regulated emergency procedures and absolute discretion with regard to low-value procurement (below 20.000 EUR for goods and services and 40.000 EUR for goods).

The 2013 public procurement spending records the lowest value (€ 277,001,460) while 2019 public procurement spending (€608,224,346.95) remains the highest marked in Montenegro since 2007 (when the country became independent), with the lowest competition (2.01 bids per tender). One quarter of procurement value was allocated without competition (single-bid tenders).

Public procurement reforms in Montenegro as assessed by the European Commission¹ - after marking “good progress” in 2015, the Commission assessed Chapter 5 with “limited progress” in 2016, “backsliding” in 2018, then again “limited progress” in 2019 and 2020. Only for the last two years this assessment improved again with “good progress” marked in Chapter 5.

Institutional framework. The Directorate for Public Procurement Policy of Montenegro (DPPP) under the Ministry of Finance is responsible for procurement legal framework and policies in Montenegro.

DPPP is also in charge with the administration of the newly established e-procurement system as well as with implementing training programs and the examination process of public procurement officials. Procurement is monitored by contracting authorities, the Ministry of Finance (through DPPP) and the State Audit Institution. The Administration for Inspection Affairs is performing inspection control, whereas the Commission for Protection of Rights in Public Procurement Procedures is in charge with solving complaints on public procurement procedures. An administrative dispute may be initiated against a decision of the Commission, however this does not have suspensive rights. Although an Anti-corruption Agency is in place which is also in charge with assessing the conflict of interest situations in public procurement, their role is quite limited to notifying other competent bodies of the judicial system.

¹ <https://institut-alternativa.org/en/the-european-commission-report-political-instability-and-tensions-halt-reforms/>



The public procurement system in Montenegro is decentralized and contracting authorities conduct the procurement processes in line with the provisions of the procurement legislation through the e-procurement system. One centralized procurement is established within the Administration for Cadastre and State Property and is in charge with centralized procurement of specific goods and services for the central administration.

Legislation and strategy. Several enhancements to the Public Procurement system in Montenegro have been made over the past couple of years. In July 2020, the government adopted a new Procurement Law with several bylaws, which is well-aligned aligned with the EU acquis (European Directives for public procurement). The law continues to be based on principles of transparency, open competition, fairness, equal treatment, non-discrimination, cost-effectiveness, and efficiency in use of public funds, but also adds new principles, including the principles of environmental protection, social and labor law and ensuring energy efficiency, freedom and proportionality. The law also introduced new procedures such as competitive dialogue, partnership for innovation, and competitive negotiation procedures, and it also mandates the Contracting Authorities to select the most advantageous bid based on either 1) offered price; 2) best price-quality ratio; 3) life-cycle cost.

The Directorate for Public Procurement Policy of Montenegro is currently in the process of adopting amendments to the procurement law in order to further harmonize the legal system with EU Directives. These amendments are expected to be adopted by the Parliament by the end of 2022.

The government also adopted the new Strategy for Development of the Public Procurement System for the period 2021-2025 with the Action Plan for its implementation. The new strategy highlights new steps in the implementation of the e-procurement system, which includes all modules and interoperability with other E-Systems to be implemented by 2023, as well as the goal for 300 additional economic operators to be registered in the system by 2025. The strategy also focuses on the increased use of Framework Agreements, Centralized Purchasing and the promotion of SMEs, Green Procurement, and Women-Owned Businesses.

E-procurement and data. A major element of this reform was the implementation of the e-Procurement system which was funded by the European Commission via IPA funds and is currently managed by DPPP. It has been operational since January 1st, 2021 and covers all processes of procurement except direct agreements (below EUR 5000) and all main stages of the procurement process i.e. planning, publishing of SPDs, amendments to SPD, submitting bids electronically, publication of award. The system also serves as a monitoring tool and has already started producing some data. The system has some modules for contract performance, as Contracting Authorities need to provide information regarding when the contract is finished or amendments are done (value or other legal aspect of the contract), but this functionality needs further improvement.

By June 2022, all 662 contracting authorities and 3,687 economic operators were registered in the new e-procurement system. According to the DPPP report based on the e-procurement data, the total public procurement spending managed by the contracting authorities in 2021 amounts to EUR 182,720,939.72 (without direct agreement) as follows: goods - EUR 105,748,013.4, services – EUR 31,609,982.77, works – 45,362,943.57. The total number of awarded contracts is 4,523 contracts. Direct agreements in 2021 amounted to EUR 36,959,173.62 which means almost 17% of the overall public procurement spending. It should be noted that 2021 was an atypical year as the budget was approved very late (mid-2021) and Covid pandemic was still ongoing.

Regarding centralization, Montenegro increased efficiency in public procurement through centralization of 10



commonly used goods and services for all government agencies, however, the share of contracts awarded through centralized purchasing was only around 2% of the overall procurement spending in 2021. The objective in the Strategy is to increase this share to 5% by 2025. The Strategy also aims at creating standards for women-owned business and women-led business so that the e-procurement system can distinguish which firms are women-owned.

Public Procurement shortfalls in Montenegro

The latest report from the European Commission, issued in October 2022, includes an assessment of the requirements of Chapter V – Public Procurement, and under which, the EC judged that Montenegro is “moderately prepared” on Public Procurement, but that overall, good progress was achieved in 2021. The priorities identified by the report refer to the need to further improve the functionality of the e-procurement system and its interoperability with state administration registers, such as the electronic registers of the Ministry of Justice and the Revenue and Customs Administration, and to ensure that EU public procurement rules are observed in all cases. The report also highlights the fact that the high number of contracting authorities remains an obstacle to the overall efficiency of the procurement system and that there is a need to strengthen the capacity of smaller municipalities to conduct larger and more complex public procurement procedures, including under EU-financed projects.

Despite good progress in the legal reform, the public procurement market in Montenegro exhibits signs of limited competition and transparency compared to peer countries, which undermine level playing field.² 45 percent of the contracts awarded through the e-procurement portal in 2021 only received one bid. While receiving a single bid could be attributed to insufficient number of bidders acting on the Montenegrin market, it could also indicate non-competitive bidding procedure. Lack of competition allows for awarding above-market price contracts and extracting monopoly rents. For about 4 percent of the e-procurement contracts, a call for tender was not published in the official procurement journal, which may indicate a lack of transparency in the bidding procedure and should be subject for further analysis.

Competitively negotiated contracts without prior publication accounted for 13 percent of the total value of public procurement in 2021. Key data on Montenegrin public procurement in 2021 is captured in the below table.

Type of procurement procedure (Figure A) ³	Percent of the published contracts	Percent of the total value of awarded contracts	Average contract value
Simple procurement (contracts with low	63 percent	20%	9,947 Euros

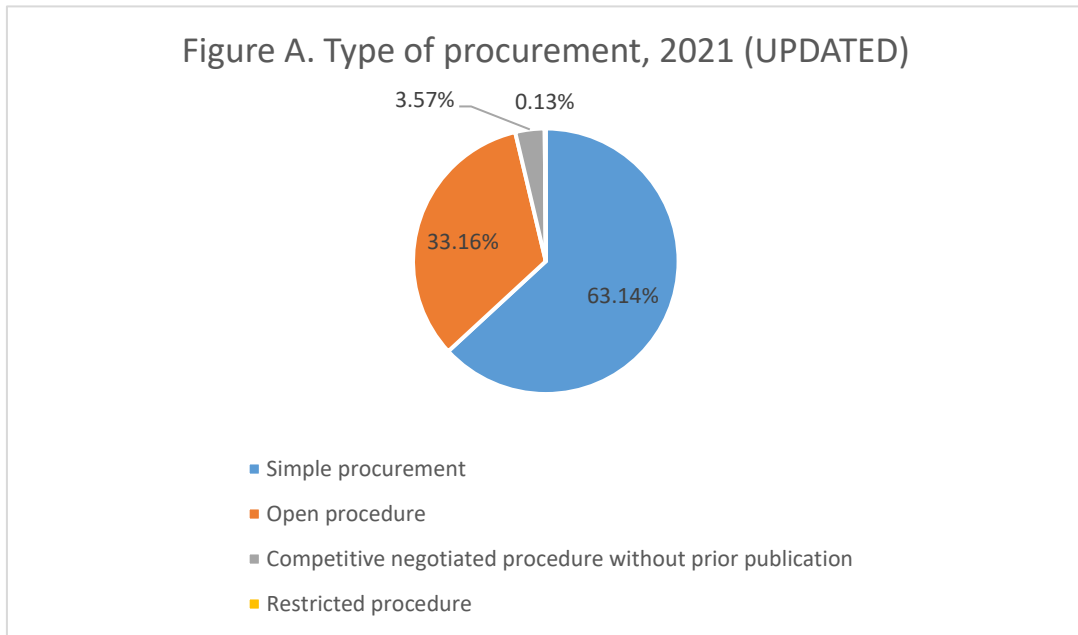
² The indicators for non-competitive procurement practices, such as single bidder, short advertising period, and number of bids won by a single firm are based on the work of Fazekas and King (2019). These indicators that can signal lack of access to public procurement market and undermine competition.

³ Simple procurement refers to procurements of a value that is below the thresholds prescribed by the Law and regulated by the Ordinance on the manner of conducting simple procurements (Official Gazette of Montenegro, No. 061/20, 065/20, 071/20, 074/20, 102/20). In particular, simple procurement refers to procurement of goods, services, and works, the value of which does not exceed 5,000 euros per year, procurement of goods and services the value of which is estimated between 5,000 and 20,000 euros per year, or procurement of works, the value of which is estimated between 5,000 and 40,000 euros. These procurements are initiated exclusively by publishing on the electronic public procurement system. Open procurement procedures are the most transparent and can achieve the highest level of competition. Restricted procedures are used in special conditions when conducting open procedure is not possible due to the specificity of the procurement. Negotiated procedures without prior publication of a call for tenders refer to urgent procurements awarded in accordance with the EU law.



value, below the thresholds regulated by the procurement law)			
Open tender	33 percent	66% (two thirds)	71,358 Euros
Restricted tender	0.1 percent (5 contracts)	0.2%	40,301 Euros
Competitive negotiation without prior publication	3.6 percent	13%	130,392 Euros

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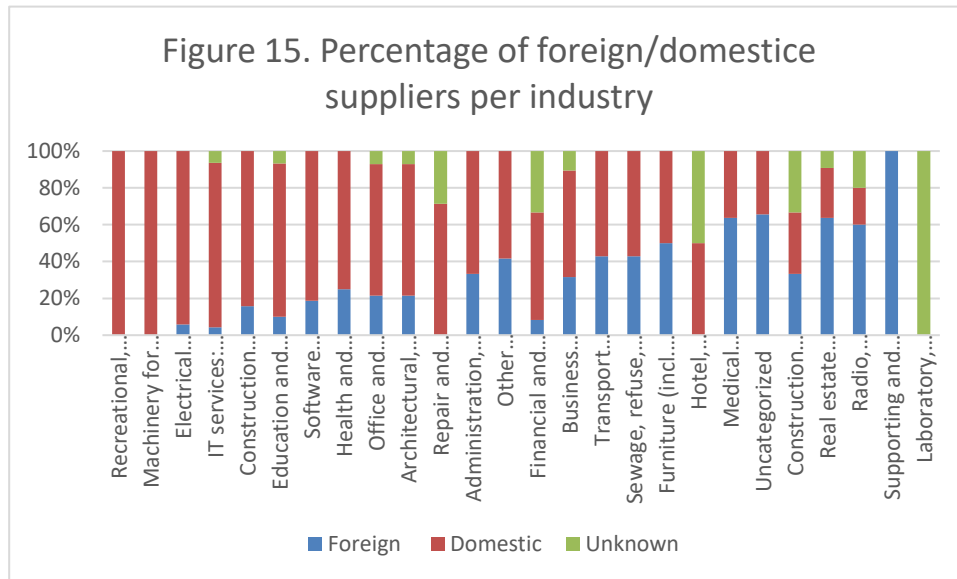
Source: E-procurement registry and WBG staff calculations

Even for a relatively small country such as Montenegro, a very large share of contracts are awarded to the same companies overtime, pointing to lack of competition in public procurement. Having the same firm winning all the contracts of a given procurement entity also indicates rigged competition and signals corruption and cartelization of markets between a few operators. 59.47 percent of the firms were awarded only one contract, whereas 40.53 percent of the contracts were recurrently awarded to the same company. That is, 34.30 percent of firms won under 10 procurement contracts, and 6.24 percent were awarded between 10 and 65 contracts.



Some procurement markets exhibit low level of openness and foreign competition. Overall, 397 out of 598 ProACT contracts⁴ (or 65 percent) were awarded to domestic suppliers.⁵ Industries, such as supporting and auxiliary transport services; travel agencies services; medical equipment, pharmaceuticals, and personal care products; and radio, television, communication, and telecommunication appear to be largely foreign, with 100, 64, 64, and 60 percent of the contracts going to foreign suppliers, respectively (Figure 15). However, other industries are largely domestic (e.g. recreational, cultural, and sporting services; machinery for mining, quarrying, construction equipment; electrical machinery, apparatus, equipment and consumable, lighting; IT services, consulting, software development, Internet and support; and construction work). While this could potentially indicate low level of openness, it could, on the other hand, be simply attributed to the fact that products these markets are less attractive for foreign bidders. The largest foreign supplier country is Northern Macedonia with 48 contracts, amounting to 8 percent of total contracts.

Figure 15. Percentage of foreign/domestic suppliers per industry



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DEVELOPMENT OBJECTIVE

The Development Objective is to assist the Government of Montenegro to develop a reform plan for building a sustainable, effective and efficient public procurement system. The analytical work will assess strengths, weakness and gaps in the system, benchmark it with international practices using the second version of the MAPS tool and provide recommendations for improvement that will also assist to meet the EU requirements.

Specifically, the assessment will:

1. Develop a shared understanding of the current state of Montenegro's Public Procurement System amongst all stakeholders to strategize future reform efforts to achieve a modern and harmonized procurement system;

⁴ Procurement Anticorruption and Transparency platform (ProACT) offers access to 613 large procurement contracts in Montenegro that are financed by the World Bank between 2003 and 2018.

⁵ The geographical information is missing for 15 contracts.



2. Identify the strengths and weaknesses of the public procurement system using MAPS core module and suggest appropriate mitigation measures;
3. Assess Montenegro's electronic procurement system using MAPS electronic procurement supplementary module to identify key issues and its further development ensuring self-sustainability.
4. Propose performance and red flags indicators to support the monitoring and supervision of the public procurement system.

ACTIVITY TYPE

Is this mainly an analytical or an advisory activity?

Analytical

Does this task produce analytics of the following type?

Fiduciary Assessment - MAPS

ACTIVITY SUMMARY

Montenegro's public procurement system will be assessed following the latest harmonized methodology for assessing the procurement system (MAPS core + e-procurement). Assessment will be conducted on all four pillars of MAPS - (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency. In addition, special emphasis will be given to assessing Montenegro's e-procurement system. It will be assessed following the supplementary e-procurement module of MAPS.

The assessment is expected to cover the following activities:

1. Inform all stakeholders about the study to build consensus on the methodology for the study;
2. Conduct this assessment jointly with other development partners actively involved in Montenegro.
2. Hire a team of experts (STCs) to coordinate the study;
3. Finalize the concept note and detailed methodology of the study;
4. Conduct an initial desk review of procurement laws, secondary legislation, and procedures;
5. Distribute pre-assessment questionnaires to the key contacts covering all stakeholders;
6. Conduct a detailed field-level assessment of the public procurement system covering key sectoral organizations;
7. Analyze the field-level data;
8. Draft the assessment report, including a summary of identified risks and issues under the MAPS pillars along with a risk mitigation action plan (as applicable);
9. Share the draft report with the government counterpart for comments;



10. Organize a workshop to discuss the draft report;
11. Finalize the report in consultation with the government;
12. Obtain necessary approval on the report;
13. Publish and disseminate the report.



DETAILED ACTIVITY DESCRIPTION

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I. Need for a comprehensive, up-to-date assessment

While various procurement reform initiatives were undertaken over the last decade, such as the PEFA 2019⁶, the IMF PIMA 2022⁷ or the annual EC reports⁸ which include the assessment of the requirements of Chapter V – Public Procurement, there has not been any comprehensive, up-to-date assessment of the public procurement system carried out so far for grounding the procurement reform efforts in a strategic manner. It is necessary to take stock of the progress made to date, assess the completeness and effectiveness of the public procurement system in a holistic manner (including the perspective from the private sector), identify any remaining gaps that may be impeding the public procurement system from delivering the desired outcomes, and provide prioritized recommendations for improvement to guide the Directorate for Public Procurement Policy in systematically strengthening the public procurement going forward for better procurement outcomes. During the process, the key priorities formulated by the European Commission in the 2022 country report will also be considered, respectively:

- further improve the functionality of the e-procurement system and its interoperability with state administration registers;
- fully respect the EU public procurement rules in all relevant cases, such as when awarding the concession to operate Airports of Montenegro.

The assessment will be conducted using the Methodology for Assessing Procurement Systems (MAPS) (<https://mapsinitiative.org>). MAPS 2018 is a universal tool and gold standard for assessing public procurement systems. The analytical framework of the core methodology is based on four pillars: i) the existing legal and policy framework regulating procurement in the country; ii) the institutional framework and management capacity; iii) the operation of the system and competitiveness of the national market; and iv) the accountability, integrity and transparency of the procurement system. The MAPS assessment reflects leading international procurement practice that serves as a guide towards sustainable and inclusive public procurement reform. Through this endeavor, the government aims to identify opportunities for, and challenges to, the country's procurement system, which will provide guidance in the identification of gaps based on a detailed set of qualitative and quantitative criteria for enhancing the current procurement framework and processes to make it more responsive to the needs of the government.

In addition to the core assessment, supplementary modules have also been developed that complement the core assessment methodology. One of the supplementary modules that has recently been developed is the module on Electronic Public Procurement, defined as "(...) the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process."⁹ As such, this supplementary module also follows the four thematic pillars of the MAPS core assessment with 13 additional indicators specifically targeted at e-Procurement. While not intended to assess the performance or security levels of the system, the indicators will help identify the strengths and weaknesses of the e-procurement system of a country based on rules, institutions, standards, and conditions that enable and regulate the e-Procurement ecosystem. Since Montenegro and Mauritius are the first two countries participating in the pilot assessment, this assessment will also suggest further improvement/inclusion/ deletion of appropriate indicators/ sub-indicators.

As part of the overall e-Procurement supplementary module assessment, the Assessment team will also assess the e-GP system to be used for Bank financed procurement, including by other IFIs/donors.

The Directorate for Public Procurement Policy, under the Ministry of Finance, has requested the World Bank's technical assistance in carrying out a holistic assessment of the public procurement system using MAPS 2018. DPPP has also proposed to give particular attention, as part of the core MAPS assessment, to the electronic procurement supplementary module, as the national e-procurement system was recently launched and needs an in-depth assessment for the purpose



of further strengthening the system’s capacity and operability. This is also in line with the European Commission’s recommendations to Montenegro [2022 country report], specifically to further improve the functionality of the e-procurement system. The proposed assessment will take a broad view of the public procurement system, reflecting on the procurement reform efforts made so far and the remaining challenges, and its conclusions will be based on both qualitative findings and quantitative analysis to support evidence-based recommendations and follow up actions for the government’s consideration in devising a strategic plan for systematic enhancement of the system.

Therefore, the assessment will consist of: 1) MAPS Core Assessment methodology; and 2) MAPS Electronic Procurement Supplementary module.

II. Tasks to meet the objectives

The assessment will be conducted in three phases as follows:

- **Phase 1 - Planning and Preparing the Assessment:** to appropriately scope and time a demand-driven MAPS assessment, define management arrangements, set up the assessment team, arrange for the collection of the information required and identify stakeholders to be interviewed and/or surveyed. Planning would enable better co-ordination among the various stakeholders involved at the leadership and participation levels and would help reach agreement on critical aspects of the assessment.
- **Phase 2 – Country Analysis and Conducting the Assessment:** The assessment will start with a country context analysis will be carried out using the MAPS II core tool which comprises four Pillars, 14 indicators and 55 sub indicators, which together present the criteria for a “snapshot” of the actual system against the internationally accepted procurement principles and practices. The indicators will be applied both in qualitative and quantitative terms. The assessment will also include the e-Procurement supplementary module, which comprises 13 additional indicators, and 32 sub-indicators, which are structured under each of the four pillars of the MAPS core methodology. The assessment will be carried out based on a 3-step approach to assess each sub-indicator. The Bank task team will also take necessary feedback related EC’s to e-GP requirements and check with MAPS e-GP modules requirements.
- **Phase 3 – Reporting:** After conducting the assessment and validating the results, a detailed MAPS II Draft Assessment Report (DAR) will be completed by the international lead consultants and submitted for review. It will be reviewed by the Assessment Steering Committee, the MAPS Secretariat and by the Assessment Technical Advisory Group (ATAG). The Reporting phase also includes the finalization of the Assessment Report after gathering comments of reviewers.

The assessment will be conducted through virtual means, complemented by physical missions to Montenegro.

1. Planning and Preparing for the Assessment Phase which includes:

- **Consultation with DPPP** to: (i) discuss and build consensus around the MAPS methodology application, validation process, data collection; (ii) conduct stakeholders mapping and agree on the composition of the Steering Committee; (iii) make sure that the scope of the MAPS assessment is tailored to the public procurement strategy and development

⁶ <https://www.pefa.org/sites/pefa/files/2020-02/ME-Dec19-PFMPR-Public%20with%20PEFA%20Check.pdf>

⁷ <https://www.imf.org/en/Publications/CR/Issues/2022/06/08/Montenegro-Technical-Assistance-Report-Public-Investment-Management-Assessment-519043>

⁸ https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en#files

⁹ Glossary of the MAPS core methodology.



objectives; and as a result, (iv) finalize the Concept Note for this important task.

- **Establishing a multi-disciplinary team** for carrying out the assessment, having complementary skills in areas of legal, procurement, electronic procurement, supply market assessment, and contract management. It comprises experts, who are WB staff and consultants, and DPPP staff, as well as external partners. DPPP will assist the Team in coordinating with the concerned government agencies and other key stakeholders.

2. Conducting the Assessment Phase, which includes:

- **Desk review** of the documents making up the legal and regulatory frameworks and other relevant policy documents and Public Financial Management and Public Procurement System studies available.
- **Collecting other relevant qualitative data** through interviews and stakeholders’ workshops.
- **Collecting hard data as required by MAPS for quantitative indicators in the form of statistical information on public procurement performance**, including from the eGP system and through public and private sector surveys.
 - **Conducting data analysis against the MAPS indicators** based on two years full data in the e-procurement system using the following three-step approach¹⁰:

Steps	Assessment
Step 1	Review of the system applying assessment criteria expressed in qualitative terms. To provide detailed information related to this comparison (actual situation in relation to the assessment criteria). This analysis will enable the assessors to analyze the strengths and weaknesses of the system
Step 2	Review of the system applying a defined set of quantitative indicators defined as per Annex 2 of MAPS 2018 document. Quantitative indicators are not benchmarked against set standards but can be used by the country to define a baseline, set national targets and measure progress over time.
Step 3	Analysis and determination of substantive or material gaps (gap analysis) to identify the areas that show material or substantial gaps and require action to improve the quality and performance of the system Sub-indicators that exhibit a “substantive gap” need to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system In case of identified reasons that are likely to prevent adequate actions to improve the system, “red flags” need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

- **Formulating findings and recommendations** (based on the above three-step analysis) for validation by the Steering

¹⁰ The Methodology for Assessing Procurement System (MAPS) is available at the following website: <https://www.mapsinitiative.org/>



Committee and Stakeholders. The procurement data analytics report will be annexed to the main report.

3. Reporting Phase which includes:

- **Preparing the Montenegro MAPS Draft Assessment Report (in English)**, including identified gaps, recommendations for system improvement, and an action plan.
- **Sharing of the draft report** with government counterparts, Steering Committee, and other key stakeholders for comments. The draft report will be subject to quality assurance (See Section VIII). After the Draft Assessment Report has been issued, the Bank's Team in collaboration with the DPPP shall organize a validation workshop to discuss and seek input on the main findings of the report. The Workshop shall be attended by all key procurement stakeholders including members of the Steering Committee, procuring entities, private sector, external partners, CSOs and media. The feedback provided at the workshop shall be considered in finalizing the report.
- **Preparing the Final Assessment Report** taking into account the comments received during the quality assurance process and the validation workshop.
- **Follow up:** subsequently, the Government would be liaising with counterparts, as needed, to seek support for the implementation of the action plan and continue monitoring the outcomes.

III. Focus of the assessment

The core assessment will be conducted on the four pillars of MAPS, i.e. (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency. The aim is to apply all recommended quantitative indicators, including survey-based ones, subject to data availability. The assessment will cover all the main stakeholders of the public procurement system and selected contracting authorities (including SOEs). The data available from the eGP system will be used for assessing the quantitative indicators and for providing supportive evidence to the assessment.

As part of the data analytics and diagnostic assessment, the assessment will look into the root causes of the limited competition in order to support formulating appropriate mitigation measures. A combination of stakeholder survey, focused group discussions and data analytics may be considered.

In addition, the supplementary module will allow for a comprehensive assessment of the e-procurement system, which will include an overlook at the regulatory framework and the e-procurement strategy, the funding of the e-procurement system, staff training and capacity regarding the system, the e-procurement ecosystem and its functionalities, the engagement of the private sector with the system, and how the e-procurement system ensures accountability, integrity, and transparency.

Subject to availability of the data, the impact of COVID19 on the country procurement system implementation and the supply chain system in the country may also be explored.

Procurement complaints mechanism is also a crucial part of an efficient procurement system as it helps preserve integrity and transparency of procedures and ensure checks and balances that control contracting authorities and prevent arbitrary decisions. The project will therefore perform an analysis of the functions of the Commission for the control of public procurement procedures, as the key actor in the handling of procurement complaints, but also subsequent judicial review mechanisms. This will also include understanding the roles of agencies having oversight over procurement, such as the Agency for Prevention of Corruption (APC), the State Audit Institution (SAI), the Commission for Prevention of



Conflict of Interest etc. and establish the uniformity of interpretation of the procurement rules and related documents. Particular attention will be given to the e-procurement system as well.

IV. Information sources

Key information sources are listed below:

- **Documents making up the legal and regulatory framework:** laws, regulations, instructions, **issuances**, manuals, bidding documents. Most of the documents are publicly available in DPPP's website (<https://ujn.gov.me/podzakonska-regulativa-zakona-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19/>)
- The Strategy for Development of the Public Procurement System for the period 2021-2025 with the Action Plan for its implementation
- **Other assessments** and studies available on the Montenegro Public Financial Management and Public Procurement Systems from Government, Bank, Development partners and others:
 - European Commission Country reports (the last one from 2022)
 - Public Expenditure and Financial Accountability Performance report (2019)
 - Technical Assistance Report - Public Investment Management Assessment issued by the International Monetary Fund (2022)
- **Court Rulings and Audit Reports:** recent procurement and contract management related rulings and reports, respectively.
- **Statistical information** Procuring Entities and eGP system. From January 01, 2021, all procuring entities are using e-GP system. Hence all the procurement data are available for statistical purposes. DPPP provided all standard statistical reports generated from e-GP system. In addition to that, DPPP will provide full procurement data extracted from the e-GP system
- **Interviews** with the key procuring entities to assess how the procurement system is functioning at the field level. Interviews will also be conducted with other important stakeholders within government, civil society organizations, professional associations and chamber of commerce, academic and research institutions, bidding communities, and other private sector bodies. Overall, the basis for conducting interviews will be the MAPS standard checklist for stakeholders, which will be tailored following the finalization of the stakeholder analysis.
- **Data collection:** The assessment will use the full data available from the e-procurement system and provided by the DPPP. This data will be used to assess quantitative indicators and to provide supportive evidence to the assessment..

The e-procurement data does not include extensive data on the contract execution stage. In addition, since the e-procurement roll-out started in 2021, the e-procurement data cannot not capture the full procurement cycle for large value contracts and works contract spanning multiple years. For these reasons, the assessment will also rely on additional data collected from procuring entities. The sample for this exercise is expected to include approximately 100 contracts with an appropriate mix of goods, works, consultancy projects. The sample selection shall follow the guidance at paragraph 28 of the MAPS Methodology 2018 to represent a mix of entities and categories of procurement to make it representative at an aggregate level. Specifically, the sample will include 60 contracts selected from the e-procurement data signed after 2020 and completed by October 2022, and 40 large-value contracts¹¹ signed before the e-procurement

¹¹ Contracts above 500,000 EUR for works, and above 300,000 - 400,000 EUR for goods and services.



system roll-out.¹² As discussed and agreed upon with DPPP during the kick-off mission, DPPP will organize the data collection process based on templates provided by the Bank. The entities considered for this process, which were agreed upon with DPPP, are: Administration for Public Works; Administration for Transport; Montenegrin Electric Enterprise; Public Company Roads of Podgorica; Capital City of Podgorica; Ministry of Public Administration, Digital Society and the Media; Ministry of Health.

- **Private sector/Civil Society Organization surveys** to assess the private sector participation and perception of the public procurement environment and role of CSOs.

Furthermore a questionnaire shall be prepared for a private sector survey (like electronic SurveyMonkey/ Microsoft tool) and for Civil Society Organizations active in public procurement and governance in Montenegro to cover input required for sub-indicators under MAPS Methodology. This survey will be based on a standard template already used for similar MAPS and shall be adapted for Montenegro with input from DPPP.

V. Leadership and Assessment Team

A. Leadership

A multidisciplinary and cross-departmental Assessment Steering Committee (ASC) is set to ensure an efficient, high-standard and participatory implementation of the Assessment. It will provide leadership and guidance to the Assessment Team throughout this project. It will review the draft outputs of the Assessment Team before embarking on the quality review by peer reviewers in the Bank and then by MAPS Secretariat and the and the MAPS Assessment Technical Advisory Group (ATAG). It will be established under the Directorate for Public Procurement Policy of Montenegro, Ministry of Finance and will include officials from other key government agencies involved in public procurement, private sector, civil society, and WB. Members of the ASC representing the Government will be acting as experts and will actively take part in the implementation process, collaborating on data and case study gathering, facilitating access to documentation upon need, and facilitating dialogue among stakeholders.

B. The Assessment Team:

The Assessment Team will carry out the assessment in consultation with the Assessment Steering Committee. The Assessment Team comprises of World Bank staff including Task Team Leader and Co-Task Team Leader, Procurement, Governance and Financial Management specialists, Economist, and WB Consultants for Procurement and e-Procurement. In addition to those, four development partners are part of the assessment team. They are (i) European Commission (EC), (ii) European Bank of Reconstruction and Development (EBRD), (iii) European Investment Bank (EIB), and (iv) Council of Europe Development Bank (CEB). All these four external partners will be actively involved in the assessment and report finalization. In addition to general input, EBRD will provide specific input on Pillar 1, and CEB will provide particular input on Pillars 3 and 4. However, the World Bank has the overall responsibility for this assessment and report finalization, taking input from all external partners.

The Government will designate the focal point officials in DPPP to assist the Assessment Team in coordinating the Assessment and to work on a dedicated basis as an integral part of assessment team.

¹² The exact criteria for the sample selection will be finalized once the Bank team will receive the eGP full data and the list of large-value contracts signed before eGP roll-out from selected procuring entities. The criteria for sample selection will ensure representativeness of the final sample.



The assessment will be conducted with the World Bank providing the leadership role, working closely with DPPP, with the support of specialized consultants. The entire task shall be led and coordinated by a Task Team Leader of the World Bank supported by a co-TTL from the World Bank. The World Bank Team will also comprise two other procurement specialists from ECA-EFI Procurement team. Finally, a Senior Financial Management Specialist, an Economist from Montenegro, and a Senior Governance Specialist will also be involved to provide guidance and input in their respective areas of expertise. Each pillar of the MAPS assessment will have a thematic lead from the World Bank team, who will be responsible for drafting the assessment and recommendation in close coordination with the International PP consultant and the local consultant.

In addition, there will be four main consultants hired by the Bank (3 international and 1 national) contracted for the assignment who will work jointly with the Government of Montenegro as follows:

- The Lead international Consultants will include one lead public procurement expert, and one e-Procurement expert: The Lead Consultant is responsible for providing technical leadership and guidance in the conduct of the assessment in accordance with the MAPS II methodology. She would also oversee the adequate application of the methodology, the timely collection of information and data, and the quality assurance of data analysis and recommendations, and of writing and presenting the assessment report. The e-Procurement expert will focus on the e-Procurement supplementary module as well as any e-Procurement indicators under the core assessment and ensure their integration in the overall report.
- A research assistant will also be selected to support the data analytics under the project. This consultant will be responsible for cleaning administrative and primary datasets and create all indicators required for analysis, write well-documented, reproducible code for data cleaning, descriptive statistics, regression analysis, data visualization, and any other analysis as per project need, manage databases and integrating various data sources as necessary, and produce data analysis outputs for the MAPS Assessment report (eg graphs, tables).
- The National Consultant with specialized knowledge and experience in the following fields: data collection and data analytics. The National Consultant will be responsible for gathering and analyzing data on public procurement in the country, disseminate the survey and collect responses, participate to the country analysis, conducting interviews, facilitating public consultations, consolidating preliminary findings, contributing to the report production, and ensuring consistency in the overall process.

All Consultants (national and international) are in charge of supporting the assessment by participating and guiding the data collection and analysis, the review of selected procurement cases, the formulation of recommendations and documenting the detailed assessment results in accordance with the methodology.

The Consultants will work in close cooperation with the Assessment Steering Committee, to timely access necessary information and data and review of procurement cases' samples.

The Government will provide timely access to necessary information and data and will facilitate meetings with public and private stakeholders (e.g., private sector organizations, civil society) and facilitate the review of the sample of procurement cases by making the files available for review, preferably in a central location.

VI. Stakeholders

In order for the MAPS II to reach its objectives and build the foundation for informed and evidence-based reform priorities, the process involves **national stakeholders** to take part by providing evidence and data, answering survey



questionnaires and being interviewed. Stakeholder engagement can be a complex process, but it is of extreme importance for the success of the MAPS assessment. Therefore, the team will aim to create a solid stakeholder analysis, considering stakeholder interests, influence and expectations in an optimal way to ensure the public procurement framework is credible and viable, drawing on support and identified (government and private sector/civil society) champions who are critical to success. There will be a need for balancing competing stakeholder interests continually affected by the political economy, state of procurement markets and access to legislators.

Following the identification of stakeholders, the team will use a matrix to map each indicator and sub-indicator to the different stakeholders, taking into account their level of influence, the role they play in the procurement system, and the impact that the indicators have on them.

The below is an overview of the main stakeholders in procurement in Montenegro:

- *The Key counterpart for MAPS Assessment:* Directorate for Public Procurement Policy of Montenegro (DPPP) under MoF is the key counterpart agency. DPPP is keen in engaging and leading the Montenegro MAPS assessment Steering Committee, under the overall leadership of Ministry of Finance¹³.
- *National and Local Procuring Entities:* The team will consult with public administrations and institutions at the central level, including existing central purchasing bodies, but also with municipalities and other local level procuring entities.
- *The key oversight agencies to be consulted as stakeholders are:* (i) Agency for Prevention of Corruption (APC)¹⁴; (ii) the State Audit Institution (SAI)¹⁵; (iii) the Commission for Protection of Rights in Public Procurement Procedures¹⁶; (iv) and Administration for Inspection Affairs.
- *Development partners:* As part of the stakeholders' consultations, the Assessment Team will co-ordinate any eventual technical inputs of the other development partners, such as EU, WB, EBRD, EIB and COE. Although the OECD will not participate in the assessment *per se*, the assessment team will seek guidance from the OECD regarding quality assurance of the initial findings, as well as throughout the assessment and invite representatives to participate to some missions for advice. OECD is also part of ATAG.
- *CSOs and private sector:* Civil Society Organizations (CSOs) involved in public procurement are amongst the stakeholders that will be consulted together with the private sector and business associations (contractors, suppliers, consultants), associations of engineers and architects, academia, and media. There is a need to locate CSOs active in governance, procurement, and service delivery.
- *Other agencies to be consulted:* Agency for the Protection of Competition, Human Resources Administration of Montenegro, Agency for Investment of Montenegro, etc.
- *Other organizations to be consulted:* Chamber of Commerce of Montenegro¹⁷, Montenegrin Employers Federation, Union of Municipalities, etc.

¹³ [Ministry of Finance | Directorate for Public Procurement Policy of Montenegro](#)

¹⁴ <https://www.antikorupcija.me/en/>

¹⁵ <http://www.dri.co.me/1/index.php?lang=en>

¹⁶ <http://www.kontrola-nabavki.me/1/index.php?lang=en>

¹⁷ <http://www.pkcg.org/>



VII. Validation of assessment results

In terms of process and sequencing, the initial results of assessment shall be shared with DPPP at the stage of preparation of the draft report and their input sought. In addition, the Assessment Team shall seek input from key stakeholders, including the private sector, at the draft report stage through virtual or face-to-face interaction as may be permissible at the time.

To ensure that the assessment findings are valid and credible, a joint validation workshop shall be arranged in collaboration with DPPP involving all stakeholders and external partners to agree on: (i) findings of the assessment, (ii) reform priorities, and (iii) a shared strategy for addressing key weaknesses in the public procurement system.

A robust quality-assurance approach shall be followed to review compliance with the assessment process and assessment report as per the MAPS methodology, including quality review of assessment results by the peer reviewers within the World Bank, and by OECD. After addressing comments, and obtaining clearance from the Bank Management, the review by a MAPS Assessment Technical Advisory Group (ATAG), assembled by the MAPS Secretariat, as final quality assurance process, shall be sought for external certification of MAPS assessments and their comments incorporated in the final report. The role of ATAG is a substantive review to ensure that the assessment is comprehensive and well-written, all in accordance with the MAPS methodology.

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DELIVERABLES

Group By: Pillar

Name	Lead	Completion Date	Processing Type
Pillar: Not Categorized			
* A report of Public Procurement System of Montenegro following MAPS (Core + e-Procurement)	Tanvir Hossain	29-Dec-2023(P)	DR Required
* - Primary Deliverable		P - Planned A - Actual DR - Decision Review	

EXPECTED RESULTS AND OUTCOMES

The main output of this activity will be a report assessing the adequacy of the current Public Procurement System in Montenegro using the MAPS 2018 tool to identify strengths and gaps/weaknesses and provide recommendations for further improvement. This will form the basis for the Government to devise a strategic plan for prioritizing future



procurement reform efforts, setting revised targets, and making necessary adjustments in procurement policy and implementation modalities. The Assessment team will work with the Government to establish the strategic action plan to operationalize the recommendations identified. The Assessment working arrangements and timetables are summarized below:

Output	Responsible	Cooperation with	Target Time Frame
Concept Note	Assessment Team	Internal and External partners, Government	October 2022
Concept Note submitted for TAG review and for WB Concept Review	Assessment Team	Internal and External partners	October 2022
Organizational and logistical arrangements (including the selection of experts/ consultants and ensuring that required information and data is available)	Assessment Team	Steering Committee	October 2022 to early November 2022
Establishment of the Steering Committee	Ministry of Finance	Assessment Team	November 2022
Analysis of Country Context	Assessment Team	Steering Committee	November – December 2022-
Assessment of the Public Procurement System <ul style="list-style-type: none"> ▪ Develop and regularly update assessment schedule ▪ Collect data (qualitative and quantitative data) Apply the MAPS indicators using the three-step approach	Assessment Team	Steering Committee	January 2023 – May 2023
Developing Recommendations for Prioritized Reform	Assessment Team	Steering Committee	June 2023

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Validation of Findings – Stakeholder workshop	Government, facilitated by Assessment Team	Stakeholders External partner Peer Reviewers	July 2023
Assessment Report <ul style="list-style-type: none"> ▪ Draft ▪ Review/Comments ▪ Final report 	Assessment Team	Assessment Steering Committee MAPS Secretariat/ Assessment Technical Advisory Group	Draft Report: September 2023 Comments: October 2023 Final Report: November 2023
Publication of MAPS Assessment Report	Government/ MAPS Secretariat / World Bank		December 2023

The following table provides a general overview of the succession of the different activities.

Task / Month	22-Oct	22-Nov	22-Dec	23-Jan	23-Feb	23-Mar	23-Apr	23-May	23-Jun	23-Jul	23-Aug
1. Concept Note, Logistics											
2. Analysis of Country Context											
3. Assessment: Data Collection											
4. Assessment: Analysis (3-steps)											
5. Recommendations											
6. Validation											
7. Report Writing											
8. MAPS Quality Assurance											



9. Final Report, Publication

Do you want to track result indicators for this activity?

No

RISKS

Please describe the risks related to this activity and how they can be managed.

The key risks are as follows:

- 1. The allocated budget may not be adequate
- 2. Tight timelines to complete the task
- 3. Incomplete and/or unreliable data available

Proposed mitigation measures:

- 1. Closely manage the tasks from budgetary point of view. Try to get additional fund from contingency fund.
- 2. A clear time-bound action plan will be prepared in consultation with key stakeholders, and it will be monitored closely. Each month there will follow-up /coordination meeting with DPPP and appropriate measures to address implementation issues.
- 3. Discuss data availability & quality, including access to, during the inception period and identify alternatives in case of missing key data.

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DISSEMINATION and OUTREACH STRATEGY

Preparation of the assessment report will involve **extensive consultations** with a wide range of stakeholders from the Government, development partners, private sector, and civil society, for which a number of meetings and workshops will be arranged.

During the assessment, the **Steering Committee** will hold quarterly meetings (at a minimum) with the Assessment Team to discuss the progress and provide assistance in overcoming any obstacles and/or bottlenecks that may occur during the assessment period.

The assessment report will be presented to higher government levels and subsequently shared with other key stakeholders in line with the dissemination plan agreed between the World Bank and the Government.

The Assessment Team shall seek expertise from communication specialists of the World Bank to highlight the key recommendations and to differentiate between the substantial procurement recommendations and the more strategic areas of assessments and reforms. The aim is to foster support for strategic reforms from decision-makers at the policy level of the executive and legislative branches of the government. The final report will be published, with the consent of the MoF of Montenegro, and the Bank team will ensure that it is accessible to all relevant stakeholders.

Following the publication of the assessment, the Bank team will also cooperate with DPPP in exploring ways and means of implementing the public procurement system improvement action plan included in the Assessment Report.

MILESTONES

Schedule

Name	Original	Revised	Actual
AIN Sign-off			07-Oct-2022
Management Approval of Concept	21-Oct-2022	27-Oct-2022	
Completion Summary	30-Jun-2023	29-Dec-2023	

BUDGET

Budget Plan vs Actual (USD)

Source of Fund	Cumulative Budget			Current FY (2023)			
	Activity Plan	Actual Expenditure to Date	Actual vs Plan (%)	Activity Plan	WPA Plan	Expenditure (YTD)	WPA Burn Rate (%)

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Bank Trust Fund	100,000	32,728	32.73	0	100,000	32,728	32.73
Bank Budget	0	1,400		0	0	1,400	0

Budget Plan (USD)

Do you want to plan the budget by FY?

No

Source of Fund

Cumulative Budget

Grand Total

Grand Total Cost 100,000

Bank Trust Fund 100,000

Clients or Audience

Does this activity have a client?

Yes

Organizations & Contacts

Directorate for Public Procurement Policy of Montenegro
Line Ministry/Ministerial Department, Activity Leadership/Oversight
Montenegro

Contacts

Jelena Jovetic
General Director
jelena.jovetic@mif.gov.me
Survey Participation: Yes

TEAM

Project Team

Name	Role	Title	Unit
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Tanvir Hossain	Team Leader (ADM Responsible)	Senior Procurement Specialist	EECRU
Orjana Ibrahimimi	Team Leader	Procurement Specialist	EECRU
Aleksandar Crnomarkovic	Team Member	Sr Financial Management Specialist	EECG2
Elena Carmen Calin	Team Member	Procurement Specialist	EECRU
Ishtiak Siddique	Peer Reviewer	Senior Procurement Specialist	EAERU
Knut J. Leipold	Peer Reviewer	Lead Procurement Specialist	EAERU
Majed El-Bayya	Peer Reviewer	Lead Procurement Specialist	EGVPF
Manjola Malo	Peer Reviewer	Senior Procurement Specialist	ELCRU
Milan Lakicevic	Team Member	Economist	EECM2
Rajesh Kumar Shakya	Team Member	Consultant	EAERU
Serena Sara Daniela Cocciolo	Team Member	Economist	EGVPA
Zuhra Osmanovic-Pasic	Team Member	Senior Governance Specialist	EECG2

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Extended Team

Name	Title	Organization	Location
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INSTITUTIONAL DATA

Does this activity contribute towards design and implementation of financing projects and/or development of SCDS and CPFs?

No

Does this activity address climate change adaptation, mitigation or both?

No

Is this activity an Impact Evaluation (IE) or does it include IE deliverable(s)?

IE is the study of causal relations between a program, policy or project intervention and outcomes of interest. IE employs counterfactual analysis to evaluate program, policy or project interventions that are either Bank-financed or financed by other governments and institutions.

No

Is this activity a response to COVID-19?

No



ANNEX A. DELIVERABLES DETAILS

Not Categorized

Deliverable Name	Decision Review Required?	Status
A report of Public Procurement System of Montenegro following MAPS (Core + e-Procurement)	Yes	Planned
	Planned date	Actual date
Deliverable Creation	--	07-Oct-2022
Decision Review approval	15-Dec-2023	
Deliverable Completion	29-Dec-2023	
Lead	Tanvir Hossain	
Deliverable document(s) will be disclosed	Yes	
Provide a brief description of the deliverable	<p>A detailed report on the Public Procurement System of Montenegro following MAPS (Core + e-Procurement).</p> <p>The report will cover all four pillars of MAPS - (i) legal, regulatory, and policy framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) accountability, integrity, and transparency.</p> <p>In addition, it will cover a detailed assessment of Montenegro's e-procurement system, key considerations and way forward to have a robust and self-sustainable e-procurement system.</p>	

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ADDITIONAL INFORMATION

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ASSESSMENT TEAM

The Assessment Team comprised of World Bank staff including Task Team Leader and Co-Task Team Leader, Procurement, Governance and Financial Management specialists, Economist, and WB Consultants for Procurement and e-Procurement.

Tanvir Hossain	Task Team Leader	Senior Procurement Specialist
Orjana Ibrahim	Co- Team Leader	Senior Procurement Specialist
Aleksandar Crnomarkovic	Team Member	Sr Financial Management Specialist
Elena Carmen Calin	Team Member	Procurement Specialist
Yolanda Tayler	Team Member	Consultant
Rajesh Kumar Shakya	Team Member	Consultant
Zuhra Osmanovic-Pasic	Team Member	Senior Governance Specialist
Tamara Travar	Team member	Procurement Specialist
Ana Durnic	Team Member	Consultant

Development Partners contribution

Development partners, including European Bank of Reconstruction and Development (EBRD), European Investment Bank (EIB), and Council of Europe Development Bank (CEB) were part of the assessment team. EBRD and EIB provided specific input on Pillar 1 and 2 and CEB will provide particular input on Pillars 3 and 4.

Evgeny Smirnov	EBRD	Director, Procurement Policy Adviser, Legal
Stana Maric	EBRD	Associate Director, Procurement Policy Adviser, Legal
Rafael Torrente	EBRD	Procurement Specialist
Andreja NERAL LAMZA	EIB	Senior Procurement Specialist
Constantino Longares Barrio	CoEB	Deputy Head of Procurement Division



Montenegro
Ministry of Finance

Address: Stanka Dragojevića 2,
81000 Podgorica, Montenegro
tel: +382 20 242 835
fax: +382 20 224 450
www.mif.gov.me

Ref. no: 01-10-430/22-1699/,

Podgorica, 19 October 2022

TO: WORLD BANK

SUBJECT: LETTER OF SUPPORT

Dear Sir or Madam,

I am writing on behalf of Ministry of Finance of Montenegro - Directorate for Public Procurement Policy to confirm our support as an institution for the proposed project of the World Bank "The MAPS Project in Montenegro", which is a methodology for assessing procurement systems. The said Project will be beneficial to our institution and, overall, the entire public procurement area in Montenegro, and I hereby express our full support.

I would like to stress out that the Directorate for Public Procurement Policy is committed to fully support the implementation of the Project on long term. Also, we will delegate the personnel, if necessary, during the Project length, in order to facilitate the successful implementation of the Project activities.

As previously discussed with the representatives of the World Bank, we are expecting this Project to have major impact in several areas of great importance for us, such as:

- Analysis of the entire public procurement system, in terms of its strengths and weaknesses;
- A special focus will be put on detailed review of electronic public procurement system;
- Performance indicators and incorporating red flags.

In closing, we are pleased to inform you that we are eager to start our cooperation in implementation of this Project.

Sincerely,

MINISTER

Aleksandar Damjanović, MSc





MAPS

Methodology for Assessing
Procurement Systems

Indicator Matrix

MAPS ASSESSMENT FOR MONTENEGRO

Volume II

April 2024

Pillar I. Legal, Regulatory and Policy Framework

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Pillar I. Legal, Regulatory and Policy Framework

Pillar I. Legal, Regulatory, and Policy Framework

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

Sub-indicator 1(a) Scope of application and coverage of the legal and regulatory framework

The legal and regulatory body of norms complies with the following conditions:

Assessment criterion 1(a)(a):

Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The Constitution of the Republic Montenegro is the supreme law proclaimed on October 22, 2007 (amended in 2013) by the National Assembly of the Republic of Montenegro. The Constitution¹ indicates that (i) the ratified and published international agreements shall make an integral part of the internal legal order, (ii) shall have the supremacy over the national legislation and (iii) shall be directly applicable when they regulate the relations differently from the internal legislation. In addition, the Constitution² indicates that the Parliament (assigned with legislative power) adopts laws and other regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations). The Government³ (composed of Prime Minister and Ministers) is entitled to adopt decrees, decisions and other acts for the enforcement of laws.

EU membership of the country remains the top priority and has been driving the reform process which are focuses on strengthening the rule of law and judiciary reform, combating corruption and organized crime; implementing economic reforms to ensure sustainable economic growth and competitiveness; implementing social reforms including education and health; improving and strengthening its public administration and increasing investments projects in transport, energy and environmental to enhance connectivity and sustainability. Montenegro officially applied to join the EU on 15 December 2008, and membership negotiations began on 29 June 2012. At present only 3 chapters are provisionally closed while the reaming 3 chapters are all open to negotiations, including Chapter 5 "Public Procurement".

Montenegro has been working to align its legislation and institutional setup with EU standards. The legal framework on public procurement is well aligned with the EU acquis and integrate the three main EU Procurement Directives and the Remedies Directives.

The key primary legislation on public procurement is the Public Procurement Law (herewith: PPL) as amended and published on the Official Gazette of Montenegro No 074/2019 of 30-Dec-2019, 03/2023 of 10 January 2023. Public Procurement Law, which was adopted on 17 December 2019, entered into force on 7 January 2020. It became applicable 7 July 2020, and it was lastly amended in January 2023. The PPL covers public procurement in the public and utilities sectors for contracts above specified thresholds, and it covers all the procurement procedures envisaged in EU Public Sector Directive 2014/24 and EU Utilities Sector Directive 2014/25.

As regulated by the EU Concessions Directive, concessions are covered by the Law on Public-Private Partnerships (herewith: the PPP Law) adopted on 17 December 2019 and applicable as of 4 July 2020. The PPP

¹ Article 9 "Legal Order"

² Article 82 "Responsibilities of the Parliament"

³ Article 100 "Responsibilities of the Government of Montenegro"

Pillar I. Legal, Regulatory and Policy Framework

Law defines the PPP concept and regulates the procedures for PPP project approval and the selection of private partners. In the awarding of works or service concessions, PPL provisions are applied along with the additional specific rules of the PPP Law.

Procurement in defense and security is covered by the PPL but details concerning relevant contract procedures are defined in the regulation adopted by the Government.

The legislation on the right to appeal is broadly in line with the EU *acquis* and is integrated in the PPL provisions.

In addition to the main PPL, comprehensive set of accompanying key secondary legislation and by-laws have been adopted, such as Decrees issued by the Government of Montenegro, Rulebooks issued by the Minister of Finance in charge of the public procurement system, and Manuals and Guidelines issued by the DPPP.⁴

PPL⁵ stipulates that relevant provisions of the law governing obligation relations shall apply *mutatis mutandis* in relation to the public procurement contracts.

The legal and regulatory set of norms regarding public procurement is adequately recorded and organized hierarchically and precedence of norms is clearly established.

Gap analysis: The assessment has not identified any gap.

Recommendations: None.

Assessment criterion 1(a)(b):

It covers goods, works and services, including consulting services for all procurement using public funds.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 3 PPL defines “public procurement” as a process of obtaining goods, works, consultancy or other services by contracting authorities, for which the funds have been provided, regardless of whether they have a public purpose. Articles 75-77 PPL define the subjects of public procurement as per three categories: goods, services and works and listed eligible types of activities under each of them. Consulting services are included under the services category. The PPL applies to all public bodies including local self-government unit and entities as indicated in Article 2 PPL whereby differentiation is made between Public Contracting Authorities⁶ and Sectoral Contracting Authorities⁷.

