



MAPS

Methodology for Assessing
Procurement Systems

METHODOLOGY FOR ASSESSING PROCUREMENT SYSTEMS (MAPS)

2018





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FOREWORD

Public procurement is a crucial component of public services delivery, good governance and sustainable economies with inclusive growth. Governments around the world spend approximately USD 9.5 trillion in public contracts every year. This fact means that on average, public procurement constitutes around 12%-20% of a country's GDP.¹ The strengthening of public procurement systems is thus central for achieving concrete and sustainable results and to build effective institutions.

The Methodology for Assessing Procurement Systems (MAPS) was initially developed in 2003/2004, thanks to the collective efforts of many stakeholders. Its goal was to assess and improve public procurement systems by providing a common tool for analysing information on key aspects of any system. **MAPS has been widely used to assess the quality and effectiveness of public procurement systems** and, based on the strengths and weaknesses identified, to develop strategies and implement reforms. These efforts typically focused on creating the foundation for a well-functioning public procurement system by establishing a legal, regulatory and institutional framework.

This revision to the original MAPS reflects a modern understanding of public procurement, taking account of global developments and improvements suggested by the wide array of users and stakeholders. **The new MAPS is a universal tool that aims to catalyse and accelerate the implementation of modern, efficient, sustainable and more inclusive public procurement systems in all countries.** MAPS assessments highlight where reforms are most needed and indicate how reforms can be best carried out.

¹ 12% in OECD countries and 18%-20% in the European Union; this percentage may be higher in some developing countries.

The MAPS revision was guided by several considerations:

- **Value for money**, reflecting the basic goal that every procurement system should be providing the required goods, works and services in an economic, efficient, effective and sustainable way.
- **Transparency**, reflecting the basic and commonly agreed-upon principle of disclosure to make policies, legal and institutional frameworks and information related to decisions available to the public in a comprehensible, accessible and timely manner.
- **Fairness**, reflecting the ambition that the public procurement process should be free from bias, ensure equal treatment and take decisions accordingly, thus ensuring integrity.
- **Good governance**, recognising the importance of the wider governance context on the way public procurement is conducted and how reforms to procurement are implemented. This aspect includes reflection of horizontal procurement goals, policy considerations and integrity principles.

Contextual elements have been integrated to ensure that the application of MAPS helps contribute to effectiveness. Among those considerations are national policy objectives, including targets on sustainability, support for the private sector, civil service reform, etc., as well as other factors that create an enabling environment for a well-functioning procurement system, such as good public financial management, accountability, legal certainty and workforce capacity.

The new version of MAPS is timely in the wake of the launch of the Sustainable Development Goals (SDGs). **Like the SDGs, MAPS will be relevant for all countries, irrespective of income level or development status.** MAPS is related to Goal 12, which calls for the promotion of sustainable procurement practices in line with national priorities and policies, and Goal 16, which calls for effective and accountable institutions. In addition, MAPS is anchored in the 2015 Organisation for Economic Co-operation and Development (OECD) Recommendation of the Council on Public Procurement and is reflective of leading international procurement frameworks such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement (2011), the European Union (EU) Directives on Public Procurement (2014), and the procurement frameworks used by multilateral development banks, countries and implementing institutions. It provides a holistic assessment framework, establishing the criteria of an effective and efficient procurement system that all countries should strive to achieve.

The MAPS revision process was a co-operative effort that included countries and partners alike. The draft revised MAPS methodology was open to public consultations and was further vetted in a testing and piloting phase involving a diverse set of countries spanning various income categories and development situations, to ensure broad participation and contributions from the public and private sector as well as civil society.

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SECTION I – USER’S GUIDE

Introduction

Objective of the User’s Guide

1. This User’s Guide aims to facilitate a consistent approach to the application of the Methodology for Assessing Procurement Systems (MAPS), focusing on how the findings can be most effectively translated into reforms.