However, there are numerous exclusions from the PPL (Articles 13-24 PPL) which include:

(1) procurement of goods, services and works conducted under international agreements.

⁴ Article 44 PPL lists the tasks of the Ministry in the public procurement area: e.g. monitoring, providing guidance on the application of the PPL, etc.

⁵ Art. 149 stipulate that provisions of the law governing obligation relations shall apply *mutatis mutandis* to execution and responsibility of contractual parties for meeting the obligations from the public procurement contract.

⁶ State body; local self-government unit; public service, that is, an undertaking which fulfils all of the following conditions: it has a capacity of a legal person; it was founded with an aim of meeting the needs of public interest and does not perform an activity of an industrial nor commercial character, and in which the state and/or local self-government unit owns more than 50% of the shares or interest, or which receive more than 50% of their funding from the budget of Montenegro and/or budgets of local self-government units and other public revenues or which are controlled by the contracting authority or which have more than half of their management body or oversight body members appointed by the contracting authority; association founded by two or more contracting authorities

⁷ A public contracting authority pursuing one of the sectoral activities; an economic operator in which a public contracting authority has a dominant influence and which performs one of the sectoral activities, or other economic operators performing one of the sectoral activities on basis of special or exclusive rights assigned to them by a competent state body or a competent body of a local self-government unit.

Pillar I. Legal, Regulatory and Policy Framework

- (2) procurement of service contracts including land acquisition, acquisition of construction facilities and other real estates, audio and visual media services, radio and tv broadcasting services, arbitration or amicable settlement of disputes, various legal services, etc.;
- (3) procurement of postal services;
- (4) procurement in the field of electronic communications;
- (5) procurement of services based on an exclusive right;
- (6) procurement in the public sector;
- (7) procurements between public contracting authorities;
- (8) procurements for the pursuit of sectoral activity for purpose of resale or lease;
- (9) procurement of water, energy or fuel to produce energy;
- (10) procurements in the field of defense or security;
- (11) simple procurements.

Compared to the Directive 2014/24/EU on public procurement to make a uniformed judgement of the suitability of the great number of exclusions in Montenegro PPL, it can be concluded that the exclusions provided by the PPL of Montenegro are almost identical in number and type of exclusions. However, some exclusions are not in line with the Directive such as financial, legal or other services in the proceedings related to the privatization of the economy, procurement of election materials and tasks related to the development and adoption of planning documents as stipulated by the law governing spatial planning.

The PPL covers also utility sector procurement such as electricity, gas and thermal energy, water management, traffic service, airports and seaports, postal services research and production of oil, gas, coal or other solid fuels.

The defense and security services are regulated in the PPL (Articles 174-178) which indicate that procurement in the field of defense and security will be conducted based on the Decree on the List of Military Equipment and Products, the Procedure and Manner of Public Procurement in the Defense and Security Area⁸. The Degree covers military equipment, including all its parts, components or subassemblies; security-sensitive equipment, including all its parts, components or subassemblies; goods, services and works that are directly related to the equipment referred to in items 1 and 2, during any period or entire life cycle of such equipment; services and works exclusively for military purposes; security-sensitive services.

Special public procurement rules apply to procurement for diplomatic and consular missions and military-diplomatic representatives and these procurements are prescribed by the Government of Montenegro unless otherwise specified by international treaty or agreement.

PPL is not applicable also to simple procurement for the goods, services and works with an annual estimated value up to 8,000.00 euro; goods and services with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 25,000.00 euro; works with an annual estimated value to be equal to or greater than 8,000.00 euro, but less than 40,000.00 euro. Simple procurement is regulated by the Rulebook on Conducting Simple Procurement.⁹

Private Public Partnerships and Concessions are not regulated by PPL but are subject to separate laws. For more detail refer to assessment criteria 1 (a)(c).

Gap analysis:

Considering the list of exceptions described in the qualitative analysis, the PPL doesn't cover all procurement using public funds. Each category of these exclusions includes sub-categories, which ultimately implies a large number of exclusions overall. Many of these exclusions are regulated by other sector laws and by-laws (decrees, rulebooks) other than PPL legal framework which makes it hard to identify the limitation of PPL application to

⁸ Official Gazette of Montenegro, No 76/2020 of 28 July 2020

⁹ Official Gazette of Montenegro, No 16/2023 of 10 February 2023, 20/2023 of 22 February 2023, 36/2023 of 29 March 2023

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all procurement using public funds.

The PPL exclusion due to the use of simple procurement below 8,000 Euro, results in a high rate of the total procured budget. The data analysis captured by the EPPS indicates that the total value of simple procurement below 5,000 euros (the 2019 PPL threshold) represents 37% of total procured amount in 2021 and 16% in 2022 at system level. It is noted that the total value of budget (or percentage) that can be procured within a budgetary year by a Contracting Authority under simple procurements is not limited by the procurement legal framework.

Recommendations:

The legal framework should ensure that the list of exceptions is in full accordance with the EU Directive 2014/24/EU.

Additionally, the legal framework should include provisions to limit the level of budget that a Contract Authority can launch using simple procurement below 8,000 Euro within a budgetary year.

Assessment criterion 1(a)(c):

PPPs, including concessions, are regulated.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Considering that PPPs and concessions are out of the scope of a detailed assessment since they are regulated outside the PPL, the analysis by the assessment team have been limited to confirm that the PPP and Concessions legal frameworks: comprise a framework that sets out clear policy objectives to prepare, choose and implement PPP projects or concession; facilitate the identification, selection, prioritization, evaluation, structuring, market sounding, procurement, negotiation, financing, and delivery of PPP projects; assign clear roles and responsibilities for each entity involved in PPP project delivery or concession granting.

PPPs and concessions are regulated by two separate laws. The Law on PPPs published on the Official Gazette of Montenegro no. 073/19 dated 27 December 2019 regulates Public Private Partnerships, whereas the Law on Concessions published on the Official Gazette of Montenegro no. 008/09 dated 4th February 2009, 073/19, of 27 December 2019 regulates concessions. DPPP is also in charge of policy development for both PPPs and concessions. Respective secondary legislation for PPP law is in force and publicly available¹⁰ and for concession is in force and publicly available¹¹.

According to the PPP Law, a public-private partnership is based on the principles of protection of the public interest, free management which ensures a high degree of quality, safety, affordability, transparency, nondiscrimination, proportionality, protection of competition, and protection of the environment. The law covers contractual and institutional public-private partnerships and elaborates in detail on the procedure for concluding a public-private partnership contract, which regulates the public and private partners' respective rights and obligations with respect to the public-private project. The PPP Law recognized 2 types of PPPs Contractual Public-private partnerships where, the mutual relations between the public partner and the private partner are regulated by a public-private partnership contract and Institutionalized public-private partnership based on the establishment of a company held jointly by the private and the public partner, which provides public services, executes public works along with maintenance of public facilities that are the subject matter of works, or builds, reconstructs, manages or maintains public infrastructure, in order to implement the public-private partnership project. Article 13 in the PPP Law has identified what can be a subject matter of the PPPs and among those construction and management of roads, railways, airports and ports are considered to be of strategic interest to Montenegro. While there is also a list of exemptions in Article 14 that don't apply the

¹⁰ The texts are available in the Official Gazette No. 58/20 and 59/20.

¹¹ The texts are available in the Official Gazette Nos. 47/09, 67/09, 32/15, 37/11, 40/16.

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PPP law such as projects that are implemented under international rules, related to protection and rescue of natural disasters and emergency, procurement of weapons and other defense and security, exploration and production of hydrocarbons, civil protection interventions, works goods and services that are procured under the PPL.

The PPP Law describes from Article 27 to 36 the preparatory phases of an PPP starting from the identification of a potential PPP either by the Contracting Authority itself or by an interested party. The entity filing the initiative shall participate in the public-private partnership contract award procedure on equal terms with other bidders and shall not be afforded preferential treatment.

The PPP law also defines the issues related to the preparation of tender documentation and justification analysis and regulates the entire procedure through which the proposal of one project passes to the final adoption. The provisions of the law governing public procurement are also applicable to the public-private partnership contract award and also for those aspects that are not regulated from the PPP Law itself. The PPP Law recognizes the most economically advantageous bid as the award criteria to select the most advantageous bid. The decision to award a PPP contract published in the Official Gazette of Montenegro is required for the final award decision.

Inspection control over the implementation of the PPP law is carried out by the administration authority responsible for inspection affairs. In the public-private partnership contract award procedure, the protection of rights in the procedure shall be provided by the Commission for Protection of Rights in Public Procurement Procedures in accordance with this Law and the law governing public procurement.

The PPP Law regulates also the PPP contract implementation, its amendment including its transfer to another private partner and further the termination conditions. Dispute settlements can be done before a national or international arbitration according to the Montenegrin law. Unless otherwise foreseen in the PPP contract, the disputes will be settled by the competent court of Montenegro.

The right to use natural wealth, goods in general use and other goods of general interest that are in state property, with the payment of concession fees or providing financial compensation are regulated by the Law on Concession. The scope of coverage of a concession is in Article 6 of Concession Law, while the Law requires that it is granted based on an annual concession plan. The Law establishes the Commission on Concession which has the right to review appeals against the decision to award the concession. The decision to initiate the procedure for granting a concession is made by the competent authority, which submits to the Government (or municipal authority) the concession act. Before such an act is submitted, a public hearing is organized. Methods for granting concession include public tendering in an open procedure; public tendering in a two-stage procedure; public tendering in a summary procedure. However, Article 20 of the concession law indicates that public tendering is not conducted for specific circumstances which may include national defense and security, realization of the concession carried out on the basis of an international treaty etc.

Public announcement for the call is made after the approval of the concession act in the Official Gazette of Montenegro. The competent authority prepared the tender documentation which contains public announcement, instructions to bidders for drafting and submitting bids, criteria for the selection of the most favorable bid, draft contract with all related annexes and forms, form of bank guarantee of the bid, conditions that must be met by bidders, documentation or other evidence of fulfillment of the conditions determined by the public announcement and tender documentation depending on the subject of the concession, which the bidder is obliged to submit. The bids received are evaluated by an ad hoc commission taking into consideration main criteria such as the period for which the concession is requested; the amount of concession fee offered;

Pillar I. Legal, Regulatory and Policy Framework

the price offered, i.e., the provision of services tariff; references of bidders (technical and/or financial conditions, previous experience in performing concession activities and other); quality of service; the degree of public interest; the degree of use of natural wealth; the effects on employment, infrastructure and economic development; environmental program and measures to improve energy efficiency.

The two-stage procedure is carried out in cases granting concessions for projects that are complex from a technical, technical-technological, legal, financial, or other point of view, or when a large number of bidders are expected. The two-step process includes public advertising for prequalification followed by prequalification procedure, where the tender commission evaluates applications for prequalification and accepts or rejects applications based on predetermined pre-qualification criteria. Only qualified bidders can purchase the tender documentation and submit bids which are evaluated and ranked as in an open procedure.

Concession for a period up to three years are granted using summary procedure which implies that the concession act doesn't undertake a public hearing, whereas the deadlines to submit a tender and conduct evaluation are reduced compared to the normal open procedure.

The Law regulates the preparation of Concession Agreement, transfer of contract, its termination, and in particular the mechanisms to set up the concession fee.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(a)(d):

Current laws, regulations and policies are published and easily accessible to the public at no cost.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

The Law on Publishing Legislation and other Acts regulates the procedure for making legislation available to the public via the Official Gazette of Montenegro¹². All primary and secondary legislation – as originally adopted – is available free of charge on the publicly accessible online database of the Official Gazette. In case there are amendments to the legislation, these are also available free of charge on the database. However, the obligation to publish consolidated versions of legislation has not yet been established, and the consolidated versions are available online only through a paid service (offered by private service providers, as well as by the Official Gazette).

Primary and secondary legislation in relation to public procurement is published in the Official Gazette of the Republic of Montenegro (*Službeni List Crne Gore*)(sluzbenilist.me), while bylaws adopted by the Minister of Finance and DPPP, such as Rulebooks and Manuals relating to procedures are published on the DPPP's website (<https://ujn.gov.me>). DPPP's website also contains copies of procurement laws and regulations (in either pdf or word format), including unofficial English translations of some legislation (including PPL). DPPP publishes both original acts and their respective amendments, followed in several instances by a self-prepared consolidated version. These can be consulted free of charge. Furthermore, the DPPP website also contains

¹² The Law on the publishing of regulations and other acts" (Zakon o objavljivanju propisa i drugih akata) was published in the "Official Gazette of Montenegro, no. 5/08", entered into force on 30 January 2008. and is the legal basis for the publication of laws, other regulations and acts.

Pillar I. Legal, Regulatory and Policy Framework

unofficial Word versions of publications in the Official Gazette which would raise concerns as to their validity and whether third parties can rely on these texts.

Gap analysis:

The consolidated version of the legal framework is not available free of charge at the Official Gazette and readers need to search for both original acts and amendments to make reference to the most recent legal version. Although DPPP publishes all legal updates on their website, reference to the most recent legal version is missing as the uploaded version does not always represent the official version of the act and is not linked to the Official Gazette portal.

Recommendations:

DPPP should ensure to keep laws, regulations and procedures governing public procurement up to date and preferably on a single, freely accessible online portal. In order to ensure wider access to economic operators, a link or reference to this portal is provided at the e-procurement portal for ease of reference.

Sub-indicator 1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criterion 1(b)(a):

Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.

Conclusion: No gap

Red flag: No

Pillar I. Legal, Regulatory and Policy Framework

Qualitative analysis:

Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used. The PPL indicates the threshold of works, goods and services for which the procurement methods apply. For contracts below the thresholds, classified as simplified procurement, these methods are not applicable, and the Ministry of Finance has elaborated the Rulebook on Conducting Simple Procurement.

The following procurement methods are envisaged and described under the PPL:

- open procedure (Art. 54)
- restricted procedure (Art. 55, 56)
- competitive procedure with negotiation (Art.57,58)
- negotiated procedure without prior publication of a contract notice (Art. 59, 60, 65)
- competitive dialogue (Art. 61, 62)
- partnership for innovation (Art. 63)
- negotiated procedure with prior publication of a contract notice (Art. 64)

The PPL sets out the conditions under which the Contracting Authority shall select a procurement method depending on the type, the essential characteristics, and specific conditions of the subject of public procurement.

Articles 68-72 in the PPL describe the special methods to conduct public procurement which include:

- Framework Agreement
- Dynamic purchasing system
- Electronic auction
- Electronic catalogue

Procurement methods applicable as per provisions of PPL and forms of conducting public procurement are fully transposing the EU Procurement Directive 2014/24/EU.

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Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(b)(b):

The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

The PPL provides a range of procurement methods including from the competitive (open procedure) to less competitive (negotiated procedure with prior publication of a contract notice). The PPL sets out conditions for use of procedures which are generally linked to the nature, complexity and specific conditions involved in the contract. The PPL sets out thresholds applicable to each procedure and minimum bid submission deadlines. When deciding to apply reduced deadline for submission, Contracting Authorities are requested by the PPL provisions to provide a written justification. Also, in case of applying the negotiated procedure without prior publication of a contract notice, an opinion from the DPPP is required (except in a situation of urgency). Further relevant articles of the PPL regarding procurement methods clearly describe the obligations of the Contracting Authorities to transparency concerning the publication of tender documents and information regarding the decision to award the contract.

Gap analysis:

The timeline to submit tenders in the dynamic purchasing system is not regulated and there a standard 30 days' time apply. The PPL foresees in Article 70 that the examination of requests to participate in dynamic purchasing system should normally be performed within a maximum of 10 working days with the possibility for 5 more days, as prescribed in EU Public Procurement directives, but it does not provide for shorter time limits for the receipt of tenders at the second stage (whereas the directives contain a 10-day time limit). This means that a 30-day deadline would have to apply, as in restricted procedures.

Recommendations:

The PPL should indicate the appropriate timeline to submit offer in the second stage of dynamic purchasing system in accordance with proportionality principle.

Assessment criterion 1(b)(c):

Fractioning of contracts to limit competition is prohibited.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Article 27 PPL sets out that Contracting Authorities shall not fraction items to be procured with the aim to circumvent the application of the PPL and consequently limit competition. Also, fractioning of items to be procured is recognized by Article 211 PPL as a serious offense, and the responsible oversight body may impose an administrative fine from 5,000 to 20,000 EUR to the Contracting Authority. In addition, a pecuniary penalty in the amount ranging from 250.00 to 2,000.00 EUR shall also be imposed on the person that is found responsible for the offence in the Contracting Authority.

Pillar I. Legal, Regulatory and Policy Framework

On the other hand, Article 80 PPL recognizes that procurement procedures by default should be organized in LOTS. When the Contracting Authorities have not divided the subject of procurement into lots, they shall provide an indication of their reasons for doing so in the tender documentation.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(b)(d):

Appropriate standards for competitive procedures are specified.

Conclusion: No gap

Red flag: No

Qualitative analysis:

A Contracting Authority can choose the public procurement procedure depending on the type, the essential characteristics and specific conditions of the subject of public procurement. Even though the Contracting Authorities are given discretion to choose the procurement procedure, this discretion is limited by the same PPL as it requires that CAs must follow the requirements applicable to such procedure as set out in the relevant articles of the PPL.

Appropriate standards for competitive procedures are specified through Articles 54-63. Further details on the procedures are set out in the various standard documents issued by the Ministry of Finance. These include comprehensive provisions aimed at guiding the work of the Contracting Authorities, defining the contents of the documents to be used, and facilitating the recording of the various steps to be performed.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(c)

Advertising rules and time limits

The legal framework meets the following conditions:

Assessment criterion 1(c)(a):

The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).

Conclusion: No gap

Red flag: No

Qualitative analysis:

The electronic public procurement system ("EPPS") (*Crnogorske Elektronske Javne Nabavke, CeJN*)¹³ was introduced in Montenegro in January 2021. In the EPPS, all public procurement opportunities in Montenegro are posted. The portal is easily and freely accessible. In accordance with Article 45 PPL, the Montenegrin EPPS enables, amongst others, the publication of tender documentation and dispatching of public procurement notices above the thresholds identified in Article 26 PPL to the Publications Office of the EU for further publication in the Official Journal of the EU.

¹³ See website: <https://cejn.gov.me>.

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Only when using the negotiated procedure without prior publication of a contract notice (Articles 59, 60, 65 PPL), are no opportunities published. The use of such a method must always be justified and the Contracting Authority shall obtain the opinion of the Ministry, before the initiation of such type of negotiation procedure (Article 65 PPL). The Ministry shall provide their opinion based on the submitted justification, within eight days of the receipt of the proper documentation. Only when for reasons of extreme urgency brought about in exceptional circumstances by events unforeseeable by the contracting authority and not depending or attributable to that contracting authority, the opinion of the Ministry is not requested.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(c)(b):

Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.

Conclusion: No gap

Red flag: No

Qualitative analysis:

According to Article 115 PPL the time between publication of the invitation for prequalification applications, or for an open procedure and the submission of proposals, depends on the complexity of the procurement and the level of competition expected.

Time limits are determined based on the thresholds of public procurement varying from the minimum of 15 days to 30 days from the publishing of a procurement notice. Contracting Authority may shorten the period for bid/proposal submission if required so by a reason of urgency which is not caused by the fault of the contracting authority. In such circumstances, the CA shall provide an explanation in the invitation for submission of bids for the reasons of urgency due to which the bid submission period was reduced. Each article that describes the procurement methods provides for the minimum timeframes for the publication timeline. It is clear from the different provisions of the PPL that the range of minimum timeframe from 15 days to 30 days reflects the complexity of procurement procedures associated with increased procurement threshold.

In the event of interruption of operation or technical limitations in operation of EPPS, the time limits in the public procurement procedure shall be extended for a period of duration of interruption, and at least 24 hours from putting the ESJN (EPPS) system back into operation, or for the remaining part of the time limit if the interruption of operation or technical limitations in operation of EPPS lasted longer than the remaining part of the time limit.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None

Assessment criterion 1(c)(c):

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Publication of open procedures is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).

Conclusion: No gap

Red flag: No

Qualitative analysis:

Publication of open procedures is mandated on EPPS where all public procurement opportunities are posted. Publication is made in EPPS also for **simple** procurement above 8,000 Euro and they are available at no cost. For more details see criterion 1 (c)(a). The procurement notices are accessible at no cost through EPPS.

Gap analysis:

The assessment has not identified any gap

Recommendations:

None.

Assessment criterion 1(c)(d):

The content published includes enough information to allow potential bidders to determine whether they can submit a bid and are interested in submitting one.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 53 PPL requires that public procurement procedure shall commence with publishing or sending the tender documentation which shall contain a call for competition, the technical specification of the procurement subject, methodology for bid evaluation, the instruction for preparation and submission of bids and the instruction on legal remedy. The call shall contain information about a contracting authority, type of award procedure, subject-matter of procurement, estimated value of procurement, conditions for participation, deadline for the submission of an application/bid, time of opening of applications/bids and other relevant information which will reasonably inform bidders on subject-matter of procurement and the public procurement procedure.

Furthermore, Article 86 requires that tender documents are prepared in a clear, precise and logical manner as they must contain all the information that will enable the bidder to be aware of all costs that may be encountered in relation to public procurement. More relevant information on the type of information that the tender document may indicate is provided in the Rulebook on Forms of Conducting Public Procurement. As explained in assessment criterion 2(c)(c) contract conditions are not included in the tender document and the potential bidders don't have information on the expected contractual clauses in advance.

Gap analysis:

The tender documentation includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one, with the exception of contract clauses. The lack of contract conditions on the procurement documents creates uncertainties regarding the main conditions and obligations for the parties to the contract.

Recommendations:

Forms for conducting public procurement should include as part of the sample tender documents model contract clauses that should be used as a minimum to several types of contracts for works, services and goods.

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Sub-indicator 1(d) Rules on participation The legal framework meets the following conditions:
Assessment criterion 1(d)(a): It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions
Conclusion: No gap
Red flag: No
Qualitative analysis: The PPL mandates in different articles the right of economic operator to participate in public procurement procedures. Articles 8 and 10 lay down the principles of public procurement by guaranteeing fair and equal access to all prospective bidders as follows: <ul style="list-style-type: none">- Principle of ensuring competition under the article 8 provides that” Contracting authorities may not restrict or prevent competition among economic operators, and they may not prevent any economic operator from taking part in a public procurement procedure by way of unjustified application of the negotiated procedure or by using discriminatory conditions and criteria or measures favoring individual economic operators.”- Principle of equality, freedom and prohibition of discrimination under the article 10 provides that “Contracting authorities shall ensure that all economic operators in a public procurement procedure enjoy equal treatment. Contracting authorities shall not establish the conditions which would constitute national or territorial, subject-matter or other kind of discrimination against economic operators, or discrimination which would arise from the classification of business activity carried out by an economic operator...” According to Art. 28 of PPL, an Economic Operator may participate in a public procurement procedure independently or jointly with one or more economic operators. Conditions for participating in a public procurement procedure and grounds for exclusion are elaborated in Articles 99 (listing the mandatory conditions), Articles 101-106 (requesting fulfillment of qualification requirement being of professional nature, economic and financial standing, and technical and professional ability), and Articles 108-110 (listing exclusions from public procurement procedures). In March 2022, Montenegro aligned with the EU’s foreign and security policy, including EU restrictive measures following Russia’s unprovoked aggression against Ukraine, as well as for international law and a rules-based international order. Montenegro supported the Joint Statement on aggression by the Russian Federation against Ukraine with the support of Belarus which among others refer to sanctions “ <i>to acting against the people and entities who facilitate the war in Ukraine and the harmful activities of the Russian government. Specifically, to taking measures to limit the sale of citizenship—so called golden passports—that let wealthy Russians connected to the Russian government become citizens of our countries and gain access to our financial systems</i> ” ¹⁴ . The above restrictions implies that citizens from Russia and Belarus are not allowed to participate in government financed activities including procurement procedures.
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(d)(b): It ensures that there are no barriers to participation in the public procurement market.

¹⁴Quoted from [file:///C:/Users/wb548753/Downloads/Joint Statement on further restrictive economic measures.pdf](file:///C:/Users/wb548753/Downloads/Joint%20Statement%20on%20further%20restrictive%20economic%20measures.pdf)

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Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis:

Article 10 of PPL on principle of equality, freedom and prohibition of discrimination clearly provides that Contracting Authorities shall ensure that all economic operators in a public procurement procedure enjoy equal treatment. Contracting authorities shall not establish the conditions which would constitute national or territorial, subject-matter or other kind of discrimination against economic operators, or discrimination which would arise from the classification of business activity carried out by an economic operator. Domestic preference or price preference for domestic firms have not been identified.

Clauses introducing conditionalities to foreign economic operators (bidders) have not been identified either in PPL, or subsequent by-laws regulating exclusions from application of the PPL or bid forms. However, it appears that there exists an underlying barrier which is the requirement of national licensing for providing certain types of services and/or works. Article 102 of PPL entitles the CAs to request in the tender documents that economic operators must prove that they possess a valid authorization (permit, license, approval or other act) in accordance with law. Similarly, the EU Directive 2014/24/EU provides that economic operators shall demonstrate the suitability to pursue the professional activity and contracting authorities may require their enrollment in one of the professional or trade registers kept in the country of establishment.

Albeit this requirement can be easily fulfilled by the local economic operators, for international ones might pose a barrier to participation. As a general practice, interested bidders are required to comply with Montenegrin law in respect to sectoral legal framework such as the Law on Spatial Planning and Construction of Structures, Law on state surveying and cadaster of immovable property, Law on Safety and Health at Work among others. Only certified companies can provide these services which are to be complied with the aforementioned laws. The laws typically apply not only to companies but also to professionals who compose the proposed teams. Companies and experts are certified by relevant authorities in the country. At times, the process for obtaining or validating similar international certifications in Montenegro is a lengthy and costly process that benefits mostly to local participants and involves a barrier to fair and equal competition. It is noted that DPPP does not get involved in the matter and delegates the licensing requirements to each competent authority.

Domestic preference or price preference for domestic firms have not been identified either. Registration to EPPS is not a barrier to participation in a procurement process and based on the number of international firms (economic Operators) registered to date¹⁵ there is no evidence of such barriers. International bidders are not required to obtain any national e-certification to register and can use their own national e-certifications. Also, the form for Self-declaration submitted by economic operators¹⁶ based on Article 111 of the PPL doesn't present any additional barrier to those explained above regarding professional capacities to participate in public procurement procedures in the country.

Gap analysis:

Although the PPL itself doesn't impose any barrier for firms (mainly international) to participate, it is found that there exists an underlying barrier which is the requirement of national licensing for providing certain types of services and/or works. Interested bidders are required to comply with Montenegrin law in respect to the sectoral legal framework such as on construction, cadaster of immovable property, health and safety at work among others. Only certified companies can provide the required services and licenses are usually requested at the time of procurement of the intended works or services. The laws typically apply not only to companies but

¹⁵ A total of 1,212 foreign bidders are registered in EPPS, out of which 637 have participated at least in one bid. 349 foreign firms have been awarded at least one contract.

¹⁶ The Form of the Statement Of The Business Entity is published on Official Gazette 071/20, dated 16.07.2020

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also to professionals who compose the proposed teams who are required to be certified by relevant authorities in the country. At times, the process for obtaining or validating similar international certifications in Montenegro is a lengthy and costly process that benefits mostly to local participants and involves a barrier to fair and equal competition. It is noted that DPPP does not get involved in the matter and delegates the licensing requirements to each relevant authority.

Recommendations:

The secondary legislation should provide clear reference on the applicability of authorization and license by including in tender documents instructions to allow that proof of applying for a license should be sufficient evidence of a qualification at the tendering phase and that the license should be presented at contract signature stage. In addition, the tender documents should indicate what will be considered an equivalent license and provide a description of the procedure for obtaining a license from the competent authorities.

DPPP should coordinate with relevant institutions in at least identifying the relevant licensing requirement that impose a barrier to public procurement procedures and provide this information to widely accessible portals.

Assessment criterion 1(d)(c):

It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

Article 99 PPL details that only those economic operators may participate in a public procurement procedure who:

1) have not been convicted, or whose executive director has not been convicted of a criminal offence with the following elements:

- criminal association;
- creation of a criminal organization;
- giving a bribe;
- receiving a bribe;
- giving a bribe in business operations;
- receiving a bribe in business operations;
- evasion of taxes and contributions;
- fraud;
- terrorism;
- terrorist financing;
- terrorist association;
- participation in foreign armed formations;
- money laundering;
- human trafficking;
- trafficking minors for adoption;
- slavery and transport of enslaved people.

2) have settled all due obligations resulting from taxes and healthcare and pension insurance contributions, the records of which are kept with the state administration authority in charge for collection of tax revenues, or the competent state authority of the country of registered office of the economic operator.

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Article 110 PPL recognize that a Contracting Authority may exclude and economic operator from participation in a procurement procedure if;

- in a period of three years preceding the lapse of the deadline for submitting applications or bids, the EO has terminated a public procurement contract, public-private partnership contract, or concession contract with that or another contracting authority or for which a contract financial security instrument was called, damage or another sanction in accordance with the law compensated, due to significant and permanent shortcomings during implementation of key requirements from a prior public procurement contract, a public-private partnership or a concession contract;
- in a period of three years preceding the lapse of the deadline for submitting applications or bids in prior public procurement procedures, the EO provided to that contracting authority untrue data needed to verify compliance with the requirements for participating in the procedure, or lack of grounds from exclusion from the procedure, or failed to submit required proof.

Although the legal framework recognizes the mandatory exclusions, it doesn't elaborate the process for reaching decisions on administrative debarment including the process related to any possible appeals. From the above article it appears that each of the Contracting Authorities can conclude its own debarment process. Additionally, the DPPP does not apply a debarment list for Economic Operators which are ineligible to participate in public procurement procedures and Contracting Authorities are not aware of the list of debarred EO from other CA.

According to Article 135b, before awarding contracts, contracting authorities must require the awarded tenderer to submit up-to-date supporting documents such as certificates, statements, and other means of proof regarding exclusion grounds. This rule is applied every time before the contract award, regardless of how often the contract is awarded to the same tenderer which may pose administrative and financial burden to participants.

Gap analysis:

PPL does not provide the procedures that lead to the debarment procedure for Economic Operators. Additionally, there isn't a unified list of debarred EO which raises the risk of firms with unprofessional and offence behavior being awarded contracts from public funds. The PPL doesn't provide grounds to reject tenderers due to other legitimate exclusions such as those in adherence to UN Security Council sanctions or any other international agreements that limit participation to members of the agreements. The request to verify with supplementary documents the EOs self-declaration is applied every time before the contract award, regardless of how often the contract is awarded to the same tenderer which may pose administrative and financial burden to participants.

Recommendations:

The legal framework should include a process for reaching decisions on administrative debarment as well as other legitimate exclusions such as adherence to the UN Security Council or other obligations deriving from existing international agreements.

Normative/Regulatory body should be tasked with the role of finalizing the administrative debarment process and publishing the list of debarred economic operators in EPPS. The right to appeal against such a decision should be granted.

EPPS should publish the list of debarred firms and ensure for mechanism to identify the status of debarred firms during the execution of procurement procedure.

The legal framework may include provisions to recognize the legal effects of supporting documents submitted by the same bidder within a specific timeframe.

Assessment criterion 1(d)(d):

It establishes rules for the participation of state-owned enterprises that promote fair competition.

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Conclusion: No gap
Red flag: No
Qualitative analysis: <p>There are no provisions on establishing rules for the participation of state-owned enterprises that promote fair competition. The same participation conditions that apply for privately owned are relevant also for state-owned economic operators, which is compliant with the requirement of the Procurement Directive 2014/24/EU.</p> <p>Article 18 indicates that the PPL does not apply in case of procurements of goods, services and works awarded by a public contracting authority to another economic operator with majority state ownership, where:</p> <ul style="list-style-type: none">- the contracting authority, independently or jointly with other public contracting authority, exercises control oversight over such economic operator;- such economic operator carries out more than 80% of its the economic activities in the performance of tasks entrusted to it by one or more public contracting authorities or an economic operator controlled by such public contracting authorities; and- there is no direct participation of the private capital in the legal person, except for participation of private capital in accordance with the law and founding agreement of that legal person, and which does not have a significant influence in controlling and the right of limiting and which does not exercise a decisive influence on that legal person.
Gap analysis: <p>The assessment has not identified any gap.</p>
Recommendations: <p>None.</p>
Assessment criterion 1(d)(e): <p>It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis: <p>Article 101 PPL details the requirements used to verify a bidder's ability to perform under a specific contract. The article provides that Contracting Authorities may, in accordance with subject matter of the public procurement require in the tender documentation from economic operators to comply with the following conditions:</p> <ul style="list-style-type: none">- capability to pursue the professional activity,- economic and financial standing and/or- technical and professional ability. <p>The conditions to pursue the professional activity are further detailed in art. 102 stating what type of evidentiary documentation is required for proving the condition (excerpt from the Central Registry of Economic Operators or other appropriate register, in the country in which the economic operators are seated; and/or, a valid authorization (permit, license, approval or other act). Financial and economic capacities are determined in Article 104 requesting information related to a certain minimum yearly turnover in the preceding two years, including a certain minimum turnover in the area covered by the contract; and/or the ratios between of assets and due liabilities; and/or other financial parameters. Technical and professional parameters are described in Art. 106 and are related to a specific experience with high-quality and successful execution of same or similar</p>

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activities related to the field of the procurement subject; the necessary expert and personnel resources that will be involved in the contract execution; mechanical and technical equipment and/or other capacities necessary for timely and high-quality execution of the contract; quality management system in place which is relevant to the area of the subject of procurement; an environmental protection system in place.

In terms of eligibility to participate as indicated in criterion 1 (d)(c), the PPL determines the eligibility requirements and Article 111 indicate the procedure that the Economic Operators need to follow in order to confirm that they meet the requirements by submitting a self-declaration.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(e)

Procurement documentation and specifications

The legal framework meets the following conditions:

Assessment criterion 1(e)(a):

It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 86 requires that tender documents shall contain clear, precise and commonly understandable information to enable submission of adequate and comparable qualification applications or bids as well as all information on the costs that a bidder may bear in relation to his participation in public procurement process. Articles 87-98 set out a way tender documents are to be written by procuring entities and their content by explaining the required content of technical specifications, use of technical characteristics, requirements related to execution of subject contract, essential requirements and charges for the use of patents, requirements related to labels, amendments and clarifications to tender documentation, means of financial securing, etc.

There are several by-laws such as rulebooks in use providing standardized forms to be used for each type of procurement process and each stage in a procurement process. Manuals and guidelines for bidders which provide clear instructions to bidders on how to register in EPPS, fill in all required data and submit their bid through the system have also been developed and in use.

Gap analysis:

The legal framework mandate that the minimum information must contain, however it appears a gap in the secondary legislation regarding the standardized forms for contract conditions which is an area that Article 86 requires to be covered in procurement documents. Contracting Authorities include different contract models which don't cover main contract clauses in a consistent manner.

Recommendations:

The legal framework should ensure that the preparation of procurement documents is based on a harmonized standard procurement document which covers the whole procurement cycle, including contract management. EPPS should support a library of sample procurement documents and contracts models for different types of procurements.

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Assessment criterion 1(e)(b): It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.
Conclusion: No gap
Red flag: No
Qualitative analysis: Article 87 on setting out the rules for drafting technical specifications provides that Technical Specifications of the procurement subject shall be determined: 1) as a performance-related or functional requirement, in a manner that the required parameters are defined precisely enough to enable the bidders to prepare an adequate bid and contracting authorities to properly select the most advantageous bid; 2) with reference to Montenegrin standards, norms and related documents, technical regulations and technical specifications concerning project design, execution of works or utilization of goods which are harmonized with European standards, technical regulations or common technical specifications stating the words “or equivalent”, and when there are no such norms, technical regulations and technical specifications in Montenegro, the contracting authority refers to European standards, technical regulations, common technical specifications, internationally recognized standards and other technical reference systems determined by European standardization bodies. This provision is to a great extent compliant with article 42 on technical specifications in the Directive 2014/24/EU on public procurement.
Gap analysis: The assessment has not identified any gap
Recommendations: None.
Assessment criterion 1(e)(c): It requires recognition of standards that are equivalent, when neutral specifications are not available.
Conclusion: No gap
Red flag: No
Qualitative analysis: Article 87(2) PPL provides that the law does require recognition of standards that are equivalent, when neutral specifications are not available.
Gap analysis: The assessment has not identified any gap
Recommendations: None.
Assessment criterion 1(e)(d): Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing).
Conclusion: No gap
Red flag: No
Qualitative analysis: Article 95 provides that Economic Operators shall have the right to request the Contracting Authorities in writing to clarify the tender documentation or amendments thereof, within the time set for the submission of

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qualification applications or bids, and no later than 10 days before the deadline for the submission of qualification applications or bids. Contracting Authorities shall, depending on the type of public procurement procedure, publish or supply clarification of the tender documentation via EPPS with no delay and at the latest within five days as of the day of receipt of the request.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(f)
Evaluation and award criteria
The legal framework mandates that:

Assessment criterion 1(f)(a):

The legal framework mandates that the evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The evaluation criteria are determined depending on the type of procurement subject and in accordance with requirements of the PPL and based on the Rulebook on the methodology of evaluation of bids.

Art. 117 provides that Contracting Authorities shall determine the criterion in the tender documentation and establish a methodology for evaluation of bids. The criterion for selection of the most advantageous bid shall be descriptive, determined by points, related to the subject of procurement and non-discriminatory.

Art. 135 reaffirms that each member of the Commission carrying out procurement procedures shall separately (individually) evaluate regular bids based on the criteria established in the tender documentation.

Gap analysis:

The assessment has not identified any gap

Recommendations:

None

Assessment criterion 1(f)(b):

The legal framework allows the use of price and non-price attributes and/or the consideration of life cycle cost as appropriate to ensure objective and value-for-money decisions.

Conclusion: No gap

Red flag: No

Qualitative analysis:

To ensure objective and value-for-money decisions, the PPL (Article 117) envisages selection of the most advantageous bid in a public procurement procedure applying the principle of cost-effectiveness, on basis of the following criteria:

- offered price
- best price-quality ratio, or
- life-cycle cost.

PPL articles 118 and 119 further detail price-quality ratio and life cycle costing. These criteria are reflected in the Rulebook on forms in public procurement procedure.

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Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(f)(c): The legal framework mandates that quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.
Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>PPL does not define consulting services as a category but services in general. Definition of services as subject to procurement is defined in Art. 76 which provides that the subject matter of procurement of services shall be the services from the following fields: transport; finances; ICT; education, science and research; accounting and auditing; consultancy; project design; expert supervision; hospitality, healthcare, social care, as well as other services, apart from those covered by procurement of goods referred to in article 75 of PPL.</p> <p>All the selection methods defined by PPL apply to all types of procurements (goods, works and services) and there is no distinction in this regard. Therefore, it is assumed that the award criteria listed under Art.117 apply also for consulting service including the Price-quality ratio criterion. Although Article 118 PPL provides for the parameters to be considered while determining the price-quality ratio there is a lack of forms (including evaluation process) to provide guidance on the methodology on evaluating the technical capacity in consulting services.</p>
Gap analysis: The Rulebook on the methodology for assessment of bids does not provide a clear methodology on evaluating technical capacity for consulting services.
Recommendations: The secondary legislation should provide for a methodology for evaluating technical capacity for consulting services.
Assessment criterion 1(f)(d): The legal framework mandates that the way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents.
Conclusion: No gap
Red flag: No
Qualitative analysis: <p>According to Article 117 Contracting Authorities are obligated to determine the criterion in the tender documentation and establish a methodology for evaluation of bids. The same article further provides that the bid evaluation methodology shall contain the method and the maximum number of points which could be assigned to a bid in accordance with the determined criterion and each envisaged parameter.</p> <p>Rulebook on methodology of bid evaluation in public procurement procedure defines methodology of bid evaluation to select the most advantageous bid based on criteria and methodology defined in the procurement documents. Further on, Art. 118 provides that where the price has been previously determined, the bids shall be evaluated solely based on the quality parameters. The ratio between the price and the quality shall be</p>

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determined in such a manner that the number of points given based on price may not exceed 90% of the total determined maximum number of points.

Value for money is the leading principle of this Rulebook prescribing evaluation criteria which normally combine cost and non-cost attributes and thus providing optimal combination of various criteria to meet the requirements set by contracting authority. The Rulebook establishes three different evaluation methods: absolute, relative (proportional) and combined.

By applying the absolute method, bids are evaluated in such a way that for a certain amount, that is, the price/s or the amount of a certain value that represents the quality of the procurement object or a certain amount of life cycle cost determines a certain number of points, which is applied to the amounts given in the bids.

By applying the relative method, bids are evaluated in such a way that the bid with the lowest amount offered, that is, by the price amounts or the amount of the best offered value that represents the quality of the item or the lowest assigns the maximum number of points to the offered life cycle cost of the item, and other offers are valued in such a way that the lowest offered amount, that is, the amount of the price, the amount of the best offered value which represents the quality of the public procurement item or the lowest offered cost of the public procurement item's life cycle divide by the offered amount, that is, the price amounts, by the amount of the offered value, which represents the quality of the public procurement item or the offered life cycle cost of the public procurement item and the result obtained multiply by the predicted maximum number of points. By applying the combined method, bids are evaluated in such a way that, where possible, a certain part or parts of the public procurement subject are evaluated according to the absolute method, and a certain part, that is, parts of the public procurement subject are evaluated according to the relative (proportional) method, and the points thus obtained are added to the final number of points.

Gap analysis:

Although the legal framework sets the element required by the criterion itself, the assessment team considers that the ratio between price and non-price factors is set at high levels to ensure that value for money in public procurement is promoted. Further analysis on this is made on assessment criteria 3 (a)(d)

Recommendations:

Guidance notes should be provided to Contracting Authorities by DPPP on the use of different ratio of thresholds between price and quality considering the type of contracts and apply a differentiated ratio based on the features of works, goods or services contracts.

Assessment criterion 1(f)(e):

The legal framework mandates that during the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

PPL Article 134 indicates that the Commission responsible for conducting the procurement procedure is responsible to review and assess the bids, after opening of bids, without the presence of the authorized representatives of bidders. Previous PPL had a clear statement regarding non-disclosure of information during bid assessment but was removed in the 2023 PPL.

Gap analysis:

The current PPL doesn't have a clear provision stating that the information on the review of bids shall be confidential until contract award.

Recommendations:

The legal framework should clearly indicate non-disclosure of information during bid evaluation for all parties outside the evaluation process.

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Sub-indicator 1(g) Submission, receipt, and opening of tenders The legal framework provides for the following provisions:
Assessment criterion 1(g)(a): Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.
Conclusion: No gap
Red flag: No
Qualitative analysis: Opening of tenders is regulated by the Article 129 and it is done in the Electronic Public Procurement System (EPPS) at the moment of lapse of the time limit for tender submission, without the presence of the authorized representatives of the bidders. Article 131 further defines that the EPPS shall automatically create Minutes of opening of bids immediately after opening of bids has been completed and shall forward it to all bidders, jointly or individually, depending on the type of the public procurement procedure.
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(g)(b): Records of proceedings for bid openings are retained and available for review.
Conclusion: No gap
Red flag: No
Qualitative analysis: Article 131 PPL defines that the EPPS shall automatically create Minutes of opening of bids immediately after opening of bids has been completed and shall forward it to all bidders, jointly or individually, depending on the type of the public procurement procedure. Also Art. 181 regulates the obligation of retaining complete documentation from public procurement procedures conducted in accordance with the same law providing also that the documentation, which is recorded in the EPPS, shall be archived for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data. Furthermore, the Rulebook on manner of operation and use of EPPS provides that each publication must be available in the archives of the EPPS for at least five years from the date of publication with the objective unrestricted access and search to the ordering party who conducted the procedure, to the competent authority for public policy procurement, the Commission for the Protection of Rights in the Public Procurement Procedure and the competent inspection body.
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(g)(c): Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.

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Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>There is no article in the PPL regulating the issue of maintaining security and confidentiality of bids in various stages of public procurement procedure such as prior to bid opening and after the award of contracts. Instead, Article 45 provides that processing, exchange and publication of data in electronic form within the EPPS shall be conducted in accordance with the laws governing electronic government, electronic identification and electronic signature, electronic document, electronic trade and information security. Additionally, Art. 32 states that communication, exchange and storage of information and data in a public procurement procedure shall be done in a way that ensures the integrity and confidentiality of data included in qualification applications, bids, plans and projects, whereas Art. 30 provides that a contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential.</p>
Gap analysis: <p>Apart from Article 30 on Data protection, the PPL doesn't regulate particularly the issue of maintaining security and confidentiality of bids in various stages of public procurement procedure such as prior to bid opening and after the award of contracts. The provisions of the PPL do not clearly indicate that disclosure of information may be done by law enforcement institutions.</p>
Recommendations: <p>The legal framework needs to expressly mandate that security and confidentiality of bids shall be maintained prior to bid opening and until after the award of contracts. The legal framework should clearly mandate that disclosure of information during procurement procedures can be allowed upon request of law enforcement agencies.</p>
Assessment criterion 1(g)(d): <p>The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.</p>
Conclusion: No gap
Red flag: No
Qualitative analysis: <p>The disclosure of specific sensitive information is prohibited, as regulated in the legal framework, i.e. as provided by the Article 30 stating that a contracting authority shall not disclose information pertaining to economic operator which has been designated as confidential. Contracting authorities shall not reveal to other candidates and bidders in a negotiated procedure without prior publication of a contract notice, a competitive procedure with negotiation, a competitive dialogue, an innovation partnership or a negotiated procedure with prior publication of a contract notice the data or designs communicated to them by the candidate or the bidder participating in negotiations or a dialogue, without their written consent.</p>
Gap analysis: <p>The assessment has not identified any gap.</p>
Recommendations: <p>None.</p>
Assessment criterion 1(g)(e): <p>The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.</p>

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Conclusion: No gap
Red flag: No
Qualitative analysis: Art. 122 describes the modality of tender submission; tenders shall be submitted in electronic form to a contracting authority via EPPS. An economic operator declaration and a bid guarantee shall be submitted in electronic form via EPPS. If the bidder cannot submit a bid guarantee in an electronic form, it shall be obliged to submit a copy of the bid guarantee via ESJN (EPPS), and to submit or deliver original of the bid guarantee to the contracting authority directly or via registered mail no later than tender submission deadline. All the details regarding communication between the contracting authorities and bidders via the EPPS, submission of tenders, their receipt and confirmation by contracting authorities etc. are elaborated in detail in the Rulebook on manner of operation and use of EPPS.
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Sub-indicator 1(h) Right to challenge and appeal The legal framework provides for the following:
Assessment criterion 1(h)(a): Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.
Conclusion: Minor gap
Red flag: No
Qualitative analysis: The legal framework provides for the right of a participant to challenge decisions or actions by a procuring entity. Section XI in the PPL is dedicated to the protection of rights in public procurement procedures. Article 183 provides that "Protection of rights of participants in a public procurement procedure, in accordance with this Law and a regulation governing public procurement in area of defense and security shall be exercised before Commission for Protection of Rights in Public Procurement Procedures (hereinafter: Commission for Protection of Rights).
Gap analysis: No gaps are identified for the specific criterion if considered the scope of coverage of PPL and the terminology used to refer only to participant in procurement procedures. However, the legal framework doesn't foresee the right of a party who might have an interest in the procurement procedures. Decisions of contracting authorities to select a non-open competitive method (including negotiation without publication of prior notice) cannot be challenged. However, the assessment team considers that the right to challenge an award decision should be granted for simple procurement as well. The Rulebook on Conducting Simple procurement don't envisage the right of the bidders to challenge the decision of Contracting Authorities
Recommendations:

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Protection of rights of participants in public procurement procedure should be reflected in the legal framework that regulates simple procurement.

Assessment criterion 1(h)(b):

Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Article 185 provides that the procedure for protection of the right is initiated by an appeal which is filed with the Commission for Protection of Rights through the contracting authority. Upon receipt of an appeal, Cas publish appeals at EPPS and suspend the procurement procedure. Cas notify the Commission on all appeals received, including those adopted in whole, along with evidence of publishing their decisions. Appeals not adopted in whole by Cas are automatically passed to the Commission through EPPS. However, this requires an action by a CA in the system. Organization and status of the Commission is provided in the PPL articles 198-208. Specifically, Article 198 PPL provides that the Commission shall be an authority responsible for the protection of rights in public procurement procedures and the procedures for awarding contracts on public-private partnership. The Commission shall be autonomous and independent in performing its functions.

PPL grants also the right for judicial review; Art. 197 provides that administrative proceedings may be initiated against a decision of the Commissions. The complaint filed against a decision of the Commission for Protection of Rights shall have no suspensive character for the conclusion of a public procurement contract. The Commission for Protection of Rights shall publish on its website and the EPPS the notification concerning the commencement of administrative proceedings before the courts and the resulting decision.

The PPL recognize also that any person who suffered damage due to violation of the PPL has a possibility of damage compensation before the competent court in accordance with the Laws on Administrative Procedures¹⁷ and on Administrative Disputes¹⁸.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(h)(c):

Rules establish the matters that are subject to review.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The PPL establishes clearly which are the matters subject to review and those are in accordance with the subject

¹⁷ Published in the Official Gazette of Montenegro 056/14 of 24 December 2014, 020/15, of 24 April 2015, 040/16 of 30 June 2016, 037/17 of 14 June 2017

¹⁸ Published on Official Gazette of the RMN", No. 60/03, 28.10.2003

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matters of the Remedies Directive¹⁹. Article 185 PPL provides that an appeal with the Commission for Protection of Rights may be filed against: tender documentation; changes and/or supplements to the tender documentation; decision on exclusion from a public procurement procedure; decisions on the selection of the most advantageous bid; decisions on annulment of the public procurement procedure. The same article elaborates in detail on each of the above-listed items which serve as a basis for an appeal.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(h)(d):

Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.

Conclusion: No gap

Red flag: No

Qualitative analysis:

PPL establishes time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.

PPL article 186 elaborates in detail the right to appeal to the Commission for Protection of Rights through the contracting authority, considering the matter which is appealed:

- within 20 days following the day of publication or delivery of the tender documentation, or modifications and supplements to the tender documentation, if the deadline for submitting qualification applications or bids is at least 30 days; 10 days following the day of publication or delivery of the tender documentation, or modifications and supplements to the tender documentation, if the deadline for submitting qualification applications or bids is at least 15 days; until the lapse of half of the time limit for submitting qualification applications or bids, if the deadline for submitting qualification applications or bids is at least 15 days
- within 10 days of supply of the decision on exclusion from a public procurement procedure publication of the decision on selection of the most advantageous bid or the decision on annulment of a public procurement procedure.

Art. 193 foresees the deadlines for decision-making by the Commission for the Protection of Rights, which shall be obliged to:

- adopt the resolution to suspend the appeal within eight days as of the day of receipt of notification on withdrawal of the appellant;
- adopt the resolution referred to rejection for administrative noncompliance of the complaint within eight days as of the day of submission of the appeal and complete case files;
- Adopt the resolution referred to rejection or acceptance based on a detailed review, within 30 days as of the day of submission of the appeal and complete case files. This deadline may be extended for a maximum of 10 days in the event of the need to engage an expert witness, to obtain the opinion of the competent authorities and the volume of the documentation in the public procurement procedure, of which the appellant and the contracting authority shall be notified.

Gap analysis:

The assessment has not identified any gap.

¹⁹ DIRECTIVE 2007/66/EC

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Recommendations: None.
Assessment criterion 1(h)(e): Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.
Conclusion: No gap
Red flag: No
Qualitative analysis: Art. 189 provides that the Contracting Authority shall be obliged to publish on the EPPS, within three days following the day the appeal is lodged, a notification that the appeal was lodged and that further actions in the public procurement procedure have been suspended until the resolution on the appeal is rendered. Also, Art. 197 provides that the Commission for Protection of Rights shall publish on its website and the EPPS the notification concerning the commencement of administrative proceedings before the courts and the resulting decision. Decision of the courts are publicly available at Administrative Court of Montenegro website ²⁰ .
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Assessment criterion 1(h)(f): Decisions by the independent appeals body can be subject to higher-level review (judicial review).
Conclusion: No gap
Red flag: No
Qualitative analysis: Article 197 PPL provides that administrative proceedings may be initiated against a decision of the Commission for Protection of Rights. Any company/person who suffered damages resulting from a violation of the PPL, has the possibility to request compensation before the administrative courts. Due to the non-suspension character of the court suits in procurement ambit, there are no other remedies available such as returning the parties to their original positions (i.e being awarded the contract).
Gap analysis: The assessment has not identified any gap.
Recommendations: None.
Sub-indicator 1(i) Contract management The legal framework provides for the following:
Assessment criterion 1(i)(a): Functions for undertaking contract management are defined and responsibilities are clearly assigned.