Purpose and use of the methodology

2. MAPS is intended to provide a harmonised tool for use in the assessment of public procurement systems. The methodology is designed to enable a country, with or without the support of external partners, to conduct an assessment of its procurement system in order to determine its strengths and weaknesses. The resulting information can serve as the basis for harmonised system development and reform initiatives² that can improve capacity and address any weaknesses. The assessment also provides the country with information it can use to monitor the performance of its system and evaluate the success of the reform initiatives in improving performance. By identifying weaknesses in a country’s current system, it also offers external partners information that can help them determine risks to the funds they provide to partner countries.
3. MAPS is a universal tool. It aims to lay the foundation for a well-governed public procurement system that helps meet policy objectives, increase public trust, enhance well-being and build more prosperous and inclusive societies. It is guided by the principles value for money, transparency, fairness and good governance. The 2018 version of MAPS embodies high aspirational standards and serves as a guide toward reform, rather than setting out minimum standards that countries are universally required to attain. Depending on the conditions in a given country, for example in the case of fragile states that are vulnerable to conflict, these aspirational standards may only be achievable over a longer period.
4. The MAPS assessment is neither an audit of a procurement system, nor intended as a substitute for a fiduciary assessment by the country, a donor or other external partners, if required. It aims to provide a common assessment tool for countries and for the international community, irrespective of geographical application.

2 The terms “reform initiatives” and “system development” are used interchangeably in this methodology.

Analytical Framework (Overview)

Building blocks

5. The MAPS analytical framework consists of a core assessment methodology and a number of supplementary modules.
6. The MAPS core methodology described in this document provides a comprehensive approach for assessing procurement systems. It defines the structure for conducting a country context analysis, presents a refined indicator system for assessing the quality and performance of the system in terms of outcomes and results, and describes the key elements of the assessment process.
7. Supplementary modules are progressively being developed to complement the core assessment methodology. They focus on specific policy areas of public procurement and can be used by countries depending on their needs.

Analysis of country context

8. Section II, “Analysis of country context”, presents a structured approach for analysing the local environment, to ensure that the assessment is anchored in a country’s specific needs and that the different elements of the MAPS analytical framework are applied appropriately.
9. The context analysis draws on easily accessible information and existing data, and focuses on a number of factors essential for procurement reform. These include the country’s economic situation, its national policy objectives, the public procurement reform environment, and the relationship between the public procurement system, the public finance management and the public governance systems. The context analysis also identifies key stakeholders formally and informally linked to public procurement structures.

Indicator system

10. The MAPS indicator system is described in detail in Section III, “Assessment of public procurement systems”. It rests 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.
11. Each pillar has a number of indicators and sub-indicators to assess. The indicator system has a total of 14 indicators and 55 sub-indicators, which, taken together, present the criteria for a snapshot comparison of the system against the stated principles. The indicators are expressed in qualitative and/or quantitative terms, as appropriate. Figure 1 (below) outlines the overall structure of MAPS.

Figure 1. Overview of MAPS



12. The indicators often refer to the procurement law and to the legal framework. The reference to the procurement law is to the supreme legal instrument governing public procurement in the country. The form or nature of the supreme law varies depending on a country’s legal system (common law, civil law, etc.) and on tradition.³ In general, this document assumes an over-arching supreme legal instrument, then proceeds to the regulations that provide further detailed legal interpretation and detailed procedures for administering them. In some instances, legal obligations related to public procurement may also derive from memberships in international and/or regional associations or treaties. Other national laws, including on budget, construction or competition, may also impose obligations that guide public procurement. The entire set of legal instruments relating to public procurement is designated as the “legal framework”.

Application of indicators

13. Each indicator and sub-indicator is preceded by a short text that outlines the elements that the sub-indicator attempts to assess and describes the nature and importance of the item in question. This aims to guide the assessor to the relevant aspects to be reviewed and to specified principles or standards. The criteria to be considered under each sub-indicator are then presented in a table titled “Assessment criteria”. The assessment criteria establish the basis on which the system will be assessed (qualitative indicators). A set of quantitative indicators offers the opportunity to substantiate the assessment of several sub-indicators by taking performance-related data into account.

³ Some countries have laws and others may have acts, decrees, circulars or regulations.

14. Each sub-indicator should be assessed using the following three-step approach:
- i) review of the system, applying assessment criteria expressed in qualitative terms;
 - ii) review of the system, applying a defined set of quantitative indicators;⁴
 - iii) identification of substantive or material gaps (gap analysis).