²⁰ <https://www.sudovi.me/sdvi/odluke>

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Conclusion: Substantive gap
Red flag: No
Qualitative analysis: <p>Art. 152 requires that the Contracting authorities perform control over execution of a concluded public procurement contract and prepare the report on the implementation of the contract and publish it on the EPPS within 30 days after the implementation of the public procurement contract. As such the main responsibility for contract management is with the Contracting Authorities. However, in this provision or others, the responsibilities to be undertaken by the assigned person(s) to follow up on contract implementation have not been defined.</p>
Gap analysis: <p>Contract management in its full range is not defined either in PPL or subsequent by-laws. The existing regulation of this matter is insufficient to cover the whole range of functions and responsibilities required to complete the whole process of contract management. Also, the contract implementation reports prepared by CA don't capture the information of technical or physical implementation of the contract but provides only administrative data of the contract such as the signed date, implementation period, contract value etc.</p>
Recommendations: <p>The legal framework should further develop and define functions and responsibilities for managing contracts. EPPS should include features to capture data on contract management. In addition, DPPP should elaborate a Contract Management Manual.</p>
Assessment criterion 1(i)(b): <p>Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>Conditions for contract amendments are defined in the PPL under article 151. This article considers all valid aspects which could lead to contract amendments including inter alia where the modifications, irrespective of their monetary value, have been provided for in the tender documentation and the increase of the contract value may not exceed 20% of the original contract value; for procurement of additional goods, services or works that have become necessary and that were not included in the original contract whereupon the increase of the contract value may not exceed 20% of the original contract or when the need for modification has been brought about by circumstances which a contracting authority could not foresee and the modification does not alter the overall nature of the contract, whereupon the increase of the contract value may not exceed 20% of the original contract; when a need to modify the contract resulted from circumstance the contracting authority could have not envisaged at the time the contract was concluded, and the modification does not change the nature of the contract but it only reduces the contractual values; when the economic operator, following corporate restructuring, including takeover, merger, acquisition or insolvency, is universally or partially replaced by an entirely or partly new legal successor, or an economic operator which fulfils the originally established criteria of the public procurement contract.</p> <p>However, the PPL and the secondary legislation don't ensure that there are control mechanisms in place to ensure that contract amendments ensure economy.</p>
Gap analysis: <p>The PPL and the secondary legislation don't ensure that there are control mechanisms in place to ensure that contract amendments ensure economy.</p>

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Recommendations:

Legal framework should include provisions to ensure that Contracting Authorities perform internal control mechanisms to ensure contract amendment procedures are adequately followed to ensure economy and efficient use of resources.

Assessment criterion 1(i)(c):

There are efficient and fair processes to resolve disputes promptly during the performance of the contract.

Conclusion: No gap

Red flag: No

Qualitative analysis:

PPL provisions don't directly regulate the process of dispute resolution during the performance of a public procurement contract. Article 149 PPL refers to the provisions of the law governing obligation relations for execution and responsibility of contractual parties to meet the obligations from the public procurement contract. Based on a review of sample contracts from selected Contracting Authorities, the clauses of the contract envisage that disputes during performance of contract can be resolved amicably or by initiating a litigation procedure at the competent court as defined in special conditions of contract. In practice, such litigations may take years to conclude due to complex international contracts, and the cost may be prohibitive. To avoid long delays in resolving disputes, the country has made the policy to accept alternative dispute resolution (ADR).

The Law on alternative dispute resolution was published in the Official Gazette no. 77/2020 of 29.7.2020 and entered into force on 6.8.2020. It regulates the alternative resolution of disputes in civil law proceedings (hereinafter: alternative resolution of disputes) by mediation, early neutral assessment of disputes and other methods of alternative dispute resolution, in accordance with internationally accepted standards. The Law does not apply to the procedure for amicable settlement of disputes before an arbitrator, which is regulated by a separate Law on Arbitration ("Official Gazette ", no. 47/2015) and is consistent with generally accepted practices of neutrality of arbitrators, due process, appropriateness and enforceability. Arbitration Law governs domestic and international arbitration, recognition, and enforcement of arbitral awards, as well as matters of jurisdiction and court procedure in relation to arbitration. The arbitration process can be handled by a sole arbitrator or an arbitral panel. The Law stipulates that if the parties have agreed to submit a dispute to arbitration, and the matter is brought before the court instead, the court shall, upon a party's objection, declare its lack of jurisdiction. International arbitration decision that are taken outside Montenegro are recognized and enforced by the competent civil court in line with the NY Convention on enforcement of international arbitral award to which Montenegro is member since 2015.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(i)(d):

The final outcome of a dispute resolution process is enforceable.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The outcome of litigation procedures before a court are regulated by the Law on Obligations and court decisions are binding with due consideration to judicial review.

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For dispute resolution under the ADR mechanism, Article 23 of the Law on alternative dispute resolution provides that the settlement concluded before the mediator is binding on the parties who concluded it. The parties are obliged to fulfil the obligations of the settlement within the period determined by the settlement.

Also, based on the Arbitration Law, an arbitral award made by an arbitral tribunal in the territory of Montenegro shall have the force and effect of an enforceable document and shall be enforced in accordance with the law governing the procedure for enforcement and security. As indicated in the assessment criterion 1(i)(c), the Arbitration Law recognizes the legal effects for the arbitration decision and that only court's decision may set aside an arbitral award subject to conditions that are listed in the articles 47 and 48 of the Arbitration Law. International arbitration decision that are taken outside Montenegro are recognized and enforced by the competent civil court in line with the NY Convention on enforcement of international arbitral award to which Montenegro is member since 2015.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

**Sub-indicator 1(j)
Electronic Procurement (e-Procurement)
The legal framework provides for the following:**

Assessment criterion 1(j)(a):

The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

The legal framework mandates e-Procurement solutions covering the public procurement cycle partially. Based on PPL article 45 on EPPS which provides the full range of actions that the system enables covering a complete public procurement cycle, the Rulebook on manner of operation and use of Electronic Public Procurement System (EPPS) was put into force in 2021. In practice, contract implementation documents are not registered in the system. Only the report on contract completion is published, but not the progress report, billing and payments, etc.

Gap analysis:

Although EPPS covers most of the procurement cycle, it doesn't allow for contract implementation documents to be registered in the system. Only the report on contract completion is published, but not the progress report, billing and payments, etc.

Recommendations:

EPPS should be enhanced to cover the procurement cycle entirely with full application in practice including substantive information on contract implementation.

Assessment criterion 1(j)(b):

The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

Conclusion: No gap

Red flag: No

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Qualitative analysis:

Article 32 provides that electronic means for communication, as well as their technical characteristics shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict access for economic operators in a public procurement procedure. Communication, exchange and storage of information and data in a public procurement procedure shall be done in a way that ensures the integrity and confidentiality of data included in qualification applications, bids, plans and projects.

Furthermore, Article 45 requires that processing, exchange and publication of data in electronic form within the EPPS shall be conducted in accordance with the laws governing electronic government, electronic identification and electronic signature, electronic document, electronic trade and information security.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(j)(c):

The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

Conclusion: No gap

Red flag: No

Qualitative analysis:

PPL clearly defines that the whole public procurement process will be managed electronically. Art. 122 provides that a tender shall be submitted in electronic form via EPPS. An economic operator declaration and a bid guarantee shall be submitted in electronic form via EPPS. However, exceptions are allowed in specific situations but only in terms of submitting a bid guarantee as a part of a bid, which can be submitted by postal service directly to a contracting authority, such as if the bidder cannot submit a bid guarantee in an electronic form, it shall be obliged to submit a copy of the bid guarantee via ESJN (EPPS), and to submit or deliver original of the bid guarantee to the contracting authority directly or via registered mail no later than the lapse of the time limit for submission of bids. The original bid guarantee in written form shall be submitted in an envelope. The Rulebook on manner of operation and use of EPPS regulates the whole submission process and communication between contracting authorities and participants in public procurement process.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Sub-indicator 1(k)

Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

Assessment criterion 1(k)(a):

A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.

Conclusion: Minor gap

Red flag: No

Qualitative analysis:

Article 181 PPL describes that Contracting Authority shall store the complete documentation from public procurement procedures conducted in accordance with the PPL, at least four years after the day of execution

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of the public procurement contract. The documentation, which is recorded in the EPPS, shall be archived for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data.

The Rulebook on manner of operation and use of EPPS provides that each procurement notice, depending on the type of public procurement procedure, and the associated documentation must be publicly available for review in EPPS at least one year from the date of publication. Each publication must be available in the archives of the EPPS for at least five years from the date of publication with the objective of unrestricted access and search to the contracting authority who conducted the procedure, to the competent authority for public policy procurement, the Commission for the Protection of Rights in the public procurement procedure and the competent inspection body.

The Rulebook on Methods for conducting Simple Procurement foresees that the Contracting Authority shall safekeep the documentation on the simple procurement for five years following the day the simple procurement contract is concluded.

Gap analysis:

Access to procurement records for public inspection is limited. The inspection as a control authority does not have automatic access to what is being safekept in the e-procurement system but has to obtain CA's approval in the system. What is available for public inspection (media, NGO, citizens) is rather limited, especially in the part of contract implementation where there is almost no data available.

Recommendations:

A system for safekeeping of records and documents should cover the entire procurement process, including contract management and this should be clearly defined in legal framework outlining the importance of availability of information and records that track each procurement action. The legal provisions should also define different levels of access to procurement documents in the system for different types of users.

Assessment criterion 1(k)(b):

There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.

Conclusion: No gap

Red flag: No

Qualitative analysis:

The contracting authority is obliged to store the complete documentation from public procurement procedures conducted in accordance with PPL for at least four years after the day of execution of the public procurement contract or framework agreement. The documentation, which is recorded in the EPPS, shall be archived for at least five years from the conclusion of a public procurement contract or framework agreement in a way that preserves the integrity of the data. This timeline appears to be in general in line with audit cycle (maximum every 3 years), but not with the statute limitation for fraud and corruption offences (which may vary from 5-10 years) depending on the offence severity.

The subsequent by-law, the Rulebook on manner of operation and use of EPPS also provides that each procurement notice, depending on the type of public procurement procedure, and the associated documentation must be publicly available for review in EPPS at least one year from the date of publication. Each publication must be available in the archives of the EPPS for at least five years from the date of publication with the objective of unrestricted access and search to the contracting authority who conducted the procedure,

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to the competent authority for public policy procurement, the Commission for the Protection of Rights in the public procurement procedure and the competent inspection body.

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(k)(c):

There are established security protocols to protect records (physical and/or electronic).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

Neither PPL nor the subsequent by-law on EPPS requires or defines the establishment of security protocols for records management. The Rulebook on form of records for public procurement procedures identified the type of information and documents which should be recorded by Contracting Authorities. However, it fails to describe the protocols for how physical records are kept within institutions. Despite the fact that security protocols are not defined in the legal framework governing public procurement, they are regulated at the state level and apply to all public administration bodies, specifically the Law on archiving and Decree on office management of public administration bodies. In contrast, the EPPS ensures security protocols for electronic records.

Gap analysis:

Neither PPL nor the subsequent by-law on EPPS requires or defines the establishment of security protocols for records management. However, the keeping of physical records is regulated by other laws and by-laws outside the scope of legal framework governing public procurement but they apply generally to all public administration bodies which covers procurement records as well.

Recommendations:

The legal framework on public procurement should establish security protocols for procurement related documents.

Sub-indicator 1(l)

Public procurement principles in specialized legislation

The legal and regulatory body of norms complies with the following conditions:

Assessment criterion 1(l)(a):

Public procurement principles and/or the legal framework apply in any specialized legislation that governs procurement by entities operating in specific sectors, as appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Public procurement principles generally do apply in specialized legislation. Public procurement in the utilities sector, i.e. procured by contracting entities operating in the sectors of water, energy, transport and postal services is covered by specific provisions in Articles 158-166 of the PPL. Also, the procurement procedures that are to be followed in sectorial contracts is elaborated throughout Article 167-183 and envisage same procurement methods and procurement principles as in classical procurement:

(i) Open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue, for the procurement of each procurement subject.

(ii) Partnership for innovation, if it has the need for innovative goods, services or works that cannot be satisfied by the procurement of goods, services or works already available on the market;

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(iii) Negotiated procedure without prior publication of a contract notice, if there are circumstances referred

PPL articles 175 and 176 define list of equipment and specialized procurements in the field of defense and security which are excluded from the application of PPL and is regulated by the Decree on the list of military equipment and products, procedure and method of implementation of public procurements in the field of defense and security. There is only one provision in this Decree that defines application of public procurement principles and that is a principle of economy. The said provision provides that “The contracting authority is obliged to ensure economical use when carrying out the procurement referred to in Article 1 of this regulation of public funds, in accordance with the purpose, type and estimated value of the procurement object in order to achieve the best value for the contracted price, which is not higher than the market price for comparable volume, content and quality of the subject of procurement, if that subject of security procurement is available on the market and adequate to the needs of the client. The principle of transparency is limited in defense and security procurement due to its sensitive nature.

Gap analysis:

No gaps are identified. Even though these are specialized procurements and therefore excluded from application of PPL and regulated by specialized legislation, public procurement principles promoting transparency, fairness, competitiveness, value for money decisions are generally applied across the entire spectrum of public service delivery with due consideration to specificities of different sectors such as defense.

Recommendations:

None.

Assessment criterion 1(l)(b):

Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.

Conclusion: No gap

Red flag: No

Qualitative analysis:

Selection and contracting of PPPs is regulated by the specialized legislation which is the Law on public-private partnership. According to the article 7 of PPP Law principles of protection of the public interest; security and affordability; transparency; non-discrimination; **proportionality**; protection of competition; environmental protection applies in the selection process of PPP contracts.

The Law also precisely defines the issues related to the preparation of tender documentation and justification analysis and regulates the entire procedure through which the proposal of one project passes to the final adoption. It is also important that the legislator especially emphasized the importance of public interest, since the analysis of justification that accompanies each public-private partnership project is its important segment.

Equally, the Law on Concessions considers some of the public procurement principles equivalent to those in the PPL. Article 3 of the Law on concessions provides that granting concessions is based on the principles of transparency, non-discrimination and competitiveness.

For more details on the legal framework on PPP and Concession see criterion 1 (a)(c).

Gap analysis:

The assessment has not identified any gap.

Recommendations:

None.

Assessment criterion 1(l)(c):

Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.

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Conclusion: No gap
Red flag: No
Qualitative analysis: <p>There is a special legal entity established by the Law on PPP for the purpose of implementation of PPPs, investments, and promotion of investment potential of Montenegro as a destination for investments, namely the Montenegrin Investment Agency. The organizational structure of the Agency is also clearly defined by the PPP Law with clear responsibilities assigned.</p> <p>Its role is to promote and monitor the realization of public-private partnerships and investments. In addition, the Agency and the Ministry of Finance and Social Welfare give an opinion on public-private project proposals. At the same time, all public-private partnership contracts shall be registered on the Contracts Register of the Agency and published on its web page.</p> <p>Similarly for the concessions the respective Law on concessions, assigns the Commission for Concessions of Montenegro, which is independent and autonomous in its work, with responsibilities for carrying out duties established by this law and its organizational structure and responsibilities are clearly defined by the law.</p>
Gap analysis: The assessment has not identified any gap.
Recommendations: None.

Indicator 2. Implementing regulations and tools support the legal framework

Sub-indicator 2(a) Implementing regulations to define processes and procedures
Assessment criterion 2(a)(a): There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.
Conclusion: Minor gap
Red flag: No
Qualitative analysis: <p>There are a set of regulations that are enacted by the Government which supplement the implementation of the PPL. They include three types of acts; the higher embedded in a Decree which is approved by the Government of Montenegro; a lower-level regulations compared to the Decrees are foreseen in the Rulebooks approved by the Minister of Finance and the third level are the Manuals and Guidelines prepared by the DPPP. The full set of sublegal acts are published in the DPPP website²¹ and are accessible to public.</p> <p>The following areas are regulated by:</p> <ol style="list-style-type: none"><i>Decrees</i><ol style="list-style-type: none">on the List of Military Equipment and Products, Procedure and Method of Conducting Public Procurements in the Fields of Defense and Security ²²;on the Method of Planning and Conducting Centralized Public Procurement ²³

²¹ <https://ujn.gov.me/podzakonska-regulativa-zakona-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19/>

²² Official Gazette of Montenegro, No 76/2020 of 28 July 2020

²³ Official Gazette of Montenegro, No 69/2020 of 11 July 2020, 105/2020 of 29 October 2020

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(iii) on the Method of Procurement for Diplomatic and Consular representation of Montenegro abroad²⁴.

2. Rulebooks

(i) on simple procurement

(ii) on forms of public procurement procedures

(iii) on the form of public procurement plans

(iv) on the content of the bids

(v) on the use of e-procurement system

(vi) on the form of records of registered bidders in the electronic public procurement system

(vii) on the list of works and jobs that may be the subject of public procurement

(viii) methodology of assessment of offers in public procurement procedure

(ix) on the methodology for evaluating the public procurement value

(x) on the program and method of passing the professional examination for public procurement

3. Manuals and guidelines

(i) Manual on simple procurement

(ii) Manual on publishing simple procurement

(iii) Manual on preparation of public procurement plans

(iv) Registration form for contracting Authorities

(v) Manual for bidders

(vi) Bidders' registration form

(vii) Manual for evaluation of bids

The content of the regulations is in line with the PPL and from the review it was not noted any contradiction with the PPL.

Gap analysis:

The reviewed regulation appears to cover majority of PPL provisions and provide details on their implementation. However, it is noted that a specific area promoted by PPPL such as sustainable procurement is not prepared and available. PPL requires a more comprehensive regulation on specific areas such as sustainable procurement that is not covered in the set of regulations. Contracting Authorities are not furnished with adequate operational tools to implement the article 11 of the PPL.

Recommendations:

Elaborate a specific regulation to cover the application of sustainable public procurement including social, environmental and innovations in public procurement.

Assessment criterion 2(a)(b):

The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

As listed in the criterion 2 (a)(a) there is a numerous list of regulations and rulebooks which is set in different level of legal hierarchy. It is noted that for separate process within procurement cycle there are separate regulations which might create confusion for Contracting Authorities. As such the Rulebooks for the elaboration of forms for public procurement procedures and forms for bidders are described in different Rulebooks although they can be seen as an integrated process of preparing the tender documents by the Contracting Authorities. In other instances, the Manual prepared by the DPPP reflect only the instructions of conducting the referenced process in the Electronic Public procurement System rather than providing guidance from the procedural contexts.

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Gap analysis:

Numerous regulations are issued with no systematic coherence among procurement steps to enable easy reference and application by Contracting Authorities.

There is lack of a consolidated set of regulation to summaries in one single act the full cycle of the procurement procedures. DPPP may further consider harmonizing the existing set of implementation rules into more unified acts.

Recommendations

Review the current coverage of the procurement regulation and prepare a consolidated set of rules to cover the whole procurement cycle and complement with separate regulations for specific processes.

Assessment criterion 2(a)(c):

Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly

Conclusion: No gap

Red flag: No

Qualitative analysis

Based on the provisions of the PPL (Art 26, Art 27, Art 38 etc) the Ministry of Finance (MoF) that have the responsibility to further define rules that are issues in accordance with the PPL. In addition, Art 44.2 requires the MoF to provide technical guidance on the implementation of the PPL. The MoF performs these tasks through the DPPP as stated in the Rulebook and Job systematization of the Ministry of Finance, by assigning the DPPP with the function of preparing draft regulations in the field of public procurement. The DPPP updates the set of regulations as needed and based on any change of the PPL issued by the Parliament. The most recent update of the regulations was done since February 2023 after the 2023 amendments on the PPL.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Sub-indicator 2(b)

Model procurement documents for goods, works and services

Assessment criterion 2(b)(a):

There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis:

The Rulebook on forms for conducting public procurement procedures approved by the Ministry of Finance include the template of procurement documents for the following selection methods:

- open public procurement procedure
- limited public procurement procedure.
- competitive procedure with negotiations, competitive dialogue, innovation partnership and negotiated procedure with the prior publication of procurement notice;
- negotiated procedure without prior publication of procurement notice
- Invitation for tenders in a competitive process with negotiations, competitive dialogue, partnership for innovation and negotiated procedure with prior publication of procurement notice.

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The abovementioned rulebook doesn't provide for a template of procurement documents based on the type of contracts (goods, works and services). The Contracting Authorities are required to adjust the format based on the characteristics of procurement.

There is also a separate Rulebook on the content of the bid in the public procurement procedure which gives instructions on how to prepare a bid in response to a call for tender issued by the Contracting Authorities. Both rulebooks don't provide clear information on the type of documents that the bidders are requested to submit nor ensure for templates that can be used from bidders to facilitate preparation of bids.

Gap analysis:

There are no separate tender documents for works, goods or services. The model tender documents are prepared based on the procurement selection methods and lack to have separate templates for works, goods and services. Also, the model documents don't provide for all related information that the potential bidders need to be informed in advance, in particular the standard contract conditions.

Recommendations

Elaborate model standard procurement document for different type of procurements under works, services and goods and ensure the option of customizing based on different selection methods within this type of procurement documents. Model contract conditions should be available as part of procurement document based on different type of procurement.

Assessment criterion 2(b)(b):

At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.

Conclusion: No gap

Red flag: No

Qualitative analysis

The forms on conducting procurement procedures generally include clauses that reflect the provisions of the PPL and Rulebook linked to public procurement. Information presented in the standard procurement documents include:

- Information about the contracting authority.
- Data on the procedure and subject of public procurement:
- Type of procedure,
- Subject of public procurement (type of case, name and description of the case),
- Estimated value of the subject of procurement,
- Method of purchase:
- The whole, by the parties,
- Special form of procurement:
- The Framework Agreement,
- Conditions for participation in the public procurement procedure and special grounds for exclusion,
- Criteria for the selection of the most favorable tender,
- The manner, place and time of submission of bids and opening bids,
- The deadline for making a decision on the election,
- The term of validity of the offer
- Guarantee

As noted in assessment criteria 2 (b) (a) the template doesn't include the standard contract conditions nor a set of critical and mandatory contractual provisions is part of the forms on conducting procurement procedures.

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Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 2(b)(c): The documents are kept up to date, with responsibility for preparation and updating clearly assigned.
Conclusion: No gap
Red flag: No
Qualitative analysis The MoF through DPPP has the responsibility to keep the documents up to date. See assessment criteria 2 (a) (c). The most recent update of the Rulebook containing the model tender documents is done in February 2023 after the changes in the PPL.
Gap analysis The assessment has not identified any gap
Recommendations None.
Sub-indicator 2(c) Standard contract conditions used
Assessment criterion 2(c)(a): There are standard contract conditions for the most common types of contracts, and their use is mandatory.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The model tender documents don't provide for standard contract conditions. Up until 2019 PPL amendments, it was obligatory that the tender document contain contract model as a rule, however the current PPL in force does not require it anymore.
Gap analysis Article 149 paragraph 2 of the PPL indicate that a public procurement contract shall be concluded and executed in conformity with the conditions determined by the tender documentation, the selected, bid and the decision on selection of the most advantageous bid. However, in the forms establishing the Standard Tender Documents there are not listed the standard contract conditions for different type of contracts.
Recommendations Forms on conducting procurement procedures should be supplemented with model contract conditions for works, goods and services.
Assessment criterion 2(c)(b): The content of the standard contract conditions is generally consistent with internationally accepted practice.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis See assessment criteria 2 (c) (a).

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Gap analysis Since there are no standard contract conditions the assessment could not cover this criterion.
Recommendations Develop standard contract conditions as part of the forms on conducting procurement procedures.
Assessment criterion 2(c)(c): Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis From the review of sample contracts to inform the assessment of indicators under Pillar 3, it is noted that the procurement documents that are made available to bidders before 2019 PPL amendment there is the form of the contract prepared by the Contracting Authority. For the sample contracts of 2020-2023 the form of the contract is not part of the procurement documents.
Gap analysis Contracting Authority don't include the form of the contract as part of the procurement documents issued to bidders those creating uncertainty to potential bidders on the contractual conditions. Also there is risk of nonconformity in the practice followed by different Contracting Authorities.
Recommendations Include the model contract conditions based on different types of contracts, as part of procurement documents.
Sub-indicator 2(d) User's guide or manual for procuring entities
Assessment criterion 2(d)(a): There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.
Conclusion: Minor gap
Red flag: No
Qualitative analysis DPPP has issued different manuals for Contracting Authorities (CA) and Economic Operators (EO). They mainly refer to use of the E-PS for the different steps covered by each manual. For CA the following manuals are prepared and published: <ul style="list-style-type: none">- Registration form for Contracting Authority- On Simple procurement- On Public procurement plan preparation- On evaluation of Bids- On data entry in E-PS For the EO the following manuals are made available: <ul style="list-style-type: none">- Bidder registration form- Manual for Bidders.
Gap analysis There is fragmented set of manuals which doesn't give clarity for all procurement procedures that need to be followed to ensure a correct implementation of the PPL and its regulations. The present manuals have more focus on describing the functionality of the E-Procurement System rather than being focused on functional details of the procurement processes.
Recommendations

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Consolidate the existing guidance with additional missing links into a comprehensive public procurement manual to allow for a synchronized instruction covering all steps of procurement cycle from Contracting Authority and Economic Operator perspective.
Assessment criterion 2(d)(b): Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.
Conclusion: No gap
Red flag: No
Qualitative analysis Based on Art 44. 2 the MoF has the responsibility to provide technical guidance for implementation of the PPL and this role is executed through the DPPP, which is entitled to prepare the draft regulations and guidance regarding public procurement. This function of the DPPP is also indicated in the Rulebook and Job Systematization of Ministry of Finance.
Gap analysis The assessment has not identified any gap
Recommendations None.

Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

Sub-indicator 3(a) Sustainable Public Procurement (SPP)
Assessment criterion 3(a)(a): The country has a policy/strategy in place to implement SPP in support of broader national policy objectives
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Government have approved a broader Sustainable Development Strategy ²⁵ until 2030, but there is no reference to objectives related to public procurement. The Public procurement Strategy refers to the objective of promoting the green and sustainable procurement and education of participants in public procurement procedures on ways to implement SPP. Although the Action Plan for implementing the Procurement Strategy stress out only the number of trainings received to measure the performance indicator of such measure, confirming that there is no strategy in place to implement SPP and the focus remains only at professionalization enhancement in the area of Sustainable Procurement.
Gap analysis The country doesn't have a strategy in place to implement SPP albeit in the Public Procurement Strategy it is stated the objective to promote green and sustainable procurement from the optic of increasing practitioners' capacities only. There are lack of operational tools available for Contracting Authorities to support implementation of SPP.
Recommendations Develop SPP strategy as part of the Public Procurement Action Plan for 2023-2025.
Assessment criterion 3(a)(b): The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.

²⁵ <https://wapi.gov.me/download-preview/6852d215-af43-4671-b940-cbd0525896c1?version=1.0>

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Conclusion: Substantive gap
Red flag: No
Qualitative analysis See 3 (a) (a)
Gap analysis There is not a SPP implementation plan in place which is based on an in-depth assessment. There are no tools in place to operationalize, facilitate and monitor the application of SPP. The Action Plan for implementing the Procurement Strategy stress out only the number of trainings received to measure the performance indicator of such measure, confirming that there is no strategy in place to implement SPP. The annual action plan for 2022 included measures related to the promotion of sustainable procurement, including green public procurement, however activities are delayed according to the report on the implementation of the strategy. It is stated that workshops were held which concluded that it would be needed a higher level of promotion of environmental and social criteria in the process of awarding public procurement contracts including measuring the results. This is planned to be achieved through educational programs and promoting the use of sustainable criteria in the procuring processes. One of the strategic objectives of the 2023 annual action plan refers to encouraging the implementation of framework agreements, centralized public procurement, green and sustainable procurement, mainly focused on the increase of the percentage of framework agreements, centralized procurement, sustainable criteria etc. Training program on sustainable procurement were conducted by the Ministry of Finance and Chamber of Commerce of Montenegro during 2023
Recommendations See recommendation 3 (a) (a)
Assessment criterion 3(a)(c): The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.
Conclusion: No gap
Red flag: No
Qualitative analysis The PPL allow for sustainability in all stages of procurement cycle. Article 11 requires that Contracting Authorities shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labor law including collective agreements, in accordance with the law and internationally ratified conventions on environmental protection and social and labor law. Contracting authorities shall procure goods, services or works while ensuring the adequate reduction of energy consumption costs, that is, while observing the principles of energy efficiency. Article 25 allow for reserved procurement for which Contracting Authorities may in tender documentation establish the right to participate in public procurement procedures for economic operators whose aim is the social and professional integration and employment of disabled persons, as well as of disadvantaged persons in accordance with the law governing professional rehabilitation and employment of disabled persons, provided that those persons account for at least 30% of the employees, whereupon all participants of the joint bid and all subcontractors belong to the said group. Article 87 include that technical specifications may include requirements concerning the environmental protection, energy efficiency, social care and/or protection and transfer of intellectual property rights.

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Article 106 foresees that Contracting Authorities may include as part of technical and professional ability required in the tender document that an environmental protection system in place.

Article 117 foresees that a Contracting Authority shall select the most advantageous bid in a public procurement procedure applying the principle of cost-effectiveness, on basis of the following criteria:

- 1) offered price;
- 2) best price-quality ratio or
- 3) life-cycle cost.

Article 114 requires that Contracting Authorities may require in the tender documentation that economic operators submit evidence or certificates issued by accredited certification bodies on fulfilment of quality assurance conditions related to the subject of the procurement as well as the environmental protection requirements.

Gap analysis

The assessment has not identified any gap

Recommendations

None.

Assessment criterion 3(a)(d):

The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 118 of the PPL foresees that the ratio between the price and the quality shall be determined in such manner that the number of points given on the basis of price may not exceed 90% of the total determined maximum number of points. Although the PPL doesn't not set a minimum threshold but a maximum one, the application of this article in the reviewed sample contracts shows that the applicable rate from Contracting Authorities varies from 90 % to 80% for price and 10 % to 20% for quality.

Gap analysis

The maximum rate for price doesn't allow for a well-balanced application of sustainability elements. Contracting Authorities tend to apply the edges of indicated rates in the PPL even though the PPL don't prevent the quality criteria to be rated higher compared to price. The PPL don't provide for a mandatory application of sustainability criteria as such the legal provision don't ensure by default a well-balanced application of sustainability criteria.

Recommendations

Guidance notes can be provided to Contracting Authorities on the use of different ratio of thresholds between price and quality considering the type of contracts and apply a differentiated ratio based on the features of works, goods or services contracts.

Sub-indicator 3(b)

Obligations deriving from international agreements

Public procurement-related obligations deriving from binding international agreements are:

Assessment criterion 3(b)(a):

Clearly established

Conclusion: No gap

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Red flag: No

Qualitative analysis

Montenegro has clear obligations arising from membership in the World Trade Organization - Government Procurement Agreement (GPA), the Central European Free Trade Agreement (CEFTA), North Atlantic Treaty Organization (NATO) and Stabilization and Association Agreement with EU.

The GPA, which Montenegro joined in July 2015, aims to free access to the public procurement market by member states of the Agreement. It is based on equality and reciprocity principles through establishing a multilateral framework of balanced rights and obligations concerning public contracts. The GPA applies to contracts above certain GPA thresholds. Montenegro's obligations as a member of the GPA include:

- informing members about possible legislation changes;
- statistical reporting on public procurement procedures above EU thresholds;
- active participation in the Secretariat's working bodies.

Obligations arising from Montenegro's membership from 2007 in the Free Trade Agreement for Southeast European Countries – CEFTA to promote free trade and the region's economic progress based on WTO principles and values, include free access to the public procurement markets of the countries in the region. To that end, Montenegro updates information on possible changes in the legal framework governing public procurement annually.

Montenegro's membership in the North Atlantic Treaty Organization - NATO on June 2017 brings the right of Montenegro-based business entities to participate in public procurement procedures for the needs of this military alliance under identical conditions. It also offers economic entities based in NATO member countries the possibility to participate in public procurement procedures organized for military purposes in Montenegro.

Stabilization and Association Agreement between EU and Montenegro is concluded on March 2010 and establish a free trade area between the EU and the country, identify common political and economic objectives and encourage regional co-operation. In the context of accession to the European Union, the SAA serves as the basis for implementation of the accession process. In the ambit of public procurement, the SAA considers the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity, following in particular the WTO rules, to be a desirable objective. With the entry in force of the SAA, EU companies established in Montenegro and those not established in Montenegro shall be granted access to contract award procedures in Montenegro under treatment no less favorable than that accorded to Montenegro companies.

Gap analysis

The assessment has not identified any gap

Recommendations

None.

Assessment criterion 3(b)(b):

Consistently adopted in laws and regulations and reflected in procurement policies.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 13 of the PPL indicates clearly the exclusions for procurement procedures deriving from international arrangements. The PPL shall not apply to procurements of goods, services or works that are conducted in accordance with the following:

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- 1) particular rules determined by an international organization, on basis of a ratified international agreement with that international organization.
- 2) the procedures different from those laid down in this law, on basis of legal instruments establishing international legal obligations, such as ratified international agreement between Montenegro and one or several third states, for procurements which will be jointly implemented or used by contractual parties;
- 3) particular rules determined by an international organization or an international financial institution, provided that such organization or institution funds or secures funding of the project, unless otherwise agreed. In such case if the contract is co-financed by more than 50% by an international organization or international financial institution, the contractual parties shall agree on the rules pertaining to the public procurement procedure they will apply.

Gap analysis

The assessment has not identified any gap

Recommendations

None

Pillar II. Institutional Framework and Management Capacity

Indicator 4. The public procurement system is mainstreamed and well integrated into the public financial management system

Sub-indicator 4(a)

Procurement planning and the budget cycle

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criterion 4(a)(a):

Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 84 of PPL foresees that annual procurement plans are prepared by Contracting Authorities by January 31 of each year and are submitted to the Ministry of Finance (DPPP) for approval. Publication procurement plan in the EPPS is required. Also, any subsequent change in the approved procurement plans should be submitted to the MoF for publication. The PPL and its implementation acts don't foresee the multiannual planning process however this does not prevent multi-annual commitments or commitments that continue in the following year.

Annual procurement plans are prepared in line with the adopted annual budget and stay within budgeted allocations for spending units. Non-binding medium-term budget estimates and expenditure ceilings are prepared for two years following the budget year, but they remain mostly provisional. There is a requirement by which multi-annual contracts need to be approved by the MoF before being tendered out by spending units. The MoF monitors whether such contracts are within budget appropriation/medium-term limits. However, there is no centralized control mechanism which would include hard controls to prevent undisclosed liabilities showing up after the authorization stage. Heads of spending units are accountable for entering into commitments. Commitment control is decentralized to financial management and control systems within individual spending units, and there is no effective ex-ante control to prevent spending units from entering into contractual commitments beyond budget limits. Effective controls for multi-annual commitments require ex-ante approval by the MoF before the respective contracts are signed, but the application of such controls in practice is lagging. Medium-term expenditure estimates remain provisional and are rarely analyzed on a rolling basis. There are also concerns with the accuracy of available data on such commitments and the resulting liabilities.

Gap analysis

The PPL doesn't envisage the process of multi annual procurement planning.

There is a requirement by which multi-annual contracts need to be approved by the MoF before being tendered out by spending units. The MoF monitors whether such contracts are within budget appropriation/medium-term limits. However, there is no centralized control mechanism which would include hard controls to prevent undisclosed liabilities showing up after the authorization stage. Heads of spending units are accountable for entering into commitments. Commitment control is decentralized to financial management and control systems within individual spending units, and there is no effective ex-ante control to prevent spending units from entering into contractual commitments beyond budget limits. Effective controls for multi-annual commitments require ex-ante approval by the MoF before the respective contracts are signed, but the application of such controls in practice is lagging. Medium-term expenditure estimates remain provisional and are rarely analyzed on a rolling basis. There are also concerns with the accuracy of available data on such commitments and the resulting liabilities.

Recommendations

Effective system of controls should be instituted and applied in practice which ensures that multi-annual

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commitments stay within medium-term expenditure ceilings and are properly recorded. Commitment controls and approvals should be automated and interfaced with EPPS.

Assessment criterion 4(a)(b):

Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Following the provisions of the PPL the procurement procedure cannot start unless the activity is included in the annual procurement plan and estimated budget is allocated by the contracting authority. Multiannual contracts have financial coverage only for the one-year budgetary period, but they are included in the midterm budget planning.

The Law on Budget and Fiscal Responsibility (LBFR) sets a clear budget calendar. According to the calendar, the spending units have two months to prepare financial plans after receiving the budget circular. The budget is submitted to the parliament and adopted within the prescribed deadline of December 31 of the current for the following year's budget. The exception was the budget for 2021. Due to the Covid-19 pandemic the budget was adopted in June 2021. The execution of the budget prior to the adoption was based on decision on temporary financing. However, interim calendar steps included in the budget approval are not always adhered to.

Procurement plan, and respective contracting, remain within the budget allocations and therefore financing of the contract amount for the given budget period is secured. The annual budget allocations and monthly payment allotments provide limits for budget execution. Budget execution remains within ceilings of the annual budget and monthly payment allocations determined as part of in-year financial planning. Treasury Directorate of the MoF is in charge of the budget execution process in terms of processing payments, monitoring expenditures and reporting on budget execution. The Treasury Directorate prepares annual cash flow forecasts on inputs from the Budget Directorate and Economic Policy Directorate. Revenue estimates are updated monthly, based on the monitoring of the information on the actual revenue collected and on expenditures submitted for payment. Spending estimates reflect the approved spending plans submitted by the spending units, which are broken down by month. The forecasts are continuously monitored, and corrections are made each month on a rolling basis. No such detailed procedures are prescribed for medium-term budgeting. The medium-term budget estimates and expenditure ceilings exist and are prepared for two years following the budget year but they remain non-binding and provisional.

Gap analysis

Financing of contracts beyond the budget year is not allocated and secured in each annual budget, however contract amount/portion for the budget year is fully cover by budget allocations and available funds. For multiannual contracts, the one-year budgetary period is a cap for projects that present a higher rate of progress either than originally estimated or when cost overruns arise. This provision leaves, in many instances, contracts to be held or suspended until the new budgetary year is approved.

Recommendations

Medium-term plans and budgets should be strengthened to provide more robust and binding allocation of funds for multi-annual contracts.

Assessment criterion 4(a)(c):

A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

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Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>Article 182 of the PPL asks for semiannual and annual Report to be prepared by each Contracting Authority which should contain information of the public procurement procedures conducted and concluded contracts for simple procurements. Based on the provision of the same PPL, the Ministry of Finance shall prepare and submit to the Government/Council of Ministers the semi-annual report on conducted public procurement procedures and concluded public procurement contracts, as well as a report on procurements and concluded contracts/accounts for the simple procurements. For contract implementation phase, Contracting Authorities are obliged also to prepare contract monitoring reports which are also published. However, data on the payment execution level are not presented in these reports.</p> <p>Spending units report quarterly on budget execution to the MoF. The first-tier spending units that have responsibility for certain public institutions which are second-tier spending units, receive and consolidate their financial information on a quarterly basis before reporting to the MoF. In-year reports compare the spending with the latest revised budget where applicable, not the original budget. The MoF does not publish the budget outturn reports at the full level of detail as presented in the original budget, only at an aggregated level. No direct comparison to the original budget is possible since the reports do not show separately different spending units, functions, or programs, only the economic classifications.</p> <p>Quarterly budget execution reports are formally prescribed by the legislation and they are prepared by the Treasury Directorate based on the Treasury Main Ledger and information reported from the spending units. The MoF Treasury Directorate also produces monthly aggregate reports from the SAP system shortly after the end of each month. There are no major concerns regarding the accuracy of in-year budget reports. In preparation of the consolidated quarterly report prepared by the MoF, the reported data from the spending units is reconciled with the Treasury Main Ledger by the MoF.</p> <p>The implementation monitoring and reporting framework of investment projects is defined by the Decision on Capital Budget (DCB), Article 15. The DCB prescribes that the Administration for Traffic and the Administration for Public Works report at least quarterly on investment implementation to MoF in a standardized format. The financial execution of the capital budget is shown on aggregate level as part of in-year quarterly budget execution. While financial implementation reporting for investment projects follows the regular quarterly reporting, the physical implementation reports are prepared and submitted to GoM on annual basis. Both Administrations prepare their annual reports, which encompass both the financial and physical implementation of projects and submit them for approval to the GoM.</p>
Gap analysis <p>Contract implementation data is fragmented, however overall reports on budget execution which include also major contracts, is timely and reliable.</p>
Recommendations <p>Include in contract implementation reports prepared by the Contracting Authorities information on the financial progress of the contracts.</p>
Sub-indicator 4(b) Financial procedures and the procurement cycle The legal and regulatory framework, financial procedures and systems should ensure that:
Assessment criterion 4(b)(a): No solicitation of tenders/proposals takes place without certification of the availability of funds.

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Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>Article 83 of the PPL clearly links the start of a procurement procedure with the budget allocation and inclusion of such procedure in the annual procurement plan. However, the PPL doesn't describe how the certification is obtained. Also the implementing regulation foresee the same requirement. Article 2 on the Decree on simple procurement mandate the procurement procedure shall be conducted if financial resources and funds for VAT for estimated value of the procurement subject matter are allocated under the budget for such procurement, in accordance with the law.</p> <p>Budget is executed within the limits provided by the annual budget allocations and monthly payment allotments. Following the approval of the annual budget, the MoF apportions the approved budget month by month taking the inputs from the spending units. MoF's annual cash forecast is updated monthly on a rolling basis from monitored revenue and expenditure flows. The MoF estimates limits on expenditure warrants for the first-tier spending units for each month of the current fiscal year based on revenue projections and historical treasury data. Upon receiving expenditure warrants, first-tier spending units prepare a monthly spending plan that is submitted to the MoF. Spending units receive information timely in advance as to how they can commit funds within their annual budget allocations and make payments within monthly limits. There is no formalized system of certification of availability of funds.</p> <p>Spending units must submit payment orders on the Treasury Directorate template for all payments to be executed from the Single Treasury Account. The Treasury Directorate executes payment orders only after matching them to reservations. However, no effective control is in place to ensure that all commitments on orders, contracts, and other liabilities are systematically captured in the FMIS. The spending units are therefore not effectively prevented from incurring legal commitments in excess of the funds warranted to them. They may delay entering a budget commitment and filing their payment requests until they have sufficient warranted funds available, and in such a way create arrears.</p>
Gap analysis <p>Certification of availability of funds is conducted manually by the Ministry of Finance for all procurement plans that are submitted for approval to DPPPP and not linked with government financial system.</p>
Recommendations <p>Automate the certification for availability of funds through government financial management systems and its interface with EPPS.</p>
Assessment criterion 4(b)(b): <p>The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>The national regulation and procedures are clearly defined. These are followed in practice and ensured by sound internal control procedures within the contracting institutions. Appropriate authorizations for payments by senior officials are embedded in internal control procedures. Likewise, only authorized personnel within spending units can submit request for payments to the Treasury. Segregation of duties in key processes is singled out as a required control activity in the Law on Management and Internal Control, intended to prevent</p>

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the same member of government staff from being responsible for any two of authorization, approval, execution, recording, and control.

The procedures for processing the invoices are part of the financial management legal framework and also are incorporated as part of the specific public procurement contract. The procedures are publicly available, and Contracting Authorities are mandated to follow them within their organization.

Payment to contractors is made in Euro that is the official currency of Montenegro. In addition the PPL mandate that the currency used in procurement procedure is Euro, applying also to international contractors.

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):

- invoices for procurement of goods, works and services paid on time (in % of total number of invoices).

Source: PFM systems.

There are not data available to support the analysis. The information on payment execution is not captured in real time by the financial system. Also the team could not collect all invoices processed under sample contracts that were reviewed as part of the Pillar 3 assessment.

Gap analysis

The procedures set for processing the invoices are clear and transparent, however lack of data generated from Financial management System to show if the payment procedures are conducted timely, indicate that the system is not transparent and that financial information is not available to all.

Recommendations

EPPS should ensure interface with Financial Management System.

Indicator 5. The country has an institution in charge of the normative/regulatory function

Sub-indicator 5(a)

Status and legal basis of the normative/regulatory institution function

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criterion 5(a)(a):

The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The PPL provides a clear description of the institutions that are involved in the domain of public procurement. Article 2 of the PPL indicate that the administrative authority responsible for public procurement is the Ministry, however without mentioning the ministry responsible for public finance management. The reference to the Ministry of Finance being responsible for public procurement can be found only on the Regulation for the Organization of the State Administration.²⁶ The overarching responsibility stays within the Ministry of Finance which executes all responsibilities listed in the PPL through the Department for Public Procurement

²⁶ Published on Official Gazette of Montenegro", no. 049/22 from 06.05.2022, 052/22 from 13.05.2022, 056/22 from 27.05.2022.

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Policy (DPPP). The role of the DPPP in the ambit of public procurement is elaborated in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance.

Oversight on implementing PPLs is attribute attributed to MoF while Inspection oversight is attributed to authority in charge of inspection affairs. The findings of the inspection are shared with DPPP although during the assessment was not concluded based on evidence how and if the findings are taken into account in a systematic manner by the DPPP in order to improve the efficiency of the procurement system.

Protection of rights of economic operators is assigned to Commission for protection of rights.

Supreme Audit institution is mandated to carry out compliance, financial, and performance audits of entities that are financed from the budget or with other means of state support and to manage state assets that were founded or are majority owned by the state. This includes entities at central and local level, as well as state-owned enterprises (SOEs). SAI also conducts Information Technology (IT) audits, audits of political parties, and follow-up (control) audits. Every year SAI conducts annual audit of the Government's budget.

SAI conducts audits based on its internal audit plan. SAI informs heads of audited institutions on audit results through audit reports. The financial and compliance audits cover public procurement, focusing on entire procurement process, including implementation of procurement legislation and contract implementation. There is an operational Internal Audit function²⁷, positioned as an organizationally and functionally independent advisory function to the top management of each institution

Gap analysis

The article 209 of the PPL foresee two type of oversight. (i) The Ministry shall carry out oversight over the implementation of the PPL and regulations adopted pursuant to it. (ii) Inspection oversight over the implementation of PPL shall be performed by the administration authority in charge of inspection affairs through a public procurement inspector, in accordance with the PPL and the law governing inspection oversight. Even though the PLL provides more clearly the oversight responsibilities of the inspection administration, it lacks to clearly indicate the responsibility of the Ministry of Finance in order to avoid any potential overlap since both entities are mandated with oversighting the implementation of the PPL. From the interview with DPPP staff was emphasize that the DPPP monitors the overall public procurement with the objective to ensure its enhancement and improvement, while to role of inspection is more compliance driven and is focused on identifying misdemeanors of CA/staff involved in public procurement. The Inspection oversight prepares annual reports which are submitted to the working bodies of the Parliament and a monthly report about the performed oversight and the measures undertaken, which shall submit to the Ministry. Inspection in Public Procurement adheres to the provision of the PPL, however this role seems to remain at the limit of an administrative function only. During the assessment in the interview with DPPP it was confirmed that the reports received from Inspection Administration are not used/analyzed to identify systematic issues in public procurement systems that need improvement.

Based on PPL article 210, the Inspection cannot perform inspection oversight during the public procurement procedure, which raise the question of effectiveness of the oversight function towards ensuring the correct implementation of the PPL. The Administration of Inspections in Public Procurement don't provide for a summary of most identified irregularities in procurement procedures review, or how these findings were taken into consideration by DPPP to issue any instruction or guidance to the Contracting Authorities in avoiding the same systematic issues.

Recommendations

²⁷ In line with Article 49 of the Management and Control Law, the Internal Audit function can be organized through (i) establishment of an Internal Audit Unit in the spending unit, (ii) agreement on sourcing of the Internal Audit function from another spending unit with MoF approval, or (iii) provision of the Internal Audit function from another sector-linked spending unit.

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Perform a functional review of the efficiency and effectiveness of the control bodies and, where needed, streamlining the control function and refine better their responsibilities in the legal framework.

Sub-indicator 5(b)

Responsibilities of the normative/regulatory function

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

Assessment criterion 5(b)(a):

providing advice to procuring entities

Conclusion: No gap

Red flag: No

Qualitative analysis

Based on Article 44/5 the Ministry of Finance responsible to provide advisory assistance to Contracting Authorities and economic operators upon their request.

Gap analysis

The assessment has not identified any gap.

Recommendations

None.

Assessment criterion 5(b)(b):

drafting procurement policies

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no clear reference to the role of drafting procurement policies in the Article 44. The PPL refer only to function of providing technical guidance to the implementation of the PPL. Although this function is not explicitly mentioned in the PPL it is however regulated by the Decree on organization of state administration under the Ministry of Finance.

Gap analysis

The assessment has not identified any gap.

Recommendations

None.

Assessment criterion 5(b)(c):

proposing changes/drafting amendments to the legal and regulatory framework

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no clear reference to this role in the Article 44. However, this role is implied in the provisions of PPL and also is mentioned under the responsibility of the DPPP in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance. Although this function is not explicitly mentioned in the PPL it is however regulated by Rulebook on Internal Organization and Job Classification of the Ministry of Finance. Considering the hierarchy of legal acts, the PPL should refer to this function in order for the sublegal acts to be based to the provisions of the PPL.

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Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(d): monitoring public procurement
Conclusion: No gap
Red flag: No
Qualitative analysis Article 44/1 of PPL foresee that monitoring public procurement is under the responsibility of the Ministry of Finance.
Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(e): providing procurement information
Conclusion: No gap
Red flag: No
Qualitative analysis Based on Article 44/10 the MoF is responsible for publishing public procurement plans, tender documentation, decisions and other legal acts of contracting authorities issued during the public procurement procedure, including the amendments thereof, public procurement contracts and framework agreements, modifications of contracts and notifications concerning lodged complaints on the EPPS.
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 5(b)(f): managing statistical databases
Conclusion: No gap
Red flag: No
Qualitative analysis Article 44 foresees <i>inter alia</i> that the Ministry of Finance is responsible for: 9) establishing and maintaining records on registered bidders in the EPPS; 12) preparing, publishing and updating the list of contracting authorities, which are registered in the ESJN (EPPS), and the list of public procurement officers. 17) preparing and submitting to the Government reports which contain statistical data captured from the EPPS.
Gap analysis

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The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(g): preparing reports on procurement to other parts of government
Conclusion: No gap
Red flag: No
Qualitative analysis Article 44/17 foresees that the Ministry of Finance has the role of preparing and submitting reports to the Government (Council of Ministers headed by the Prime Minister and composed by Ministers as member of the Cabinet). As per Article 182 the reports refer to statistical reports on conducted public procurement procedures and concluded public procurement contracts, as well as a report on procurements and concluded contracts/accounts for the simple procurements. The frequency of reports is semiannually and annually.
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 5(b)(h): developing and supporting implementation of initiatives for improvements of the public procurement system
Conclusion: No gap
Red flag: No
Qualitative analysis There is no clear reference to this role in the Article 44 of the PPL, however the role, even if not explicit, it is embedded in the other functions spelled out this article.
Gap analysis The assessment has not identified any gap.
Recommendations None.
Assessment criterion 5(b)(i): providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement
Conclusion: No gap
Red flag: No
Qualitative analysis Based on Article 44/6 the Ministry of Finance has the function of organizing and carrying out professional development and education for employees of contracting authorities and other persons for performing public procurement tasks.
Gap analysis The assessment has not identified any gap.

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<p>Recommendations None</p>
<p>Assessment criterion 5(b)(j): supporting the professionalization of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Based on article 44/7 the Ministry of Finance has the function of organizing the taking of the professional examination for performing tasks in public procurement field and issuing certificates for the work in public procurement field.</p>
<p>Gap analysis The assessment has not identified any gap.</p>
<p>Recommendations None.</p>
<p>Assessment criterion 5(b)(k): designing and managing centralised online platforms and other e-Procurement systems, as appropriate</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Article 44/8 attributes to the Ministry of Finance the role of establishing, maintaining, and managing the E-PS and monitoring its use.</p>
<p>Gap analysis The assessment has not identified any gap.</p>
<p>Recommendations None.</p>
<p style="text-align: center;">Sub-indicator 5(c) Organisation, funding, staffing, and level of independence and authority</p>
<p>Assessment criterion 5(c)(a): The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis Article 2 of the PPL indicate that the administrative authority responsible for public procurement is the Ministry, however without mentioning the ministry responsible for public finance management. The reference to the Ministry of Finance can be found only on the degree for organizing the state administration. In the later the Ministry of Finance is mandated as the regulatory institution in the domain of public procurement. The functions and responsibilities of Ministry listed in the article 44 of the PPL are executed through the Department for Public Procurement Policy (DPPP) established within the Ministry of Finance as a General Directorate following the description provided in the Rulebook on Internal Organization and Job Classification of the Ministry of Finance.</p>

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The Head of the DPPP is a high-level civil servant at the level of General Director that is appointed by the Minister of Finance. The Director reports only to the Minister of Finance and not directly to the Government, however the annual reports prepared by the DPPP are presented to the Government by the Minister of Finance. Although the head of DPPP does not have direct reporting line within the Government (Council of Ministers), the team assess that the Director has adequate mechanism to influence policy enhancement through the Minister of Finance.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 5(c)(b):

Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Since the regulatory functions is performed by a department within the structure of the Ministry of Finance the required budget of the DPPP is planned and executed as part of the main budget of the Ministry of Finance.

Gap analysis

Financing is not secured by the legal/regulatory framework; however, it is implied that the Ministry of Finance execute its function under the public procurement through the overall assigned budget for the Ministry. During the assessment time it was noted a lack of sufficient budget to support maintenance and upgrades of EPPS. Also the analysis on post systematization of DPPP demonstrates that number of addition staff needed to perform DPPP functions are restricted due to lack of adequate financial resources allocated to DPPP.

Recommendations

Ensure that the Ministry budget include sufficient budget to allow DPPP functioning including, additional staff and EPPS maintenance and/or upgrade.

Assessment criterion 5(c)(c):

The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The organization of DPPP is reflected in the Rulebook on Internal Organization and Job Classification²⁸ of the Ministry of Finance . Based on the rulebook the DPPP is headed by a General Director and is composed of 4 main directorates with a total number of 23 staff :

- (i) The Directorate for Normative – Legal Affairs and Monitoring in Public Procurement (9 staff)
- (ii) The Directorate for Vocational Training, Training and Passing the Professional Examination in the Field of Public Procurement (5 staff)

²⁸ Publicly available at <https://ujn.gov.me/>

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- (iii) Directorate for monitoring the public procurement system and management of electronic public procurement (5 staff)
- (iv) The Directorate for Public-Private Partnership (4 staff)

At the time of the assessment the number of vacancies was 3. During the discussion with the DPPP is evidenced the increasing workload of the present staff, which calls for high attention to the needs of increasing the human capacities and providing continues support through capacity building.

The EPPS requires more additional IT staff to allow for smooth operation.

Gap analysis

Considering the function assigned to the DPPP, the current human resources is not completely sufficient to perform the responsibilities properly and in due time as foreseen by the PPL. High demand for additional IT staff to support running of EPPS.

Recommendations

Conduct yearly workload analysis and its findings should guide the revision of the rulebook and post systematization applicable to DPPP.

Sub-indicator 5(d) Avoiding conflict of interest

Assessment criterion 5(d)(a):

The normative/regulatory institution has a system in place to avoid conflicts of interest.*

Conclusion: Minor gap

Red flag: No

The PPL foresee different articles regarding the conflict of interest (Art. 38 to Art 43) which include responsibilities of parties involved in procurement procedure to identify, report and avoid a conflict-of-interest situation. As such these articles elaborate around the responsibilities of Contracting Authorities representatives and economic operators participating in procurement processes. No specific reference to the establishing a system to avoid conflict of interest within the DPPP is mentioned in the PPL. The PPL provide specific tasks to the DPPP including approval of yearly procurement plans before publication to EPPS, providing opinion on application of negotiated procedure without publication of a prior notice and in such context even though his role in core procurement procedure is minimal, the DPPP don't have an integral procedure to avoid conflict of interest. Nevertheless, the DPPP as part of the MoF is required to observe the Code of Ethics and also prepare the Annual Integrity Plans which all DPPP staff report for.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):

- Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses).

Source: Survey.

Following the survey to private sector on the question if the normative/regulatory institution enables that the conflict of interest is identified and avoided, resulted that:

- 39 % of respondents²⁹ believe that the normative/regulatory enables that the conflict of interest is identified and avoided.
- 18% believe that regardless of executing the normative and regulatory function, the institution that carries it out is unable to identify and address Col.
- 27% don't have a clear opinion and 19 % of respondents have not preferred to answer (DK and RA).

²⁹ Total number of responses to this question is 261

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Gap analysis

Although the PPL refer to the parties involved in the procurement process while describing the Col principles, it doesn't refer particularly to conflict of interest of the regulatory institution /DPPP. The institution doesn't have a specific system to avoid conflict of interest tailored to procurement functions within DPPP but observe general requirement of Government Code of Ethic. Also considering the result of the survey there is the perception that the regulatory function is not fully able to identify and addresses cases of Col.

Recommendations

A separate system to identify and avoid conflict of interest during execution of DPPP functions should be established.

Indicator 6. Procuring entities and their mandates are clearly defined

Sub-indicator 6(a)

Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

Assessment criterion 6(a)(a):

Procuring entities are clearly defined.

Conclusion: No gap

Red flag: No

Qualitative analysis

Article 2 of the PPL defines the procuring entities (Contracting Authorities as defined in the PPL) which may be wither a public contracting authority or a sectoral contracting authority.

A. Public contracting authorities include the following:

- state body;
- local self-government unit;
- public service, that is, an undertaking which fulfils all of the following conditions:
 - a. it has a capacity of a legal person;
 - b. it was founded with an aim of meeting the needs of public interest and does not perform an activity of an industrial nor commercial character, and
 - c. in which the state and/or local self-government unit owns more than 50% of the shares or interest, or which receive more than 50% of their funding from the budget of Montenegro and/or budgets of local self-government units and other public revenues or which are controlled by the contracting authority or which have more than half of their management body or oversight body members appointed by the contracting authority;
- association founded by two or more contracting authorities.

B. Sectoral contracting authorities are the following:

- a public contracting authority pursuing one of the sectoral activities established by PPL
- an economic operator in which a public contracting authority has a dominant influence, and which performs one of the sectoral activities, or
- other economic operators performing one of the sectoral activities on basis of special or exclusive rights assigned to them by a competent state body or a competent body of a local self-government unit.

In addition, Article 4 of the PPL provides for definition of terms used such as state body, local self-government unit, public service.

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Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 6(a)(b): Responsibilities and competencies of procuring entities are clearly defined.
Conclusion: No gap
Red flag: No
Qualitative analysis There is no single list of responsibilities and competencies of procuring entities, but PPL in its entirety provides without ambiguity the responsibilities and competencies of procuring entities. Art. 38 list the responsibilities of Contracting Authorities in identifying and addressing conflict of interest. Art.51-67 provide for the responsibilities of Contracting Authorities during the execution of different procurement methods, such as restricted procedures, open procedure, restricted procedure, competitive procedure with negotiation, negotiated procedure without prior publication of a contract notice, partnership for innovation, competitive dialogue, negotiated procedure with prior publication of a contract notice. More competences are listed in Art. 84 for preparing procurement plans; Art. 85 to conduct market analysis; Art. 86-87 to prepare tender documents and draft technical specifications; Art 95 to issue clarification for tender documents; Art. 134-135 for evaluation bids received; art 141-144 on the approval of the decisions after the evaluation process is completed; Art 149-151 on concluding the contract, amending it or terminating; Art 152 on monitoring and reporting on execution of contracts.
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 6(a)(c): establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*
Conclusion: Minor gap
Red flag: No
Qualitative analysis Article 47 of the PPL require that every Contracting Authority is obliged to appoint at least one person to perform tasks of a public procurement officer. A public procurement officer shall be a person that has passed the professional exam for performing public procurement tasks. MoF/DPPP is informed with the resolution that appoints such officer in every Contracting Authority. Also, the PPL provides for the functions and responsibilities of the public procurement officer which include take part in preparing public procurement plans; supply interested persons with the part of the tender documentation containing confidential data in accordance with law; keep records of public procurements; draft reports on conducted public procurement; carry out administrative tasks in the course of a public procurement procedure and perform other tasks in accordance with this Law and secondary legislation.

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Based on the size of the Contracting Authority the number of procurement officers can be more than one and usually they are included within the structure of legal departments of the institutions or finance and budget departments. Big size Contracting Authorities have a separate unit for public procurement.

Quantitative analysis

// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):

- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).

Source: Normative/regulatory function.

100% of Contracting Authorities have at least one procurement officer who have passed the exam appointed. In total there are 675 Contracting Authority registered in the EPPS and by end of 2022 the total number of registered public procurement officers have passed the exam is 811³⁰. These numbers indicate that there are at least adequate number of procurement officers to perform the function for all Contracting Authorities that have been registered in Montenegro.

Gap analysis

The limited knowledge of procurement legislation among the Line management of contracting authorities is an issue that can undermines the integrity and effectiveness of the procurement system. Management lacks the necessary organizational, legal, and practical skills and experience to handle daily operations within public procurement at individual contracting authorities.

Recommendations

Training modules dedicated to line management should be introduced by DPPP.

Assessment criterion 6(a)(d):

Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 48 of the PPL indicates that within each procurement entity a commission for conducting the public procurement procedure shall be established by the resolution of the authorized person of the contracting authority. The responsibility to make procurement decisions stays within this Commission which should be composed of an odd number of members comprised of employs of contracting authority and also the procurement officer may be part of the Commission. The PPL doesn't make any distinction in terms of decision-making authority based on procurement thresholds.

Gap analysis

Delegation of the authority to make decisions based on the risk and monetary sum is not exercised and may be a source of inefficiencies in procurement execution.

Recommendations

Procurement implementing regulations should elaborate delegation of decision-making to the lowest competent level based on risks assessment and estimated procurement value.

³⁰ Source of data, 2022 Annual Report of DPPP published at <https://ujn.gov.me/wp-content/uploads/2023/06/lzvjestaj-o-javnim-nabavkama-za-2022.godinu.pdf>

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Assessment criterion 6(a)(e): Accountability for decisions is precisely defined.
Conclusion: No gap
Red flag: No
Qualitative analysis Article 48 provides the responsibilities for which the Commission on conducting public procurement is accountable for. This include to prepare and establish tender documentation and amendments and supplements to the tender documentation and provide clarifications; review, assess, and evaluate bids or qualification applications; write minutes of the review, assessment and evaluation of bids; prepare and propose to the authorized person of the contracting authority decisions on the exclusion from a public procurement procedure, decisions on the selection of the most advantageous bid and decisions on the annulment of procedures; prepare responses to appeals. Also Article 47 provides for the responsibility of the procurement officer, making this position accountable to take part in preparing public procurement plans; supply interested persons with the part of the tender documentation containing confidential data in accordance with law; keep records of public procurements; draft reports on conducted public procurement; carry out administrative tasks in the course of a public procurement procedure and perform other tasks in accordance with the PPL and secondary legislation.
Gap analysis The assessment has not identified any gap.
Recommendations None.
Sub-indicator 6(b) Centralized procurement body
Assessment criterion 6(b)(a): The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis Art. 74 of the PPL foresee that the public procurements for the needs of state administration bodies or public services founded by the state can be implemented by a contracting authority appointed by the Government's regulation. Public procurements for the needs of the local administration bodies and public services founded by the local self-government can be implemented by a contracting authority appointed by the regulation of the competent local self-government body. Regulation on the Manner of Planning and Implementing Centralized Public Procurement ³¹ provides for a description of roles, responsibilities, and scope of application of centralized procurement at central/national level. Centralized public procurement is applicable for the following categories: <ul style="list-style-type: none">• Goods: office and other consumables, motor vehicles and other means of transport, except vehicles with priority of passage in accordance with the law regulating the safety of road traffic, fuel and engine oils, office furniture.

³¹ "Official Gazette of Montenegro", No. 069/20 of 11.07.2020, 105/20 of 29.10.2020, 139/22 of 16.12.2022, 029/23 of 16.03.2023

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Article 4 of the above-mentioned regulation on Centralized Procurement entitles the administration authority in charge of the state property management to execute centralized procurement. Based on the Regulation of Public Administration state management is under the responsibility of Agency of Cadaster and State Property.

Gap analysis

The list of procurement activities that is covered under centralized procurement was recently reduced, by excluding defense procurement activities, IT and several activities of Ministry of Interior. During the assessment it is confirmed that considering international practices there is scope for increasing the list of services and goods to be procurement under centralize procurement.

From data analytics covering E-Procurement data from January 2021- March 2023, the procurement launched refers only to 13 CPVs and the total contractual amounts for the Cadaster Agency is 5,521,022 Euro and this amount corresponded to 63 contracts. Additionally, the contractual amount of Cadaster Agency covers 0.84% of total contractual volume. While as share of procurement procedures during the same period only 4% of the total number of procedures³² are centralized procurement.

In addition, consider the high rate of the use of simple procurement below 8,000 Euro appears clear that CAs are not adequately considered the benefits of centralized procurement nor the appropriate use of Framework Agreements as tools to increase efficiency and economy of scale.

Recommendations

Based on a spending analysis of Contracting Authorities, MoF should consider reviewing the list of activities under centralized procurement in order to enhance the efficiency of centralized purchasing.

Ministry of Finance many consider in long term based on an extended list of activities that fall under centralized procurement , to establish a dedicated Central Purchasing Body outside existing public institutions which have diverse core functions. of activities under centralized procurement in order to enhance the efficiency of centralized purchasing.

Assessment criterion 6(b)(b):

In case a centralised procurement body exists, the legal and regulatory framework provides for the following:

- Legal status, funding, responsibilities and decision-making powers are clearly defined.
- Accountability for decisions is precisely defined.
- The body and the head of the body have a high-level and authoritative standing in government.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Regulation on the Manner of Planning and Implementing Centralized Public Procurement indicates that the administrative body responsible for state property management (namely the Administration for Cadaster and State Property) is assigned as Centralized Procurement Body along with other responsibilities it has under the sector of state property registry. The regulation outlines generally the responsibilities of the Administration in conducting centralized procurement however it lacks to provide reference to the legal status and funding source for the Administration.

It covers centralized procurement for 40 procuring entities at central government level, i.e. ministries and state bodies, while its mandate is not covering self-local government, which based on the PPL the function of the centralized procurement is executed by a different body appointed by the administration of self-local government.

³²The total number of procurement packages is 12'523 packages and out those 540 packages with mapped at EPPS as Centralized Procurement

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Gap analysis Legal status of the Administration for Cadaster and State Property is not clear in the regulation for centralized procurement although it might be captured in the Degree that regulated the functioning of Public Administration ³³ . Article 21 of the Regulation indicates the Administration as an administrative body.
Recommendations Reflect the legal status of the administrative body responsible for state property management in the legal framework for centralized procurement.
Assessment criterion 6(b)(c): The centralized procurement body's internal organization and staffing are sufficient and consistent with its responsibilities.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Administration for Cadaster and State Property covers different responsibilities ³⁴ among which also centralized procurement for central government institutions. During the assessment is recorded that the number of staff assigned to cover the centralized procurement was 3 and the number of Contracting Authorities for which they operated only in 2022 was 40 including only central level institution.
Gap analysis Considering that the responsibilities of the Administration include other areas apart from centralized procurement, it is assessed that there is lack of adequate human resources to respond to this function in a systematic manner.
Recommendations Conduct a workload analysis to inform the revision of the rulebook on organization and systematization of workplaces of the Administration for Cadaster and State Property.

Indicator 7. Public procurement is embedded in an effective information system

Sub-indicator 7(a) Publication of public procurement information supported by information technology The country has a system that meets the following requirements:
Assessment criterion 7(a)(a): Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Art. 45 of the PPL mandate the use of an Electronic Public Procurement System (EPPS) to enable: 1) drawing up and publishing of tender documentation and other acts related to public procurement; 2) dispatching public procurement notices

³³Regulation of Public Administration available at <https://metrologija.me/wp-content/uploads/zakonodavstvo/ostalo/Uredba-o-organizaciji-i-nacinu-rada-drzavne-uprave.pdf>

³⁴ The responsibilities are listed in Article 25 of the above Regulation.

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- 3) free access, search, review and download of the published tender documentation and other acts related to conducting of public procurement procedures;
- 4) drawing up, submission, receipt, assessment and evaluation of qualification applications, bids, plans, projects and solutions, free of charge;
- 5) registration and keeping records on economic operators;
- 6) the competent state authorities to access the database of the EPPS.

The information obtained through ESSP is easily accessible at the webpage <https://cejn.gov.me/>. The data retrieved from the system allow an overall analysis of the procurement procedures and statistical data can be obtained to assess the performance and outcome. Open data is not published, so there are not evidence of using the data by stakeholders for analysis, measuring, monitoring and evaluating procurement performances

Gap analysis

The in-depth data for specific procurement procedures, sectors or type of institutions are not easily obtained.

Recommendations

EPPS should be aligned with the Open Contracting Data Standard (OCDS) and facilitate the disclosure of e-Procurement data as machine-readable data for anyone to download, share and use with appropriate licenses without any fee. A comprehensive data analytics tool should be available in the e-Procurement system, and provide access to the tool to the stakeholders with appropriate level of licenses.

Assessment criterion 7(a)(b):

There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.

Conclusion: No gap

Red flag: No

Qualitative analysis

The legal and regulatory framework mandates all procuring entities to use e-Procurement System. The PPL specifies that the electronic means to be used for public procurement procedures shall be the Electronic Public Procurement System (EPPS) which is a web-based platform that allows contracting authorities to publish tender notices, receive bids, and award contracts electronically.

The use of EPPS is mandatory for all public entities in Montenegro, regardless of their size or budget. The Law provides for a number of exceptions to the mandatory use of e-Procurement, such as for procurements that are:

- Simple procurement (although data should be entered after the process is conducted)
- For security-sensitive goods or service
- For procurements that are subject to international agreements

The Law also provides for a number of sanctions for contracting authorities that fail to use e-Procurement in accordance with the law. These sanctions can include fines, suspension of the right to participate in public procurement procedures, and even criminal prosecution.

Using the system is free of cost and system maintenance is funded through the government budget. The system is operated by Contracting Authorities that are registered and Economic Operator that are registered. Third party can access also the information related to completed tender procedure and also those in process. The EPPS is operating since January 2021 and until the date of the assessment counts for 675 Contracting Authorities register and overall 4128 firms registered as Economic Operators. The volume of procurement during 2021 results 435,343,271 Euro , while during 2022 results 650,817,678 Euro.

In total 4,599 contracts have been awarded during 2021 for a total amount of 164,248,424 Euro. In 2022 the number of contracts awarded is 6,879 for a total amount of 430,431,992 Euro.

The following tables represents information of Tenders, contracts and volumes (absolute) by CAs type.

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Type of Contracting Authorities	Tenders		Contracts	
	#	Estimated volume	#	Contracted volume
State body	2,425	176,156,977	2,505	91,318,993
Local self-government unit	2,190	147,078,564	1,903	104,368,079
Public service	5,179	568,751,536	5,551	323,277,965
Association founded by two or more contracting authorities	1	15,000	NA	NA
Sectoral contracting authorities	2,727	343,587,552	2,362	135,579,986

Gap analysis
The assessment has not identified any gap.

Recommendations
None

Assessment criterion 7(a)(c):
The information system provides for the publication of: *

- procurement plans
- information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions
- linkages to rules and regulations and other information relevant for promoting competition and transparency.

Conclusion: Minor gap

Red flag: No

Qualitative analysis
The EPPS provide for publication of Annual Procurement Plans and all respective revisions of the Procurement Plans. In addition, all information related to the procurement cycle from procurement notices to contract signature is accessible in the EPPS. Information on payments however is not captured in the EPPS nor in the contract monitoring tables published for the signed contracts. The contract monitoring tables are required to be published in ESPP, as well as are contract amendments, however the EPPS don't cover contract management processes. The ESPP reflects the appeals submitted for a procurement decision however the appeal decision is not recorded in the EPPS.

Quantitative analysis
// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):

- procurement plans published (in % of total number of required procurement plans)
- key procurement information published along the procurement cycle (in % of total number of contracts) :
- invitation to bid (in % of total number of contracts)
- contract awards (purpose, supplier, value, variations/amendments)
- details related to contract implementation (milestones, completion and payment).

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- *annual procurement statistics*
- *appeals decisions posted within the time frames specified in the law (in %).*

Based on the information from EPPS January 2021- March 2023

- 100% of procurement plans are published by CA. Also procurement plans revisions are published.
- 100% of Tender documents published
- 100% of invitation to bids published
- 100% of contracts have published contract monitoring tables with information on milestone and completion of contract. Details on payment are not captured in EPPS.
- Annual procurement statistics are part of the Annual procurement Report prepared by DPPP and are not shared in the ESPP.
- During 2021-2022 100% of the appeals decision are published within the timeframe of PPL but only of Commission website and not in EPPS.

Source: Centralised online portal.

Gap analysis

The EPPS don't reflect the payments conducted for the signed contracts nor the appeal decision issued by the commission on protection of rights. It appears that no linkages to other relevant information for promoting transparency and competition are ensured through the EPPS such as for example cases of corruption handled by the Agency for preventing Corruption, or Court decisions for convicted firms.

Recommendations

Upgrade the functionalities of EPPS to capture payment and appeal decision, and provide for interfaces with other systems that promote transparency such as the Agency for preventing Corruption.

Assessment criterion 7(a)(d):

In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of tender documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The information published on the online portal include the full set of tender documents, full contract documents including technical specification and contract monitoring tables. However, evaluation reports are not published for the wide public, they can be accessed only by the CA members of the Evaluation Committee and auditors. Also details of contract implementation are limited to general information on the contracts and don't ensure to capture progress of implementation.

Gap analysis

Data and information published in the EPPS is not supporting completely the concept of open contracting since evaluation reports are not published and also contract implementation details including payment are not available.

Recommendations

Enhance the functionalities of EPPS to support publication of Evaluation Reports and Contract implementation data.

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Assessment criterion 7(a)(e): Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*
Conclusion: Substantive gap
Red flag: No
Qualitative analysis EPPS does not support machine-readable open data concept. The system is not aligned with Open Contracting Data Standard, which is a machine-readable format for storing and publishing procurement data. This lack of support for OCDS makes it difficult to access and analyze procurement data, and it also limits the transparency of the public procurement process.
Quantitative analysis There are no data to support this analysis since the EPPS don't provide for open data formats. <i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e):</i> <i>- Share of procurement information and data published in open data formats (in %).</i> <i>Source: Centralised online portal.</i>
Gap analysis The system is not based on open data format.
Recommendations EPPS should be aligned with the Open Contracting Data Standard (OCDS) and facilitate the disclosure of e-Procurement data as machine-readable data for anyone to download, share and use with appropriate licenses without any fee.
Assessment criterion 7(a)(f): Responsibility for the management and operation of the system is clearly defined.
Conclusion: No gap
Red flag: No
Qualitative analysis Art 44/8 of the PPL assigns the Ministry of Finance with the responsibility of regulating and setting the standards for the operation, implementation and continues improvement of the EPPS. Such responsibilities are further delegated to the DPPP in the Rulebook for the Systematization of Ministry of Finance.
Gap analysis The assessment has not identified any gap.
Recommendations None
Sub-indicator 7(b) Use of e-Procurement
Assessment criterion 7(b)(a): E-procurement is widely used or progressively implemented in the country at all levels of government.*
Conclusion: Minor gap

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Red flag: No
Qualitative analysis Based on the PPL the use of electronic procurement is mandatory for all procurement procedures that are subject to the Public Procurement Law. All levels of government acting as Contracting Authorities based on the categorization made by the PPL (see criterion 6 (a) (a)) use EPPS. Also the EPSS is used to simple procurement above 8,000 Euro.
Quantitative analysis <i>// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-Procurement</i> <ul style="list-style-type: none">- number of e-Procurement procedures in % of total number of procedures- value of e-Procurement procedures in % of total value of procedures Based on data from EPPS during 2022: <ul style="list-style-type: none">- Due to the high number of invoices processed the % of procurement procedures results low therefore the assessment refers to the % in value for ensuring a correct assessment. 5,512 procurement procedures including simple procurement above 5,000 Euro where conducted within EPPS while 154,262 invoices constitute the level of simple procurement below 5,000 Euro (increase to 8,000 after the 2023 PPL revisions).- 87.5 % of the total procurement value have been procurement through EPPS. Value of procurement conducted in the EPP in 2022 was 430,431,992 Euro while the simple procurement below 5,000 Euro was 63,117,015 Euro. <i>Source: e-Procurement system.</i>
Gap analysis There is a numerous number of simple procurement transactions (in number and in value ³⁵) pertaining to the simple procurement below 5,000 Euro which is conducted outside EPPS In the secondary legislation there is no threshold to limit the yearly amount for which a contracting authority can use simple procurement outside EPPS. With the increase of the threshold to 8,000 Euro the total value of such expenditure category is expected to be higher that actual amount reported in 2022.
Recommendations Establish a threshold for the yearly budget amount that Contracting Authorities can use simple procurement below 8,000 Euro (as amendment by the 2023 PPL from 5,000 Euro to 8,000 Euro).
Assessment criterion 7(b)(b): Government officials have the capacity to plan, develop and manage e-Procurement systems.
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis DPPP is the ultimate responsible institution tasked with the responsibility to plan, develop and manage EPPS. The current structure of the DPPP don't foresee a dedicated team for the EPPS (as is a good practice seen in

³⁵ Information on simple procurement below 5,000 Euro is captured in the 2022 Annual report of DPPP. In total during 2022 a total of 154,262 invoices was processed for a total of 63,117,015 Euro.

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other countries in the region) and hence the capacities at the time of the assessment are limited and current human resources stretched to adhere with these associated tasks. Presently the only financial source to support the EPPS remain budget funds.

Gap analysis

Financial recourses are limited to further develop the EPPS and optimize possible system interface with different operation governmental systems.

Also human resources at DPPP appear to be limited in managing day to day operation of the system and plan for its future improvement.

Recommendations

Establish a business continuity technical team under the DPPP with all technical and administrative and supporting expertise for the smooth operation of EPPS to avoid the vendor-lock situation

A comprehensive e-Procurement Strategy for the implementation of the EPPS with executable action plans should be prepare. The strategy should include at a minimum, policies on e-Procurement system adaptation in public entities and private businesses, e-Procurement implementation policy, sustainability and governance policy, and communication and capacity building policy.

Assessment criterion 7(b)(c):

Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

There are trainings organized by DPPP and Administration for Human Resources on e-procurement system functioning, for all users. DPPP performs routine evaluation and periodic adjustment of training programs on the e-Procurement systems based on feedback and need. In addition, DPPP has prepared EPPS user manuals that facilitate the use of the EPPS.

Gap analysis

The DPPP does not have policy in place requiring updating the knowledge and skills of the staff involved in e-Procurement, which may create challenges in tackling the new challenges posed by the ever-emerging technologies and meeting the expectations of the users of the system.

Recommendations

Set a mandatory training requirement for the new recruitments and regular refresher trainings on the operational (functions and features and their proper use, security, communication, e-Procurement challenges) as well as technical areas in a regular basis for all the staff in e-Procurement operation and support to develop the capacity to address the challenges.

Assessment criterion 7(b)(d):

Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

For all procurement procedures that are published through EPPS, bidders are required to submit their offers electronically. In order to submit a bid, the private operator needs to be registered in the list of Economic

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Operators in EPPS. The registration is free of charge. In total there are 4,158 Economic Operators registered in the EPPS of which 2,946 are local firms and 1,212 are foreign firms.

The low number of firms registered in EPPS show that the use of EPPS since 2021 have not ensured an increased participation of suppliers through digital technology. The lack of data on MSME (see below the quantitative analysis) participation in procurement procedures support this finding. The results of the survey with private sector reveal that overall there is a positive view on the EPPS but less on the ability of the system to foster competition (only 48% of responses confirm that EPPS foster competition). As elaborated in assessment criteria 9 (a) (b) in Pillar 3 the competition levels are still very low, ranging from 1.5 to 2 bids per tender. The single bidder rate is also very high, irrespective of the procurement procedure (52% simple procurement, 65% restricted procedure, 68% open procedure). It should be noted that the single bid rate also increased from 2021 to 2022 (from 60% to 71%) while the average number of bidders per lot decreased from 1.7 to 1.5.

Quantitative analysis

* *Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):*

- *bids submitted online (in %)*
- *bids submitted online by micro, small and medium-sized enterprises (in %)*

- 100% bids submitted online for the procedures published on EPPS (excluding simple procurement below 8,000 Euro)
- The EPPS don't provide data on the type of Economic Operators being MSMEs or not. Therefore, such analysis is not possible based on available data.

Source: e-Procurement system.

Gap analysis

Form the interviews with the Chamber of Commerce, the private sector has recognized the efficiency of preparing and submitting bids electronically. Although they raised to issue of system interfaces with other government systems that issue documents that attest their economic, financial stand towards fulfilling selection and qualification criteria in public procurement procedures. The results of the survey with private sector reveal that overall there is a positive view on the EPPS but less on the ability of the system to foster competition (only 48% of responses confirm that EPPS foster competition).

Recommendations

Ensure that EPPS allow for interface with government systems to attest supplier economic, financial stand towards fulfilling selection and qualification criteria in public procurement procedures.

Assessment criterion 7(b)(e):

If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

Conclusion: No gap

Red flag: No

Qualitative analysis

Since 2021 the EPPS is in place and operational, therefore this assessment criterion don't apply.

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Gap analysis N/A
Recommendations: N/A
Sub-indicator 7(c) Strategies to manage procurement data
Assessment criterion 7(c)(a): A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The EPPS have a particular Module on reporting and it provides data and reports on procurement activity, including information on procurement plans, notices, and contracts. The module also includes tools for monitoring compliance with procurement regulations and identifying areas for improvement. The data captured feed the statistical report provided in the annual procurement reports prepared by DPPP. However this data should be analyzed manually and the system don't offer for data analytics tools.
Gap analysis The EPPS don't provide for data analytics feature and the elaboration of data is done manually by DPPP. This will allow the Ministry to develop procurement policies to improve the system efficiency based on data analytics.
Recommendations Enhance data analytical feature for the EPPS.
Assessment criterion 7(c)(b): The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis See assessment criteria 7 (c)(a). The EPPS is a comprehensive system that supports a variety of procurement procedures, including the two-stage bidding procedure and joint ventures. However, there are some areas where the system could be improved, such as the lack of e-catalogs, framework agreements, and dynamic purchasing systems. Additionally, the system does not have contract management with electronic invoicing modules. The system don't allow for 2 envelope system as well.
Gap analysis The EPPS is a comprehensive system that supports a variety of procurement procedures, including the two-stage bidding procedure and joint ventures. However, there are some areas where the system could be improved, such as the lack of e-catalogs, framework agreements, and dynamic purchasing systems. Additionally,

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the system does not have contract management with electronic invoicing modules. The system doesn't allow for 2 envelope system as well. The EPPS don't provide for data analytics feature and the elaboration of data is done manually by DPPP. This will allow the Ministry to develop procurement policies to improve the system efficiency based on data analytics.

Recommendations

Enhance data analytical feature for the EPPS along with other features included in the gap analysis.

Assessment criterion 7(c)(c):

The reliability of the information is high (verified by audits).

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The adequacy of the data entered in EPPS is responsibility of the Contracting Authorities. As such reliability of data can be ensured only through audits conducted at CA level. A general audit for the EPPS has not been conducted.

The performance for the EPPS was measured only once so far, through a specific project implemented by the Government's Competitiveness Council, but there is no systemic performance evaluation established.

Gap analysis

No audits are performed tailored at national level to ensure the reliability of data.

Recommendations

SAI to include in its annual audit plan a functional audit on EPPS. In addition, a third-party system security audit should be carried out. The assessment should be carried out every time major changes are made in the system to ensure new vulnerabilities are not introduced.

Assessment criterion 7(c)(d):

Analysis of information is routinely carried out, published and fed back into the system. *

Conclusion: Minor gap

Red flag: No

Qualitative analysis

DPPP prepares semiannual and annual procurement reports which are submitted by the Minister of Finance to the Government of Montenegro (Council of Ministers) for endorsement. These reports are published on the webpage of DPPP and contain statistical information on different procurement aspects. The data are mainly linked with the information that is captured by EPPS and is supplemented with additional information that Contracting Authorities include in their periodical reporting for areas that are not captured in the EPPS (such as simple procurement below 8,000 Euro).

Quantitative analysis

// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):

- total number and value of contracts
- public procurement as a share of government expenditure and as share of GDP
- total value of contracts awarded through competitive methods in the most recent fiscal year.

Based on EPPS data for 2022 the required indicators results as follow:

- 6,879 contracts signed with a value of 430,431,992 Euro
- Public procurement constitutes 8,74 % of GDP.
- 39,6% of the signed contracts (2724 contracts are awarded through competitive methods (open

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procedure) representing 72,2 % of contracted volume 310,771,898 Euro.

Source: Normative/regulatory function/E-Procurement system.

Gap analysis

The information retrieved from procurement data are not fed back in the system but are captured only in the annual DPPP reports.

Recommendations

EPPS should foresee a statistical module that is freely accessible.

Indicator 8. The public procurement system has a strong capacity to develop and improve

Sub-indicator 8(a)

Training, advice and assistance

There are systems in place that provide for:

Assessment criterion 8(a)(a):

Substantive permanent training programmes of suitable quality and content for the needs of the system.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Article 50 of PPL mandates that employees of contracting authorities involved in the conducting of public procurement tasks shall attend professional training and education courses. Contracting authorities shall provide professional development and training for public procurement officers and other persons employed by contracting authority involved in public procurement tasks. Professional training and education in public procurement field shall be conducted on basis of the program for professional training and education.

Professional training and education for the needs of contracting authorities shall be organized and conducted by the Ministry of Finance/ DPPP which shall establish the program and method of professional training and education in public procurement field. Professional training and education may be organized and conducted by the Ministry also for economic operators and other persons.

During the assessment DPPP informed that there are two main types of trainings organized by the Ministry - on legislative framework and the use of e-procurement system. In cooperation with the Human Resource Directorate the Ministry of has adopted the Training calendar for the year 2022³⁶. There were over 394 officers and interested persons were trained in a total of 12 trainings. This includes trainings organized by the Human Resources Administration – a total of 4 trainings and those organized by the Directorate for Public Procurement Policy – 8 trainings. The training duration varies from 1 to 2 days.

Gap analysis

Although training activities are conducted frequently, DPPP lack an annual training program which will make the training process more systematic and allow for tracking also different level of training modules. A training curriculum for different levels is also not consolidated.

Recommendations

Develop an annual training program based on levels of procurement competencies which should be delivered based on a structured training curriculum.

Assessment criterion 8(a)(b):

Routine evaluation and periodic adjustment of training programmes based on feedback and need.

Conclusion: Substantive gap

³⁶ Published at the [TRAINING CALENDAR \(ujn.gov.me\)](https://ujn.gov.me)

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Red flag: No
Qualitative analysis During the assessment the DPPP has not provided documents to show how the systematic evaluation of trainings is conducted.
Gap analysis There are no evidence to demonstrate that there are mechanisms or documents to show how the systematic evaluation of trainings is conducted.
Recommendations Elaborate as part of the training program also the system for evaluation of trainings conducted and analysis of feedback to inform the preparation of training program for the upcoming year.
Assessment criterion 8(a)(c): Advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.
Conclusion: No gap
Red flag: No
DPPP offers such support through help desk and advisory support provided to Contracting Authorities upon request. A help desk function is available and published at the website of the DPP https://ujn.gov.me/obavjestenje-za-help-desk , although it has only contacts of responsible persons of DPPP who can be reached to receive clarifications regarding legal issues related to the application of the PPL, professional training, improvement and taking a professional exam in the field of public procurement, electronic procurement system and Public Private Partnerships (PPP).
Gap analysis The assessment has not identified any gap.
Recommendations None
Assessment criterion 8(a)(d): A strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The Procurement Strategy for improving public procurement addresses the issue of professionalization and education through all its strategic and operational objectives. Several activities are included to achieve the objective: <ul style="list-style-type: none">- Education of employees in the Ministry of Finance with the participation of international experts, in order to promote new techniques for concluding public procurement contracts, on the application of EU regulations in the context of the new regulatory framework for public procurement and transfer of international good practices.- Education of contracting authorities, business entities and other interested persons on the legal framework in the field of public procurement and the method of application of the same);- Organization of training on integrity and prevention of corruption and conflict of interest in public procurement for contracting authorities.- Education of Contracting Authorities and business entities related to the use of CEJN- Promotion of green and sustainable procurement with a focus on ENP criteria

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However, there aren't specific parts on the Procurement Strategy to ensure that there is a well-defined and continual training strategy.

Gap analysis

The Procurement Strategy for improving public procurement addresses the issue of professionalization however there aren't specific parts to ensure that there is a training strategy in place prepared by DPPP.

Recommendations

Elaborate as part of the Procurement Strategy a well-defined strategy for the continues training program to be provided to procurement practitioners based on different level of proficiency

Sub-indicator 8(b)

Recognition of procurement as a profession

The country's public service recognises procurement as a profession:

Assessment criterion 8(b)(a):

Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Procurement is recognized as a specific function but not as a profession in the country. The PPL requires that the staff assigned within the procurement entities as procurement officer passed the professional exam for performing public procurement. The list of persons who has passed the certification exam is public and available at the website of DPPP. From 2012-2020 the number of certified procurement staff is 683, while during 2022, 65 staff has been certified as procurement officers.

Procurement professionalization is not supported however by different professionals' level in public procurement. Professionals level are linked with the years of work in public administration but not the level of expertise gained in public procurement.

Gap analysis

Professional levels of public procurement officers are not applicable in the job classification.

Recommendations

Establish professional levels within procurement based on the European Competency Framework for Public Procurement Professionals.

Review of the legal framework on Civil Servants and State Employees to recognize procurement as a profession.

Assessment criterion 8(b)(b):

Appointments and promotion are competitive and based on qualifications and professional certification.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Appointments and promotions are done mainly following the requirement of the public administration however the PPL requires that a procurement officer has received the certification for performing public procurement functions.

Gap analysis

Although appointments take into consideration the certification in public procurement, there was no evidence that promotions are competitive and are based on level of experience in public procurement.

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Recommendations Enforce the application of PPL in conjunction with public administration rules for staff appointments and promotion.
Assessment criterion 8(b)(c): Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.
Conclusion: Minor gap
Red flag: No
Qualitative analysis Staff performance is based on public administration human resource management. Such performance is evaluated on yearly basis. Human Resources Management Authority issues the performance evaluation methodology based on which each administration performs the assessment.
Gap analysis There was no evidence of a systematic methodology on how the DPPP being in charge for providing continues capacity building in the area of public procurement, collects from all institutions operating under the public procurement system staff needs based on performance evaluation.
Recommendations Create coordination mechanism with CA to receive on regular basis a list of staff that needs capacity enhancement based on the outcome of staff performance evaluation.
Sub-indicator 8(c) Monitoring performance to improve the system
Assessment criterion 8(c)(a): The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.
Conclusion: Substantive gap
Red flag: No
Qualitative analysis The Government of Montenegro has adopted a Strategy for improving the policy of public procurement and public-private partnership for the period 2021- and the Action Plan for the implementation of the Strategy 2021-2022. The Strategy provides outcome and performance indicator to monitor achievement of strategy objectives and results which are aimed to improve the system. DPPP has established a separate department which is responsible to monitor the performance of public procurement system. The department receives also the reports from inspections but during the assessment it was not shown how these reports might contribute to undertake changes in procurement system and improve performance of Contracting Authorities. However, there is not clear if the DPPP has established a performance measurement system that focuses on both qualitative and quantitative aspects and that is followed and reported by each CAs. DPPP prepares and submits to the Government annual reports for public procurement procedures which provide information for different performance indicators which compared to previous years enable measurement of system performance, but there are no set targets for each of the indicators.
Gap analysis The Action Plan for implementing the Strategy for 2023-2025 was not prepared until the assessment period. There are no evidence how the DPPP uses the findings and recommendations for inspection reports to address systematic issues in public procurement. DPPP has not established a performance measurement system with set indicators that focuses on both qualitative and quantitative aspects and that is followed and reported by each CAs.

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Recommendations

An Action plan for 2023-2025 for implementation of PP Strategy should be prepared. A comprehensive data capture and performance measurement system Integrating the KPIs into the procurement measurement system. should be established and integrated with the e-procurement system to be introduced. Furthermore DPPP should established a systematic mechanism to ensure elaboration of reports from inspection and take measures to improve procurement performance based on the findings.

Assessment criterion 8(c)(b):

The information is used to support strategic policy making on procurement.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The Action Plans that will be adopted during the Strategy implementation period are adopted to define activities and measures for the Strategy's implementation and be its integral part. The Action Plan states the strategic objective, operating objectives, activities for implementing operating objectives, activity holders, deadlines and performance indicators for implementing the Strategy's activities. If necessary, Action Plans are subject to revision, according to the decisions and timeline determined by the Coordinating Body. The Coordination Body will define the next Action Plans that the Government will adopt.

A Coordinating Body will monitor the strategic and operational objectives' impact of the Strategy. By the end of the year, it will prepare an Annual Report on the Strategy and Action Plan Implementation to assess the annual strategic and operating objective's performance. The Annual Report will contain elements that enable direct results monitoring in the Strategy's implementation and real changes produced by the individual activities implementation. The Coordinating Body will submit the Annual Report to the Government for adoption and make it publicly available on the Public Procurement Policy Directorate's website. If necessary, reporting and submission of reports to the Government can be made semi-annually.

In the last quarter of 2025, the Coordinating Body will prepare a closing report on the Strategy's implementation. The Report will evaluate the strategic and operational objectives set by the Strategy during implementation, evaluate any unfulfilled objectives, and determine their relevance for drafting a new strategic document.

Finally, the strategic and operational objectives' meeting will be evaluated in the last quarter of 2025. The person who coordinated the Strategy's implementation will be appointed as the head of the evaluation. The evaluation reference group, which the Ministry of Finance will establish in the last quarter of 2025, will consist of the representatives of institutions and other stakeholders who did not participate in the strategic document's development and implementation.

Gap analysis

There is no evidence to support the assessment of this criterion. The Strategy and its implementing Action Plan capture only some key development objectives to improve public procurement system.

Recommendations See recommendation in 8 (c)(a)

Assessment criterion 8(c)(c):

Strategic plans, including results frameworks, are in place and used to improve the system.

Conclusion: Minor gap

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Red flag: No
<p>Qualitative analysis See 8 (c) (a). Strategic Plans are embedded into the Strategy for PP, however there are no results framework prepared to be monitored at the level of CAs and DPPP.</p>
<p>Gap analysis The strategic plans don't include results frameworks that are used to improve the system</p>
<p>Recommendations See recommendation in 8 (c)(a)</p>
<p>Assessment criterion 8(c)(d): Responsibilities are clearly defined.</p>
Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis The action plan prepared to support implementation of the Strategy to improve procurement system, envisage which are the responsible bodies for undertaking the actions foreseen to achieve the objectives of the Strategy. The lack of results framework makes it ambiguous the role of institutions in monitoring performance.</p>
<p>Gap analysis The lack of results framework makes it ambiguous the role of institutions in monitoring performance.</p>
<p>Recommendations While establishing the performance monitoring system, the roles and responsibilities at the level of Cas and DPPP should be elaborated.</p>

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The text under the Qualitative analysis summarizes the assessment on each sub-indicator following the interviews conducted with several institutions during the missions from November 2022 and January 2023 as well as the documentation reviewed. Results of the data analysis and firm survey are also used to inform the analysis. The list of institutions that are part of the sample and the documents reviewed are presented in annex 8.

Indicator 9. Public procurement practices achieve stated objectives

Sub-indicator 9(a) Planning
<p>Assessment criterion 9(a)(a): Needs analysis and market research guide a proactive identification of optimal procurement strategies.</p>
Conclusion: Substantive gap
Red flag: No

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Qualitative analysis

Contracting authorities in Montenegro apply the public procurement legislative framework currently in force, including the different by-laws which include forms and templates, to which they are obliged to abide. As clarified by the DPPP, the contracting authorities do not have the possibility to adopt their own internal acts or procedures in the part that has been precisely regulated by the legislation. The assessment could not establish to which extent the contracting authorities have internal procedures to complement the provisions of the procurement legislation.

Regarding the planning stage and the steps, the contracting authorities apply for establishing the procurement approach for major procurement in particular as well as the type of analysis they conduct and how they engage with the market during the preparation stage, the following may be noted.

Needs assessment documents and/or contracting strategies to document the planning stage beyond the published procurement plan, are not published, therefore the completeness and correctness of the analysis performed by the procurement professionals cannot be assessed. As general practical steps explained by the different contracting authorities interviewed, the needs are provided by each unit of the contracting authority and are centralized by the procurement unit by the end of January. In certain cases, the consolidated plan is prepared together with the financial and accounting departments. The estimated procurement budget is generally prepared based on the historical information and experience of the contracting authorities and is specified in the procurement plan which becomes the reference for the preparation of the tender documentation. Budgets are estimated in September which provides an image of the planned investments for the next year. Public procurement unit/department is generally involved in consultations, so interviewed persons appreciate time is sufficient to complete the process. The procurement plan is published in the e-procurement system after it is approved by the responsible body. Ministry of Finance is in charge with the approval for the central authorities (about 30% of the contracting authorities). Different arrangements are in place for the local authorities.

In practice, as showed by the sample analysis, estimated procurement budget is adjusted during the course of the year, which sometimes is more than 50% than the initial plan [some data from 2022: 104% Capital City Podgorica, 15% APW, 4% Traffic Administration, 52% Public Company Roads of Podgorica]. Data at system level is not available in order to establish the % of contracting authorities that modified the estimated budget with more than 50%, however, this may indicate that either the planning process is insufficiently documented or there are reasons outside the contracting authority control which does not allow planning for higher budgets from the very beginning. The latter could relate to the budgetary process in Montenegro.

Market research is rarely conducted and usually entails browsing the websites of the potential suppliers. In practice, there are noticed slightly different approaches in the way the needs analysis and market research are applied by different entities. Some base the estimates exclusively on previous experience whereas others do some assessment of prices in specific cases. This may be explained by the fact that market research is, by law, a possibility and not an obligation (article 85). Regarding market consultations, contracting authorities are not obliged to record them or to publish the results and therefore, there is no evidence of their application.

The **Administration of Public Works (APW)** is acting as a centralized purchasing unit, although it is not formally organized as such, which manages the procurement of public works for the central government. In line with the law provisions, all investments managed by the entity are planned for the year and procurement planning is directly linked with the capital budget. The needs analysis is conducted by the beneficiary of the investment, who also prepares the terms of reference. A commission established by the APW is verifying the terms of reference and develops the tender documents, including the terms and conditions. APW conducts rarely market research as they consider that there is extensive knowledge in-house on the market having in view the similarities between the procurement processes they organize. However, the contracting authority also reported cases of failed tenders due to estimated prices which were no longer valid, which may have been

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avoided if prior market research had been organized. As explained by the entity, price adjustment formula was included in the contract in line with the new law amendments to avoid such cases in the future, which is a suitable measure to address unforeseen price increases during the contract implementation and cannot justify the lack of proper planning. Similar to the APW, in the case of the **Traffic Administration**, an implementing agency in charge with the maintenance and reconstruction of capital roads, the program for capital investment is the basis for conducting public procurement.

In contrast, the **Montenegrin Electric Enterprise AD Niksic (EPCG)**, an SOE acting in the energy sector, conducted informal market research in the past, by directly engaging with the private sector, which was considered a useful process to improve the technical specifications; also improvements in the competition level was also observed. As explained by the contracting authority this is however not frequently done, but was considered in the past for major and complex investments. The entity representatives stated that they are working on an internal procedure for conducting market research and consultations, however relevant documentation was not sent arguing that documents are confidential as per internal rules.

Similarly, the **Ministry of Public Administration** is following the budget law for the preparation of the procurement plan which includes the estimated budget for each investment and is based on the needs received from all the units within the entity. The procurement unit consolidates the needs into the procurement plan with the support from the finance and accounting unit. The process for the collection of needs and estimates starts in September of each year and therefore the entity has already an image of the planned investments for the next year.

Public Company Roads of Podgorica uses their prior experience in terms of value and quantities as well as the anticipated needs when planning for the next year. Being a public local company, the budget for the entity is approved by the local parliament and about half represents public procurement, mainly regular maintenance and construction works on the territory of Podgorica. Market research is generally conducted in-house for more complex procurement (such as purchase of a new plant for asphalt paving) or to verify if prices for specific materials have fluctuated.

Health Insurance Fund conducted centralized procurement of medical supplies, medicines and equipment for the health sector until 2021 when the procurement function was decentralized and transferred to the main beneficiaries, i.e. hospitals and health clinics. This development looks in contradiction with the trend at EU level which looks more towards the centralization of the procurement of items for the health system (mainly, medicines and supplies).

Agency for Cadaster conducts centralized procurement of specific goods and services³⁷ such as insurance services, furniture, disinfection etc. for about 40 public institutions. The specific legislation for centralized procurement has been recently modified [on March 16, 2023], therefore an assessment of the practices in accordance with the current provisions could be done after a couple of years. Centralization of needs and preparation of the procurement plan is done in accordance with the deadlines set by the legislation with no major issues being faced in practice. No regular market analysis is done for the items under their portfolio except for the stage of initiating the procedure when they have a review of the market prices to assess the level of savings or the potential for procurement of bigger quantities. Procurement of IT equipment and telecommunication has been recently removed from its scope of work³⁸ due to difficulties for the suppliers to

³⁷ Current list as per 2023 amendments to the Decree on centralized procurement include: Office and other consumable material; Motor vehicles and other means of transport, other than vehicles for special purposes; Fuel and motor oils; Office furniture; Disinfection, disinsection, and deratisation; Insurance of property at the disposal of Montenegro (movable and immovable assets); Insurance of civil servants and state employees.

³⁸ Previous list also included: Computer devices and equipment; Communication equipment; Mobile telephony; Fixed-line telephony; Electronic communications – internet.

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meet the delivery deadlines and the need to spend the budget within the same year. This is currently done by each contracting authority. Impossibility to ensure a sufficient level of standardization of specifications due to resistance of beneficiaries could be another reason. These may be temporary issues due to the small market or the fact that the contracting authority may not be an attractive client; framework agreements with multiple suppliers may be an answer to this issue.

Capital City Podgorica conducts centralized procurement on behalf of the 32 different units and organizations under its coordination. The procurement planning is done in accordance with the law, similar to the other entities. The needs estimates are collected from all units in September for the following year in order to prepare the budget and ensure its approval by the local parliament by the end of the year. The detailed budget is also sent to the Ministry of Finance. Each unit sends its detailed annual public procurement plan to the centralized procurement unit which are consolidated into a single plan. Market research was conducted in the past by the procurement department within the City of Podgorica which led to important savings as stated by the contracting authority, however this is not done on regular basis without a specific reason being provided.

Gap analysis

As noted during the sample analysis, there are cases in which the estimated procurement budget is adjusted during the course of the year with more than 50% than the initial plan. Data at system level is not available in order to establish the % of contracting authorities that modified the estimated budget with more than 50% and conclude if this is a recurrent, system issue, or an isolated matter. This may indicate that either the planning process is insufficiently documented or there are reasons outside the contracting authority control which does not allow planning for higher budgets from the very beginning. The latter could relate to the budgetary process in Montenegro.

The estimated procurement value is generally built based on previous experience and is linked to the capital budget and procurement methods are based on the thresholds established by law. It may be concluded that contracting authorities are generally focused to meeting the mandatory requirements of the law and rarely make use of their right to apply more innovative approaches to document and substantiate their decisions. This may be due to insufficient guidance with regard to the benefits of conducting market research and market consultations and lack of tools which can be applied to substantiate both the estimated value and selection of a different procurement approach. Lack of market research and consultation could also explain the general low competition in public procurement or the limited use of procurement procedures other than open procedure and simple procurement.

As noted during the assessment and conversation with the selected contracting authorities, market research and market consultations are rarely carried out, being conducted in case of new or complex procurements which are not known to the contracting authority. This is confirmed by the results of the survey with economic operators, which shows that only 6% have been frequently invited to market consultations and 28% appreciated this happened rarely. The majority of the respondents consider that contracting authorities do not do enough market consultations (71%) although this instrument is widely considered useful to improve the quality of the tender documents (80%) and to reduce the likelihood of complaints from firms during the procurement process (79%). Only 18% of the economic operators appreciate that there is a clear process to identify firms to be invited to market consultations whilst there is a general perception that firms invited to participate in market consultations are given preference in awarding the contract (51%).

Recommendations:

An analysis at system level of the modification of the total procurement budget of the procurement plan (actual vs. initial) would be necessary to understand the reasons for which procurement budgets are significantly increased during the course of the year. At the same time, this could show if this is an isolated matter or if it is a systemic issue. Reasons may range from poor planning capacity at the level of contracting authorities, to the budgetary process followed in Montenegro.

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When used appropriately, market consultations are proved to enhance value for money, promote professionalism, support innovation, increase competition and reduce the risk of complaints and corruption. Organizing meetings with potential bidders in the pre-bidding phase to discuss possible improvements in the procurement process is a good practice used in many European countries, such as Belgium, Germany, United Kingdom and Ireland. A thorough analysis of the procurement portfolio by using appropriate instruments, such as the supply positioning matrix, might provide a good image of the procurements where market consultations are most relevant.

The DPPP could consider the development of guidance and tools to conduct market research and consultations, to explain what each would entail and to present their benefits and best practices in addressing the market. Contracting authorities should be encouraged to conduct market research in all cases, and market consultations in specific, complex cases, not only to document the price estimates, but to ensure that the specifications are clear and that the market is able to respond to the procurement initiative. The authorities could also envisage the introduction of obligatory market consultations for complex innovative procurements above certain threshold with control to be done by the state audit. Constant communication of the existing guidance and tools supplemented by examples of practical application of the market consultations might help contracting authorities to better understand and apply them in the procurement activity.

Market engagement at government level (for example, between line ministries and private sector) could help with identifying the specific issues the market is facing in problematic sectors, with very low competition levels, and the measures the government may be able to take in order to stimulate key business sectors. The experience of other countries shows that involvement of various stakeholders, both public and private sectors, in the promotion of the process could lead to innovations and development of new markets and products. An example is the Scottish “Meet the Buyer” events to discuss strategic sourcing, explain tendering processes, and provide advice on structuring bids [<https://www.sdpscotland.co.uk/events-mtb/>], part of the “Supplier Development Programme”, which provides tools and guidance to businesses interested in selling to the public sector.

Assessment criterion 9(a)(b):

The requirements and desired outcomes of contracts are clearly defined.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Based on the review of the tender documents from selected contracting authorities, it may be noted that they include the technical specifications, terms of reference and the bill of quantities, as appropriate, depending on the contract type and contract object. The tender documents issued after the entry into force of the 2019 procurement legislation (i.e. after mid-2020) do not include the contract form, the general or specific contract conditions. Although some of the important provisions of the contract are specified in the tender documentation, this practice puts the potential tenderers into a situation of unpredictability not-knowing the specific terms that would be applicable during the contract implementation. One of the main obstacles faced by firms when working under a government contract is the fact that the contract conditions are unknown when firms submit their bid [on the 4th place with 25%]. This aspect is further detailed below at indicator 9 (b)(b).

Issues with the tender documentation is one of the reasons why economic operators decide not to submit a bid for a tender (28% appreciate that this happened always or frequently and 46% rarely). The main problem experienced with tender documents relates to biased technical specification (23%) or biased qualifications /requirements to favor certain bidders (23%). Nevertheless, only 4% consider that the tender documents are not sufficiently accurate, informative or up-to-date.

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The sample analysis showed that requiring clarifications of the provisions of the tender documents are a general practice and that clarification requests often lead to improvements of the tender documents. According to the data analysis, at system level, 36% of the tenders were modified during the procurement process.

The selected contracting authorities had approximately the same results, 33% of the tenders being modified. In the case of **APW**, between two to five amendments were issued to clarify or correct the technical requirements. In one case, tender documents were modified to remove one of the licenses which was not mandatory by law. Clarifications also referred to the bill of quantities, terms of reference requirements and in some cases the award criteria (from lowest price to price / quality ratio). In other cases, APW did not agree to modify the tender documents despite a tenderer pointing out to very specific features (i.e. dimensions). APW also cancelled a procurement procedure before deadline following a complaint challenging the introduction of MEAT and the contract conditions. For 6 out of 10 procedures of **HIF**, interested bidders required clarifications regarding the qualification requirements, such as licenses, and technical specifications. 9 of the 10 procedures of the **Traffic Administration** analyzed also required the clarification of the technical specifications and were followed by their amendment. The **Ministry of Public Administration** had significantly fewer tender modifications and clarifications requests. In only one procedure modifications were made upon bidders' request, while another three were amended proactively by the Ministry. The e-procurement data analyzed does not contain information regarding the average number of clarification requests or tender modification to assess to which extent there is an issue with the quality of tender documents that would prevent economic operators to prepare their bids.

Gap analysis

Despite the fact that interested economic operators make use of their right to request clarifications, which are generally addressed by the contracting authorities (according to the sample review), the competition levels are still very low, with 3.5 bids at tender level and between 1.5 to 2 bids at lot level. The single bidder rate is also very high, irrespective of the procurement procedure (52% simple procurement procedures, 68% open procedure) which may raise questions around the quality of the tender documents.

Although tender documents are publicly available and include the essential documentation to enable the preparation and submission of the bids, the lack of predictability of in terms of applicable contract conditions and the high percentage of respondents who decide not to apply due to problems with the tender documents, as mentioned above, are issues which need to be further investigated by the Montenegrin Government and which may explain the low competition levels in Montenegro. Ensuring the predictability of the applicable conditions may address the issue of trust in the functioning of the procurement system and at the same time, improve competition levels.

Recommendations

The Montenegrin Government should consider developing detailed guidance on the contents of the tender documents and/or development of standard tender documents, including standard contract conditions, for each type of contract (as a starting point), which could include pre-defined text, instructions, examples and templates. Market engagement in the key sectors is other measure may also be relevant to ensure that the requirements and desired outcomes of contracts are clearly defined. These could be part of a governmental program focused on the improvement of the competition levels which may go beyond public procurement.

Assessment criterion 9(a)(c):

Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.

Conclusion: Substantive gap

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Red flag: No

Qualitative analysis

Sustainable criteria are generally not used by the contracting authorities which were subject to the assessment. Sustainability in public procurement in an early stage of development in Montenegro with some provisions being included in the law as principles for the contracting authorities [articles 7 to 12] and in the public procurement strategy which foresees 6 operational goals, one specific to sustainable public procurement.

The annual action plan for 2022 included measures related to the promotion of sustainable procurement, including green public procurement, however activities are delayed according to the report on the implementation of the strategy. It is stated that workshops were held which concluded that it would be needed a higher level of promotion of environmental and social criteria in the process of awarding public procurement contracts including measuring the results. This is planned to be achieved through educational programs and promoting the use of sustainable criteria in the procuring processes. One of the strategic objectives of the 2023 annual action plan refers to encouraging the implementation of framework agreements, centralized public procurement, green and sustainable procurement, mainly focused on the increase of the percentage of framework agreements, centralized procurement, sustainable criteria etc. Development and delivery of a training program on sustainable procurement is planned to be conducted by the Ministry of Finance and Chamber of Commerce of Montenegro in 2023. At the moment, the e-procurement system does not capture the sustainable public procurement and it is difficult to estimate its level. DPPP is considering developing guidance to provide more insights to the contracting authorities that would allow them to include such criteria in the tenders.

Some contracting authorities use some green criteria in their tenders, however quite timidly. For example, **Agency for Cadaster** used such criteria for purchase of tonners or vehicles and **EPCG** used some sustainability criteria in some of the complex procurements. Examples of criteria include workplace safety measures and waste management provisions. Three analyzed procedures from the **Traffic Administration** include the environmental protection and quality control system as sub-criteria for the assessment of the quality of the offer for which 10 points are allocated, however, considering that price accounts for 90 points, their impact over the result is close to null.

Gap analysis

Sustainability in public procurement in an early stage of regulation in Montenegro. Although the legal framework is in place, there is limited information available with regard to the established targets and their level of fulfilment by the contracting authorities. Also, there is no evidence of the progress or impact of the measures proposed within the strategy's action plan. Some authorities use some sustainability criteria in their tenders (green criteria, safety measures etc.), however, these are isolated cases.

Recommendations

Public procurement is acknowledged as a strategic tool for achieving policy objectives and has an important role in the promotion of innovation, social responsibility and environmental protection, while balancing cost and quality, thus ensuring the sustainability of its results³⁹. This requires detailed methodological guidance, extensive training and promotion of the approach among contracting authorities combined with the development of key performance indicators and corresponding functionalities of the e-Procurement system to track progress and measure success of the respective policies. The European Commission published a great number of guidelines and practice examples which could be used for developing additional guidance for the Montenegrin authorities, in particular around the following topics:

- Green public procurement;

³⁹ https://single-market-economy.ec.europa.eu/single-market/public-procurement/strategic-procurement_en

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- Social inclusion of people with disabilities and promotion of enterprises for social economy;
- Energy efficiency in procurement.

For complex procurement, the contracting authorities could engage with the private sector to assess to which extent the market can respond to the envisaged sustainability requirements or there is a need to adapt their offer in order to be able to respond to the new requirements. To further promote the sustainable aspects in procurement, the authorities may introduce obligatory use of the ecological aspect in tenders for certain categories of goods.

Sub-indicator 9(b) Selection and contracting

Assessment criterion 9(b)(a):

Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

As noted during the sample analysis, open procedure is the rule irrespective of the complexity and estimated value of the procurement, competition levels or market availability, etc. The selected sample for the analysis included open procedures and simple procurements only as no other types of procurement procedures have been identified in the statistical reports of the contracting authorities selected for the assessment (with the exception of one emergency procurement). As it is usually the practice, the evaluation process for the open procedure requires the analysis of the qualification criteria and subsequently of the technical proposals for the compliant tenders only. Use of other types of procurement procedures, including multi-stage, is limited, even if the law regulates other types of procurement procedures as well. The data analysis conducted on the e-procurement data shows that only 1% of the launched tenders are restricted tender, representing 0.5% of the estimated budget⁴⁰, and no competitive dialogue, partnership for innovation or competitive negotiations appear in the data. Three contracting authorities organized restricted tenders, Ministry of Defense, JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ (primary school) and Ministry of Internal Affairs. These are showed in the table below:

Contracting authority	No. of tenders	Estimated value EUR
JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ	1	20,669.41
Ministry of Defense	33	4,849,616.65
Ministry of Internal Affairs	2	230,000.00
Total	36	5,100,286.06

In terms of type of contract, these refer to:

Type of contract	No. of tenders	Estimated value EUR
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⁴⁰ According to the data analysis conducted based on e-procurement data: Publication dates of tenders - from 02/Feb/2021 to 14/Mar/2023; Contracts signed - From 24/Jan/2021 to 04/Apr/2023

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Works	4	1,197,871.85
Services	12	1,995,100.17
Goods	20	1,907,314.04
Total	36	5,100,286.06

JU OSNOVNA ŠKOLA MARŠAL TITO ULCINJ (primary school) organized only one procedure for a service contract for travel agency services (15 proposals received). Ministry of Defense seems to be the most experienced in conducting restricted procedures, for specific items, such as army specific goods and services and IT services. The number of proposals received ranges from 1 (Procurement of works on the reconstruction of the gas station in the "Milovan Šaranović" Barracks in Danilovgrad) to 28 (Procurement of ballistic equipment and equipment for declared forces). Goods contracts tend to receive more proposals and works. Service contracts received between 2 and 15 proposals.

Considering that the competition levels are comparable between the different types of procurement procedures, it cannot be concluded based on the sample review that applying a different type of procedure would have resulted in a different outcome. As mentioned by contracting authorities, trainings on competitive dialogue or partnership for innovation partnership by DPPP are not yet available, which may be one of the reasons for which contracting authorities do not apply these procedures. However, the impact of such measures on the competition levels is difficult to establish.

It should be noted that, at country level, the single bidder rate is very high irrespective of the procurement procedure (52% simple procurement, 68% open procedure) supports this conclusion. Also, 13.6% of the contracted volume is represented by negotiated procedure without publication (9% of the estimated budget). This results in a very high percentage of tenders awarded based on a single bid.

Gap analysis

Use of multi-stage procedures is limited in Montenegro with only 1% of restricted procedures and no other multi-stage procedures registered in the e-procurement system during the past 2 years. The law regulates other types of procurement procedures, however there may be a lack of knowledge of the benefits of using other types of procurement procedures, in particular in the case of complex tenders.

As seen in other countries, possible reasons of not using restrictive procedure could be its longer implementation period or the fact that contracting authorities do not know the market well enough to be confident that there are many suppliers available. At the same time, the reluctance to apply other procedures may also be due to the practices of the ex-post controls and audits which often question decisions which are not the rule, even when these are documented.

Recommendations

The DPPP could promote the use of the different types of procurement procedures, their advantages and disadvantages, as well as practical examples to encourage authorities to be more open to their use. DPPP could also consider developing standard tender documents for competitive dialogue, competitive negotiation or partnership for innovation. Implementation of pilot projects in complex sectors or procurements may provide the necessary insights into how the different types of procurement procedures could work in the Montenegrin environment. In particular in the case of innovative procurements, the competitive dialogue, the competitive negotiation or the partnership for innovation, which are very much based on a regular engagement with the market, could result on increased competition levels in the long term. Making use of the existing experience

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which the Ministry of Defense seems to have would be desirable to show the application of the restrictive tender process within the Montenegrin context.

Assessment criterion 9(b)(b):

Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Tender documents are generally prepared by the selected contracting authorities following the model adopted by relevant by-law (Rulebook on forms in public procurement procedures) which is generally considered well designed by the contracting authorities. New templates for tender documents are published whenever there is a modification of the procurement law were published. The provided templates may be amended by the contracting authorities under certain conditions, however, in practice, focus is on meeting the mandatory requirements. Templates are for different types of procurement procedures (one form for the open procedure, one for simple procurement, one for negotiated procedure without publication and another one common for the other types of procurement). The form applicable for open procedure refers to the sections (with limited guidance or instructions) that need to be filled in by the contracting authority, such as:

- information on the contracting authority and data on the procedure and subject of public procurement;
- grounds for exclusion;
- tender guarantee;
- award criteria;
- information on preparation and submission of offer;
- data on confidentiality;
- requests for clarification and modification of tender documents;
- statement regarding the absence of conflict of interest;
- information regarding the submission of complaints;
- information on contract signature and amendment;
- Information on the conclusion of framework agreement or centralized procurement.

In other countries, the above sections together are usually referred to as instructions to tenderers. The same template also includes a section on technical specifications, however without too many details; basically, bidders are informed that this should be an element of the offer. The templates do not include other forms which are usually part of a standard tender documentation, such as general and special contract conditions, template for terms of reference, specific forms to be filled in by the bidder, such as technical and financial proposal or statements for meeting different criteria or requirements etc.

When asked if they expressed interest for a public contract, but then decided not to submit a bid for that tender, the quality of the tender documents is the second obstacle to submit bids mentioned by the economic operators (after competition and fairness). Biased technical specifications and qualifications and requirements to favor certain bidders are the first two main problems experienced with the tender documents by the respondents to the survey.

Until the 2019 public procurement law, which entered into force mid-2020, a model of the contract was part of the model for the tender documents (separate versions for works, goods and services) and was published as a mandatory part for each tender. The version in force since mid-2020 does not require the contract model as a compulsory part of the tender documents. While it does not contain a contract model as such, a chapter in tender documents defines the basic contract elements and conditions. As of mid-2020, the tender documents

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include a section on the “Methods of concluding and amending the contract” in accordance with the Rulebook on forms for public procurement procedure, which contains standard tender document. However, aspects such as termination of the contract or contractual penalties are referred to as an option for the contracting authorities.

Nevertheless, the economic operators appreciate that contracting authorities generally use similar contract conditions for similar projects (85%), which may assure a level of predictability for the bidders that are usually working with the same contracting authorities, with a majority of 52% of them considering that the contract clauses are clear and cover all the main aspects relevant for contract implementation and that fair payment terms are included (50%). However, the economic operators consider that allocation of risks associated with the performance of the contract are unfairly distributed between the contracting authority and contractors (39%) and that the mechanisms for dispute resolution are inefficient and unfair (38%). It should be however noted that a high number of “don’t know” answers, 24% and respectively 37%, which could be interpreted in different ways (either did not want to provide an answer or did not experience such a situation).

In most cases analyzed, the signed contract corresponds to the conditions published as part of tender documents. Contract conditions are drafted by the legal department of the contracting authority and are generally aligned with the tender documents with some exceptions noted during the sample analysis. Some contracting authorities chose to include in their contracts non-mandatory provisions. For example, **HIF** also covered the obligations of the parties, ownership, contract termination, contract amendment. Similarly, the Traffic Administration and the Ministry of Public Administration. It was noted that contract provisions for complex works, such as design-built contract used by **APW**, are very basic, no sustainability considerations, no obligations of the contracting parties. The method of payment is not in accordance with the type of contract (Design-built): interim payment certificates vs. progress payment.

It was also noted in the case of **APW** that qualification requirements are generally the same throughout the sample analyzed and refer to national licenses for the required services/works and personnel capacity, and later, the previous similar experience or economic capacity. The sample assessment revealed that while during 2018-2020 requirements for personnel capacity were not always clearly defined, leaving the bidders to prove adequate personnel capacity without defining what adequate levels would be, with the introduction of the new legal provisions the list of required personnel is precisely defined. This led to several clarification requests which required also the extension of the deadline for submission of offers. This is no longer the case for the 2021 and 2022 procurement procedures analyzed.

Gap analysis

Contracting authorities generally do not publish the draft contract together with the tender documents. Not knowing the contract conditions when bidding for a contract is listed as one of the main obstacles when working under a government contract by 25% of the economic operators (after market instability – 45%; the complexity of the administrative processes during contract execution – 40% and the delays in payments – 36%). Also, risk allocation is considered unfair (39%) and the mechanisms for dispute resolution are perceived as inefficient and unfair (38%). The quality of the tender documents is the second obstacle to submit bids highlighted by the economic operators which may be explained by insufficient guidance on how to prepare tender documents or a lack of capacity.

The absence of a standard contract model for the different types of contract results in the application of different practices by different contracting authorities (and even within the same). Whilst the contracting authority should have the possibility to amend the contract model based on the specifics of the procurement, having a set of (general and specific) contract conditions would benefit both the contracting authority and the bidders as it creates predictability and reduces risks during contract implementation.

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Recommendations

The DPPP should ensure that the draft contract is obligatory part of the tender documents by modifying the Rulebook on forms in public procurement procedures. As noted at other sub-indicators, the DPPP should consider developing standard tender documents for the different types of contracts – services, works, goods – as a priority and/or guidelines and instructions on how to prepare tender documents, in particular on setting the qualification and selection criteria, award criteria, technical specifications etc., minimum set of contract clauses, and different templates to be filled in by the bidders (the technical and financial offer as a minimum). The DPPP's standard contract models could serve as a guide and should address the issues pointed out by the economic operator:

- fair risk allocation between the parties e.g. price indexation in case of market instability,
- efficient dispute resolution mechanism.
- sustainability considerations.

Additional sets of standard tender documents could be developed for the most frequently purchased items. An analysis of the procurements conducted at country level, including their volume, may provide insights into the priority list and also may indicate where the opportunities for consolidation of demand are.

Assessment criterion 9(b)(c):

Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As noted above, open procedure is the default procurement procedure for procurement above the threshold regulated by the legislation, meaning it is not required by the procurement legislation in force for contracting authorities to justify why they have selected a specific procedure, as long as it is in accordance with the law. Considering that 36% of the launched procedures (81% of the estimated budget)⁴¹ are open procedures and 58% simple procurement procedures (representing only 7% of the estimated budget), the rule was applied. About 2% of the procedures were negotiations without publication (9.3% of the estimated value). The analyzed data and information did indicate that generally contracting authorities follow the rule of the law without making use of the alternatives mentioned within the legal framework.

Justification is required for emergency procedure which was regulated by the law in force before the 2019 amendment (i.e. during the period 2017-mid-2020). The current law excludes this option. Under the sample analysis, one urgent procurement was selected for review to look at how the legal provisions are applied in practice. This was conducted by the **Ministry of Public Administration** for purchasing telecommunication links (in 2019). The review showed that no tender documents were published, as the procedure was launched by issuing the decision to initiate urgent procedure. The urgency was justified by the importance of the procurement to the state service delivery and the fact that the previous tender had failed. The lowest price was the award criterion which was common for the procedures launched before the new law adopted in 2019.

The e-procurement system also captures data on the **total value of simple procurement below 5000 euros** (i.e. direct purchase), representing 37% in 2021 and 16% in 2022 at system level.

	2021	2022
# of contracts signed	4,599	6,879
Procurement volume (EUR)	164,248,424	430,431,992

⁴¹ According to the data analysis conducted based on e-procurement data: Publication dates of tenders - from 02/Feb/2021 to 14/Mar/2023; Contracts signed - From 24/Jan/2021 to 04/Apr/2023

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# of exclusions (i.e. below 5000 euros)	130,636	155,370
Procurement Volume (EUR)	62,012,866	69,399,983
Total	226,261,290	499,831,975

The sample analysis conducted for the selected contracting authorities shows some differences between authorities which may be worth further investigating to identify any patterns at system level. **APW** spent about 155,000 euros on direct purchase in 2021 and 208,000 euros in 2022, **Capital City Podgorica** spent 455,000 euros in 2021 and 331,000 euros in 2022, the **Traffic Administration** spent 72,000 euros in 2021 and 116,000 in 2022, whereas the **Ministry of Administration** spent 110,000 euros in 2021 and almost 2,700,000 in 2022 (this represents about 45% of the overall procurement budget in 2022 which may be linked with the cyber-security attack).

In terms of other procurement approaches the data analysis shows that only 5% of the procurement procedures are represented by framework agreements.

Gap analysis

The analysis of the sample contracts shows that the contracting authorities applied the provisions of the procurement law which does not require to justify the choice of procurement procedure if the rule is observed. However, as noted above, the competition levels are very low even if contracting authorities chose the open procedure which raises the question if better value for money would have been obtained if other procurement procedures would have been applied. Such conclusion cannot be however drawn based on the available data and information.

Nevertheless, the analysis of the e-procurement data for 2021 and 2022 shows that a high value of purchases below 5000 euros and the fact that framework agreements are rarely used.

Recommendations

Considering the low competition in Montenegro, the Government should consider a wider review of the barriers which prevent economic operators to access the procurement market. This analysis should go beyond public procurement and look at the different other legislative framework applicable to all economic operators or in a specific sector. Also, a thorough market analysis in different priority sectors may also indicate which are most appropriate procurement approaches that should be considered.

The application of tools specific for conducting procurement portfolio planning at country level, sector level or at the level of key contracting authorities (such as supply positioning matrix, combined with supplier preferencing matrix) may provide insights into the opportunities for aggregation of demand, reviewing the existing resources and capacities and establishing the procurement approach.

Also, Montenegrin authorities may wish to review the guidance on establishing the estimated value of the procurement process, including in relation to the artificial split of contracts, which may help with reducing the total value of direct purchases.

Besides the already prepared procurement plan, preparation of an annual public procurement by contracting authorities managing high capital expenditure budgets is one way to increase the transparency of the procurement activity and facilitate the understanding of interested parties, including the civil society and the economic operators, on the procurement approaches foreseen by the authority. A better understanding of the authority's priorities and reasoning could also increase the trust in the decisions taken by authorities and in the public procurement system as a whole.

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Assessment criterion 9(b)(d):

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The sample analysis showed that, in general, contracting authorities comply with the provisions of the legislation and clearly describe in the tender documents the procedures for bid submission, and opening. In general, the procedures for bid submission, receipt and opening are described in the tender documents in accordance with the templates adopted by by-law. Before the launch of the e-procurement system, all the bids were submitted in closed envelope with the statement “do not open before public opening of the bids”. The bid and samples were required by the tender documentation to be submitted in a closed envelope or package in such a way that when opening the bid, it can be determined with certainty that it is opened for the first time. Since the launch of the e-procurement system in January 2021, the bids are submitted electronically in accordance with the published tender documents and following the instructions provided by the e-procurement system. Bid submission deadline follows the provisions of the legislation. In specific cases, the contracting authority can justify a shorter deadline for urgency reasons which cannot be attributable to the contracting authority. In some cases, the justification does not seem in line with the provisions (for example, **APW** provided the start of the touristic season as reason for urgency).

The bank guarantee is either attached to the bid in the e-procurement system (scanned version) or may be submitted in hard copy to the registration office, however a scanned copy must be attached to the bid in e-procurement system as well. If submitted in hard copy, the contracting authority should ensure that the envelope is not open before the opening in the e-procurement system and confidentiality is observed. The sample analysis shows that contracting authorities approach the application of these provisions slightly different. **HIF** included details of submission of the bid guarantee in the tender documents, whereas **Traffic Administration** and **Ministry of Public Administration** did not.

Bidders were allowed to take part in the bid opening when procedures were conducted offline (article 98 of the 2017 law only mentions participation of the bidders’ representatives and not general public, citizens or the media). There is no evidence with regard to allowing civil society to monitor bid submission, receipt and opening prior to the introduction of the e-procurement system, however in practice there seems to have been cases in which media representatives attended and reported on some bid openings. Since the introduction of the e-procurement system, this option is technically not possible as all stages are conducted in the online environment and the protection of data needs to be ensured.

Gap analysis

There have been noted differences in the way contracting authorities detail in the tender documents the procedure for bid submission, receipt and opening or the way the tender guarantee may be presented. This may pose additional burden on economic operators which need to pay particular attention to the formal requirements presented in each tender they intend to participate in.

Recommendations

In this case as well, the development of standard tender documents may ensure a more uniform application of the law provisions and shorten the period for bid preparation, including a simplified process for the economic operators by becoming familiarized with the general requirements of the contracting authorities.

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Assessment criterion 9(b)(e):

Throughout the bid evaluation and award process, confidentiality is ensured.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The law provisions provides that the bids are submitted thorough the electronic system and may not be disclosed, thus ensuring data protection. The contracting authority is obliged to ensure the confidentiality of the offers and that they are accessible by authorized persons only. An evaluation committee is established in accordance with the Rulebook on Method of Establishing the Commission for Opening and Evaluation of Bids and includes a procurement expert. Members of the evaluation committee are required to sign a declaration of confidentiality and need to observe the specific rules provided for by the procurement legislation, specifically the Rulebook on the Evaluation of Bids. No other guidance except what is included in the law or by-laws is provided to the members of the evaluation committee.

Tender documents include some reference to the confidentiality requirements which point out to the applicable legislation. There is no evidence in the analyzed sample of tenders regarding the way the contracting authority ensures the confidentiality of the tenders in practice. However, 21% of the economic operators that responded to the survey seem not to trust the security, integrity, and confidentiality of the data exchange over the electronic public procurement portal. Nevertheless, there is no indication of breach of confidentiality and of any complaints due to this reason either.

Gap analysis

There is no evidence in the analyzed sample of tenders regarding the way the contracting authorities ensure the confidentiality of the tenders in practice. However, there is no indication of breach of confidentiality or complaints due to this reason. Nevertheless, 21% of the economic operators that responded to the survey seem to question the security, integrity, and confidentiality of the data exchange over the electronic public procurement portal. This is an area which should be further investigated.

Recommendations

The Montenegrin Government should work towards increasing the trust levels into the e-procurement system by further engaging with the private sector to understand the reasons for the lack of trust.

Assessment criterion 9(b)(f):

Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

In terms of award criteria, prior to mid-2020 bids are generally awarded based on the lowest price criterion even if the law allowed the application of the most economically advantageous bid (MEAT). An exception is worth mentioning, however. **EPCG's** analyzed sample of procurement documents from 2018 and 2019 shows that the entity used MEAT in 7 procedures out of the 9 analyzed during this period, even if MEAT was not

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mandatory at the time. All other contracting authorities that are part of the sample analysis used price criterion in all the procedures analyzed for the years 2018 and 2019.

After the introduction of the mandatory use of MEAT criteria for open procedures with the procurement law from 2019 (applicable since mid-2020) contracting authorities can decide on awarding bids based on a price-quality ratio. Generally, it was noted that price remains the dominant factor for the award (varying between 80-90 points) and rarely a higher number of points is allocated for the quality. Some examples are provided below.

EPCG generally uses 70% price – 30% quality or 80% price – 20% quality for works; for consultancy services 50% price -50% quality and for goods 90% price – 10% quality. Examples of technical criteria which are generally used include: delivery time, experience or capabilities and expertise of the staff, or references. For consultancy services, example of quality criteria includes the experience of the experts and references of prior experience.

APW used in the case of design services 20-25 points for references for the lead team and 75-80 points for price, for supervision services 30 points team references and 70 points for the price, and in the case of goods, 10 points for the warranty period and 90 points for the price. In the case of works, for tenders launched before 2019 amendments, it was noted 20/30 points for company references and 70/80 points for price; 10 points for warranty and 90 points for price were used in works tenders analyzed from 2021 and 2022.

HIF, the **Traffic Administration** and **Ministry of Public Administration** used the 80/20 ratio in the majority of the procedures analyzed under the sample. Examples of technical criteria used include: professional references for the lead team (i.e. previous similar experience) or of the project leader (**Ministry of Public Administration**). **Traffic Administration's** procedures from 2021 and 2022 introduced environmental protection system and quality control system as sub-criteria under quality criteria. Delivery date is another technical criterion used by the **Ministry of Public Administration**.

The results of the data analysis at country level confirm the above conclusion that price is still a dominant factor. Overall, 58% of the tenders are awarded based on 100% price criteria, 28% around 90% price criteria and only 2% based on 50% price criteria.

Average financial criteria score (%)	92%
Average technical criteria score (%)	8%
Share of Tenders for which financial scores are greater than 80	87%
Share of Tenders for which financial score is equal to 100.	57%

The situation is better when looking at the open procedures only, however there is room for improvement. The average price criteria in the case of **open procedures** is 85% and 76% of the open procedures are awarded based on price criteria above 80%. However, significantly less procedures are awarded based on 100% price only criterion (i.e. 2%).

Average financial criteria score (%)	85%
Average technical criteria score (%)	15%
Share of Tenders for which financial scores are greater than 80	76%
Share of Tenders for which financial score is equal to 100.	2%

Gap analysis

Even if the use of MEAT criteria for open procedures has become mandatory with the procurement law from

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2019 (applicable since mid-2020), the analysis shows that price remains the dominant factor for the award of open procedures (76% of open procedures are awarded based on a price criteria above 80 points) and rarely a higher number of points is allocated for the quality. Secondly, technical criteria used to assess the quality of the technical offer rarely include criteria focused on the merits of the proposed solution or sustainability.

Recommendations

Moving away from a lowest-price basis is important to ensure contracts are awarded based on the overall public value. Contracting authorities should be encouraged to focus on identifying qualitative criteria that will genuinely help them focus on the merits of the technical offer and the intended benefits (and not just on the price). The DPPP should monitor the trend in using qualitative criteria over time and work towards improving their levels. Development of guidance and training may be needed to help contracting authorities.

Secondly, life-cycle costing is one of the factors which may be considered by contracting authorities during determining the lowest cost and which can be used to promote sustainable procurement⁴². Taking into account the proven benefits of the lifecycle costing method in other countries (Czech Republic, Great Britain and Germany, Australia, etc.) and the EU policies for encouraging its use, further promotion of the method in Montenegro should be envisaged. This could involve different mechanisms, including but not limited to guidance, trainings, developing methodologies for its application for different sectors/ items, gathering and analyzing of reliable data.

Assessment criterion 9(b)(g):

Contract awards are announced as prescribed

Conclusion: No gap

Red flag: No

Qualitative analysis

According to the law, it is not mandatory to publish the contract award notice, however, the integral signed contracts are published in the e-procurement system (www.cejn.gov.me) as of 2021 and in Public procurement Portal (www.portalujn.gov.me) for contracts before 2021. All the selected and analyzed contracts could be identified in one of the two systems.

For the **Ministry of Public Administration**, three 2022 procurements were not identified in the e-procurement system but they were listed in statistical report with simple procurement, although their value significantly exceeds simple procurement threshold (one goods contract for more than 1,400,000 euros and one service contract for about 500,000 euros]. These contracts could not be verified as the information was not provided by the contracting authority possibly due to their sensitivity (these are IT contracts concluded during the period of the cyber-attacks in Montenegro). Other observed contracts and procedures were published both in the Procurement Portal (2018, 2019 and 2020) and e-procurement system (2021 and 2022).

The signed contracts are generally in line with the published tender documents, in the cases where contract model was published as part of the tender documents. After the introduction of the 2019 legal amendments, the signed contract should comply with the conditions from the tender documents. The sample analysis showed that contracts are in line with the tender documents with some exceptions noted in the case of **APW** in 2021 and 2022 in which the signed contract⁴³ was not fully in accordance with the tender documents .

⁴² https://green-business.ec.europa.eu/green-public-procurement/life-cycle-costing_en.

⁴³ 2022 contract ref Design for reconstruction of the existing building of the administrative authorities in Podgorica, estimated value 82 644.63 EUR: while tender documents stipulate the insurance policy of 100K EUR, the contract mentions 200K EUR; warranty period guarantee mentioned in the tender documents is not included in the contract. Negotiations on contract provisions may have caused a delay in signing the contract.

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<p>Gap analysis The assessment has not identified any gaps</p>
<p>Recommendations None</p>
<p>Assessment criterion 9(b)(h): Contract clauses include sustainability considerations, where appropriate</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Sustainability considerations are generally not included in the analyzed contracts with some exceptions which include some general provisions.</p> <p>From the sample analysis, it was noted that Traffic Administration's contracts contain clauses on construction of waste management and safety of construction site, neighborhood and workers. Also, the bidder is obliged to observe several national laws, including the law on environmental protection, however without further details.</p> <p>As mentioned during the interviews, sustainability considerations were not required by law and guidance is still not available for the contracting authorities. DPPP has started focusing more on this aspect, as mentioned above.</p>
<p>Gap analysis Sustainability is a new area of focus for the Montenegrin authorities. Therefore, sustainability considerations are generally not included in the analyzed contracts with some exceptions which include some general provisions.</p>
<p>Recommendations Development of policy documents and guidance on sustainable procurement and adoption of dissemination and communication plans should be considered by DPPP, in collaboration with other institutions in accordance with their specific attributions. The DPPP should include notes of instructions for compulsory introduction of the sustainability considerations in the contract conditions and monitor their application over time.</p>
<p>Assessment criterion 9(b)(i): Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Analyzed contracts do not include incentive clauses, and generally include disincentives for poor performance only. The approaches differ from one contracting authority to another. In the case of APW, a performance bond of 5% of the contract value is required in almost all contracts in addition to a penalty for delay. HIF applied</p>

2021 contract ref Execution of additional works on the construction of a complex of accommodation facilities SAJ and PJP in Zlatica in Podgorica, estimated value 809 000 EUR: there were elements in the signed contract that the bidder was not aware of, as they were not presented in the tender documentation (chapter on contract conditions), such as penalties for delay of 5%, the role of expert supervision etc.

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in the 2018-2020 contracts 0.5% or 1% of the values of good which were not delivered on time, for each week of delay in delivery, payment of real expense at the account of bidder in case that the bidder does not replace non-conform goods within 30 days, right of the contracting authority to procure goods from another provider at the bidder's cost. One of the contracts includes a penalty of 10% of the total contract price which can be charged in case of non-delivery by the bidder. Contracts from 2021 and 2022 are much simpler and only contain the clause on both sides' right to cancel the contract in case the other side is not fulfilling its obligations. Same as HIF, **Traffic Administration's** and **Ministry of Public Administration's** contracts also only contain disincentives for poor performance, but no incentives. Disincentives amount to a maximum of up to 5% of the total contract value.

Gap analysis

Analyzed contracts do not include incentives for exceeding defined performance levels, and generally include disincentives for poor performance. Considering that the approaches differ from one contracting authority to another, economic operators may experience different situation from one contract to the other or from one authority to another. Not knowing the contract conditions before submitting the bid (40%), the too complex administrative processes during contract execution (36%) and the delays in payments (25%) are three of the main obstacles identified by economic operators when working under a governmental contract. Too strict criteria for applying penalties to suppliers is also listed as one of the obstacles by 11% of the economic operators. All these create an additional burden for the economic operators who need to get familiarized with the specifics of each contract and navigate the contract requirements every time a new contract is awarded.

Recommendations

Ensuring the predictability of the applicable contract conditions is key to raising the trust of the economic operators in the public procurement system. Using standard contract conditions that contain clear and uniform clauses to disincentivize poor performance would be desirable to enable economic operators to focus more on performance and less on the formalities of the contract. Standard contract conditions also ensure a balanced approach in the allocation of rights and obligations between the parties and avoid disputes during contract implementation in key areas of activity.

Assessment criterion 9(b)(j):

The selection and award process is carried out effectively, efficiently and in a transparent way*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The legal framework on public procurement includes specific legal provisions and detailed guidance with regard to the evaluation process. An evaluation committee is established in accordance with the Rulebook on Method of Establishing the Commission for Opening and Evaluation of Bids. In accordance with the law, the Minutes on Opening and Evaluation of Bids is not a publicly available document. However, the Decision on Selection of the Most Advantageous Bid, which is publicly available, is a result of the mentioned minutes and most of the information contained therein are derived from the minutes.

The e-procurement system is considered a welcomed improvement which brought simplification and higher level of transparency, however bid evaluation is considered complicated by the interviewed contracting authorities, as, in accordance with the current legislation, the contracting authority has to request the evidence from the relevant authorities to confirm that the bidder meets the qualification requirements. In the past, this was the obligation of the bidder. Some contracting authorities appreciate that information on the winning bid could be made public, without revealing any strategic information.

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Competition. According to the data analysis, the level of competition in Montenegro is generally low (less than 2 bids per lot and about 3.5 bids per tender/procurement procedure) with more competition in works tenders and areas such as business services, architectural & engineering services, installation services (except software). The single bid rate (i.e. only one offer received for a lot) is also very high with 66% at country level over the analyzed period. Surprisingly, simple procurement registers high levels of single bid as well (around 50%). It should be noted that the single bid rate also increased from 2021 to 2022 (from 60% to 71%) while the average number of bidders per lot decreased from 1.7 to 1.5.

Works contracts have higher participation (around 2 bids per lot) and a lower single bid rate (47%).

Looking at the contracting authorities that were considered for the sample analysis, the following may be noted:

- 1144 contracts from the entire population (12,324 contracts i.e. 9.3%) correspond to them and these contracts cover 151,585,621 EUR contracted amount;
- APW registers the highest participation and the lowest single bid rate
- Montenegrin Electrical Enterprise seems to have the highest diversity of suppliers (biggest supplier accounts for about 13% of the procurement budget);
- Health Insurance Fund has the lowest competition levels, the highest single bid rate and the highest market concentration, which may be justified by the specifics of the health sector, however this would need to be further investigated;
- Ministry of Public Administration also registers a high single bid rate; according to the sample analysis, the procurements are IT related; looking closer at the IT market in Montenegro may be necessary to explain the low competition;

At system level, there are a few contracting authorities which registered higher competition levels but these manage smaller procurement budgets. The majority of the contracting authorities receive less than 3 offers per lot.

There are not significant differences between regions in terms of average bids and single bid rate. Central region has a higher single bid rate i.e. 69% and the lowest competition i.e. 1.5 bid per lot.

In terms of categories of procurement, there are some which register very high single bid rates and which would need to be carefully analyzed to look for specifics of the sector, patterns, trends and potential ways to stimulate competition. A few notes may be drawn from the data analysis:

- public utilities – this seems to be a monopolistic market;
- few players in the chemical products, financial & insurances services; collected and purifies water;
- more players in the software package and information systems market (market concentration is low, hence more suppliers), however the competition is low and single bid rate is high;
- there is even higher diversity in terms of suppliers in the IT services sector and repair & maintenance services, but still very low competition and high single bid rate.

In terms of market share at country level, it may be noted that the top 10 suppliers account for 33,6% of the total contracted amount during the analyzed period (only one particular supplier, acting in the medical sector, accounts for 14% of the total contracted amount; the next biggest supplier has 3.3% market share).

Cancelled procurement. The analysis of the data from the e-procurement system shows that 11% of the tenders were cancelled during the analyzed period, accounting for 6% of the total estimated value. Tenders for goods were cancelled the most (43% of the total cancelled tenders). Looking at the type of procurement procedure, 9,33% of the open procedures and 12.8% of the simple procurements were cancelled during the analyzed period.

Some specific information noted during the assessment is presented below which may be further looked into to identify the most common reasons that lead to cancellation:

- Overall, the top 10 contracting authorities in terms of cancelled procurement account for 32.4% of

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the total number of cancelled tender;

- Capital City Podgorica cancelled 101 tenders, representing 6.4% of the total cancelled tenders, followed by AGENCIJA ZA IZGRADNJU I RAZVOJ PODGORICE DOO which cancelled 67 tenders, i.e. 4.3% of the total cancelled tenders.
- **APW** cancelled a procurement procedure due to complaint, the decision being published eight months later explaining that the second-instance body accepted the complaint and instructed the contracting authority to modify certain parts of tender documents.⁴⁴ In another case, the procedure was cancelled as it turned out that there were no available funds for this tender after the rationalization of the budget.⁴⁵

Complaints. As seen in the sample analysis and confirmed by the contracting authorities, the number of submitted complaints compared with the number of tenders launched is low. In the case of the **Ministry of Public Administration**, one complaint was submitted (out of the 7 tenders reviewed). 11 tenders launched by the **Traffic Administration** were reviewed during the sample analysis and no complaint was submitted in any of these cases. The e-procurement data shows that 2% of the tenders received complaints, however it is not evident what type of complaints data is captured by the e-procurement system. 115 tenders received complaints in 2021 (total estimated amount of tenders with complaints, 97,023,988 euros i.e. 22% of the total estimated procurement value) and 153 tenders in 2022 (total estimated amount of tenders with complaints, 97,626,901 euros, i.e. 15% of the estimated procurement value). By type of contract, goods were contested the most (139 tenders) and works the least (49 tenders).

Summarized information on complaints is also published within the annual reports of the Commission for the Protection of Rights in Public Procurement Procedures (CPRPPP). Decisions on complaints are published on the institution's website and therefore, are publicly available. According to the annual report 2021 (the latest report published), there were 217 complaints submitted for review, which represents 4.3% of the number of tenders launched during 2021 (in total 5034 tenders; also noting that some complaints may refer to tenders launched during the previous year), most of them referring to the result of the procedure, i.e. 63%. This is confirmed by the results of the survey which identifies as main reasons for submission of complaint the fact that the bidder awarded the contract does not fulfil the tender conditions and requirements (56%), followed by wrong/bias interpretation of own bid leading to a rejection (48%) and disagreement regarding the robustness of the process of evaluation of offers (33%).

21 cases were further referred to the Administrative Court (9.6 of the cases analyzed by the CPRPPP). As noted by the contracting authorities, bidders may not be motivated to go to the Administrative Court as the process

⁴⁴ 2021 procedure ref Main Design for water supply of the first phase of service facilities at the location of the mountain center "Žarski" in Bjelasica, estimated value 24 793,39 EUR. The decision of the second-instance body is available on [O nama \(kontrola-nabavki.me\)](#). Content: The complainant challenged the following aspects of the tender documents:

- classification of tender into category of works instead of services

- using the same condition as the qualification condition and selection criteria, which is not permitted under the PPL. To be qualified to participate, a tenderer had to demonstrate that it engages a civil engineer with at least one similar previous experience (personnel capacity). At the same time, as part of selection criteria, 20 pts was awarded for the references of the lead engineer.

Deliberations: The complaint was found to be justified and the PE was instructed to modify tender documents to address the deficiencies.

Outcome: PE did not act as instructed, i.e. it didn't modify the tender documents, but it cancelled the tender long after the decision had been made.

⁴⁵ 2021 procedure ref Works on the improvement of the riverbed of the Ibar in the inner-city area of Rožaj, phase II, estimated value 495.867.77 EUR.

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takes a long time and involves a cost. The survey results confirm this as 91% of the economic operators mention that they have never submitted a complaint with the Administrative Court.

Still, 65% of the economic operators consider they have never been affected in the procurement process or contract award by complaints submitted by competitors, and 4% affirmed that this had always happened.

Duration of the procurement procedure. The data analysis shows that the average duration of all the procurement procedure conducted through the e-procurement system (from initiation, i.e. publication of the tender notice to the contract signature) is of 47 days. Average period for submission of bids is 16 days.

Processing times differ from one type of procedure to the other. Restricted procedure generally takes longer than the other types of procedures (average duration of restrictive procedure is 134 days compared with open procedure which takes 76 days or simple procurement which takes only 26 days). There are not significant differences between different types of authorities (state body, local units or sectoral contracting authorities); average duration of procurement procedure for open procedure is around 70-80 days.

When looking at the duration of the different stages of the procurement process, 95% of the open procedures have a bids submission period between 15 and 30 days or more than 30 days. The remaining 5% have a bids submission period of less than 15 days which could be further investigated to identify reasons (urgency, low value even if launched as open procedure etc.). Bids submission period for simple procurement is generally below 15 days.

Award stage (from bid opening to contract signature) takes longer (49 days for open procedure) which is usually the case in other countries as well, but opportunities to improve lead times should be explored, at sector level or at the level of authorities that usually register higher durations than the national average.

By contract type, works contracts take longer to be awarded; for open procedure this is 90 days in average, compared with goods which are awarded within 72 days and services, 80 days. Durations per stage of procurement do not vary significantly either.

The contracting entities analyzed during the sample review register overall average duration of procurement procedure close to the national average, APW (Capital Projects Administration), Traffic Administration and EPCG (Montenegrin Electrical Enterprise) register higher average number of days, 147, 99 and respectively 93 days. Average durations are higher in all stages of the public procurement process compared with the national average. This is not surprising considering that these authorities are in charge with high value contracts, mostly works.

Looking at the processing times for the five largest procurement categories, there are not significant differences either. It may be noted that construction works take 89 days to be awarded, chemical products 74 days, and medical equipment, transport equipment and sewage, refuse, cleaning and environmental services between 62 and 71 days.

Substantiation of decisions and abnormally low price. The way the evaluation process should be conducted and documented is regulated in the specific by-laws, such as the minutes of the competitive dialogue, opening session report, minutes of the evaluation process, or decision of award or cancellation which are included in the Rulebook on forms in public procurement procedures. During the sample review it was noticed that **APW** documents the reasons for rejection of offers, however sometimes the decision to reject seems too strict. For example, subcontractor used facsimile signature to authorize the declaration of impartiality, inadequate proofs for personnel capacity, the date of submitted tax certificate was not as requested. It is arguable if these aspects were or could be clarified by the evaluation committee. In other cases, bids were submitted due to the fact that one subcontractor was proposed in two bids or another economic operator acted both as member of consortium and independently. Such situations are usually avoided by clearly pointing out the rules of participation in the tender documents.

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The sample analysis of **APW** contracts showed that abnormally low price tenders are not always documented and details of the content of the justification provided by the winning tender or the analysis performed by the evaluation committee could not be verified (according to article 85 of the law, an abnormally low price would be at least 30% lower than the average of all the valid tenders).

In both cases noted above, considering that the Minutes on Opening and Evaluation of Bids is not a publicly available document, and therefore were not provided for the sample analysis, a comprehensive review of how contracting authorities document their decisions was not possible.

Control of procurement procedures. The Administration for Inspection Affairs has the role of verifying the legal compliance of public procurement procedures. In 2022, the Inspection carried out a total of 333 inspections, revealing 234 irregularities for which fines were applied in total of 36.200,00 euros (representing 0.008% of the procurement volume awarded in 2022). According to the report provided by the Inspection, the most frequent irregularities are captured in the table below:

Area of irregularity	Number of irregularities	% from total number of investigations
keeping the records and documentation on public procurement exceptions	64	30%
fulfilment of the requirements for public procurement officer and the commission for the implementation of the public procurement procedure	34	14%
implementation of simple procurement below threshold (* including the division of procurements to avoid the appropriate procedures)	31	8%
control of the public procurement contracts performance reports	60	46%

Quantitative analysis

**Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):*

- average time to procure goods, works and services:

Open procedure:

Goods – 72 days

Services – 80 days

Works – 90 days

- number of days between advertisement/solicitation and contract signature (for each procurement method used)

Simple procurement – 26 days

Open procedure – 76 days

Restricted procedure – 134 days

Negotiation without prior publication – 36 days

- average number (and %) of bids that are responsive (for each procurement method used)

Simple procurement – 1.7 average of responsive bids per lot; 91% of responsive bids

Open procedure – 1.2 average of responsive bids per lot; 87% of responsive bids

Restricted procedure – 1.5 average of responsive bids per lot; 92% of responsive bids

Negotiation without prior publication – 1.09 average of responsive bids per lot; 89% of responsive bids

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- share of processes that have been conducted in full compliance with publication requirements (in %) – 100%; all tenders are conducted through the e-procurement system without the exceptions from the legislation which are not captured by the system.

- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

Total number of processes – 13,732 procurement procedures (without mini call off)

Number and % of cancelled procedures – 1547 procedures; 11% of the total number of procedures

% of cancelled procedures by type of contract: 42% goods, 32% services; 25% works

Number of awarded contracts – 12,324 contracts

Share of contracts awarded to abnormally low bid (30% lower than other bids): 4%

Share of contracts awarded to the bid that didn't have the lowest price: 3%

Source for all: Data analysis (reported period from 02/Feb/2021 to 14/Mar/2023).

Gap analysis

Considering that the Minutes on Opening and Evaluation of Bids is not a publicly available document and therefore were not provided for the sample analysis, a comprehensive review of how contracting authorities conduct the evaluation process in practice and document their decisions was not possible. Therefore, the conclusions are based on the sample analysis of publicly available documentation and the analysis of the e-procurement data (publication dates of tenders: from 02/Feb/2021 to 14/Mar/2023; contracts signed: from 24/Jan/2021 to 04/Apr/2023).

According to the data analysis, the level of competition in Montenegro is generally very low (less than 2 bids per tender) with more competition in works tenders and areas such as business services, architectural & engineering services, installation services (except software). The single bid rate (i.e. only one offer received per lot) is very high, with 66% at country level. The single bid rate also increased from 2021 to 2022 (from 60% to 71%) while the average number of bidders per lot decreased from 1.7 to 1.5. Surprisingly, simple procurement registers high levels of single bid as well (around 50%). Works contracts have higher participation (around 2 bids per lot) and a lower single bid rate (47%). This is a serious issue which needs to be addressed by the Montenegrin Government with priority.

At system level, there are a few contracting authorities which registered higher competition levels but these manage smaller procurement budgets. There are not significant differences between regions in terms of average bids and single bid rate. Central region has a higher single bid rate i.e. 69% and the lowest competition i.e. 1.5 bid per lot. In terms of categories of procurement, there are some which register very high single bid rates and which would need to be carefully analyzed to look for specifics of the sector, patterns, trends to identify potential ways to stimulate competition. A few aspects may be worth mentioning:

- public utilities – this seems to be a monopolistic market;
- few players in the chemical products, financial & insurances services, collected and purifies water; more players in the software package and information systems market (market concentration is low, hence more suppliers), however the competition is low and single bid rate is high;
- there is higher diversity in terms of suppliers in the IT services sector and repair & maintenance services, but still very low competition and high single bid rate.

The analysis of the data from the e-procurement system shows that 11% of the tenders were cancelled during the analyzed period, however reasons for cancellation have not been identified in the dataset. Some complaints data is captured by the e-procurement system, however the sufficiency and correctness of data cannot be established. Summarized information is also published within the annual reports of the Commission for the Protection of Rights in Public Procurement Procedures (CPRPPP). During 2021, the complains analyzed by the CPRPPP represent 4.3% of the number of tenders launched and 9.3% of these reach the Administrative

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Court. All economic operators affirmed that they would submit a complaint, if the firm would need to do so (from those that responded to this question).⁴⁶

The average duration of the procurement process (average time to procure) per type of procurement differs. Restricted procedure generally takes longer than the other types of procedures (average duration of restrictive procedure is 134 days compared with open procedure which takes 76 days or simple procurement which takes only 26 days). These values are close to the overall EU target of 120 days.⁴⁷

There are not significant differences between different types of authorities (state body, local units or sectoral contracting authorities) or between categories of procurement. Some authorities, managing larger packages, register higher average number of days compared with the average national, 147, 99 and respectively 93 days. Average durations are higher in all stages of the public procurement process compared with the national average.

In terms of obstacles for submission of bids, the biggest one identified by the economic operators (even if interested in the tender) refers to concerns related to the competition and fairness towards bidders (37%). At the same time, only 48% of the economic operators believe that the e-procurement system fosters competition. This also may be connected with the fact that the main problem experienced with tender documents relates to biased technical specification or biased qualification/requirements to favor certain bidders.

The economic operators were invited to specify the main reasons that would explain the low competition levels in Montenegro and the first two refers to the fact that the qualification criteria and/or requirements are designed to favor certain firms followed by unfair competition by some groups of firms (e.g. politically connected firms, SOEs, larger firms). Insufficient budget allocation for the contract is the third reason mentioned by 32% of the economic operators.

In terms of perceptions related to the functioning of the public procurement system as a whole, only 16% of the economic operators consider there is no collusion in public procurement (i.e. illegal agreement between bidders in order to distort competition, such as bid rigging)⁴⁸ and only 26% believe that the conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes⁴⁹. At the same time, 28% believe that contracting authorities strive to obtain the best value for money in public procurement.

The provided statistics of the Administration for Inspection Affairs do not include information on the characteristics of the investigated procedures such as the number and value of contracts, frequency of irregularities (within the same group of contracting authorities, if recurrent or not) etc., to assess the impact of the irregularities at system, sector or contracting authority's level. Possibly this information exists and could provide further insights into the sectors or contracting authorities where most of the irregularities are identified and which could help with the identification of the appropriate measures to improve performance.

Recommendations

Increasing competition levels in public procurement should be a priority for the Montenegrin Government. This is essential to ensure that public authorities achieve better value for money and cost savings. Better competition will also facilitate the implementation of the sustainability objectives and foster innovation. The data at system level shows that this issue may be beyond the powers of public authorities and that the

⁴⁶ 19% responded don't know and 20% preferred not to answer to this question.

⁴⁷ Public Procurement Scoreboard, decision speed indicator - https://single-market-scoreboard.ec.europa.eu/business-framework-conditions/public-procurement_en

⁴⁸ 28% responded don't know and 5% preferred not to answer to this question.

⁴⁹ 19% responded don't know and 2% preferred not to answer to this question.

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Government should support public authorities by developing national, regional or sectoral programs to increase trust in the public sector and attract the private sector. A comprehensive review of the legislative requirements, norms and standards should be conducted to identify the blockages beyond public procurement and measures should be taken in order to increase trust levels in the state authorities.

Studies and analyses conducted in other countries show that larger packages, more time allowed for bid preparation and more competitive procedures attract more bidders. The potential for aggregation of procurement demand should be analyzed to enhance competitiveness and achieve economies of scale. Public authorities implementing large procurement volumes or complex projects should work towards improving their attractiveness. Market engagement is key to ensuring that private sector is adequately informed and is consulted about planned investments.

It is widely recognized that the bidder turnout is higher when longer times are allowed for bid preparation and submission and administrative burden is reduced. Some steps have been taken in this regard, however their impact is still not evident. Lists of approved economic operators (i.e. prequalified) in key sectors may contribute to increased competition levels.

Although overall processing times seem reasonable by comparison with EU target, a review in specific sectors or authorities would provide insights into potential ways to increase efficiency. Options for improvement in time efficiency of different procurement procedures could include a review of the practices used by different contracting authorities and in different sectors in order to identify the major bottlenecks in the internal processes and in the implementation of procurement legislation. Such lessons learnt could offer useful insights that might be replicated to other similar procurements or in the same area of activity and which could be further translated into guidance.

A careful analysis of the reasons for cancellation and identifying the appropriate measures to improve performance should also be envisaged at system level. This could identify procurement categories, sectors or authorities where targeted measures are necessary.

Sub-indicator 9(c) Contract management

Assessment criterion 9(c)(a):

Contracts are implemented in a timely manner.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews and the assessment period.

Contract implementation is managed by the beneficiary units with support from the financial department and from the procurement unit, limited to the provisions of the procurement law. The interviewed contracting authorities mentioned that a responsible person is assigned by the technical department to monitor the contract implementation and assess the fulfillment of the contract requirements, in accordance with the law. The law includes provisions related to the contract modification, establishing a maximum percentage for contract increase, in line with the EU Directives.

As of mid-2020, procuring entities are obliged to report on the implementation of the public procurement contract and the report is published in the e-procurement system. During the sample analysis it was observed

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that some contracting authorities publish the report (such as the Ministry of Administration or HIF), others did not (for example, the Traffic Administration).

In terms of the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality and cost, contracting authorities do not report major issues, which appreciated that contract terms are generally observed, contracts are rarely amended and the number of terminated contracts being very low. The data analysis shows that during the analyzed period, 8% of the contracts were modified and only 1% were cancelled.

Also, total price overrun is 0.02% of the total contracted value during the analyzed period (amounting to 123,907 euros). 1% of the contracts had a contract value increase (47% goods contracts, 31% services contracts and 22% works contracts). Further information was provided during the discussions with the contracting authorities that were subject of the sample analysis.

Some information was received from the **Ministry of Administration** and **HIF**, however this is insufficient to conclude on the effectiveness of the contract management processes at the level of the two contracting authorities. For several contracts subject to the sample analysis, detailed delivery reports were shared by the Ministry which confirm that all contract provisions were met and everything has been implemented as contracted and therefore that the final payment can be done. In some cases, these delivery reports do not mention the full contract scope, but since no other information was provided, a conclusion cannot be drawn regarding the extent to which the full scope of work was delivered or not.

Entities rarely conduct performance evaluation to inform future procurement processes, with some exceptions. **Ministry of Public Administration** reported conducting regular reviews and keeping records, however these could not be provided as they were lost or affected during the cyber attack [ask again]. **EPCG** relies on the feedback from contractors, beneficiaries and project managers which is received on a daily basis and issues are addressed timely. When the new public procurement plan is prepared, the entity would review some of the information based on previous experience (for example, the price).

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days).

Price overrun: 0.02% from total contracted amount i.e. 123,907 euros; average increase of contract value is 20,651 euros

Contract modification: 8% of the total number of contracts

Source: Analysis of the e-procurement data.

Gap analysis

Even if access to documentation specific to contract management stage was limited, some conclusions can be drawn based on the available information and the results of the survey with economic operators.

Reports on contract implementation are not always published in accordance with the procurement legislation. As such, there seems to be a lack of transparency regarding the results of contract implementation, and specifically to which extent the contracting authority got the expected outcomes within the intended timeframe. At the same time, the efficiency and effectiveness of contract management processes at the level of contracting authorities is difficult to assess.

According to the information from DPPP, the contracting authorities in Montenegro are obliged to respect the public procurement legislation, which means that they cannot adopt own internal procedures on contract

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implementation if these provisions are regulated. However, this should not prevent contracting authorities to complement and clarify the national provisions in order to ensure the efficiency and effectiveness of contract management processes.

Nevertheless, according to the survey results, economic operators generally consider that contracts are implemented in timely manner (68%) and that they comply with the existing regulation on the time limits for payments (61%). However, 54% consider that contract modifications are used to circumvent public procurement rules. Conducting a more in-depth analysis of the scope of contract modifications may provide better insights into this issue.

Also, 38% of the respondents also appreciate that there are not efficient and fair processes to resolve disputes promptly during the performance of the contract⁵⁰. This issue is closely related to the need to develop standard contract conditions.

Recommendations

The public procurement directives from 2014 set the basis for better managed procurement that is focused on efficiency and sustainability. This requires a change of perspective, from an administrative approach to a strategic one focused on needs, which in turn implies a change of attention from the way the procurement procedure is carried out to a more thorough assessment of the needs, based on research and analysis as well as risk and stakeholder management, and complemented by a more structured contract management and performance evaluation.

Development and application of standard contract conditions would address part of the issues highlighted by the economic operators. These should include clear mechanisms for dispute resolution, payment terms in line with national provisions, when and how contract amendments should be made (even if the procurement law already includes such provisions).

The template report on contract implementation should further be developed to include aspects which would allow to appreciate the effectiveness of the contract management on all main contract provisions: quality, quantity, price, place, and time. At the same time, in order to identify any systemic issues and the associated measures to improve contract implementation processes, capturing all the relevant information in the e-procurement systems or the interconnection of the system with any existing databases or systems, should be envisaged by the Montenegrin authorities in the long term. The publication of summarized reports that would show the efficiency and effectiveness of the public procurement system as a whole, on the entire procurement cycle, leads to increased transparency and trust.

Guidance for contracting authorities on how to conduct the evaluation of performance at procurement portfolio level and its benefits would provide the contracting authorities with the necessary tools to document lessons learnt and define measures for improvement.

Assessment criterion 9(c)(b):

Inspection, quality control, supervision of work and final acceptance of products is carried out.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As mentioned above, contract implementation information was not provided in order to conduct the sample

⁵⁰ High percentage for "do not know" answer i.e. 37%

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analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews.

Considering that contracting authorities prepare their own contract conditions within the limits of the legislation, different practices are observed in the way they regulate the above aspects. In the case of works external review, professional supervision is mandatory by the law on spatial planning and construction. Such services have to be contracted through a separate public procurement procedure.

The analyzed contracts from **APW** prescribe the method of quality assessment and final acceptance of the procurement object. Only final acceptance of products is regulated in 2018 and 2019 **HIF**'s contracts, whereas contracts from 2021 and 2022 provide for a monthly reporting obligation. All contracts refer to the competent court to resolve all issues considering different interpretation or implementation of the contract.

Traffic Administration's contracts contain clauses which say that the bidder is in charge of ensuring quality of the materials, equipment, machines, products etc., in accordance with regulation in force, tender documentation and the bid and that materials used must be new, non-used, of a proper quality and authorized by competent institutions. The bidder is obliged to provide evidence of the quality of used materials, issued by competent authorities and laboratories at its own cost. Evidence of all examinations and tests of the materials and equipment must be kept in the construction book and the contracting authority must be informed of the results. Safety on work, construction organization study and construction waste management plan must be also prepared by the bidder. Safety measures must be also taken by the bidder for the construction site, workers, neighboring objects, equipment etc. Performance of technical inspection of works is also envisaged by **Traffic Administration**'s contracts and an obligation of the bidder to fix whatever is wrong with finished works. Final acceptance of products, supervision and quality control seems to be regulated only in some of the **Ministry of Public Administration**'s contracts. The contracts from 2020, 2021 and 2022 provide for the setup of a special Commission by the contracting authority which will be entrusted with these tasks, whereas contracts from 2018, 2019 do not include such requirements. Inspection is not mentioned in any of the contracts.

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %).

Information was not available to be able to construct these indicators.

Source: Sample of procurement cases.

Gap analysis

According to the survey results, 63% of the economic operators appreciate that contracting authorities typically carry out inspection, quality control, supervision of work and final acceptance of products. As noted above, practices differ from one contracting authority to the other. This shows that there are aspects which could be improved.

Recommendations

The fact that practices differ from one contracting authority to the other confirm the need to define uniform provisions that would be applicable to all contracting authorities. This will enable both economic operators and contracting authorities to focus on the substance and less on procedural aspects as provisions would be predictable.

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The template report on contract implementation could be modified to include these aspects. Contracting authorities could also be encouraged to issue final performance certificates for each contract that would confirm that the contract was delivered in line with the contract provisions.

Additional guidance on measurement of results based on quality, time and price, stakeholders management, risk management and remedial actions could be made available to contracting authorities to improve internal processes. Contracting authorities should be advised to evaluate and plan their internal resources so that appropriate expertise is ensured for contract supervision and performance evaluation of the contractor.

Assessment criterion 9(c)(c):

Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

As mentioned above, contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews. **APW** provided access to some payments data which shows that they generally pay invoices within the deadlines stipulated by the contract (in several cases, even on the same day). As mentioned above, partial information and data was also received from the **Ministry of Administration** and **HIF**.

Different practices are observed in the analyzed sample. In the case of **APW**, the method of payment defined in the contract is in accordance with standard practices (30 days from the receipt of the invoice). **Traffic Administration** and **HIF** sometimes include shorter period (i.e. 15 days from receipt of invoice).

The **Traffic Administration** and **HIF** provide for monthly payments in most of the contracts. These are linked with delivery stages. **Traffic Administration's** contracts also envisage 10% advance payment within 15 days of delivery of advance payment guarantee. 10% are withheld from each monthly payment to cover for potential deficiencies in works performance until the final financial report. Final acceptance has to be issued in order to make the final payment.

According to **EPCG** representatives, in certain cases, reports are submitted by the contractor as basis for issuing and approving the payment request. **EPCG** also uses for large contracts a dynamic planning which entails milestones to monitor contract execution and apply penalties, if the case. No bonus/incentives system is in place, this option is not foreseen by the legislation. The entity mentioned that they keep their own records on payments but they generally relies on the records kept by the contractors which provide detailed information on each invoice, these being considered complete and accurate.

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).

Information was not available to be able to construct these indicators.

Source: Sample of procurement cases.

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Gap analysis <p>Similar to the above indicators on contract implementation, in the absence of documentation, a general conclusion on how the contracting authorities comply with the time limits for payments or if payments are processed as stipulated in the contract, cannot be drawn.</p> <p>However, delays in payments is one of the three of the main obstacles identified by economic operators when working under a governmental contract. Nevertheless, 61% of the economic operators appreciate that contracting authorities comply with the existing regulation on the time limits for payments.</p>
Recommendations <p>Same as above.</p>
Assessment criterion 9(c)(d): <p>Contract amendments are reviewed, issued and published in a timely manner.*</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis <p>As mentioned above, contract implementation information was not provided in order to conduct the sample analysis, the below notes are based on the reviewed public documentation and the information received from the authorities during the interviews.</p> <p>According to the law, contract amendments should be published. During the sample analysis, no amendments were found for the analyzed contracts from HIF, Traffic Administration or Ministry of Public Administration.</p> <p>According to the analysis of the data from the e-procurement system, 8% of the contracts were modified, however there is not any information regarding the scope of the amendments. It confirms however, that contract amendments are published, as stipulated by law. However, the perception of the economic operators that responded to the survey is that contract modifications are used to circumvent public procurement rules (only 18% of the respondents said this is not the case).</p>
Quantitative analysis <p><i>Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %).</i></p> <p>contract amendments (in % of total number of contracts): 8% average increase of contract value in %: 20,651 euros <i>Source: e-Procurement data.</i></p>
Gap analysis <p>A comprehensive review of the contract amendments could not be conducted due to limited access to data, however the e-procurement data shows that only 8% of the contracts were modified during the analyzed period. Nevertheless, the perception of the economic operators that responded to the survey is that contract modifications are used to circumvent public procurement rules (only 18% of the respondents said this is not the case).</p>
Recommendations <p>A review of the reasons for contract amendment should be conducted to assess if these have been done in accordance with the legal provisions. The e-procurement system could be further developed to capture the subject of the amendment, initial / modified value, initial / amended duration, if the case.</p>

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Making publicly available the information on contract amendment and publishing regular reports and statistics on the number, value and scope of contract amendment, could address the issue of trust the private sector seems to have.

Assessment criterion 9(c)(e):

Procurement statistics are available and a system is in place to measure and improve procurement practices.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

Contracting authorities prepare annual reports with summaries of procedures and contracts, including some statistics which are sent to DPPP and are available in the e-procurement system. However, these are generally statistical reports published for transparency purposes and not necessarily to measure and improve procurement practices.

However, views of economic operators related to the availability of data and information on public procurement that would enable to monitor the performance and integrity of public procurement are split – 34% of the respondents consider there is sufficient public information, 32% disagree with this statement.⁵¹

Gap analysis

Statistical reports are published for transparency purposes and not necessarily to measure and improve procurement practices.

Recommendations

Development of a system of performance indicators could contribute to a systematic and comprehensive practical approach to assessing the overall performance of the public procurement system. This could focus on the following main areas: market size and characteristics, intensity of competition, economic activity, efficiency of public procurement, irregular behavior. The publication of annual reports on the efficiency of the public procurement system is seen as a good practice.

Regular, high-quality reporting of system performance is an important step, which also needs a strong, strategic overview that focuses on evidence of what is being achieved through public procurement and what scope there is to achieve more. This could provide the basis to decide on evidence-based interventions in the public procurement system and remedial actions where necessary to improve the effectiveness of public procurement at national and subnational level. The development of the monitoring mechanism and interconnection of data sources will strengthen DPPP's monitoring function.

Risk indicators could be envisaged at different transactions and stages of the procurement processes and trigger the flag to alert the relevant authority about the integrity breaches for timely mitigating the issues.

Assessment criterion 9(c)(f):

Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*

Conclusion: Substantive gap

Red flag: No

⁵¹ Also 33% responded "don't know".

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Qualitative analysis

No such opportunity is defined in the analyzed tender documents.

This is not forbidden by law, however there is no evidence of contracting authorities inviting civil society to participate in procurement processes.

Once contracts are published, civil society has the possibility to monitor their implementation and, in case additional data is needed, these could be requested on the basis of the specific legislation regarding the access to information. As indicated by the interviewed NGOs, this process takes a long time and documents, information and data are not always provided in an easily accessible format (usually, these are scanned copies).

Quantitative analysis

Recommended quantitative indicator to substantiate assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation)

Information was not available to be able to construct these indicators.

Source: Sample of procurement cases.

Gap analysis

No such opportunity is defined in the analyzed tender documents.

This is not forbidden by law, however there is no evidence of contracting authorities inviting civil society to participate in procurement processes.

Recommendations

A better understanding of the authority's priorities for investment and reasoning could increase the trust in the decisions taken by authorities and in the public procurement system as a whole. Defining clear objectives and actively informing and engaging the civil society and citizens in the definition of the investment plans, as well as during their implementation and monitoring, would secure their buy-in and support further on. Besides the already published procurement plans, contracting authorities in key sectors could develop outcome-oriented procurement strategies which would increase the transparency of the procurement activity and facilitate the understanding of interested parties, including the civil society and the economic operators, on the procurement approaches foreseen by the authority. Public authorities could use their own website to communicate to a wider range of stakeholders, including the general public and the non-governmental sector.

At the same time, the Montenegrin authorities could envisage the development of procurement training for external partners to enhance their capacities in monitoring public procurement. The main objective would be to help improve transparency and integrity of public procurement, encouraging citizens to be more engaged in the decision-making process, increasing accountability in public procurement and promoting constructive collaboration between civil society and public authorities, in particular at local level.

The World Bank has delivered such programs in several countries in the region which could be used as example.

Assessment criterion 9(c)(g):

The records are complete and accurate, and easily accessible in a single file.*

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

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Information regarding the procurement process is partially available in e-procurement system, such as the tender notice, tender documents, modifications and clarifications to tender documents, decision on selection of most advantageous bid, the contract and contracts amendments (if any) and contract implementation report. In some cases, the latter was not published by some contracting authorities, such as **Traffic Administration**, although they are obliged to do so by law as of mid-2020. Similar records can be identified in the Public Procurement Portal which keeps procurement data until the introduction of the e-procurement system in 2021. The contract implementation report was not published as it was not mandatory in accordance with the previous law.

Publicly available online records do not contain bids, minutes from opening the bids, contract information data such as invoices, data on payments, evidence of submitted/received goods/service/works (for example, a confirmation of a person who received goods that what was delivered is in accordance with the contract in terms of quality, amounts etc.; or for works selected bidder is obliged, in accordance with reviewed contracts, to keep a construction records/ book from day 1 of contract implementation where all works are recorded day by day, but this is also not available in public part of e-procurement system).

Records could not be verified for the selected contracting authorities as access was not provided.

Quantitative analysis

// Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):

- share of contracts with complete and accurate records and databases (in %)

Information was not available to be able to construct these indicators. However, the e-procurement records are publicly accessible.

Source: Sample of procurement cases.

Gap analysis

Several documents from the procurement file are publicly available in the e-procurement system. However, public online records do not contain bids, minutes from opening and evaluation of the bids, contract information data such as invoices, data on payments, evidence of submitted/received goods/service/works. In practice, the contract implementation file is kept by the beneficiary unit whilst the procurement procedure file is kept by the procurement unit.

A review of the way documentation is kept for the selected contracts could not be conducted.

Recommendations

All relevant documents and reports pertaining to a procurement procedure should be recorded in a single place, preferably in the e-procurement system, and access should be ensured for authorities in charge with monitoring and control attributions. The procurement file, which includes all relevant documentation from the initiation of the procedure to the contract award, including the evaluation report which substantiates the decisions taken during the process, is a public document in many countries, except the information which is indicated as confidential by bidders. The EPPS could be further developed to serve this purpose as well.

Indicator 10. The public procurement market is fully functional

Sub-indicator 10(a)

Dialogue and partnerships between public and private sector

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Assessment criterion 10(a)(a):

The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*

Conclusion: Minor gap

Red flag: No

Qualitative analysis

In terms of existing forums for dialogue between the government and the private sector, both formal and informal mechanisms are in place. A working group was established by Government decision which includes representatives of local municipalities, NGOs, Chamber of Commerce etc. to discuss public procurement matters.

Informal dialogue is ensured whenever necessary. This was confirmed by the representatives of the Chamber of Commerce and businesses that participated in the interviews from January 2023.

The Chamber of Commerce is an umbrella association whose activities are governed by law in charge with promoting the cooperation, assessing and being responsive to the needs of the businesses, including on public procurement matters to which particular attention was given during 2022. The Chamber of Commerce mandate includes providing opinions on draft laws with the aim to improve the business environment.

In terms of public procurement, the Chamber of Commerce representatives consider that generally the system functions well, however deficiencies were noted in crisis situations which had negative consequences in particular in the area of public works and constructions. The Chamber of Commerce initiated discussions with the Ministry of Finance and other relevant line ministries to agree on measures to address the issue of increased prices, respectively to increase the contract amount up to 20% due to situation beyond the control of the business community. A working group to review the construction law was also set up reuniting the representatives of the Ministry of Finance, Ministry of Capital Investment, Transport Administration, Chamber of Engineers, Faculty of Civil Engineering. This led to the modification of the procurement legislation from 2020.

AmCham participated in the process of creating the Law on Public Procurement during 2018 and 2019, through an Ad-hoc working group, however they did not participate in the consultations on any of the subsequent amendments stating that their members are generally large companies that did not report any pressing issues in public procurement. AmCham appreciates that they had had an open dialogue and cooperation with representatives of the Ministry of Finance within the Directorate dealing with public procurement, through our Partnership for Better Environment program. AmCham pointed out that their members consider that the legal framework is clear, and that the e-procurement system significantly improved the transparency of the public procurement process and its efficiency by reducing administrative burden. The organization did not organize training and capacity building programs on public procurement or provided support with access to funding, as their members are generally large companies.

The economic operators that responded to the survey generally believe that the existing processes for making changes to the public system do not work that well. Only 33% of the respondents consider that there is a transparent and consultative process followed when formulating changes to the public procurement legislation. Also, only 28% of the respondents believe that there is appropriate time for civil society and the private sector to provide input, comments and feedback and even less consider that their comments and feedback are taken into account (16%).

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):

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- *perception of openness and effectiveness in engaging with the private sector (in % of responses).*

33% of the economic operators consider that there is a transparent and consultative process followed when formulating changes to the public procurement legislation

28% of the economic operators believe that there is appropriate time for civil society and the private sector to provide input, comments and feedback

16% of the economic operators consider that their comments and feedback are taken into account

Source: Survey.

Gap analysis

Although some formal and informal processes to ensure dialogue between the Government and the private sector are in place, the perception of the economic operators is that these processes do not work that well.

Recommendations

The Montenegrin authorities could consider launching surveys with firms whenever the modification of the law is envisaged and in particular when it has a high impact on their access to public procurement. The Montenegrin Chamber of Commerce can support this initiative.

Assessment criterion 10(a)(b):

The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The public procurement strategy includes specific measures to promote SMEs access to public procurement, with a focus on the increased participation of businesses run by women or owned by women in public procurement. Trainings are foreseen to be organized by the Ministry of Finance in cooperation with the Chamber of Commerce for state employees and also for private sector. Since the introduction of the e-procurement system, about 100 trainings sessions were organized for the private sector on the use of the e-procurement system.

According to the report on the implementation of the PP strategy for 2021 and 2022, promotion of SMEs participation in public procurement is one of the strategic objectives. The development and delivery of a training program with the aim of providing incentives for participation in public procurement procedures was envisaged, however there is no indication of the progress to date in terms of participants.

Promotion of SMEs in public procurement procedures, with special emphasis on increasing the participation of women-led businesses in public procurement and public procurement contracts is still one of the main objectives of the 2023 action plan which foresees the delivery of an educational programs dedicated to SMEs. There is no indication of the target group.

Gap analysis

Although there are some programs in place to stimulate the participation of different types of economic operators in public procurement, their impact would need to be assessed after a few years. However, considering the low competition levels, additional measures would need to be taken into account.

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Recommendations

Considering the very low competition levels in public procurement, there is a clear need to assess the wider context which may discourage economic operators to take part in public procurement by looking at the legislations, standards and requirements applicable in different sectors.

Tailored training programs in key sectors could be drawn based on a needs assessment with the view of increasing the participation in public procurement. This could be part of a wider training strategy plan that would target all stakeholders of the public procurement system, according to the mandate and needs.

Sub-indicator 10(b)

Private sector's organisation and access to the public procurement market

Assessment criterion 10(b)(a):

The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Access to public procurement is regulated by the public procurement legislation which is aligned with the EU Directives and which foresees equal treatment for all potential bidders, national or international, or SOEs by the application of the same requirements irrespective of the bidders quality. Representatives of DPPP and contracting authorities appreciate that there are no evident barriers within the public procurement framework, however, these may be linked with other laws (such as the construction law).

As showed above, competition levels are low in Montenegro. It is not clear however if this is due to the capacity of economic operators to respond to procurement requirements or to the fact that there are high barriers to entry.

One important topic referred to during the interviews with the contracting authorities referred to the requirements for licenses and certificates. Contracting authorities generally appreciate that the provisions of the procurement law are clear with respect to their submission at the bidding stage, however the specific requirements are set by other pieces of legislation, regulating the specific areas of business, such as construction law. In terms of standards, bidders generally have to comply with the national ones and, in their absence, with the ones established at the level of the European Union. Meeting standards does not seem to be an issue, however licenses seem to create more problems and an assessment of the existing specific legislation which impact the competition in public procurement may be required.

In terms of access to the market for foreign bidders, there are no specific requirements applicable to foreign companies, however there may be language barriers. Specific licenses and certifications may also be needed at the opening stage of the procurement which may also prevent some foreign companies to enter the market. Only 7% of the contracts are awarded to international companies, representing 9% of the total contracted value over the analyzed period.

The private sector seems not willing to participate in public procurement contracts. In terms of perceptions related to the functioning of the public procurement system as a whole, only 16% of the economic operators consider there is no collusion in public procurement (i.e. illegal agreement between bidders in order to distort competition, such as bid rigging)⁵² and only 26% believe that the conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes⁵³. When asked if they

⁵² 28% responded don't know and 5% preferred not to answer to this question.

⁵³ 19% responded don't know and 2% preferred not to answer to this question.

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expressed interest for a public contract, but then decided not to submit a bid for that tender, competition and fairness is the first obstacle mentioned by the economic operators.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (a):*

Number of total active suppliers in Montenegro (2022) is **45675**

- number of registered suppliers (take part in procurement procedure) as a share of total number of (active) suppliers in the country (in %) – 9.1%
- number of registered suppliers (conduct simple procurement below 5000 euros) as a share of total number of (active) suppliers in the country (in %) – 23%

- total number and value of contracts awarded to domestic/foreign firms (and in % of total):

4,158 registered firms: 71% national 29% international

93% of the contracts are awarded to national companies and 7% to foreign ones, representing 91% of the overall contracted amount

% of firms that submitted at least one bid (from total registered): 61% (46% national and 15% international)

% of firms that were awarded at least one contract: 38% of the registered firms and 60% of the ones that submitted a bid of which,

- National – 30% of the registered firms and 65% of the ones that submitted a bid
- International - 8% of the registered firms and 55% of the ones that submitted a bid

In terms of SOE participation, of 43 bidders that are registered in the e-procurement system both as contracting authorities and economic operators, 28 attended tender procedures and 22 were awarded with a contract. They were awarded with 275 contracts (2.2% of all contracts) and contractual amount of these contracts equaled EUR 5,421,283 (0.8% of total contractual amount). 64.2% of lots that 28 firms attended were single bidder lots. For the rest of the lots winning rate of firms of interest was 42.2%.

Source: E-Procurement system.

Gap analysis

As showed above, competition levels are low in Montenegro. It is not clear however if this is due to the capacity of economic operators to respond to procurement requirements or to the fact that there are high barriers to entry. Meeting specific technical requirements, licenses and standards seem to create issues to economic operators in Montenegro but also for foreign bidders.

The private sector seems not willing to participate in public procurement contracts due to perceptions of collusion and lack of transparent and open procedures that foster competition.

Lack of capacity of economic operators to prepare the bid is the sixth reasons indicated by the economic operators that would explain the general low competition in Montenegro.

Recommendations

An assessment of the existing specific legislation, standard and other requirements which impact the competition in public procurement may be required. At the same time, improved dialogue between economic operators and line ministries would provide better insights into the specifics of the issues which prevent economic operators to take part in public procurement processes.

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Working toward the change of perceptions regarding collusion and perceived lack of transparency and open procedures that foster competition is essential to increase the attractiveness of the investments put forward by the public authorities.

In addition to the procurement plan, publication of the procurement strategies envisaged by the public authorities managing high capital expenditure budgets, early in the planning process, better portfolio planning which limits the number of modifications throughout the year, including market engagement, are ways to increase the transparency of the procurement activity and facilitate the understanding of interested parties, including the civil society and the economic operators, on the procurement approaches foreseen by the authority. A better understanding of the authority's priorities and reasoning could also increase the trust in the decisions taken by authorities and in the public procurement system as a whole.

Further developing tailored capacity building programs for economic operators to increase capacity to access public procurement should also be envisaged.

Assessment criterion 10(b)(b):

There are no major systemic constraints inhibiting private sector access to the public procurement market.

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The access of businesses to information on public procurement is facilitated by the publication of regulations and guidance on the webpage of the Ministry of Finance, through DPPP. The regulatory framework is generally considered clear and there is guidance on how to prepare quality bids, including in the instructions to tenderers which are part of the tender documents. Procurement opportunities are published in the e-procurement system, however only 48% of the economic operators consider that the e-procurement system fosters competition. In terms of transparency of public procurement, the contracting authorities publish all tenders both in the e-procurement system and some on own website. Purchases below 5000 euros are also reported in the e-procurement system even if this is not mandatory. A statistical report, which is mandatory, is published twice per year.

Public procurement seems insufficiently promoted in Montenegro. 42% of the economic operators consider that business opportunities in the public procurement market are not predictable.

With regard to systemic constraints (e.g. inadequate access to financing, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market, the following issues were highlighted by the Chamber of Commerce and representatives of the private sector interviewed in January 2023:

- Lack of predictability of planned investments – investment plans are prepared annually; it was noted that the overall value of the public procurement contracts decreased over the past 3 years which had an impact on the businesses that generally work with the Government. Planned investments were postponed by some contracting authorities. This led to difficulties for the businesses to estimate and plan their resources. The Covid-19 pandemic and the cyber-attacks in 2022 may have had an impact, however overall the reasons for this decrease is unknown. The question raised is if there were investments made without the application of the public procurement law which otherwise should have followed the procurement legislation
- Overall increase in prices – the procurement law was amended to allow for the price adjustment in 2020

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- Contract implementation data is not available – it would be useful if the e-procurement system is more transparent and includes functionalities to issue reports on contract implementation, including payments, and highlight any performance issues
- Proof of eligibility criteria time consuming to obtain – the process is sometimes cumbersome and time consuming for businesses and is also affecting the duration of the procurement procedure; an initiative to establish a one-stop-shop for businesses by the Chamber of Commerce is planned to be implemented. Setting up a list of approved economic operators could also be considered for certain sectors; this will allow that bidders are pre-screen and procurement process is made more efficient and focused on the qualitative evaluation.
- Licenses, certifications and accreditations requirements may be excessive for certain sectors – this may affect the participation of foreign companies in public procurement.

According to the survey results, the economic operators consider that main reasons to explain the low competition are related to the qualification criteria and/or requirements are designed to favor certain firms followed by unfair competition by some groups of firms (e.g. politically connected firms, SOEs, larger firms).

In terms of obstacles for submission of bids, the biggest one identified by the economic operators (even if interested in the tender) refers to concerns related to the competition and fairness towards bidders (37%). At the same time, only 48% of the economic operators believe that the e-procurement system fosters competition. This also may be connected with the fact that the main problem experienced with tender documents relates to biased technical specification or biased qualification/requirements to favor certain bidders.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):*

- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).

The conditions in the public procurement market are appropriate and conducive to open, transparent and competitive processes – 26% of the respondents

Source: Survey.

Gap analysis

Public procurement seems insufficiently promoted in Montenegro. 42% of the economic operators consider that business opportunities in the public procurement market are not predictable.

Several obstacles have been indicated by the economic operators during interviews or as part of the survey, as presented above. All these should be further investigated.

Recommendations

The Montenegrin Government should take measures to address the issues highlighted by the economic operators by analyzing, addressing and/or clarifying them. The dialogue between the public authorities and private sector is key in this regard.

Sub-indicator 10(c) Key sectors and sector strategies

Assessment criterion 10(c)(a):

Key sectors associated with the public procurement market are identified by the government.

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Conclusion: Substantive gap
Red flag: No
Qualitative analysis <p>DPPP does not conduct sectoral analysis to inform procurement decisions in a specific sector. This should be driven by line ministries, however there is no indication of any existing sector strategies. The analysis of the e-procurement data shows that there is however great potential to conduct sector analysis to inform sector strategies. The data shows that 10 procurement categories by contracted amount account for about 70% of the procurement spend in Montenegro over the analyzed period. The data analysis provides further insights into the most procured items and average contract value. There may be scope for demand aggregation in some areas (where average contract values may seem small and there are a lot of contracting authorities procuring those items, for example, laboratory reagents) or areas where a strategic partnership with existing suppliers may be beneficial (the average contract value is high and limited number of contracts, such as in the case of public lighting installations).</p>
Gap analysis <p>DPPP does not conduct sectoral analysis to inform procurement decisions in a specific sector. This could be driven by line ministries, however there is no evidence of any existing sector strategies. The analysis of the e-procurement data shows that there is however great potential to conduct sector analysis to inform procurement and sector strategies.</p>
Recommendations <p>A review of the procurement categories at system level could help define priorities at system level (for example, centralization) and determine the appropriate strategy for different procurement categories. The supply positioning matrix is a useful tool for such analysis. Authorities could consider development of strategies for centralization, as well as conducting further in-depth analysis based on the results of the analysis. This might provide a good image of the procurements where market consultations are most relevant (in particular in the case of bottleneck items or strategic items). Constant communication of the existing guidance and tools supplemented by examples of practical application of the market consultations might help contracting authorities to better understand and apply them in the procurement activity. This type of assessment also helps identify the available and required capacity (both procurement and technical) within the government and local authorities and the required additional resources necessary to procure those categories.</p>
Assessment criterion 10(c)(b): <p>Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.</p>
Conclusion: Substantive gap
Red flag: No
Qualitative analysis <p>There is no evidence regarding such risk assessment. The engagement with the private sectors seems driven by management of evolving crisis. See notes above ref feedback from Chamber of Commerce (criterion 10(b)(b)). Also, there is no evidence of engagement with the market to define procurement policy objectives.</p>
Gap analysis <p>There is no evidence regarding such risk assessment. The engagement with the private sectors seems driven by management of evolving crisis. See notes above ref feedback from Chamber of Commerce (criterion 10(b)(b)). Also, there is no evidence of engagement with the market to define procurement policy objectives.</p>

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Recommendations

The above-mentioned analysis based on e-procurement data (i.e. the supply positioning matrix) could highlight the sectors where procurement risks are the highest and for which a collaborative approach between the private and the public sector should be ensured.

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Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Sub-indicator 11(a) Enabling environment for public consultation and monitoring
<p>Assessment criterion 11(a)(a): A transparent and consultative process is followed when formulating changes to the public procurement system.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>There is a practice of consulting the public when formulating changes to the public procurement system. In line with the Law on Public Administration⁵⁴ and the Decree on the Selection of NGOs' Representatives in the Government's Working Bodies and Conducting Public Consultations in Developing Laws and Strategies⁵⁵, the Directorate for Public Procurement Policy (DPPP) invites NGOs to participate in processes of drafting laws and strategies. However, there is no legal requirement and no practice of consulting with public when formulating bylaws. CSOs representatives also participate in the design of the procurement system as members of the government's working group on chapter 5 of the Acquis. Furthermore, DPPP conducts consultations with CSOs on as needed basis in different forms, although these initiatives sometimes fail due to limited availability of CSOs specialized in this area.</p> <p>In absence of legal requirements, Contracting Authorities (CAs) do not consult with or engage CSOs in carrying out individual procurement. However, CSOs participate in public consultations related to big investment projects.</p>
<p>Gap analysis</p> <p>Legal requirements and practice of public consultations are limited to the level of laws and strategies. There is no requirement for mandatory public consultations on bylaws. The CAs do not carry consultations or engage CSOs when carrying out individual procurements. Private sector perceives the legislative drafting process as being insufficiently inclusive and transparent.</p>
<p>Recommendations</p> <p>DPPP should strive to ensure that a transparent and consultative process is followed when formulating changes to any part of the public procurement system by any public body that issues such changes. DPPP should organize consultations with key stakeholders (representatives of NGOs and private sector) around key bylaws. DPPP should, as well, identify the reasons why there is a perception among private sector that the legislative drafting process is insufficiently inclusive and that the private sector feedback is not considered.</p>
<p>Assessment criterion 11(a)(b): Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>

⁵⁴ Official Gazette no. 78/2018, 70/2021, 52/2022.

⁵⁵ Official Gazette no. 041/18.

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<p>Qualitative analysis</p> <p>There is no regular and comprehensive capacity building program established to build the capacity of relevant stakeholders to understand, monitor and improve public procurement. In addition to the consultations with civil society, the DPPP conducts consultations with the private sector on public procurement issues, performance, challenges etc. These are conducted on as-needed basis and mainly initiated by the private sector. DPPP also has an operational helpdesk for communication with the private sector. Private sector can also benefit from the training, guidelines and instructions organized and provided by the DPPP.</p>
<p>Gap analysis</p> <p>There is no regular and comprehensive capacity building program established to build the capacity of stakeholders.</p>
<p>Recommendations</p> <p>Consider a more comprehensive capacity building program which includes private sector and CSOs to enhance their role and participation in procurement.</p>
<p>Assessment criterion 11(a)(c):</p> <p>There is ample evidence that the government takes into account the input, comments and feedback received from civil society.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Government acknowledges and responds to inputs and feedback from civil society and private sector provided during the process of drafting public procurement strategies and legislation. There are examples of proposals from the private sector and civil society accepted by the government when developing changes to the public procurement system. For example, at the initiative of the Chamber of Commerce, changes to the PPL were introduced to enable contract price adjustment in response to inflation and the methodology for price calculation was developed. However, such examples are relatively rare and there is little evidence of civil society and private sector proposals being incorporated to legislation⁵⁶. Furthermore, there is no evidence of stakeholders' feedback related to individual procurements being provided, considered or accepted.</p>
<p>Gap analysis</p> <p>Inputs, comments, and feedback from civil society are only provided in relation to legislative and strategic framework, but not to individual procurements. Furthermore, there is little evidence of these input and proposals being accepted by the Government.</p>
<p>Recommendations</p> <p>See 11(c)(a) and 11(a).</p>

<p>Sub-indicator 11(b)</p> <p>Adequate and timely access to information by the public</p>
<p>Assessment criterion 11(b)(a):</p> <p>Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>

⁵⁶ Report on Public Consultations on Public Procurement Law, May 2023, DPPP.

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Qualitative analysis

Legal gaps hamper CSOs' free access to information in general. Hence, the current Law on Free Access to Information⁵⁷ enables public institutions to restrict CSOs' access to important policy decision by classifying this information as confidential.

The PPL (A.9) defines transparency as one of the of public procurement principles and requires CAs to publish on Electronic Public Procurement System (EPPS) all documentation necessary for conducting public procurement procedure. This also applies to international contracts for joint procurements (A.13). While the EPPS provides information as prescribed by the law, access to this information is hampered by limited EPPS search options (for example, search cannot be done by bidder) and lack of aggregate information for multiple procurements or contracts. Transparency is also hampered by a lack of legal requirement (and subsequently the practice) for publishing reports on implementation of CA's public procurement plans. Supreme Audit Institution further points to limited access to information on small value procurements, as these are not processed via the EPPS.

Gap analysis

While the EPPS provides access to key information related to public procurement in line with legal requirements, EPPS limited functionalities hamper effective access to such information. Furthermore, systematic access to information on small value procurement is not ensured, as these are not part of the EPPS.

Recommendations

Consider improving the functionalities of the EPPS to enable better search options and producing consolidated reports. Consider a requirement to publish through EPPS reports on implementation of public procurement plans as well as the information about small value procurements.

Sub-indicator 11(c) Direct engagement of civil society

Assessment criterion 11(c)(a):

The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:

- the planning phase (consultation)
- bid/proposal opening (observation)
- evaluation and contract award (observation), when appropriate, according to local law
- contract management and completion (monitoring).

Conclusion: Substantive gap

Red flag: No

Qualitative analysis

The PPL does not address or envisages participation of citizens in the procurement system or in any part of the procurement process.

The legal and regulatory framework provides for the participation of citizens and CSOs in strategic and legislative drafting, including in relation to public procurement (see 11(a)(a)). The Law on Public Administration⁵⁸ provides a requirement for ministries to conduct public consultations when developing laws and strategies. The Government's decree regulates i) the CSOs participation in the government's working groups engaged in legislative drafting, and ii) public consultations process in developing and adopting laws and strategies. The decree prescribes a requirement for a public body to include a CSOs' representative to such working groups based on a public call. To be eligible to apply, CSOs need to be active in the relevant field, and

⁵⁷ Official Gazette no. 44/12, 30/17.

⁵⁸ Official Gazette no. 78/2018, 70/2021, 52/2022.

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<p>their representative need to have relevant experience. Citizens and CSOs are consulted both at initial stage of legislative drafting process and on draft legal and strategic documents. Public bodies are required to prepare and publish reports on consultations. However, the decree applies only to laws and strategies, and does not extend to bylaws or other acts.</p>
<p>Gap analysis</p> <p>While the participation of CSOs in government’s legislative drafting processes is prescribed by the law, there are no specific provisions in PPL on CSOs participation in the procurement process. Lack of such provisions may have created a non-conducive environment for CSOs and subsequently the lack of their involvement in procurement.</p>
<p>Recommendations</p> <p>Encourage and support participation of CSOs and their watchdog function as well as citizen’s participation. Consider introducing provisions on CSOs role and participation in the procurement system as part of the next revision of the PPL.</p>
<p>Assessment criterion 11(c)(b):</p> <p>There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The interviewed CAs reported their adherence to the regulations requiring the CSOs participation in legislative drafting. As described above, there is no legal requirement or practice of involving CSOs in individual procurements. There are few CSOs actively engaged in monitoring the public procurement system (see 14(e)(c)).</p>
<p>Gap analysis</p> <p>There is limited evidence of CSOs participating in legislative drafting processes and monitoring of public procurement.</p>
<p>Recommendations</p> <p>See 11(c)(a).</p>

Indicator 12. The country has effective control audit systems

<p style="text-align: center;">Sub-indicator 12(a) Legal framework, organisation and procedures of the control system The system in the country provides for:</p>
<p>Assessment criterion 12(a)(a):</p> <p>laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p>

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The Law on Management and Internal Controls in Public Sector⁵⁹ sets principal requirements for a comprehensive internal control framework, including for managerial accountability and management and coordination of internal control system⁶⁰. The purpose of management and internal control, as defined in the law, is aligned with definitions in the relevant international standards.

The Ministry of Finance (MoF) Central Harmonization Directorate (CHD) has overall responsibility for formulation, coordination, and monitoring of public internal control framework policy. Heads of public bodies are accountable for implementation of the internal control framework to ensure cost-effective and proportionate internal controls that ensure compliance and achievement of institutions' goals. Independent decentralized internal audit function reviews functioning of internal control arrangements in line with International Professional Practices Framework.

Supreme Audit Institution (SAI) has financial, functional, and organizational independence from the executive, which is observed in practice, in line with the Constitution and the Law on SAI. SAI is organized on a collegiate model and led by a five-member Senate. The President of the Senate is elected from those five members by the Parliament for a nine-year, non-renewable term, while other members of the Senate are elected for an indefinite term. SAI's budget is approved directly by the Parliament.

SAI's main function is to ensure independent, professional, and objective control of the use of public funds and management of public assets in public bodies at both national and local level.

Gap analysis

The assessment has not identified any gaps.

Recommendations

None

Assessment criterion 12(a)(b):

internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The procurement function and decision-making structure in CAs is organized in a manner that provides internal control and checks and balances. The PPL defines that procurement can only be carried out if envisaged by a CA's annual procurement plan and subject to availability of funding. Procurement plans and any changes thereto are approved by MoF (for state bodies), or by a responsible body/management board (for local self-government units and public companies).

Procurement decisions within CAs are proposed by procurement commissions and endorsed by the CA's authorized person. The procurement commission is appointed by the CA's authorized person (normally a head of CA) for each individual procurement and may include a procurement officer. The CA's authorized person, who is not a member of the procurement commission, is also responsible for responding to complaints.

Budget management system ensures that payments can only be made when approved by CA's authorized person or his/her delegate. Funds can only be reserved based on authorization and verification by the MOF Treasury Department. Payments are executed by the MOF only after being matched to reservations. However,

⁵⁹ Official Gazette 75/18.

⁶⁰World Bank, Public Expenditure and Financial Accountability (PEFA) assessment, 2019, PI-25.

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there are no effective controls in place to ensure that all commitments are systematically captured in the Financial Management Information System (FMIS). The CAs are therefore not effectively prevented from incurring commitments in excess of funds warranted to them, and they may delay entering a budget commitment and filing their payment requests until they have sufficient warranted funds available, thus possibly contributing to arrears⁶¹.

There is an operational Internal Audit function⁶², positioned as an organizationally and functionally independent advisory function to the top management of each institution.

Gap analysis

Internal control/audit mechanisms are functional and ensure appropriate oversight of procurement. However, the system enables CAs to delay entering a budget commitment and filing payment requests until they have sufficient funds available. This can lead to CAs incurring commitments in excess of funds available to them, and possibly contributing to arrears.

Recommendations

Improve FMIS and relevant procedures to ensure that CAs are prevented from incurring commitments in excess of funds warranted to them.

Assessment criterion 12(a)(c):

internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The PPL provides authorizations for procurement decision to head of CA and defines tasks to be carried out by procurement officer, which are mainly administrative (PPL, A.47). In practice, head of CA exercises these authorities by formally endorsing procurement documents, contracts, and responses to appeals at first instance. Delegation of this authority to procurement or other staff is limited or non-existent as reported by interviewed CA. While this is a sound risk mitigation measure it could come at the expense of timeliness in decision making, especially when it concerns procurement of lower value.

Gap analysis

Authority for decision making is exercised in line with the law by CA's authorized person, though this could impact efficiency in decision making.

Recommendations

Delegation of authority to procurement or other staff could be explored for some procurement decisions within the relevant legal framework, to ensure a proper balance between timely decision making and risk mitigation.

Assessment criterion 12(a)(d):

independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management

Conclusion: Minor gap

⁶¹ PEFA 2019.

⁶² In line with Article 49 of the Management and Control Law, the Internal Audit function can be organized through (i) establishment of an Internal Audit Unit in the spending unit, (ii) agreement on sourcing of the Internal Audit function from another spending unit with MoF approval, or (iii) provision of the Internal Audit function from another sector-linked spending unit.

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Red flag: No
Qualitative analysis <p>The SAI is mandated to carry out compliance, financial, and performance audits of entities that manage public funds or property, as well as entities founded or are majority owned by the state. This includes entities at central and local level, as well as state-owned enterprises (SOEs). SAI also conducts Information Technology (IT) audits, audits of political parties, and follow-up (control) audits. Every year SAI conducts annual audit of the Government's budget.</p> <p>SAI conducts audits based on its internal annual audit plan. SAI informs heads of audited institutions on audit results through audit reports.</p> <p>The financial and compliance audits cover public procurement, focusing on entire procurement process, including implementation of procurement legislation and contract implementation. No specialized procurement audits are conducted. Also, performance audits, which focus on improving the system-level performance, have not focused on public procurement (only one performance audit focused on procurement of medical equipment was conducted in 2017). As part of regional project funded by the European Court of Auditors, SAI participated in parallel performance audit on public procurement in the Western Balkans, together with other SAIs in Western Balkans countries⁶³. SAI considers conducting procurement-focused performance audits starting from 2024.</p>
Gap analysis <p>Although public procurement is subject to financial and compliance audit, no special public procurement audits or performance audits are conducted.</p>
Recommendations <p>SAI should start conducting specialized procurement audits and performance audits focused on public procurement. Continuity of such audits should be ensured to enable effective implementation of the audit recommendations.</p>
Assessment criterion 12(a)(e): <p>review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)</p>
Conclusion: Substantive gap
Red flag: Yes
Qualitative analysis <p>As per the Law on SAI, SAI annually submits to the Parliament and the Government: i) Audit Report on the Final Account, and ii) Activity Report, which contains highlights and recommendations from individual audits carried out in the past 12 months. The Parliament formally acknowledges these reports. In addition, based on the Memorandum of Understanding between SAI and the Parliament, SAI submits to the relevant parliamentary committees the reports of implementation of audit recommendations.</p> <p>The reports are scrutinized by the Parliamentary Committee on Economy, Budget and Finance (CEBF) which is mandated to carry out hearings and issue own statements and recommendations for the plenary. CEBF can carry out consultative and control hearings. While there was a strong performance in 2016, no control hearings</p>

⁶³ European Court of Auditors, 2018, "Public Procurement in Western Balkans Synthesis Report on the Parallel Performance Audit conducted by the Supreme Audit Institutions of Albania Bosnia-Herzegovina the former Yugoslav Republic of Macedonia Kosovo* Montenegro Serbia".

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with respect to audit reports were held in the subsequent years⁶⁴. The statements and recommendations provided by CEBF in different years ranged from calling upon the government to implement SAI recommendation to summarizing/reiterating the main ones⁶⁵. The implementation of the Conclusions of the Parliament on audit recommendations is binding. The Government is required to submit an action plan for addressing the recommendations and to report quarterly on their implementation. In practice, the Parliament exercises a largely formal role limited to reiterating SAI's recommendations. Several high-profile recommendations from the SAI have been repeating over the years. There is also no documented link between the hearings conducted and the recommendations issued by the parliament⁶⁶.

Gap analysis

While the rules and procedures are in place to ensure adequate parliamentary oversight and follow-up on SAI's recommendations, frequency of hearing is limited, and parliamentary recommendations provide little substantive value.

Recommendations

Ensure regular control and consultative hearings on SAI reports. Based on the outcome of such hearings, develop more substantive Parliamentary conclusions in relation to the implementation of SAI recommendations.

Assessment criterion 12(a)(f):

clear mechanisms to ensure that there is follow-up on the respective findings.

Conclusion: No gap

Red flag: No

Qualitative analysis

There are clear mechanisms to ensure there is a follow-up on both, internal and external audit findings.

External audit: SAI is responsible for follow-up on the implementation of its recommendations by audited public bodies. According to SAI's internal guidelines, audited public bodies are required to provide SAI with the plan for implementation of recommendations within 30 days from receiving the audit report and to submit the first report on implementation of recommendations within 6 months. SAI may decide to conduct field visit to obtain additional evidence of implementation, and based on the results of the visit, it may decide to conduct control audit. SAI provides audited bodies with additional deadline to implement the pending recommendations and follows-up with them until all the recommendations have been implemented. In some cases, this may involve up to four control audits. SAI produces reports on implementation of recommendations and publishes the status of their implementation on its website. SAI also reports to the Parliament about the implementation of recommendations from the annual Audit Report on the Final Account, and to CEBF on implementation of recommendations from individual audits of public bodies.

Internal audit: Internal Audit reports are submitted to the head of public body and management responses are documented in the central registries of internal audit recommendations held by each Internal Audit Unit. Each Internal Audit Unit monitors the implementation and annually reports on the implementation status to the CHD. This information is aggregated into the publicly available Consolidated PIFC Report.

Gap analysis

The assessment has not identified any gaps

Recommendations

None

⁶⁴ Source: PEFA 2019

⁶⁵ Source: PEFA 2019.

⁶⁶ Source: PEFA 2019.

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Sub-indicator 12(b) Coordination of controls and audits of public procurement
<p>Assessment criterion 12(b)(a): There are written procedures that state requirements for internal controls, ideally in an internal control manual.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Implementing modalities for internal control and audit are elaborated in several by-laws, methodologies and manuals issued by the MoF/CHD. This framework has been progressively refined over the past years in line with international best practices. Internal Audit Manual defines mandatory guidelines and procedures, and general approach for conducting internal control and audit. Additional guidelines and procedures are defined in several methodologies, such as for i) the manner of establishment and improvement of management and control, ii) the work of internal audit, iii) delegating financial management and internal control tasks, iv) analyzing quality of internal audit, v) content of internal audit reports and the manner of reporting, and vi) continuous professional development of internal auditors.</p> <p>Public bodies develop own internal control framework based on the Plan for Improving Management and Control.</p> <p>All Heads of IAUs are required to develop and implement a Quality Assurance and Improvement Program for their IAUs and there is progress in preparations of internal quality assessments.</p>
<p>Gap analysis The assessment has not identified any gaps</p>
<p>Recommendations None</p>
<p>Assessment criterion 12(b)(b): There are written standards and procedures (e.g. a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Written audit standards and procedures also covering procurement audits are in place. SAI developed written standards and procedures for conducting: i) financial and compliance audits⁶⁷ (which also cover audit of public procurement segment), and ii) performance audit⁶⁸. The former prescribes types of audit procedures and audit process. In the preparatory phase checklists are prepared covering specific issues to be audited, including in relation to public procurement. Based on the checklists and supporting documents, SAI's Collegium adopts an audit plan which among other sets a detailed list of tasks for auditors. Furthermore, SAI's manual which is used as a textbook for external auditor examination provides guidelines on public procurement audit⁶⁹. Additional</p>

⁶⁷ Methodology for Conducting Financial Audit and Compliance Audit, Official Gazette no. 7/15.

⁶⁸ Methodology for Conducting Financial Audit and Compliance Audit, SAI, 2019.

⁶⁹ Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.

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<p>guidelines in place include: (i) Guidelines for Assessing the Application of Fiscal Responsibility Criteria (2017), (ii) Guidelines for Audit of Annual Financial Statements of Political Parties (2018), and (iii) Guidelines for Auditing the Final Account of the State (2018).</p> <p>The procedure for internal audit is described in Internal Audit Manual and is also applicable to audit of public procurement.</p>																				
<p>Gap analysis The assessment has not identified any gaps</p>																				
<p>RecommendationsNone</p>																				
<p>Assessment criterion 12(b)(c): There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*</p>																				
<p>Conclusion: Minor gap</p>																				
<p>Red flag: No</p>																				
<p>Qualitative analysis</p> <p>External audits are conducted in line with INTOSAO standards and based on SAI's annual audit plan. Auditees are selected based on criteria defined in SAI's Guidelines on Selection of Financial and Compliance Audits, which include budget execution size, previous audit conducted, risk and policy assessment, and strategic priorities. As noted above, no specialized procurement audits are carried out.</p> <p>Internal audit function is required to follow the International Professional Practices Framework (IPPF) issued by the Institute of Internal Auditors (IIA). There is evidence that internal audits are conducted through the public sector. IAUs carry out risk-based strategic, annual, and audit engagement planning. Audit reports are delivered to the head of the audited spending unit and are available upon request to the external auditors and the CHD⁷⁰.</p>																				
<p>Quantitative analysis</p> <p>* <i>Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c):</i></p> <ul style="list-style-type: none"> - 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). <p>Source: Ministry of Finance/Supreme Audit Institution.</p> <table border="1"> <thead> <tr> <th>External audit type</th> <th>2021-22</th> <th>2020-21</th> <th>2019-20</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>35</td> <td>37</td> <td>20</td> </tr> <tr> <td>Financial /compliance</td> <td>25</td> <td>26</td> <td>16</td> </tr> <tr> <td>Specialize procurement</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Procurement performance</td> <td>0</td> <td>0</td> <td>0</td> </tr> </tbody> </table>	External audit type	2021-22	2020-21	2019-20	Total	35	37	20	Financial /compliance	25	26	16	Specialize procurement	0	0	0	Procurement performance	0	0	0
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<p>Gap analysis While external and internal audits are conducted regularly and in line with established written standards, no specialized procurement audits or performance procurement audits are carried out.</p>																				
<p>Recommendations See 12(a)(d).</p>																				
<p>Assessment criterion 12(b)(d): Clear and reliable reporting lines to relevant oversight bodies exist.</p>																				

⁷⁰ Source: PEFA 2019.

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Conclusion: No gap										
Red flag: No										
<p>Qualitative analysis</p> <p>As per the Law on SAI, SAI submits to the Parliament its annual Activity Report, which contains highlights and recommendations from all individual audits carried out in the past year. The Parliamentary CEBF is responsible for closely reviewing the report and undertaking follow-up action. See also 12(a)(e). Internal audit reports are normally submitted to head of the public body. IAU monitors the implementation and annually reports to the CHD. See also 12(a)(f).</p>										
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>										
<p>Recommendations</p> <p>None</p>										
Sub-indicator 12(c)										
Enforcement and follow-up on findings and Recommendations										
<p>Assessment criterion 12(c)(a): Recommendations are responded to and implemented within the time frames established in the law.*</p>										
Conclusion: Minor gap										
Red flag: No										
<p>Qualitative analysis</p> <p>Deadlines for responding to recommendations from individual SAI audits are decided by the SAI Collegium in line with SAI's internal guidelines and authorizations provided by the Law on SAI. The evidence suggests that public bodies in general accept all recommendations provided related to public procurement and implement most of them. However, most of the SAI's systemic recommendations resulting from the annual audit of Final Account (related to various areas, including public procurement) are not responded to as envisaged by the Government's Action Plan.</p>										
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a):</i> <i>- Share of internal and external audit Recommendations implemented within the time frames established in the law (in %).</i> <i>Source: Ministry of Finance/Supreme Audit Institution.</i></p> <table border="1"> <tr> <td>SAI⁷¹ recommendations</td> <td>2020</td> </tr> <tr> <td>A. From individual audits</td> <td>23</td> </tr> <tr> <td>Implemented (partially implemented)</td> <td>17 (74%)</td> </tr> <tr> <td>B. From Final Account audit</td> <td>74</td> </tr> <tr> <td>Implemented (partially implemented)</td> <td>29 (39%)</td> </tr> </table>	SAI ⁷¹ recommendations	2020	A. From individual audits	23	Implemented (partially implemented)	17 (74%)	B. From Final Account audit	74	Implemented (partially implemented)	29 (39%)
SAI ⁷¹ recommendations	2020									
A. From individual audits	23									
Implemented (partially implemented)	17 (74%)									
B. From Final Account audit	74									
Implemented (partially implemented)	29 (39%)									
<p>Gap analysis</p> <p>While the recommendations related to public procurement are generally implemented by public bodies, there is still room for improvement. Limited implementation of recommendations from Final Account audit points to overall poor implementation of SAI recommendations by public bodies in general.</p>										

⁷¹ Source: SAI Activity Report for 2022. The recommendations from Final Account audit relate to various areas, including public procurement.

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<p>Recommendations</p> <p>CAs should strive to achieve a hundred percent implementation of SAI recommendations. DPPP and SAI could work on identifying ways to support CAs in this process, such as through capacity building.</p>
<p>Assessment criterion 12(c)(b):</p> <p>There are systems in place to follow up on the implementation/enforcement of the audit Recommendations.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>There are multiple arrangements in place to follow-up on the implementation and enforcement of audit recommendations. In 2021 SAI adopted Guidelines for developing, monitoring and control of implementation of recommendations. SAI follows-up with public bodies through the public bodies' implementation reports, and SAI's field visits and control audits. In 2023 SAI established an online registry of audit recommendations to support the implementation monitoring process. The registry enables the audited bodies to enter data on implementation progress. SAI plans to make the registry accessible to the public. SAI reports to law enforcement bodies if the findings imply criminal activity. The Parliament through CEBF follows-up on the implementation of recommendations from both the Final Account audit and from individual audits. However parliamentary control and consultative hearings are not conducted regularly in practice (see 12(a)(e)).</p> <p>Internal audit: Follow-up measures to IA recommendations are planned and agreed as part of each internal audit. These measures can take the form of written feedback from auditees, separate follow-up audits, or follow-up as a part of a subsequent audit. Each Internal Audit Unit monitors implementation and annually reports on the implementation status to the CHD.</p>
<p>Gap analysis</p> <p>Lack of parliamentary control and consultative hearings hampers effective implementation of audit recommendations (see also 12(a)(e)).</p>
<p>Recommendations</p> <p>See 12(a)(e).</p>
<p style="text-align: center;">Sub-indicator 12(d)</p> <p style="text-align: center;">Qualification and training to conduct procurement audits</p>
<p>Assessment criterion 12(d)(a):</p> <p>There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>There is a continuous professional development program for external auditors. SAI organizes annual training on public procurement for all its employees. Additional trainings on public procurement are also provided to selected auditors (19 auditors are authorized EPPS supervisors) by the Human Resource Management Agency (HRMA) and by international organizations such as SIGMA.</p> <p>The CHD manages a comprehensive in-class and on-the-job training program for internal auditors, in cooperation with the HRMA. Candidates who successfully complete the program are certified and subject to further continuous professional development requirements. Public procurement is also part of the National Legislation training module and a mandatory subject to pass in order to obtain the internal audit certificate.</p>

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<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</i></p> <p>- number of training courses conducted to train internal and external auditors in public procurement audits:</p> <p>External auditors: 2020: 4, 2021: 7, 2022: 2. Internal auditors: N/A.</p> <p>- share of auditors trained in public procurement (as % of total number of auditors)⁷²: 100%.</p> <p>Source for all: Ministry of Finance/Supreme Audit Institution.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gap.</p>
<p>Recommendations</p> <p>None</p>
<p>Assessment criterion 12(d)(b):</p> <p>The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>To obtain the external audit certification, candidates need to pass the mandatory exam. Public procurement is one of the mandatory topics and SAI's Manual on Audit of Annual Consolidated Financial Reports of Political Subjects and Audit of Public Procurement is used as a textbook⁷³. Furthermore, written public procurement exams are often conducted as part of the selection process. Internal auditors are also required to pass mandatory exams which include the procurement topic.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gap.</p>
<p>Recommendations</p> <p>None</p>
<p>Assessment criterion 12(d)(c):</p> <p>Auditors are selected in a fair and transparent way and are fully independent.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Selection of auditors (external and internal) follows an open competitive procedure in accordance with the HR recruitment procedure. According to the Law on SAI, the Parliament appoints the SAI Senate members based on nominations received from the CEBF. The Senate members enjoy immunity from criminal persecution in discharging their duties.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>

⁷² 63 external auditors are envisaged by the SAI's Rulebook on internal organization.

⁷³ Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.

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Recommendations

None

Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator 13(a) Process for challenges and appeals			
Assessment criterion 13(a)(a):			
Decisions are rendered on the basis of available evidence submitted by the parties.			
Conclusion: No gap			
Red flag: No			
Qualitative analysis			
<p>Appeal cases are handled by the Commission for Protection of Rights in Public Procurement Procedures (Appeals Body). The PPL prescribes that the appellant must submit evidence as part of the appeal (A.188) and prove the existence of facts on which the appeal is based (A.194). The PPL (A.194) also provides that the Appeals Body may engage an expert witness to resolve a case or seek advice from a responsible public body or organization with public authority. The PPL does not explicitly state that the Appeals Body's decisions should be rendered based on evidence. However, it refers to the General Administrative Procedure Act (GAPA)⁷⁴ on relevant issues related to protection of rights which are not regulated by PPL⁷⁵. Given that i) GAPA is applicable to all administrative procedures, ii) other laws must not contradict GAPA or affect protection of rights of parties in the procedure⁷⁶, and iii) GAPA prescribes that explanation of an administrative decision must, among other, provide description of factual circumstances and the rationale for the decision based on factual circumstances,⁷⁷ legal requirement for the Appeals Body's decisions to be based on evidence are in place..</p> <p>According to the interviews, the decisions of the Appeals Body are rendered based on evidence submitted by the parties, verification of such evidence by the Appeals Body (such as through insights into relevant databases and documents), and information obtained from expert witnesses or other public bodies.</p> <p>The following sample cases reviewed as part of the assessment show that the Appeals Body relies on available evidence which were cited in the decision letters:</p>			
#	Issue	Decision	Evidence referred and cited
1	Appellant requests annulment of public procurement procedure because i) the CA did not conduct public opening of bids and did not provide bidders with minutes of the bid opening meeting, ii) the decision on selection of bid does not mention opening of guarantee which was submitted by the selected bidder.	Appeal adopted in whole and public procurement procedure annulled.	Tender document (defining the date of public bid opening and the manner of submission of guarantees) Guarantee submitted by the selected bidder Minutes of bid opening CA's response to the appeal

⁷⁴ Official Gazette no. 56/14, 20/15, 40/16 and 37/17.

⁷⁵ PPL, Article 27.

⁷⁶ GAPA, article 4.

⁷⁷ GAPA, Article 22.

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2	Appellant requests annulment of decision on selection of bid because: i) the bid evaluation methodology defined in the Tender document was not in line with PPL and the Rulebook on the Manner of Evaluation of Bids, and ii) the decision on selection of bid states a requirement which was deleted from the Tender document through the changes to the Tender document.	Appel rejected as unfounded.	Tender document with evaluation criteria and changes to the Tender document Rulebook on the Manner of Evaluation of Bids Decision on selection of bid CA's response to the appeal
3	Appellant requests annulment of decision on selection of bid because: i) the selected bid does not include detailed specification of goods in line with the requirements of the Tender document, and ii) names of some of the brands/products defined in the bid are inaccurate.	Appeal adopted and the decision on selection of the bid annulled.	Tender document Bids received CA's response to appellant
4	A bidder has been debarred from the procurement because the executive director of the bidder's organization has been convicted for criminal act which does not establish the basis for debarment as per the PPL.	Appeal adopted and public procurement procedure annulled.	Ministry of Justice certificate on criminal conviction of the bidder's executive director, including the copy provided by the bidder and a new copy reissued by the Ministry of Justice at the request of the Appeals Body Tender document PPL Bidder's qualification statement
5	Appellant requests i) changes to the Tender document because the wording in the original and revised Tender document was not in line with PPL in describing quality standards, ii) publishing outcome of the appellant's previous appeal, which the CA failed to publish on EPPS and timely deliver to the appellant.	Appeal partly adopted under point i) (relevant wording annulled)	Institute for Standardization Database Written clarifications obtained from DPPA on the manner of publishing appeals by CAs. Tender document Announcement of appeal published at EPPS.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(a)(b):

The first review of the evidence is carried out by the entity specified in the law.

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<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis The PPL (A.185) provides that candidates submit an appeal to the Appeals Body through CA and through EPPS. The CA's committee established for the particular public procurement proposes to the CA's authorized person (i.e., its head) a response to the appeal (A.48). The Head of the CA decides on the appeal.</p>
<p>Gap analysis The assessment has not identified any gaps</p>
<p>Recommendations None</p>
<p>Assessment criterion 13(a)(c): The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There is no specific provision in the PPL that the decisions of the Appeals Body are final and binding (enforceable). However, the PPL stipulates that a lawsuit against the Appeals Body's decisions can be initiated at the Administrative Court (third instance) by a bidder, the CA, or other interested party. This implies that the decision of the Appeals Body is final and enforceable if no further appeal is submitted by the appellant to the Administrative Court. CA is required by PPL to enforce the decision of the Appeals Body within 15 days and inform the Appeals Body on the enforcement. Penalties for CAs amounting from EUR 5,000-20,000 are prescribed in case of non-compliance with these requirements. The Appeals Body is required to notify the DPPP and the Inspectorate in case of non-enforcement (A.192). The initiation of a lawsuit at the Administrative Court does not suspend the procurement procedure and the CA can award a public procurement contract with the selected bidder without waiting for the deadline for submission of lawsuit to expire⁷⁸. The Administrative Court may issue a restraining order (injunction) based on the appellant's proposal, although this possibility is almost never used in practice. If the Administrative Court decides in favor of the appellant and the public procurement contract has been signed in the meanwhile, the appellant may seek compensation of damage by initiating a new procedure at relevant first instance court (i.e., Basic Court).</p>
<p>Quantitative analysis // Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p>

⁷⁸ The public procurement contract can be signed 10 days after the Appeals Body has published its decision rejecting the appeal, while a lawsuit against the Appeals Body's decision can be filed within 20 days from the date of publishing.

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⁷⁹# of appeals received by the Appeals Body:

2020: 229

2021: 194

2022: 174

January 1 – November 28, 2023: 275

of appeals decisions (including on appeals from the previous year processed in the current year):

2020: 242

2021: 180

2022: 169

January 1 – November 28, 2023: 259

** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):*

number (and percentage) of enforced decisions.

Source: Appeals body.

2020: 57 (100% of relevant decisions)

2021: 102 (100% of relevant decision)

2022: 94 (97% of relevant decisions)

Gap analysis

The assessment has not identified any gaps.

Recommendations

None

Assessment criterion 13(a)(d):

The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Conclusion: No gap

Red flag: No

Qualitative analysis

The timeframes specified in the PPL for the submission and review of appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Timeframes for submission of challenges and appeals by the candidate to the Appeals Body through the CA (PPL, A.186):

- i) for appeals related to the Tender document and changes to the Tender document: 20 days from the date of publishing of Tender documents and changes to the Tender document, if the deadline for submission of bids or qualification statements is at least 30 days from the date of publishing/providing of the Tender document or changes to the Tender document; 10 days from the date of publishing of Tender documents and changes to the Tender document, if the deadline for submission of bids or qualification statements is at least 15 days from the date of publishing/providing of the Tender document or changes to the Tender document; and until the expiration of half of the deadline for submission of bids or qualification statements, if this deadline is less than 15 days from the date of publishing/providing of the Tender document or changes to the Tender document; if the final date of the bid submission deadline has less than 24 hours, the deadline will expire on that day.

⁷⁹ Source: The Appeals Body documents provided to the Bank team, March 2023.

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- ii) For appeals related to debarment from procurement procedure: 10 days from the date of submission of the decision on debarment.
- iii) For appeals related to the selection of most favorable bid or annulment of procurement procedure: 10 days from the date of publishing of the decision on the selection of most favorable bid or the annulment of procurement procedure.

Timeframe for head of CA to issue decision and submit an appeal to the Appeals Body (PPL, A.189):

- i) 3 days to publish the appeal at EPPS and suspend the procurement procedure.
- ii) 8 days to reject an appeal if it finds it unallowed, untimely, submitted by an unauthorized person, or incomplete; 3 days to publish this decision at EPPS/submit it to the appellant; and 3 days to inform the Appeals Body, starting from the date of publishing its decision/submitting it to the appellant.
- iii) 30 days to adopt an appeal in whole, and depending on the subject of the appeal, annul the decision appealed on, issue another decision, change or amend the Tender document in line with the appeal, or annul the public procurement procedure in part or in whole.
- iv) 8 days to inform the Appeals Body on an appeal which it rejects in part or in whole, based on grounds other than those under point ii) above.

Timeframe for issuance of decision by Appeals Body (PPL, A.193):

- i) 8 days from the date it receives the appeals and related documents to reject the appeal if it finds it unallowed, untimely, submitted by an unauthorized person, incomplete, or not in order; or to stop the appeals procedure if the appellant withdraws the appeal.
- ii) 30 days from the date it receives the appeals and related documents to reject an appeal as unfounded, or to adopt an appeal in part or in whole and annul the CA's decision or procedure or act found unlawful. This deadline can be extended by up to 10 days if the Appeals Body determines that it needs to engage an expert witness or obtain opinions from relevant public bodies, or that the documents to be reviewed are extensive.
- iii) 3 days to publish its decision at the EPPS.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

**Sub-indicator 13(b)
Independence and capacity of the appeals body
The appeals body:**

Assessment criterion 13(b)(a):

is not involved in any capacity in procurement transactions or in the process leading to contract award decisions

Conclusion: No gap

Red flag: No

Qualitative analysis

The status, organization, composition, and mandate of the Appeals Body are defined by the PPL (A.198-208) and operationalized in its internal Book of Rules. The Appeals Body is independent and professional in performing its duties. It comprises six members and president who acts as the head. The President and the members are appointed by the Parliament based on a proposal from the responsible parliamentary committee for a five-year term, with possibility of reappointment, and based on public vacancy. The PPL also prescribes that the president and the members of the Appeals Body cannot perform other public functions, or functions in political parties, and that they cannot participate in an appeal process if there are reasons that bring into question their independence. Administrative support to the Appeals Body is provided by its Secretariat whose head is selected through a public vacancy.

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<p>Gap analysis The assessment has not identified any gaps</p>
<p>Recommendations None</p>
<p>Assessment criterion 13(b)(b): does not charge fees that inhibit access by concerned parties</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>An appellant is required by PPL to pay fee for the initiation of the appeals procedure in amount of 1% of the estimated value of public procurement and not exceeding EUR 20,000. The proof of payment needs to be submitted before the expiration of the appeals deadline. If the Appeals Body decides in favor of the appellant, the amount paid must be returned to the appellant within 15 days from the date the appeals decision becomes legally valid.</p>
<p>Gap analysis The assessment has not identified any gap.</p>
<p>Recommendations</p> <p>None.</p>
<p>Assessment criterion 13(b)(c): follows procedures for submission and resolution of complaints that are clearly defined and publicly available</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The procedures for submission and resolution of appeals are clearly defined and publicly available in the PPL and the Public Procurement Manual prepared by the DPPP⁸⁰. Still, understanding of the appeals process and the Appeals Body's work appears to be insufficient, as evidenced by frequent clarifications and expert opinions provided by the DPP and legal opinions provided by the Appeals Body in response to various requests from institutions and bidders.</p>
<p>Gap analysis Available procedures and guidelines on the appeals process appear to be insufficient.</p>
<p>Recommendations Produce a commentary on the PPL to enable CAs and bidders to better understand the procurement procedures, including on the appeals process.</p>
<p>Assessment criterion 13(b)(d): exercises its legal authority to suspend procurement proceedings and impose remedies</p>
<p>Conclusion: Minor gap</p>

⁸⁰ Public Procurement Manual, DPPA, <https://ujn.gov.me/wp-content/uploads/2021/12/Priruc%CC%8Cnik-javne-nabavke.pdf>.

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Red flag: No
Qualitative analysis <p><u>Suspension:</u> The PPL (A.189) provides that, within 3 days from the receipt of an appeal, the CA shall publish the notice of receipt of an appeal, and that notification automatically suspends further action by the CA until the appeal has been resolved.</p> <p><u>Remedies:</u> The Appeals Body has legal authority to impose remedies. PPL (A.192) lists the remedies which may be imposed by the Appeals Body. Unless the Appeals Body terminates the appeal procedure due to withdrawal of the appeal by the appellant, it has the authority to render one of the following decisions: i) reject an appeal as unallowed (related to CA's decision or action which cannot be appealed), ii) reject an appeal as untimely (not submitted within the legal deadline), iii) reject an appeal as submitted by an unauthorized person, or by a bidder who did not provide a valid bid guarantee, iv) reject an appeal as incomplete (no proof of payment of required fee), v) reject an appeal as not being in order (if the appellant does not resolve the deficiency which prevents taking action on the appeal), vi) reject an appeal as unfounded (appeal statements are unfounded), or vii) adopt an appeal in whole or in part and annul an unlawful decision or procedure or act of the CA.</p> <p>It is supported with evidence that, upon receipt of an appeal, CAs publish appeals at EPPS and suspend the procurement procedure.</p> <p>CAs notify the Appeals Body on all appeals received, including those adopted in whole, along with evidence of publishing their decisions. The CA is obliged to publish notification of the appeal on EPPS within 3 days from the date of receipt of the appeal (A189). The CA may reject the appeal as unallowed, untimely, submitted by an unauthorized person, or incomplete within 8 days from the appeal. CA may also adopt the appeal in whole within 30 days from the appeal. In both cases the CA is obliged to publish such decision on the EPPS and inform the Appeals Body within 3 days from the day of the decision. If the CA rejects the appeal in part or in whole, it is obliged to publish such decision on the EPPS and inform the Appeals Body within 8 days (see also sub-indicator 13(a)(d)). This process suggests that the CA need to take action in the EPPS to notify the Appeals Body of the appeal. Hence, delayed CA's action may slow down the procedure, while no action is considered administrative silence. No such cases were however reported in practice. Prior to the establishment of the EPPS the appeals were submitted in paper form, copying the Appeals Body. It should also be noted that the fee charged to the appellant for the submission of the appeal (see sub-indicator 13(b)(b)) is paid to the Appeals Body's account. Hence the fee will need to be paid even if the appeal is accepted in full by the CA. There were cases in practice when the Appeals Body learnt about the appeal based on the bank transactions (funding reimbursed to the appellant).</p>
Gap analysis <p>To notify the Appeals Body on appeals not adopted in whole, a CA needs to take action in the EPPS. A lack of timely action or no action by the CA may create process delays and impact the appellant's right to appeal.</p>
Recommendations <p>Establish adequate control mechanisms to ensure the Appeals Body is automatically informed on appeals not adopted in whole by CAs, without having the CA take action in the system.</p>
Assessment criterion 13(b)(e): <p>issues decisions within the time frame specified in the law/regulations*</p>
Conclusion: Minor gap
Red flag: No
Qualitative analysis

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The PPL (A.193) provides that the Appeals Body resolves the appeal within 30 days, or, in cases an expert witness needs to be engaged, within 40 days. In general, the Appeals Body provides the resolution within the legally prescribed timeframes. The Appeals Body resolved within the legal deadline 92% of appeals in 2020, 85% of appeals in 2021 and 68% of appeals in 2022, with average resolution time of 18, 23, and 28 days, respectively⁸¹. A trend of somewhat slowed resolution over the years can be attributed to several factors. First, although expert witnesses are engaged in approximately 5% of the cases, their engagement creates delays as it requires application of procedures established by GAPA and Civil Procedure Law. According to these procedures, draft expert opinion must be shared with the CA, the appellant and bidders, as relevant, for their potential comments, which can be provided within 8 days. The Appeals Body is obliged to pass the comments received to expert witness for his/her feedback. The expert's feedback is then shared with the party which provided the comments for its potential additional statement, which can be provided within 8 days. Finally, the Appeals Body shares potential additional statement with expert witness, requesting his/her final opinion. Limited availability and access to expert witnesses in certain areas also creates delays. Other causes of delays include the impact of Covid-19 on the Appeals Body's operations and staff health, capacity issues (position of one member of the Appeals Body has been vacant for a while), and lack of Internet connection for 44 days in 2022 due to a cyber-attack on the Government's IT system.

Private sector perceives the decision-making timeframe as too long. Of the survey respondents who have submitted at least one complaint related to public procurement to the Appeals Body⁸², only 31% agreed with the statement that decisions of the Appeals Body are taken within a reasonable timeframe. Similar responses were received regarding the decisions of CAs (38% agreed with the statement) and the decision of the Administrative Court (12% agreed with the statement).

A sample of 15 appeals was reviewed. Based on the sample, the minimum number of days between the date of the appeal and the date of the response is 10 days and the maximum number of days is 251 days. The average time between the date of the appeal and the date of the the Appeals Body's response is 75 days. Given that the response time is calculated from the date of submission of complete documentation by the appellant (PPL, Art. 193) and not from the date of the appeal as is the case here, and given that complete documentation is often submitted with delay, these figures should only be taken as a proxy of timeliness in the Appeals Body's work.

Quantitative analysis

Quantitative indicator to substantiate assessment of sub-indicator 13(b) assessment criterion (e):

- *appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).*

Source: Appeals body.

	2020	2021	2022	Jan 1 – 28 Nov, 2023 ⁸³
Total caseload (# of appeals):	242 100%	194 100%	188 100%	294 100%
Resolved within the legal deadline	223 92.1%	164 84.5%	127 67.6%	N/A

⁸¹ Source: Appeals Body.

⁸² 43% of surveyed firms submitted at least one complaint related to public procurement to the Appels Body through the contracting authority. 9% of firms submitted at least one appeal to the Administrative Court against the decision taken by the Complaints Commission.

⁸³ This column is added to capture available data on total caseload and appeals resolved in 2023 as of the time of writing.

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Resolved beyond the legal deadline	19 7.9%	16 8.2%	42 22.3%	N/A
Total resolved	242 100%	180 92.8%	169 89.9%	259 88.1%
Unresolved	0 0.0%	14 7.2%	19 10.9%	35 11.9%

Gap analysis

Although average resolution time for the Appeals Body's decisions is within the legal timeframe, moderate number of appeal decision were not resolved within this timeframe. Analysis of sample appeals points to similar conclusion. The private sector perceives the appeals resolution as slow. However, the survey results should be taken with caution given that the sample may not be representative.

Recommendations

The Appeals Body should strive to reach its full capacity and achieve a 100% resolution of cases within the legal timeframes.

Assessment criterion 13(b)(f):

issues decisions that are binding on all parties

Conclusion: No gap

Red flag: No

Qualitative analysis

There is no specific provision in the PPL stating that decisions of the Appeals Body are binding on all parties. A lawsuit can be filed against the Appeals Body's decisions at the Administrative Court. However, such lawsuit does not suspend the procurement process (PPL, A.197). See also sub-indicator 13(a)(c).

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(b)(g):

is adequately resourced and staffed to fulfil its functions.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

The PPL envisages adequate resources for the Appeals Body, including through budget allocations and administrative support by the Secretariat, the head of which should be recruited based on merit (A.208). In practice, the Appeals Body operated at limited capacity during 2021-2022 due to the expiration of mandate of its president and resignation of one of its members. Of the 19 positions planned for the Secretariat, 14 are filled. This is because of the retirement of some staff and the Secretariat's inability to recruit new staff until it completes the necessary changes to its internal rulebook and align it with the new civil service legislation. The Appeals Body in principle receives requested operational budget allocations from the government to perform its duties.

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The members of the Appeals Body and its Secretariat regularly participate in trainings and local and regional workshops organized by the HRMA, the DPPP, international organizations (such as OECD/SIGMA) and CSOs on topics such as public procurement, e-procurement, state property registration, internal controls and accountability, fraud and corruption, etc. The results of the Appeals Body's internal training needs assessment are used to inform the HRMA's annual training plan. One member of the Appeals Body is the member of the state Working Group on EU Accession Negotiations for Chapter 5 – Public Procurement.

Gap analysis

While the Appeals Body receives requested funding from the Government, there seems to be several bureaucratic or capacity related reasons that are keeping it from reaching its full potential. The annual reports of the Appeal Body provide minimal information about the remedy system and could benefit from more data analytics that could serve the process of improving the procurement system.

Recommendations

Conduct a comprehensive functional review of the Appeals Body operations to determine organizational and capacity gaps and identify measures to improve its performance. Strengthening the Appeals Body's internal capacities in areas where the volume of appeal resolution is the largest could reduce the need for engagement of expert witnesses and thereby accelerate the resolution.

Sub-indicator 13(c)

Decisions of the appeals body

Procedures governing the decision making process of the appeals body provide that decisions are:

Assessment criterion 13(c)(a):

based on information relevant to the case.

Conclusion: No gap

Red flag: No

Qualitative analysis

Neither the PPL nor other regulations such as the Appeals' Body's internal Book of Rules or the DPPP's Public Procurement Manual prescribe that the Appeals Body's decision should be based on particular documents. However, the PPL prescribes that the CA must provide to the Appeals Body the appeal and all of its annexes, the documentation related to the public procurement procedure, appellant's qualification application, and all bids received. If the CA fails to do this, the Appeals Body will remind it to do so, with a warning that otherwise it will adopt the appeal and annul the procedure (A.191). Applicable provisions of GAPA also provide that the Appeals Body's decision are based on information that is relevant to the case (see 13(a)(a)). Finally, interviews with the Appeals Body and the actual review of the 5 sample cases (see 13(a)(a)) shows that the Appeals Body cited evidence reviewed and considered in reaching decisions.

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(c)(b):

balanced and unbiased in consideration of the relevant information.*

Conclusion: Substantive gap

Red flag: No

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Qualitative analysis

As described above, procedures governing the decision-making process provide that decision of the Appeals Body's are balanced and unbiased in consideration of relevant information. Statistical data also point that most of the Appeals Body's decisions are made in favor of appellant (see 13(c)). However, survey results point that the private sector respondents who submitted at least one complaint to the Appeals do not see the appeals system as fair and trustworthy or consistent. Only 20% of such respondents agrees that the Appeals Body's decisions are consistent, unbiased, and well-informed, while 40% disagrees with this statement. Furthermore, 24% find the decision of the Appeals Body to be correct/necessary while 36% disagree with this statement. Additionally, respondents had more positive views of the Appeals Body then of the CAs or Administrative Court. During the interviews the private sector representatives suggested improving the capacities of both the Appeals Body and CAs to deal with appeals in a credible manner.

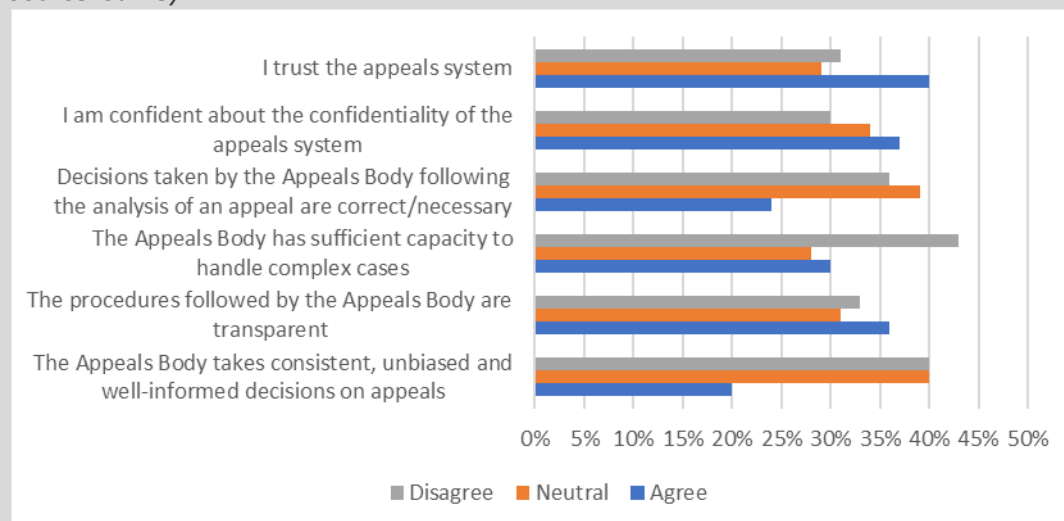
Quantitative analysis

Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):

- share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey.

- share of suppliers that perceive appeals decisions as consistent (in % of responses).

Source: Survey.



Gap analysis

The private sector does not consider the Appeals Body as trustworthy or fair. Perceptions of the private sector is that the decisions made by the Appeals Body are not consistent, they are biased, and they are not well-informed or correct.

Recommendations

Improve the capacity and transparency of work of the Appeals Body and its Technical Secretariat and sensitize the private sector on the work of the Appeals Body, such as through better public communication on its work.

Assessment criterion 13(c)(c):

result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*

Conclusion: No gap

Red flag: No

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Qualitative analysis

The Appeals Body has legal authority to impose remedies, including prohibit the CA from acting or deciding unlawfully and annul in whole or in part, an unlawful decision, procedure, or act by a CA (see 13 (b)(d)). The Appeals Body in most of cases decided in favor of the appellant (74% in 2020, 72% in 2021 and 76% in 2022). On average 4% of the appeals annually were withdrawn by the appellant.

The number of lawsuits filed to the Administrative Court varied from 32 in 2021 (on 12% of the appeals decisions) to 29 in 2021 (on 14% of the appeals decision) and 30 in 2022 (on 16% of the appeals decision). From January 1 - November 28, 2023, 26 lawsuits were filed to the Court, of which 18 relate to the Appeals Body's decisions from 2023. The number of Administrative Court's judgments and decisions is on a slight decline. From January 1, 2020 to December 5, 2023, the Administrative Court passed 145 judgments and 14 decisions, of which 106 relate to the Appeals Body's decisions from 2016, 2018 and 2019, 33 relate to the Appeals Body's decisions from 2020, 8 relate to the Appeals Body's decisions from 2021, 6 relate to the Appeals Body's decisions from 2022, and 6 relate to cancelling procedures in relation to the Appeals Body's decisions from 2020-2022.⁸⁴.

Quantitative analysis

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c): - outcome of appeals (dismissed; decision in favor of procuring entity; decision in favor of applicant) (in %).
Source: Appeals body.

Outcome of appeals	2020	2021	2022	Jan 1 – Nov 28, 2023
Decision in favor of procuring entity (CA)	23%	23%	21%	34.75%
Decision in favor of appellant	74%	72%	76%	62.16%
Appeal withdrawn by appellant	3%	5%	3%	1.15%
Procurement procedure cancelled ex-officio				1.94%
Total	100%	100%	100%	

Gap analysis

The assessment has not identified any gap.

Recommendations

None

Assessment criterion 13(c)(d):

decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*

Conclusion: No gap

Red flag: No

Qualitative analysis

CAs are obliged to publish on EPPS a notice of an appeal and a suspension of any further action in procurement process within 3 days from the date of receipt of an appeal, and its decision on the rejection of the appeal, within 3 days from passing the decision (PPL, A.189). If the Appeals Body annuls the public procurement procedure, the CA is obliged to publish notice of annulment on EPPS within 5 days from the date of the Appeals Body's decision (PPL, A.192).

⁸⁴ Source: Appeals Body.

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<p>The Appeals Body is obliged to publish its decisions on EPPS and on its website within 3 days from the date of adoption (PPL, A.193). The Appeals Body is also obliged to publish notice on administrative lawsuit filed and the court's decision on its website and on EPPS (A.197).</p> <p>The EPPS was established in 2021. Until then the Appeals Body's decisions were published on the Government's public procurement portal. 100% of the Appeals Body's decisions are published. All notices on administrative lawsuit filed and the court's decisions are also published in line with legal requirements. However it is noted that decisions of the Appeals Body are published on the website but without the possibility to use any search engines, which limits the accessibility and usability of this important information.</p>
<p>Quantitative analysis</p> <p>// Minimum indicator // *Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %). Source: Centralised online portal.*</p> <p>2020: n/a 2021: 100% 2022: 100%</p>
<p>Gap analysis</p> <p>The assessment has not identified any gap</p>
<p>Recommendations</p> <p>None</p>

Indicator 14. The country has ethics and anticorruption measures in place

<p align="center">Sub-indicator 14(a)</p> <p align="center">Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties</p> <p align="center">The legal/regulatory framework provides for the following:</p>
<p>Assessment criterion 14(a)(a): definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis</p> <p>The PPL and relevant bylaws do not provide a clear definition of fraud, corruption, and other prohibited practices in procurement. While the Law on Prevention of Corruption⁸⁵ defines corruption as "any abuse of official, business, or social position or influence with the aim of acquiring personal benefit or benefit for the others", the PPL does not refer to this law or definition. Definition of "corrupt activities" could be implied from the PPL A. 38, which requires CAs to undertake specific measures to prevent and remove consequences of corrupt practices (see 14(a)(b) below).</p>
<p>Gap analysis</p> <p>There are no clear legal definitions on fraud, corruption, and other prohibited practices in procurement.</p>

⁸⁵ Official Gazette no. 53/14, 42/17.

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Recommendations

Introduce clear definitions of fraud, corruption and other prohibited practices in procurement to PPL and relevant bylaws such as procurement manual, while ensuring consistency with the definitions provided in the Law on Prevention of Corruption.

Assessment criterion 14(a)(b):

definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Responsibility/accountability of government employees: PPL (A.38) requires CAs to undertake measures to prevent and remove consequences of corrupt practices, specifically to:

- Debar from public procurement process a business operator, qualification applicant, or a bidder for whom it has been determined that it indirectly or directly gave, offered, promised, or in other ways made certain a gift or another benefit to a public procurement officer, a member of public procurement committee, a person who participated in the preparation of tender document, a person who participates in procurement planning, or to another person, with the aim of obtaining confidential information or impacting actions taken by the CA.
- Formally note such cases, report them to relevant state bodies so that they can take legal actions, and inform DPPP.
- Conduct risk analysis and control in public procurement.

The PPL states that the contract concluded in violation of anticorruption rule is null and void ('anticorruption clause'). However, the PPL does not provide a clear definition of 'anticorruption rule'.

Penalties for government employees: The PPL (A.211 and 212) sets out penalties for CAs and for responsible persons for offences under these provisions in form of fines. Amounts of fines (EUR 2,000—20,000) appears to be low given the potential impact of offense. The Criminal Law envisages imprisonment for individuals who terminate employment contracts to employees who reported corruption based on justified suspicion. The Law on Civil Servants and Employees establishes disciplinary liability for public employees and defines disciplinary measures, including suspension from work⁸⁶.

Responsibilities of private firms: PPL (A42) prevents bidders or persons who participated in drafting of documents used for developing technical specifications for procurement of works or supervision of works, as well as persons who participated in technical consultations with CA, from participating in that procurement. Bidders are required to sign a statement on conflict of interest of their authorized person, either due to his/her ownership of, or personal relationships or previous engagement with the CA (A.43).

Debarment: PL (A108) requires a CA to debar from procurement procedure a bidder that attempted to exercise undue influence (as per A.38 explained above), that is in a conflict of interest, or that was criminally indicted for bribery or fraud.

Gap analysis

While the definition of individual responsibilities, accountability and penalties for the relevant stakeholders are

⁸⁶ Official Gazette 39/2011, Article 111.

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<p>in place, there is no definition of 'anticorruption clause' and 'anticorruption rule' that these refer to. This appears to be the result of the recent PPL amendments.</p>
<p>Recommendations Consider adjusting the amounts of penalties for violation of anti-corruption rules so that they more adequately reflect potential impact of offenses.</p>
<p>Assessment criterion 14(a)(c): definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The Law on Prevention of Corruption provides general definitions and provisions on conflict of interest in performing public duties.</p> <p>PPL (A41) defines that conflict of interest between the CA and business operator exists if a CA's representative involved in procurement has direct or indirect financial, economic, or other interest that can impact his/her impartiality and independence, providing detailed explanation of such cases.</p> <p>PPL (A.40) requires CA to take adequate measures to efficiently prevent, identify and remove conflict of interest in relation to public procurement.</p> <p>PPL (A.43) requires CA's authorized person, procurement officer, member of procurement committee, and employees participating in preparation of tender document and procurement planning to sign a statement of no conflict of interest or inform the CA's authorized person of existence of conflict of interest before the beginning of the procurement procedure, and to immediately submit a request for exclusion if conflict of interest appears during the procurement procedure. CA is required to record such requests in its record of conflict of interest and to immediately notify the MOF (DPPP) and the Corruption Prevention Agency (CPA).</p> <p>The Law on Prevention of Corruption (A.15) provides for a two-year colling-off period for former public officials. During this period the official cannot represent the public body in which he/she performed the public function, be in employment or business relationship with that body, or use the information obtained when performing the public function.</p>
<p>Gap analysis The assessment has not identified any gaps</p>
<p>Recommendations None</p>
<p style="text-align: center;">Sub-indicator 14(b) Provisions on prohibited practices in procurement documents</p>
<p>Assessment criterion 14(b)(a): The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>

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<p>Qualitative analysis</p> <p>The PPL specifies prohibited practices that should be observed by both public officials and business entities. PPL (A.111) requires bidders and qualification applicants to submit a self-declaration confirming compliance with conditions for participating in public procurement and absence of any grounds for their debarment, as defined by the tender document. PPL (A.99) prevents CAs and their authorized persons who have been convicted for certain criminal offences, including for fraud, bribery, and corrupt practices, from participating in public procurement. This requirement extends to subcontractors (A.128). However, definitions of these offenses are not provided and some other relevant prohibited practices such as collusive practices, coercive practices, and obstructive practices, are left out.</p> <p>The self-declaration form prescribed by a bylaw⁸⁷ contains clear instructions to business entities regarding the provision of data that confirm their adherence to these legal provisions.</p>
<p>Gap analysis</p> <p>While the PPL specifies criminal offenses for certain prohibited practices, definitions of these practices are lacking, and the list of prohibited practices is not exhaustive.</p>
<p>Recommendations</p> <p>Consider providing a comprehensive list of prohibited practices along with their clear definitions as part of the next PPL revision.</p>
<p>Assessment criterion 14(b)(b):</p> <p>Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.</p>
<p>Conclusion: No gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>Analysis of publicly available sample procurement documents and contracts from EPPS confirms that they include provisions on fraud, corruption and other prohibited practices as specified by the PPL and relevant bylaws. These are reflected in calls for public procurement (eligibility requirements), tender documents (information on debarment, instructions for completing Self-Declaration Form, and anticorruption clause with clear instructions and/or references to relevant PPL provisions), and contracts (an anti-corruption clause). Signed Self-Declaration statements are also available.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>
<p>Recommendations</p> <p>None</p>
<p style="text-align: center;">Sub-indicator 14(c) Effective sanctions and enforcement systems</p>
<p>Assessment criterion 14(c)(a):</p> <p>Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The PPL (A.38) requires MOF (DPPP) to prescribe the manner of keeping records on conflict of interest and</p>

⁸⁷ Rulebook on Business Entity's Self-Declaration Form, Official Gazette 74/19, 3/23.

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violation of anticorruption rules and the contents of those records, and the methodology for risk analysis in public procurement control, to ensure proactivity in corruption prevention and detection. Accordingly, the Rulebook⁸⁸ prescribes contents and forms for i) ii) record of violation of conflict of interest, i.e., anticorruption rule, and ii) risk analysis methodology. CAs are required to report annually to DPPA on conflict of interest and violation of anticorruption rules.

The Rulebook does not provide sufficient explanation of corrupt practices or of the reporting process. The template for the record of violation of anticorruption rules contains summary data on the number of notes of violation submitted, the number and type of procurement procedures in which the anticorruption rule was violated and how it was violated, data on bidders and their employees and CA's employees involved in such procedures, and whether the employees who submitted the notes of violation were pressed not to report on violation and how. Information on whether the case was reported to relevant agencies (and which ones) is not included.

PPL (A.39) requires CA's employees who have the information about corruption in public procurement to immediately notify the CA's authorized person, DPPP, Agency for Prevention of Corruption, or Prosecutors Office, depending on whom the information relates to. No additional guidance on this procedure is available.

Gap analysis

Coverage and treatment of fraud and corruption matters throughout the documentation is not comprehensive or consistent. Regulations on keeping records and reporting on corrupt practices do not provide sufficient explanation of corrupt practices and guidance and information on reporting.

Recommendations

Ensure an overall, comprehensive, and consistent treatment of fraud and corruption matters throughout the legislation, regulation, and procurement documentation, and ensure that it is applied in practice.

Improve the regulation on keeping records and reporting corrupt practices to define more clearly types of corrupt practices and the reporting process and to improve the quality of information recorded.

Assessment criterion 14(c)(b):

There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

Interviewed CAs find the PPLs provisions and available regulations described above sufficiently clear, and state that they apply them in practice. However, they report no cases of such violation in practice and no single case of corrupt practices was reported to DPPP in 2022. Only 34% of private sector respondents agree that the normative/regulatory institutions enable the conflict of interest to be identified and avoided. This suggests that the system may not be systematically applied.

Gap analysis

There is little evidence the system for reporting corruption in procurement is applied in practice.

Recommendations

Establish a clear reporting structure on issues of malpractices and ensure clarity and consistency within the legal framework and its practical application. Consider providing training and guidance to staff on how to report

⁸⁸Rulebook on Records and Methodology for Risk Analysis in Conducting Public Procurement Control, Official Gazette 055/20.

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on cases of corruption and other malpractice and strengthening working relationship among the relevant agencies (DPPP, ACA, Prosecutors Office, Inspection). Inclusion of real-life case studies where attendees play roles can be useful.

Assessment criterion 14(c)(c):

There is a system for suspension/debarment that ensures due process and is consistently applied.

Conclusion: Minor gap

Red flag: No

Qualitative analysis

Mandatory debarment is prescribed for bidders who attempted to make undue influence, who are in conflict of interest, who were criminally indicted for specified acts, or did not provide mandatory documents in procurement process (A.108). Debarment based on special grounds such as professional misconduct or provision of false data may also be prescribed by CAs in tender documents (A.110). Decision on debarment is made by CA's authorizing person based on recommendation from the Procurement Committee and submitted to bidder via EPPS. The decision can be appealed on.

However, there is no system in place for managing suspensions and debarments. There are no lists of debarred persons or similar lists, and no mechanism for automatic debarment of ineligible bidders. Apart from increasing the risk of corrupt practices, this creates operational inefficiencies as CAs are required to check eligibility of all interested bidders under each procurement procedures.

Gap analysis

While the PPL provides for mandatory debarment of ineligible bidders, there is no system in place for managing suspensions and debarments, including lists of debarred entities or a mechanism for automatic debarment of ineligible bidders.

Recommendations

Develop a system to ensure effective and consistent application of legal provisions on suspension/debarment. This includes developing and regularly updating publicly available lists of debarred entities and introducing procedures and infrastructure to ensure automatic and transparent debarment of entities from relevant lists.

Assessment criterion 14(c)(d):

There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

External reports of international organizations, including the EC, and interviews with CSOs point to limited enforcement of laws on fraud, corruption and other prohibited practices, as well as a lack of a credible criminal justice response, in particular in relation to investigations, prosecutions and final convictions on high-profile corruption. Available reports of criminal justice or other institutions do not provide data on procurement-related cases of fraud or corruption (see 14.(d)(c)). However, statistics on prosecution and convictions related to cases of "high-profile corruption" and "abuse of official power", which cover procurement, indeed point to poor enforcement. As an illustration, in 2020 POs handled 476 criminal charges related to abuse of official power. While this represents a 10% increase compared to 2019, it is still only 3% of the total POs caseload. Only 12 indictments were proposed based on these charges, one indictment was ordered, and one investigation was

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conducted, while 120 charges remained unresolved. Similarly, courts processed only 40 indictments and passed only 6 convictions, leaving 30 indictments unresolved. Furthermore, courts upheld only one of the 6 complaints that POs filed against the court decisions.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d):*

- Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).

Source: Normative/regulatory function/anti-corruption body.

- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.

Source: Normative/regulatory function/anti-corruption body.

- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).

Source: Survey.

The team could not get hold of data for the recommended quantitative indicators.

Gap analysis

Available evidence and reports suggest to very poor enforcement of laws on corruption, fraud, and other prohibited practices.

Recommendations

Systematic action should be taken to improve the enforcement of relevant legislation. This may involve stronger sanctions, strengthening capacities and integrity of law enforcement agencies, and raising public awareness and support.

Sub-indicator 14(d)

Anti-corruption framework and integrity training

Assessment criterion 14(d)(a):

The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The country has in place a comprehensive institutional anti-corruption framework. The CPA is the key institution for preventing corruption and promoting integrity. CPA is responsible for establishing the existence of conflict of interest and corrupt practices, undertaking prevention measures, and protecting whistleblowers. The law enforcement responsibility is placed in the Prosecutors' Office (prosecution and overseeing investigation) and police (investigation). CPA acts based on reported cases of corruption as well as ex-officio. If it determines the existence of corruption with elements of criminal acts, it forwards the case to the Prosecutor's Office, and the Prosecutor's Office informs CPA on its decision. ACA's decisions are final and can be appealed through an administrative court procedure. The ACA's Council, appointed by the Parliament for a four-year term in office, consists of five-members and is responsible for ACA's decisions and for the appointment of its director.

To create awareness and fight corruption at national level, CPA monitors and supports the development and implementation of institutional integrity plans, proposes legislative changes to prevent corruption, advises on alignment of regulation with international anti-corruption standards, provides training, and cooperates with

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civil society. As part of this work, CPA proposed specific changes to the PPL during the process of its revision. CPA is also planning to work on preparation of the Government’s new anti-corruption strategy and linking the institution’s electronic database of cases with the EPPS.

Despite ACA’s improved performance over the past years, its capacity to tackle corruption appears to be limited .CPA lacks the technical competence and budget to deliver its mandate. 55 out of 75 staff positions are currently filled.

While the total number of cases of suspected corrupt practices reported to CPA (including those related to public procurement) has been increasing over the past three years, the procurement-related cases averaged to only 10% of the total cases processed, and CPA determined the existence of corrupt practices in only three such cases (1% of total cases processed by ACA).

Cases processed by ACA	2020	2021	2022
# of cases processed reported by whistleblowers	75	142	188
# of cases processed ex-officio	3	6	9
# of cases processed total	78	148	197
Share of cases related to public procurement in total cases processed	6%	8%	15%
Share of cases related to public procurement in which corruption practices were established in total cases processed	0%	1%	1%

Quantitative analysis

**Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a):*

- percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).

Source: Survey.

Only 20% of surveyed businesses perceive anti-corruption measures for public procurement as effective. 30% of respondents are neutral, while 51% disagree or strongly disagree with the statement that the anti-corruption measures are effective.

Gap analysis

While Montenegro has in place a comprehensive institutional framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to implement their mandate, the system does not appear to be effective when it comes to corruption in public procurement. Despite increase in total number of cases of corrupt practices processed by ACA, the share of procurement-related cases remains low with corrupt practices established at only 1% of the cases. General private sector opinion about the effectiveness of anti-corruption measures is unfavorable.

Recommendations

Review factors to help preventing corruption and improve them, both in the legal framework and practice. This can include campaigns targeting the youth and the mid-level career officers demonstrating how corruption robs them from the opportunities that other fellow Europeans enjoy, showing that corruption is not an abstract concept but a real, lifelong behavior that they have the power to combat, and that public procurement should be a tool to combat it rather than a conduit to spread it.

Assessment criterion 14(d)(b):

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As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>Several mechanisms are in place to detect and mitigate corruption risks in the public procurement cycle:</p> <ul style="list-style-type: none"> • Internal control systems are fairly adequate, and the procurement organizational structure provides segregation of roles and responsibilities (see 12(a)). • Public bodies are required to analyze and mitigate risks in procurement cycle based on the prescribed Methodology⁸⁹. The methodology identifies conflict of interest as a risk area and defines mitigation measures. These are clarified in complementary guidance provided by DPPP. Furthermore, public bodies are mandated to maintain records of corruption and report on them (see 14(c)(a) above). • In line with legal requirements and the methodology prescribed by ACA, each public body adopted and published its Integrity Plan, which outlines measures to prevent and detect corruption identified based on the public body's self-assessment of its exposure to corruption and conflict of interest risks. Public bodies report on Integrity Plans annually. <p>ACA provides training to public bodies on topics related to corruption and conflict of interest (17 trainings attended by 197 participants in 2021 and 29 trainings attended by 362 participants in 2022). Furthermore, CPA employees received training on public procurement.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>
<p>Recommendations</p> <p>None</p>
<p>Assessment criterion 14(d)(c):</p> <p>As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.</p>
Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>Annual reports of the CPA and the Prosecutor's Office are published and contain comprehensive and detailed statistics on the number, type and outcome of cases processed. The Prosecutor's Office report provides detailed statistics on the number of criminal charges, investigation orders, investigations, verdicts, indictments, and court verdicts by category of criminal act and by PO. High-profile corruption is defined as a category of criminal act. While there is no category of procurement related corruption defined by the Montenegrin legislation, such corruption is normally processed under the category "abuse of official power". To better detect and fight procurement-related corruption and manage related data, the DPPP has undertaken initiative to introduce "persuasion of bidders" as a category of criminal act through changes to Criminal Law.</p>
<p>Gap analysis</p> <p>While compiled statistics are prepared and published on legal proceedings and convictions related to high-profile corruption and abuse of official power, they are not available for procurement-related corruption.</p>
<p>Recommendations</p> <p>Ensure that statistics on corruption related legal proceedings and others are compiled and published. In</p>

⁸⁹ Rulebook on Recording and on Methodology for Risk Analysis in Conducting Public Procurement Control, Official Gazette 055/20.

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<p>addition to strengthening data management systems, this might also require legislative changes, including to Criminal Law.</p>
<p>Assessment criterion 14(d)(d): Special measures are in place for the detection and prevention of corruption associated with procurement.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis There is no special mechanism in place for detecting and preventing corruption in procurement.</p>
<p>Gap analysis There are no special measures other than that what is described under 14(d)(b) above.</p>
<p>Recommendations Consider developing an integrated anti-corruption strategy and improve the use of modern technologies in detecting corruption. Some can be embedded in the e-procurement system. The DPPP should continue improving e-links with Tax Administration and Ministry of Justice to facilitate automatic document exchange. Comprehensive training and awareness raising programs on corruption in procurement should be designed and implemented (see also 14(d)(e)).</p>
<p>Assessment criterion 14(d)(e): Special integrity training programmes are offered and the procurement workforce regularly participates in this training.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis There is no regular integrity training program on procurement. However, the CPA provides dedicated support on integrity training. Also, CPA engages in anti-corruption awareness raising for the public and training to public bodies as needed.</p>
<p>Gap analysis While CPA provides dedicated training on integrity, there is no regular integrity training program on public procurement.</p>
<p>Recommendations Incorporate integrity training session in the public financial management training program or as a standalone program delivered on regular basis.</p>
<p style="text-align: center;">Sub-indicator 14(e) Stakeholder support to strengthen integrity in procurement</p>
<p>Assessment criterion 14(e)(a): There are strong and credible civil society organisations that exercise social audit and control.</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis In general, the country's civil society organizations sector is relatively well developed. Capacities and interest of CSOs vary and there are many formal and informal coalitions between CSOs and other stakeholders. However, only a couple of CSOs exercise effective social audit and control in public procurement. This can be attributed to lack of capacities on the CSOs side and their general focus on areas financially supported by international donors.</p>

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Gap analysis While the CSOs sector is relatively strong, few CSOs provide effective social control and audit in public procurement.
Recommendations Strengthen capacity of CSOs to exercise social audit and control in procurement through training, coalition building, stronger support from international partners, and stronger collaboration with government and private sector.
Assessment criterion 14(e)(b): There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.
Conclusion: Minor gap
Red flag: No
Qualitative analysis The role of civil society in Montenegro is generally recognized and promoted. The current legal and institutional framework provides for effective and meaningful engagement of civil society (see 11(a)(a)), though improvements still need to be made to foster CSOs participation in drafting bylaws, strengthen cooperation and consultation between the state institutions and civil society, and improve free access to information. Funding rules for CSOs are also in place, though financial support by the government is limited. While there is a relatively conducive environment for the operation of CSOs, the procurement environment has no procedure to encourage the involvement of CSOs in public procurement. As a result, there are limited practices in which CSOs play a meaningful role as a third-party actor in monitoring procurement implementation.
Gap analysis While the environment is generally conducive for the operation of CSOs, there are no procedures to ensure their meaningful engagement in monitoring procurement implementation.
Recommendations See 9(c)(f).
Assessment criterion 14(e)(c): There is evidence that civil society contributes to shape and improve integrity of public procurement. *
Conclusion: Minor gap
Red flag: No
Qualitative analysis There are not many CSOs that are working on public procurement in Montenegro. Institute Alternativa is very active in working on government accountability and transparency, including in public procurement. Its representative is also the member of the government's working group on Chapter 5 of the Acquis. Network for Affirmation of NGO Sector (MANS) is very active in working on corruption issues in various sectors, including in public procurement. Both these NGOs actively participated in drafting changes to PPL. MANS established own IT system that enables improved search of procurement data based on the EPPS and submitted over 1,500 information requests to CAs since 2015. Private sector perceives CSOs contribution as limited – only 18% of the survey respondents agreed with the statement that CSOs actively provide oversight and social control in public procurement. Only 6% reported any cooperation with CSO, while only 1% reported regular and well-established cooperation with CSOs.
Quantitative analysis

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<p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):</i></p> <ul style="list-style-type: none">- number of domestic civil society organizations (CSOs), including national offices of international CSOs actively providing oversight and social control in public procurement. <p>Source: Survey/interviews.</p> <p>2 CSOs actively provide oversight and social control in public procurement. Source: interviews with CSOs, private sector and government stakeholders.</p>
<p>Gap analysis</p> <p>While there is evidence of CSOs contribution to shaping and improving integrity in public procurement, the number of such CSOs is limited and the impact of their engagement is perceived as limited.</p>
<p>Recommendations</p> <p>See 14(e)(a) and 9(c)(f).</p>
<p>Assessment criterion 14(e)(d):</p> <p>Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*</p>
<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>All business entities registered in Montenegro are members of the country's Chamber of Commerce. As such they are required to adhere to the Chamber's Code of Ethics, which sets the principles and requirements of ethical behaviors with the aim of ensuring transparency and integrity in operations. Compliance in public procurement is ensured through relevant legal and regulatory framework on financial management, internal control mechanisms and external audit. Over 82% of surveyed businesses have internal rules and compliance measures on public procurement in place. However, businesses generally lack internal rules, regulations and procedures on various integrity and anti-corruption aspects of their operations, such as conflict of interest/breach of integrity by employees (41%), giving gifts and hospitality (27%), and handling corruption reports and protection of whistleblowers (21%). Only 31% of businesses have anti-corruption or integrity plans.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d):</i></p> <ul style="list-style-type: none">- number of suppliers that have internal compliance measures in place (in %). <p>Source: Supplier database.</p> <p>82% of suppliers that have internal compliance measures in place. Source: survey.</p>
<p>Gap analysis</p> <p>Majority of businesses have adequate internal compliance measures to support public procurement, but rules and procedures on integrity and conflict of interest in operations are generally missing.</p>
<p>Recommendations</p> <p>Chamber of Commerce and DPPP should work together to promote adopting internal compliance measures by business entities to support integrity and ethical behavior in public procurement.</p>
<p style="text-align: center;">Sub-indicator 14(f)</p> <p style="text-align: center;">Secure mechanism for reporting prohibited practices or unethical behaviour</p>
<p>Assessment criterion 14(f)(a):</p> <p>There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.</p>

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Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>The information regarding the suspected fraud/corruption/prohibited practices cases can be reported to a public body suspected, or directly to ACA, in writing, verbally, via mail or electronically. CPA can also initiate the procedure to establish the existence of fraud/corruption/prohibited practices <i>ex-officio</i>. The information is kept confidential and anonymous unless the person reporting requests the information to be publicly available.</p>
<p>Gap analysis</p> <p>The assessment has not identified any gaps</p>
<p>Recommendations</p> <p>None</p>
<p>Assessment criterion 14(f)(b):</p> <p>There are legal provisions to protect whistle-blowers, and these are considered effective.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>The Law on Prevention of Corruption provides for protection of whistleblowers' identities and rights (A.58-A.68). CPA is obliged to protect a whistleblower and a whistleblower is entitled to protection in cases he/she was or could be harmed because of reporting on corruption. A whistleblower can request protection in written or verbally. CPA decides on the request based on review of the information provided and notifies the whistleblower within 15 days. If CPA determines that a whistleblower has been or could be harmed, it provides recommendations to a relevant public body. CPA is also required to provide technical support to a whistleblower in case he/she has been harmed and has decided to initiate a court procedure. Finally, a whistleblower has a right on court protection, as well as to a reward in case his/her reporting on corruption has contributed to generating public revenues.</p>
<p>Gap analysis</p> <p>Criterion is met.</p>
<p>Recommendations</p> <p>N/A.</p>
<p>Assessment criterion 14(f)(c):</p> <p>There is a functioning system that serves to follow up on disclosures.</p>
Conclusion: No gap
Red flag: No
<p>Qualitative analysis</p> <p>There is an adequate legal and regulatory framework for follow up on disclosures, which is functioning in practice. A public body to which the information is reported by a whistleblower checks the accuracy of information, takes appropriate action, and informs the whistleblower of action taken within 45 days. If the public body does not provide feedback or if the whistleblower is not satisfied with the feedback provided, the whistleblower can opt to report to the ACA. In such case the CPA will provide its opinion and, if it determines the existence of fraud/corruption/prohibited practices, recommendations on actions that the public body</p>

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should take. The public body is required to report to CPA on actions taken within the deadline specified by the ACA. If it fails to do so, the CPA will inform the inspectorate or a relevant supervisory body, submit a special report to the Parliament, and inform the public. The public body and the CPA are both required to inform the Prosecutors' Office in case the suspect corrupt practices involve criminal acts, or other institution as relevant to the case. These institutions are in turn required to report back to CPA on outcome of the procedure.

Gap analysis

The assessment has not identified any gaps

Recommendations

None

Sub-indicator 14(g)

Codes of conduct/codes of ethics and financial disclosure rules

Assessment criterion 14(g)(a):

There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*

Conclusion: Substantive gap

Red flag: Yes

Qualitative analysis

The Government's Code of Ethics for Civil Servants and Employees⁹⁰ prescribes general codes of conduct in areas such as respectful treatment of colleagues and clients, public appearance, data management, etc. Head of public institution is required to inform employees of this code and employees are required to report to their superiors on its violation. The code however does not deal with PFM or procurement. Furthermore, while the code applies to all central government employees (including PFM and procurement staff) it does not apply to employees in local self-government units or state-owned enterprises, which also act as CAs.

Quantitative analysis

** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):*

- share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).

Source: Normative/regulatory function.

There is no requirement for CAs to have a mandatory code of conduct in areas of PFM or procurement. While none of the interviewed CAs reported having any codes of ethics, the Internet search suggests that some institutions and SOEs do have them, however they do not address PFM or procurement.

Gap analysis

The government's code of ethics provides general rules of conduct for all employees in central government institutions, including those dealing with PFM and procurement. However, there is no legal requirement or practice of adopting codes of conduct or ethics in areas of PFM or procurement.

Recommendations

Consider developing codes of ethics applicable to staff and officials working on PFM area.

Assessment criterion 14(g)(b):

The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*

⁹⁰ Official Gazette no. 050/18.

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Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>While the PPL prescribes specific duties of heads of public bodies and procurement staff, it does not clearly define their accountability for decision making. General accountability for decision making and management of human and financial resources for ministers and heads of public bodies is prescribed by the Law on Government and the Law on State Administration.</p> <p>The Law on Prevention of Corruption (A.23-A.27) obliges public officials to report to CPA on their revenues and property. No such requirement is in place for other officials involved in public procurement. CPA maintains the registry of revenues and property of public officials and discloses the data from the registry on its website, except for sensitive personal data. The team could not access any of the registries maintained by CPA at its website or at the website of the agency which previously managed the registry⁹¹.</p>
<p>Quantitative analysis</p> <p><i>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):</i></p> <p><i>- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).</i></p> <p><i>Source: Normative/regulatory function.</i></p> <p>N/A.</p>
<p>Gap analysis</p> <p>Accountability provisions and requirements for financial disclosure are in place for public officials, but not for all employees directly or indirectly involved in procurement activities or decisions.</p>
<p>Recommendations</p> <p>Consider expanding accountability provision to cover all involved in procurement activities and decisions.</p>
<p>Assessment criterion 14(g)(c):</p> <p>The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.</p>
Conclusion: Minor gap
Red flag: No
<p>Qualitative analysis</p> <p>As explained under 14(g)(a), no mandatory code of conduct in areas of PFM or procurement is in place. Failure to comply with accountability and financial disclosure provisions results in administrative or criminal penalties.</p>
<p>Gap analysis</p> <p>Penalties are in place for violation of financial disclosure rules. As there is no mandatory code of conduct in areas of PFM or procurement, no relevant penalties can be defined.</p>
<p>Recommendations</p> <p>See 14(g)(a). Ensure provisions on penalties are included.</p>
<p>Assessment criterion 14(g)(d):</p> <p>Regular training programmes are offered to ensure sustained awareness and implementation of measures.</p>

⁹¹ Internet search at <https://www.antikorupcija.me/me/registri/> from August 10, 2023.

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<p>Conclusion: Minor gap</p>
<p>Red flag: No</p>
<p>Qualitative analysis</p> <p>The CPA has a dedicated department with four employees that conducts research and design and delivers training to public bodies in coordination with the HRMA (see 14(d)(b)). Training is delivered based on annual training plans and training needs. The greatest interest is for training in the areas of financial disclosure, conflict of interest, whistleblowers' protection and integrity. There is no regular training program related to code of ethics.</p> <p>No regular training programs are in place for the private sector. 92% of surveyed business reported that they have not attended any training related to anti-corruption or integrity in public procurement. 8% of the respondents who did receive such training all found it useful.</p>
<p>Gap analysis</p> <p>While CPA delivers training on various topics, including financial disclosures, there is no regular training program related to code of ethics.</p>
<p>Recommendations</p> <p>Ensure regular training of ethics. It can be jointly organized by CPA and HRMA or DPPP. Chamber of Commerce and DPPP should work together to establish regular training programs on-anticorruption and integrity for business entities.</p>
<p>Assessment criterion 14(g)(e):</p> <p>Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.</p>
<p>Conclusion: Substantive gap</p>
<p>Red flag: Yes</p>
<p>Qualitative analysis</p> <p>There is no requirement to capture information on beneficial ownership. CPA maintains registries on conflict of interest and financial disclosure. While this data is accessible at CPA website, the system for systematically using this information by decision makers is underdeveloped.</p>
<p>Gap analysis</p> <p>There is no established procedure and practice to capture information on beneficial ownership. Data on conflict of interest and financial disclosures is not systematically used for decision making.</p>
<p>Recommendations</p> <p>Ensure that Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.</p>



MAPS

Methodology for Assessing
Procurement Systems

Background Documents

ANNEX 5



Laws and regulation:

1. Law on Public procurement (Official Gazette of Montenegro no. 074/19 from 30.12.2019, 003/23 from 10.01.2023, 011/23 from 27.01.2023.)
2. Law on Public-Private Partnership (Official Gazette of Montenegro no. 073/19 from 27.12.2019.)
3. Law on Concessions (Official Gazette of Montenegro no. 008/09 od 04.02.2009, 073/19 from 27.12.2019.)
4. Law on Alternative Dispute Resolution (Official Gazette of Montenegro no. 77/2020 from 29.7.2020.)
5. Law on Free Access to Information (Official Gazette of Montenegro no. 044/12 from 09.08.2012., 030/17 from 09.05.2017.)
6. Law on protection of Competition (Official Gazette of Montenegro no. 44/2012, 13/2018 and 145/2021)
7. Law on Prevention of Corruption (Official Gazette of Montenegro no. 053/14 od 19.12.2014.)
8. Law on the Budget and Fiscal Accountability (Official Gazette of Montenegro no. 20/2014, 56/2014, 70/2017, 4/2018)
9. Decree on the Manner of Planning and Implementing Centralised procurement (Official Gazette of Montenegro no. 069/20 from 11.07.2020, 105/20 from 29.10.2020, 139/22 from 16.12.2022, 029/23 from 16.03.2023.)
10. Decree on the list of military equipment and products, procedure and method of implementation of public procurement in the field of defense and security (Official Gazette of Montenegro no. 076/20 from 28.07.2020.)
11. Law on Management and Internal controls in the public sector (Official Gazette of Montenegro no. 075/18 from 23.11.2018)
12. Law on State Audit Institution of Montenegro (Official Gazette of Montenegro no. 28/04 from 29.04.2004, 27/06 from 27.04.2006, 78/06 from 22.12.2006, 17/07 from 31.12.2007, 73/10 from 10.12.2010, 40/11 from 08.08.2011, 31/14 from 24.07.2014, 070/17 from 27.10.2017.)

Bylaws and implementing acts to the Public Procurement Law:

13. Decree on the method of procurement for diplomatic and consular representation of Montenegro abroad (Official Gazette of Montenegro no. 090/20 from 01.09.2020.)
14. Rulebook on Simple procurement (Official Gazette of Montenegro no. 016/23 from 10.02.2023, 020/23 from 22.02.2023, 036/23 from 29.03.2023.)
15. Rulebook on the list of social and other special services that may be a subject to public procurement (Official Gazette of Montenegro no. 056/20 od 15.06.2020)
16. Rulebook on forms of records in public procurement (Official Gazette of Montenegro no. 061/20 od 24.06.2020.)
17. Rulebook on the content of bid in public procurement (Official Gazette of Montenegro no. 071/20 from 16.07.2020, 009/21 from 01.02.2021)
18. Rulebook on the declaration form of the economic operator (Official Gazette of Montenegro no. 071/20 from 16.07.2020.)



19. Rulebook on the methodology for bid evaluation in public procurement (Official Gazette of Montenegro no. 074/20 from 23.07.2020)
20. Rulebook on detailed criteria for forming the commission for implantation of public procurement procedure (Official Gazette of Montenegro no. 055/20 od 12.06.2020)
21. Rulebook on forms to be used in public procurement procedures
22. Rulebook on records and methodology of risk assessment in performing controls in public procurement procedures (Official Gazette of Montenegro no. 055/20 from 12.06.2020)
23. Rulebook on the forms of records of registered bidders in the electronic public procurement system (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
24. Rulebook on the list of works and jobs that may be the subject to the public procurement (Official Gazette of Montenegro no. 057/20 from 18.06.2020)
25. Rulebook on the method of determining the correction of calculation error in the bid in public procurement (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
26. Rulebook on the methodology for evaluating the public procurement value (Official Gazette of Montenegro no. 057/20 from 18.06.2020.)
27. Rulebook on the program and method of passing the professional exam for public procurement (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
28. Rulebook on the public procurement plan form (Official Gazette of Montenegro no. 055/20 from 12.06.2020.)
29. Rulebook on the use of the e-procurement system (Official Gazette of Montenegro no. 001/21 from 04.01.2021)

Bylaws and implementing acts to the Law on Budget:

1. Decision on the Creation of the Capital Budget and Evaluation Criteria for the selection of capital projects (Official Gazette of Montenegro no. br. 008/09 from 04.02.2009, 073/19 from 27.12.2019)
2. Decision on the method of preparation and content of the program budget (Official Gazette of Montenegro no. 075/17 from 09.11.2017.)
3. Instructions on the work of the state treasury (Official Gazette of Montenegro no. 053/14 from 19.12.2014, 072/15 from 21.12.2015.)

Bylaws and implementing acts to the audit laws:

1. Methodology for Conducting Financial Audit and Compliance Audit, Official Gazette no. 7/15.
2. Manual on Audit of Annual Consolidated Financial Statements of Political Bodies and Public Procurement Audit, SAI, 2019.

Statistical reports:

1. Annual 2023 Report on public procurement prepared by the Directorate for Public Procurement Policy



2. Annual 2022 Report on public procurement prepared by the Directorate for Public Procurement Policy
3. Annual 2021 Report on public procurement prepared by the Directorate for Public Procurement Policy
4. 2023 Annual Report of the Commission for protection of Rights
5. 2022 Annual Report of the Commission for protection of Rights
6. 2021 Annual Report of the Commission for protection of Rights
7. 2022 Work Report Administrations for Inspection Affairs
8. 2021 Work Report Administrations for Inspection Affairs
9. 2023 State Audit Institution Annual Report
10. 2022 State Audit Institution Annual Report
11. 2021 State Audit Institution Annual Report
12. Statistical annual reports on public procurement of the Capital City of Podgorica for 2018, 2019, 2020, 2021 and 2022
13. Statistical annual reports on public procurement of the Administration for Capital Investments for 2018, 2019, 2020, 2021 and 2022
14. Statistical annual reports on public procurement of the Ministry for Public Administration for 2018, 2019, 2020, 2021 and 2022
15. Statistical annual reports on public procurement of the Health Insurance Fund for 2018, 2019, 2020, 2021 and 2022
16. Statistical annual reports on public procurement of the Roads of Podgorica for 2018, 2019, 2020, 2021 and 2022
17. Statistical annual reports on public procurement of the Traffic Administration of Montenegro for 2018, 2019, 2020, 2021 and 2022
18. Statistical annual reports on public procurement of the Electric Company of Montenegro for 2018, 2019, 2020, 2021 and 2022

Other documents:

1. 2023 European Commission's Report on Montenegro
2. 2022 European Commission's Report on Montenegro
3. 2021 SIGMA Monitoring Report on Principles of Public Administration - Montenegro
4. 2023 Investment Climate Statements: Montenegro – U.S. Department of State
5. Council of Europe, Group of States Against Corruption (GRECO) Reports
6. UNCAC Civil Society Coalition: New Civil Society Report on Montenegro: Comprehensive Legislation Not Matched with Practical Enforcement Of Anti-Corruption Measures, August 2023
7. 2019 World Bank, Public Expenditure and Financial Accountability (PEFA) assessment



Montenegro Stakeholders Analysis and Mapping

The primary objective of undertaking MAPS assessment is to assess the quality and effectiveness of the public procurement systems in Montenegro. This enables the Government to form a basis for implementation of modern, efficient, sustainable, and more inclusive procurement system.

Purpose and Rationale: Stakeholder analysis studies the stakeholders in the system; their roles, formal and informal links, and influence to better manage and engage these stakeholders during a project or change process. Stakeholder analysis is not purely normative and may involve the perceptions of stakeholders regarding their level of influence and engagement regardless of what their mandates may say. This section on MAPS stakeholders examines:

- Who the stakeholders are;
- What their level of influence is;
- Which MAPS pillars they affect the most.

More specifically, the analysis organizes the procurement system stakeholders according to the following categories:

- being core, extended or external stakeholders
- the role they play in the procurement system
- the level of influence they have, where influence is defined as formal authority or assigned function, informal authority, being consulted and/or the capacity to deliver a procurement related mandate

Overall, the stakeholder analysis complements the findings of the institutional and legal analysis completed under MAPS. Patterns in who had which level of influence were mirrored between the central and local level. Stakeholders with medium to low influence tended to be those whose institutional arrangements and legal mandates weakened their ability to play their role.

While not an explicit category of analysis, the nature of communication and engagement between core and non-core stakeholders had an effect on non-core stakeholder influence.

In addition to institutional arrangements and type of communication/engagement, another factor affecting stakeholder influence was training/capacity. This made categorizing the level of influence of stakeholders a challenge as both good and poor performance would have an impact on the quality of the work.

The following section provides details on the core stakeholders of the Government of Montenegro procurement system.

1. Ministry of Finance (MoF)

- **Role and Responsibilities:** The Ministry of Finance holds overarching responsibility for public procurement. This includes executing responsibilities outlined in the Public Procurement Law (PPL) through the Department for Public Procurement Policy (DPPP). MoF is also tasked with oversight of implementing Public Procurement Law.
- **Influence and Interest:** High influence due to its central role in policy formulation, implementation, and oversight. High interest in ensuring compliance and efficiency in public procurement processes.
- **Potential Impact:** The Ministry's policies and decisions directly affect all aspects of public procurement, from policy formation to implementation and oversight.

2. Department for Public Procurement Policy (DPPP)

- **Role and Responsibilities:** The DPPP, under the MoF, executes responsibilities related to public procurement as listed in the PPL. This department is a central administrative body responsible for developing and implementing procurement policies.
- **Influence and Interest:** High influence as the main executor of procurement policy. High interest in maintaining an efficient and transparent procurement system.
- **Potential Impact:** Plays a crucial role in ensuring the public procurement system's effectiveness and efficiency. It is also expected to use inspection findings to improve the system, although the mechanism for this is not clearly defined.

3. Inspection Authority

- **Role and Responsibilities:** Responsible for oversight and inspection in public procurement. This authority examines compliance with procurement laws and regulations.
- **Influence and Interest:** Moderate influence in the procurement process through oversight activities. High interest in ensuring compliance and rectifying irregularities.
- **Potential Impact:** Inspection findings can influence policy adjustments and operational improvements in procurement practices.

4. Commission for Protection of Rights

- **Role and Responsibilities:** Focuses on protecting the rights of economic operators within the public procurement process. This includes addressing complaints and disputes related to procurement.
- **Influence and Interest:** Moderate influence in safeguarding the interests of bidders and economic operators. High interest in maintaining a fair and transparent procurement environment.
- **Potential Impact:** Their decisions can significantly impact the fairness and perceived integrity of the procurement process.

5. Supreme Audit Institution (SAI)

- **Role and Responsibilities:** SAI conducts compliance, financial, and performance audits of public entities, including audits of public procurement processes. It also covers audits of state assets, SOEs, IT systems, and political parties.
- **Influence and Interest:** High influence due to its comprehensive audit responsibilities and authority to assess the entire procurement process. High interest in transparency, accountability, and proper use of public funds.
- **Potential Impact:** Audit findings and recommendations can lead to significant reforms and improvements in public procurement practices.

6. Internal Audit Function

- **Role and Responsibilities:** Provides advisory services to top management in each institution, ensuring internal controls and compliance with procurement regulations.
- **Influence and Interest:** Moderate influence, primarily within individual institutions. High interest in ensuring compliance and efficient use of resources.
- **Potential Impact:** Can influence institutional policies and procedures, leading to improved internal control and compliance.

7. Government Entities (Central and Local Levels)/Procuring Entities

- **Role and Responsibilities:** These entities, including central government departments, local authorities, and state-owned enterprises (SOEs), are subject to the public procurement rules and regulations. They are responsible for executing procurement processes according to the PPL.
- **Influence and Interest:** Moderate to high influence as they are direct actors in the procurement process. High interest in obtaining goods and services efficiently and legally.
- **Potential Impact:** Their adherence to procurement laws affects the overall integrity and efficiency of the public procurement system. They are also key in implementing procurement-related reforms and improvements suggested by oversight bodies.

8. Economic Operators (Suppliers and Contractors)

- **Role and Responsibilities:** These are private sector entities that participate in public procurement processes by bidding for government contracts.
- **Influence and Interest:** Moderate influence as stakeholders in the procurement process. High interest in a transparent, fair, and efficient procurement system that provides equal opportunities for participation.
- **Potential Impact:** Their feedback and experience with the procurement system can highlight areas of improvement or inefficiencies. They are directly affected by the fairness and transparency of the process.

9. Civil Society and Media

- **Role and Responsibilities:** These stakeholders provide oversight and scrutiny of the public procurement process, promoting transparency and accountability. They can also act as advocates for good governance and public interest.
- **Influence and Interest:** Moderate influence through their ability to shape public opinion and pressure for reforms. High interest in ensuring that public funds are used effectively and that procurement processes are transparent.
- **Potential Impact:** Can act as watchdogs, bringing issues to light and prompting corrective actions. They can also influence public perception and trust in the public procurement system.

Summary of Stakeholder Dynamics

The public procurement landscape is characterized by a structured but complex interplay of responsibilities and oversight mechanisms. The Ministry of Finance, through the DPPP, plays a central role, supported by inspection authorities and the SAI, which provide oversight and audit functions. The Commission for Protection of Rights and Internal Audit functions serve as additional layers ensuring fairness and compliance.

The extended landscape of stakeholders in public procurement includes not only governmental and oversight bodies but also the private sector, civil society, and the media. Each stakeholder group has distinct roles, interests, and levels of influence:

1. **Governmental and Oversight Bodies (MoF, DPPP, Inspection Authority, SAI, Internal Audit):** These entities are central to policy formulation, implementation, and oversight. They ensure that the procurement process is compliant with laws and regulations, and that public funds are used effectively.
2. **Government Entities (Central and Local Levels):** These entities execute the procurement processes and are directly affected by procurement policies and regulations. They are crucial in implementing any changes or reforms suggested by oversight bodies.
3. **Economic Operators (Suppliers and Contractors):** Represent the private sector's involvement in public procurement. Their engagement and feedback can highlight practical challenges and opportunities for improvement in the procurement process.
4. **Civil Society and Media:** Play a critical role in ensuring transparency and accountability in public procurement. They can influence public opinion and push for reforms, serving as external checks on the system.

Potential Areas for Improvement

- **Coordination and Communication:** Enhancing communication among all stakeholders, particularly between oversight bodies and implementing entities, can lead to more consistent and effective procurement practices.
- **Transparency and Fairness:** Ensuring that the procurement process is transparent and fair to all participants, particularly economic operators, is crucial. This can be supported by clear and accessible avenues for grievance redressal.

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

- **Accountability and Follow-up:** Strengthening the mechanisms for accountability, including the systematic use of inspection and audit findings, can improve the overall efficiency and trust in the public procurement system.

Summary of Stakeholder Dynamics and their influence in implementing MAPS recommendations

Stakeholders	Roles and responsibilities in Public Procurement	Interest and Influence	MAPS PILLAR THEY ARE ASSOCIATED WITH	Pioneer stakeholders to support implementation of MAPS recommendations and Plan of actions
Ministry of Finance, Directorate for Public Procurement Policy	Policy and regulations; Monitoring; Guidance and training; Advisory assistance; Examination & certification; E-procurement; Green and sustainable procurement; SMEs	Interest: HIGH Influence: HIGH	All Pillars + supplementary e-procurement module	All actions proposed under Pillar 1; 4 actions proposed under Pillar 2; all actions proposed under Pillar 3; 6 actions proposed under Pillar 4
Ministry of Finance – Directorate for the Budget	Budget planning and budget execution; State budget payments and reporting	Interest: HIGH Influence: HIGH	Pillars I, II and III + supplementary e-procurement module	Actions linked to pillar 2 for the PFM related activities
Commission for protection of rights in public procurement procedures	Handling complaints on public procurement procedures	Interest: HIGH Influence: MEDIUM	Pillars III and IV + supplementary e-procurement module	1 action under Pillar 4
Administration for Inspection Affairs – Inspectorate for Public Procurement	Ex post control and supervision; Simple procurement	Interest: HIGH Influence: MEDIUM	Pillars I and III + supplementary e-procurement module	1 action under Pillar 1

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

Agency for Prevention of Corruption	Conflict of interest and prevention of corruption	Interest: MEDIUM Influence: MEDIUM	Pillar IV	5 actions under Pillar 4
State Audit Institution	External audit	Interest: HIGH Influence: MEDIUM	Pillar I, III and IV + supplementary e-procurement module	1 action proposed under Pillar 4
Chamber of Commerce representing economic operators*	Economic operators' participation in PP processes; competition	Interest: HIGH Influence: HIGH	All Pillars + supplementary e-procurement module	Actions related to pillar 3
Administration for Cadaster and State Property	Centralized procurement for the central government level	Interest: HIGH Influence: MEDIUM	Pillars I and III + supplementary e-procurement module	1 action under Pillar 2
Capital City Podgorica	Contracting authority; Conducting public procurement procedures and implementing the PPL; Centralized procurement for municipality of Podgorica	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Traffic Administration	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of works	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Health Insurance Fund	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of medical supplies and services	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

Administration for Capital Investments	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of capital investments	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Electric Company of Montenegro	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of electricity	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Roads of Podgorica	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of civil works in the Capital City Podgorica	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
Ministry of Public Administration	Contracting authority; Conducting public procurement procedures and implementing the PPL; mainly in charge of IT services	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar III) + supplementary e-procurement module	All actions proposed under Pillar 3
NGO Institute Alternative	NGO active in monitoring public procurement	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar IV) + supplementary e-procurement module	Consultative role for implementation of all actions
NGO MANS	NGO active in monitoring public procurement	Interest: HIGH Influence: MEDIUM	All pillars (mainly Pillar IV) + supplementary e-procurement module	Consultative role for implementation of all actions

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

*A thorough consultation was conducted with the private sector through the launching of an online survey. The results have been used to inform the analysis of assessment criteria mainly in Pillar 3 and Pillar 4. The survey was launched with the support of the Chamber of Commerce in Montenegro and targeted economic operators which had previous experience with the procurement system. In total, 1,700 firms were invited to participate. The response rate was around 15 percent (i.e., 261 respondents), which is statistically representative for an online survey with firms.

List of Stakeholder consulted during the Assessment.

1.	Ministry of Finance – Directorate for Public Procurement Policy
2.	Ministry of Finance – Directorate for the Budget
3.	Commission for protection of rights in public procurement procedures
4.	Administration for Inspection Affairs – Inspectorate for Public Procurement
5.	Agency for Prevention of Corruption
6.	State Audit Institution
7.	Chamber of Commerce
8.	Administration for Cadaster and State Property
9.	Delegation of European Union in Montenegro
10.	Capital City Podgorica
11.	Traffic Administration
12.	Health Insurance Fund
13.	Administration for Capital Investments
14.	Electric Company of Montenegro
15.	Roads of Podgorica ltd.
16.	Ministry of Public Administration
17.	Administration for Public Works;
18.	Ministry of Health
19.	Montenegrin Investment Agency
20.	Montenegrin Electric Distribution System – CEDIS

Annex 6: Stakeholders Analysis and list of Stakeholders consulted

21.	Post Office of Montenegro
22.	Investment and Development Fund
23.	Montefarm ltd.
24.	Secretariat of Prosecutor Council
25.	Union of Municipalities
26.	NGO Institute Alternative
27.	NGO MAN

Minutes

MAPS Validation Workshop

Thursday November 30, 2023

Workshop Objectives

The Validation Workshop aims at presenting the results of MAPS assessment conducted in Montenegro over November 2022- December 2023. Stakeholders have the opportunity to discuss the findings and share their views and feedback.

The presentation of the findings covers core MAPS and E-Procurement Supplementary Module.

Participants

1. Directorate for Public Procurement Policy
2. Ministry of Finance
3. State Audit Institution
4. Administration for Inspection Affairs
5. Anti-Corruption Agency
6. Commission for the Rights Protection in Public Procurement Procedures
7. Administration for Cadaster and State Property
8. Chamber of Commerce
9. Administration for Capital Projects
10. Ministry of Public Administration
11. Institute Alternativa
12. Montenegrin Electric Distribution System – CEDIS
13. Ministry of energy and mining
14. Post Office of MNE
15. Investment and Development Fond
16. Secretariat of Prosecutor Council

Opening remarks

The workshop opening remarks were made by Cristopher Sheldon, World Bank Country Manager for Montenegro and Jelena Jovetic, DPPP General Director. They emphasized the relevance on the MAPS assessment towards Montenegro accession process to EU. In addition the recommendations provided by this assessment will allow to continue with the procurement reform path in the country.

Pillar I - Legal, Regulatory and Policy Framework and Pillar II - Institutional Framework and Management Capacity

Main findings and gaps under these 2 indicators were presented by Orjana Ibrahim, World Bank

Discussion and feedback received on presentation of Pillar 1 and 2

State Audit Institution (SAI):

- We would like to express our very positive opinion about the overall assessment report as it matches to the greatest extent with everything we identified during our work. Primarily, when it comes to gaps, we would like to single out the ones referring to contract management stage and failures to meet contractual obligations by contractors in particular. Despite such situation, contracts are not terminated. However, it has been noted that such unfavorable practice for contracting authorities has slowly been changing recently.
- When it comes to centralized procurement, bidders complain that they do not receive adequate and timely information. For example, in case of procurement of mobile telephony, if a tender fails, it takes too long time to initiate a new one. Individual procurement processes therefore appear to be better practice currently. At the same time, it is recommended to establish a new department which would deal with centralized procurement only.

Response by MAPS Assessment team:

Thank you for confirming the findings.

Department of Public Procurement Policy (DPPP)

- The finding stating that exclusions of economic operators from public procurement procedure in two-stage biddings is not regulated is unclear. It was stated that they are not reflected in the electronic procurement system, which they are, and bidders can complain accordingly.

Response by MAPS Assessment team:

The finding in our report is related to non-existence of list of debarred firms as well administrative procedures for debarment, how these decisions are made, on what grounds. They are not related to exclusions during public procurement procedure, in tendering stage.

- The other comment refers to contract form to be provided in bidding documents. It should be noted that this is not legally binding as it is not part of our by-laws. Also, receiving bids and a part referring to bidding documents itself should be separated as they already are separated in our by-laws as it is clearer that way. By-laws and laws are available at one place publicly available and easily accessible and in chronological order, i.e. following the whole procurement process.

Response by MAPS Assessment team:

When it comes to contract clauses being part of bidding documents, it is very important that bidders are informed in advance about contract conditions, rights and obligations that will be imposed on them as well as possible restrictions and termination conditions.

When it comes to legal possibility of contracting authorities to provide contract clauses in additional remarks, practice varies, some do not use this possibility at all.

- We do agree that sustainable procurement require further amendments and improvements.
- We do agree that competencies of supervision and inspection are not clear and the provision in the PPL regulating this could be clearer when it comes to these competencies.

Response by MAPS Assessment team:

Thank you for confirming the findings.

- When it comes to delegation of responsibilities, authorized person can authorize other person for some small-scale procurements, but it is not a common practice in high value procurement. In these cases, it is usually either minister or executive director, depending on organizational structure of a contracting authority. PPL was not able to regulate allocation of responsibilities in further detail as this issue has been regulated by other laws.

Response by MAPS Assessment team:

Regarding delegation of responsibilities, one of the options for regulating this matter and further improvements in the legal framework is to define thresholds which would define who can be authorized for contracts of certain values, which was the aim of this recommendation.

- Regarding the finding related to major contract clauses being omitted in bidding documents, this requires additional clarification. On the other hand, a full text of contract is published in electronic procurement system upon its signing. Publishing form of contract in bidding documents leaves space for complaints on conditions of contract by bidders. However, such complaints would be pointless as such form would be provided by the law and corresponding by-law anyway, i.e. it would be legally grounded. Part of bidding documents called Form of Contract does not exist per se but there are parts of bidding documents covering this matter. In additional remarks, contracting authority has a legal right to define particular contract conditions in more detail.

Response by EBRD:

Allocation of risks or clear division of responsibilities increases transparency and integrity. We have an example of Ukrainian electronic procurement system ProZorro which is considered as one of the most transparent systems in Europe.

I would like to provide one example related to intention to publish full text of contract. In international court practice, there has been ruling recently judged at the European court of Justice by which it was prohibited to publish the full text of contract due to protection of confidentiality of data.

Administration for capital investments:

- Regarding the gap related to contract clauses which should be part of the bidding documents as well as standard contract templates, we are the authority with large number of contracts on annual level and so far the bidders have not complained about this, therefore this is not something we would stress as a current problem. The current practice of including only particular contract clauses through special remarks in bidding documents proved to be sufficient and even better than in the past period when all clauses were included.

Response by MAPS Assessment team:

Thank you for sharing your practice.

- Contract implementation proved to be problematic though as the only available document in the EPPS is a report on contract implementation that we upload in the system. IT sector should be able to link the systems so that we as contracting authorities have better picture of contract implementation and both physical and financial progress.

Response by MAPS Assessment team:

Thank you, this addressed by the assessment team in the E-Procurement Supplementary module by recommending the establishment of a contract monitoring module within EPPS.

- The whole cycle from planning to payments stage should be included and that is what is really missing. Linking the system with other ones especially financial management systems to avoid duplication of work when it comes to payments recording is essential and would reduce workload on our side.

Response by MAPS Assessment team:

Thank you, this addressed by the assessment team in the E-Procurement Supplementary module by recommending the establishment of a e-invoice function within EPPS.

Investment and Development Fund of Montenegro:

- It is important that bidders are informed in advance about contractual clauses and their rights and obligations, therefore it is a must to include the most important contract clauses.

Response by MAPS Assessment team:

Thank you for confirming the finding on the need to have a form on contract conditions .

E-Procurement Supplementary Module

Main findings and gaps under this part were presented by Rajesh Kumar Shayka, World Bank

Discussion and feedback received on presentation of E-Procurement Module

State Audit Institution (SAI)

- Although there is no special public procurement relation audit they are conducting, within each regularity audit they perform, public procurement are audited as a special segment. She has also announced their intention to implement a special procurement specific audit that should cover larger number of contracting authorities in a near future. SAI representative wanted to find out more about debarment lists mentioned in the presentation, some good examples in other countries, criteria and whose competence the lists are.

Response by MAPS Assessment team:

There are many different ways to do it and shared some examples, including different practices of who does debarment lists – in some countries, contracting authorities do it, but also institutions similar to Directorate for Public Procurement Policy.

NGO Institute alternative

- The civil society need to have access to the reports produced within the e-procurement system in real time, which was well recognised in the report. She explained that this NGO did not have much trouble obtaining the required reports due to their overall good cooperation with DPPP, but that these should be by default publicly available to all.
- When it comes to low value procurement that are not registered in the e-procurement system (up to 5.000 euro before, and up to 8.000 euro now), she shared the concern of PP system not being fully transparent and said that IA's findings show that invoices reported in the e-procurement system within annual reporting make much less of direct contracting that this NGO is regularly obtaining through freedom of information requests, thus showing that direct contracting is not fully transparent.

Response by MAPS Assessment team:

Thank you for the comments and confirmations of the Bank's findings that transparency is transparency and should be the same for all of the procurement, including the low ones.

- Following the comments of NGO Institute alternative's representative, SAI's representative confirmed that plenty of irregularities found in PP by SAI relate to low procurement that are not implemented through the e-procurement system.
- Representatives of DPPP argued that the framework agreements are being done through the e-procurement system, as well as complaints.

Response by MAPS Assessment team:

Thank you for the suggestions and will check and make changes to the report accordingly.

Pillar III - Public Procurement Operations and Market Practices

Main findings and gaps under this indicator were presented by Carmen Calin, World Bank

Discussion and feedback received on presentation of the Pilar III

State Audit Institution (SAI)

- Confirmed plenty of presented findings, particularly those referring to the low competition index and single bid tenders. She shared some concerns related to potential corrupt practices in public procurement that deters economic operators from bidding, including, among others,

that, sometimes, preferred bidders participate in drafting tender specifications, especially in IT services.

- She also confirmed the need for better public procurement planning, emphasising that contracting authorities often just re-write the same plan from year to year, not taking into account real needs or realistic influences, such as inflation. Another thing she reflected on was the need of conducting a real cost analysis of procurement procedure, thinking that, if CAs knew how much each procedure costs, they would only opt for those procedures and procurement that are really necessary.

Response by MAPS Assessment team:

Thanked for the comments and highlighted again the importance of hearing from the bidders and listening to the market.

DPPP

- Shared concerns about the competition index and said that improving it will definitely be DPPP's one of the top priorities in the period to come. Regarding the survey conducted by the Bank with Chamber of Commerce's support, she expressed their concern about only 15% response rate and explained that for the survey they have implemented 2 years ago with the British Council for Competition, the response rate was 989 out of 1000 that was invited.
- As for the procurement planning, it was explained that several factors influence poor planning of CAs, such as frequent reorganisations of public administration. It was emphasized the need of the CAs to learn how to better estimate PP value.

Response by MAPS Assessment team:

It is very encouraging that the Competition Council Survey had that high response rate, but that this one should not be disregarded neither, if for nothing else, then at least as a roadmap for looking deeper into some of the most concerning findings. The team will discuss with DPPP in a separate meeting to present the methodology in calculating the competition index.

Pillar IV - Accountability, Integrity and Transparency of the Public Procurement System

Main findings and gaps under this indicator were presented by Zuhra Osmanovic-Pasic , World Bank

Discussion and feedback received on presentation Pilar IV

NGO Institute alternative

- Agreed with all of the finding related to civil society participation without further comments. Shared some of their own findings about repression in public procurement from 2016 onwards, including, among other, that there has been only one court verdict on corruption in public procurement, which was deliberating. It is stressed the need for the introduction of a special criminal offense related to public procurement.

Response by MAPS Assessment team:

Asked if it is realistic to introduce procurement-specific criminal offence, to which representative of NGO Institute alternative replied that they have analyzed practices in the region to find out that three Western Balkans countries have it, including Serbia, for example, that has two PP related criminal offenses.

DPPP

- Explained that there is already ongoing initiative for introducing the PP related criminal offense into the Criminal Code and that DPPP already has a series of meetings with the Ministry of Justice, Police and Prosecution. However, she explained that this criminal offense is only related to the bidders' agreements the first ranked to give up their offer in order for the second one to win the tender, or about price etc.)
- The survey with economic operators' response rate is added to the Report.

Response by MAPS Assessment team:

Thank you and well noted. The response rate will be added in the Report.

Commission for protection of rights

- The representative of the commission didn't agree that the Commission has been inefficient, having in mind all of the objective reasons mentioned also in the MAPS report, in terms of capacities etc. He explained that in 2023 the Commission has received 83% more complaints than in 2022 – 275 cases by the end of November, and that they have solved 259. He also explained that expert witnesses are the reason for prolonging case management in some cases - mostly energy and medical related procurement, which only makes 5% of the total number of their workload, not more.

Response by MAPS Assessment team:

Thank you for the comments and we will address the expert witnesses part once again and review accordingly.

Closing remarks

The Assessment team informed the participants that they can send written comments to the MAPS Assessment team **until December 8, 2023.**

Annex 1

List of participants

Names of participants	Institution
1. Jelena Jovetić 2. Sanja Poleksić 3. Farisa Kardović 4. Gorana Mrvaljević 5. Jasna Hodžić 6. Svetlana Tomović 7. Nerma Kalač 8. Dijana Vukčević	Directorate for Public Procurement Policy
9. Goran Vojinović 10. Marija Radević 11. Mara Bajevac	Ministry of Finance
12. Nataša Cimić 13. Nikola Golubović 14. Dušan Marković	Commission for the Rights Protection in Public Procurement Procedures
15. Lejla Kaljić 16. Nađa Rašović 17. Ivan Milićević	Administration for Inspection Affairs
18. Tanja Dragović 19. Radovan Šćepanović	State Audit Institution
20. Jelena Dajković	Anti Corruption Agency
21. Nataša Begović 22. Danijela Vukčević 23. Dijana Krivokapić	Administration for Cadaster and State Property
24. Dragoljub Bulatović 25. Ivana Parača	Chamber of Commerce
26. Žaklina Kosić 27. Dalila Orahovac 28. Supresa Gjelaj	Administration for Capital Projects
29. Ivana Krstajić 30. Julijana Planić 31. Dijana Džaković 32. Zoran Amidžić	Ministry of Public Administration
33. Dragana Jaćimović	Institute Alternativa
34. Predrag Ivović	Montenegrin Electric Distribution System - CEDIS

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35. Bilgena Pačariz	Ministry of energy and mining
36. Anja Rešetar 37. Stanka Pejović	Post Office of MNE
38. Darko Krivokapić	Investment and Development Fond
39. Milica Drašković	Secretariat of Prosecutor Council
40. Andreja Neral Lamza	EIB
41. Evgeny Smirnov 42. Stana Maric 43. Rafael Torrent	EBRD
44. Orjana Ibrahim 45. Carmen Calin 46. Tamara Travar 47. Zuhra Osmanovic-Pasic 48. Yolanda Tayler 49. Rajesh Kumar 50. Ana Durnic 51. Dragana Varevic	World Bank

Annex 8. Sampling methodology for selected contracts and results of the review

Summary

To complement the data analysis conducted based on the data extracted from the e-procurement system for the period February 2021-March 2023, a sample of 65 procurement cases from 6 procuring entities was also selected to support the qualitative assessment. The sample included an appropriate mix of goods, works, consultancy contracts completed during the period 2018-2022 with focus on strategically important and top-spending ministries and cutting across different levels of the government. The sample selection followed the guidance of paragraph 28 of the MAPS Methodology 2018 to represent a mix of entities and categories of procurement to make it representative at an aggregate level. The strategy was discussed and agreed with DPPP during the kick-off mission.

These have been chosen based on the annual statistical reports published by the contracting authorities and envisaged high value contracts, different types of contracts and different types of procedures, where possible. The tender documentation and award information were accessed in the EPPS in the EPPS (www.cejn.gov.me) as of 2021 and in Public procurement portal (www.portalujn.gov.me) for contracts before 2021. According to the law, it is not mandatory to publish the contract award notice, however, the integral signed contracts are published and could be identified in one of the two systems. Data on contract information practices was requested from the selected contracting authorities. The sample analysis informed the qualitative assessment under each indicator.

Selected Contracting Authorities

The following procuring entities were selected for the sample analysis. The table below shows their procurement activity during the period February 2021-March 2023 as captured by the e-procurement system.

	Procurement Procedures	Estimated volume(EUR)	Contracts	Contracted volume(EUR)
Capital City Podgorica (324)	398	12,514,303	409	8,512,773
Health Insurance Fund (556)	17	865,240	14	738,087
Traffic Administration (653)	74	36,523,875	52	26,617,655
Capital Projects Administration (880)	170	125,829,295	96	70,533,665
Ministry of Public Administration (171)	48	8,234,827	43	5,809,672
Roads of Podgorica (288)	134	15,530,368	128	6,680,634

Montenegrin Electrical Enterprise (242)	387	94,231,555	315	26,133,792
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The following table shows the procurement volumes compared to the volume at country level.

	% of tot Procedures	% of tot Estimated volume	% of tot Contracts	% of tot Contracted volume
Capital City Podgorica (324)	3.2%	1%	3.3%	1.3%
Health Insurance Fund (556)	0.1%	0.1%	0.1%	0.1%
Traffic Administration (653)	0.6%	3%	0.4%	4.1%
Capital Projects Administration (880)	1.4%	10.2%	0.8%	10.8%
Ministry of Public Administration (171)	0.4%	0.7%	0.3%	0.9%
Roads of Podgorica (288)	1.1%	1.3%	1.1%	1%
Montenegrin Electrical Enterprise (242)	3.1%	7.6%	2.6%	4%

Selected Contracts

As mentioned above, some criteria were considered for the selection of contracts for the review, as follows:

- contracts concluded during the period 2018-2022
- appropriate mix of goods, services and works from each contracting authority
- high value contracts
- different types of procedures, including cancelled procedures

The initial list included 90 contracts: 29 works, 29 goods and 32 services. However, the analysis of all stages of the procurement procedure was conducted for 60 contracts from the list. For the remaining 30 some preliminary analysis was done based on data from the e-procurement system, desk research and interviews.

Since the focus of the analysis is on contract implementation, the sample of contracts targeted completed contracts (considering the estimated time for finalization).

Sample list	2018	2019	2020	2021	2022	Total	In-depth analysis
CAPITAL CITY PODGORICA	4	4	3	3	3	17	0
CAPITAL PROJECT ADMINISTRATION	0	5	5	4	6	20	19
HEALTH INSURANCE FUND	4	4	0	1	1	10	10
TRAFFIC ADMINISTRATION	0	5	0	2	4	11	11
MINISTRY OF ADMINISTRATION	3	1	2	2	5	13	11
MONTENEGRIN ELECTRIC ENTERPRISE	4	5	0	0	0	9	9
ROADS OF PODGORICA	5	5	0	0	0	10	0
	20	29	10	12	19	90	60

Approach for the review

The review was conducted mainly on public information available in the e-procurement system and the registry in place prior to the introduction of the e-procurement system. Selected contracting authorities were requested by DPPP to provide additional information which regard to those stages of the procurement process which are not covered by the e-procurement system or the other databases (i.e. planning, evaluation and contract management). The response rate was low with only two authorities providing access to some contract implementation data, specifically on payments and amendments, but which was insufficient to draw a conclusion at a bigger scale.

Results of the assessment

The assessment followed a list of questions related to each sub-indicators, as presented below. The summarized conclusions of the assessment are captured within the matrix for Pillar 3 which makes reference to the performance of the contracting authorities in relation to the different sub-indicators. More results on the procurement activity of the selected contracting authorities are presented in annex 9 regarding the analysis of the e-procurement data which cover the following aspects:

- use of open procedures
- processing times by procedure type
- competition
- modified/cancelled contracts

List of questions

Indicator	Question
9 (a) (a)	Do you carry out need analysis and market research to guide the identification of optimal procurement strategy? When? annually or when updating procurement plans, or when necessary? how? Distribute Questionnaires', ongoing contract, past experience, etc? <i>Ask for evidence.</i>
9 (a) (b)	Do you clearly define at the planning stage the requirements and desired outcomes of contracts? Do you have defined internal processes / procedures for conducting the needs analysis? Briefly explain the process. <i>Assess who does what, level of inter-departmental collaboration / cross functional work.</i>
9 (a) (c)	Do you have access to clear guidance on when and how to use sustainability criteria? In which type of procurements you usually use sustainability criteria? What type of criteria do you mostly use? Are sustainability criteria, if any, used in a balanced manner and in accordance with national priorities, to ensure value for money?
9 (b) (a)	Are multi-stage procedures used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process?
9 (b) (b)	Do you use standard bidding documents and general contract conditions proportional to the need? Did you develop them or they were made available to you? Do you use them in all procurements consistently? To which extent you adapt them?
	Are the contract clauses published at the launch of the procurement process?
9 (b) (c)	Do you choose procurement methods in accordance with the purpose and in compliance with the legal framework? Do you justify and document the choice?
	How do PEs comply with the legal framework when choosing procurement methods?
9 (b) (d)	Are procedures for bid submission, receipt and opening clearly described in the procurement documents? Are these procedures complied with?
9 (b) (e)	What are the means to ensure the confidentiality throughout the bid evaluation and award process? Was there any breach of confidentiality?
	Were there any complaints regarding breach of confidentiality?
9 (b) (f)	Do the procurement documents include criteria to achieve value for money? What techniques do you apply to achieve value for money? Are these applied consistently?
9 (b) (g)	Are the contracts awards announced/published?

9 (b) (h)	Do contract clauses include sustainability considerations, where appropriate? If not, which would be the reason? Is there sufficient available guidance on how to do this?
9 (b) (i)	Do the contract conditions include clauses that provide incentives for exceeding defined performance levels and disincentives for poor performance? Is there guidance available on how to do this?
9 (b) (j)	How do you ensure that the selection and award process is carried out effectively, efficiently and in a transparent way?
	Do you generally consider that procuring entities implemented the right measures to ensure that the selection and award process is carried out effectively, efficiently and in a transparent way?
9 (c) (a)	Do you consider that generally contracts are implemented in a timely manner?
9 (c) (b)	How do you carry out Inspection, quality control, supervision of work and final acceptance of products? Are there any procedures in place establishing the workflows besides contract conditions?
9 (c) (c)	Does the time payment defined in the contract comply with the international good standards? What process do you follow to approve invoices for payment? Do you examine invoices? Are payment provisions used in the contract in compliance with the law? Are payments processed as stipulated in the contract?
	Are payment provisions used in the contract in compliance with the law? Do you consider that generally procuring entities comply with the requirements?
9 (c) (d)	Do you have internal procedures for contract amendment? How do you prepare contract amendments? What is the process to approve the contract amendments? Are they prepared and issued timely? Are they published?
9 (c) (e)	Are procurement statistics available and a system is in place to measure and improve procurement practices? What is the frequency for elaboration of such statistics? Are they publicly available?
9 (c) (f)	Do you provide opportunities for the civil society to participate in planning phase; evaluation and contract award; contract implementation?
	With the introduction of the e-procurement system, would such opportunities be possible?
9 (c) (g)	Are the records complete and accurate, and easily accessible in a single file? <i>Ask for a sample file.</i>
	Would you generally consider that procuring entities keep accurate and complete records?
	With the introduction of the e-procurement system, would such records be available in the PE's profile?