Step 1: Review of the system applying assessment criteria expressed in qualitative terms

15. Step 1 of the assessment is based on a qualitative review of the existing regulatory and policy framework, as well as institutional and operational arrangements, to determine whether or not the prescribed standard has been attained. Certain indicators do not lend themselves to assessment through hard evidence (i.e. facts and figures) and may require surveys or interviews with stakeholders and participants in public procurement, such as professional associations, representatives of civil society, independent media or well-recognised and respected investigative journalists, and government officials, as indicated in this guide.
16. A narrative report should provide detailed information on this comparison (that is, on the actual situation in relation to the assessment criteria) and on changes that may be under way. This narrative will enable the assessors to analyse the strengths and weaknesses of the system.

Step 2: Review of the system applying a defined set of quantitative indicators

17. Step 2 of the assessment focuses on the application of a (minimum) set of 15 quantitative indicators. These are closely related to the prevailing procurement practices in the country and are therefore often referred to as performance indicators. Quantitative indicators are useful for demonstrating results, for example by examining a sample of procurement transactions and other relevant information deemed representative of the performance of the system.
18. The narrative report should provide the detailed findings of this analysis. In countries where the necessary data is unavailable or unreliable, the particular circumstances should be explained in the narrative report.
19. Quantitative indicators are not benchmarked against set standards but can be used by the country to define baselines, set national targets and measure progress over time. Additional quantitative indicators are recommended for optional use as appropriate (refer to “Recommended quantitative indicators”).

Step 3: Analysis and determination of substantive or material gaps (gap analysis)

20. The assessment findings are further analysed and interpreted (Step 3) to identify the areas that show material or substantial gaps and require action to improve the quality and performance of the system.
21. A substantive or material gap exists when any of the following situations arises:
- The system exhibits less than substantial achievement of the stated criteria.
 - Any of the essential elements of the indicator (e.g. independence, objectivity, timeliness) are missing.
 - There is enough evidence that a provision in the legal/regulatory framework is not working as intended (i.e. factual evidence or conclusive outcome from interviews or from the analysis of procurement practices).
22. To substantiate the gaps identified in Steps 1 and 2 of the assessment, an analysis in greater depth may be conducted. This can be achieved by a more comprehensive qualitative review of existing arrangements and/or through an expanded analysis of public procurement practices (e.g. by increasing the sample size of procurement cases analysed).
23. If substantiated, the sub-indicator should be clearly marked as exhibiting a “substantive gap”, to demonstrate the need to develop adequate actions to improve the quality and performance of the system. Any deeper analysis that is

⁴ The workflows for steps 1 and 2 can be organised in parallel.

conducted should be fully explained in the detailed assessment report, to ensure consistency and comparability of assessments. Additional evidence and conclusions should be reflected in the report.

24. Should the assessor identify factors likely to prevent appropriate action to improve the public procurement system, “red flags” should be assigned. These are used to highlight any element that could significantly impede the main goals of public procurement and that cannot be mitigated directly or indirectly. Such factors could also lie outside the sphere of public procurement, for example:
- Assessors/government do not agree on the assessment results (e.g. substantive gaps).
 - Other national laws or regional/international agreements impose conflicting obligations.
 - Other factors prevent improvement of the public procurement system (e.g. political economy; jurisdiction; interdependence of problems/complexity, etc.).

Limits of indicator application

25. The indicators alone cannot give a full picture of a procurement system, which is by nature complex. They should be seen as a vehicle for identifying the strengths and weaknesses of the system in broad terms. The indicators also serve as support for a more thorough analysis to be carried out by the assessor, as indicated above.
26. The application of indicators allows for professional judgements by the assessor. Subjectivity should be reduced to a minimum to ensure that assessments carried out by different assessors maintain reasonable consistency and comparability for analytical purposes. This is one of the main objectives of the methodology and of this guide. The assessor should also bear in mind that there is no single model for a procurement system and that different models have been developed world wide that may work well in one political, institutional or cultural setting, but not in another.
27. The decision on the scope of performance measurement and data collection should be made specific to the country and be based on the availability of data and the country’s objectives. The decision should consider cost effectiveness as well as the sustainability of data collection and analysis to ensure the long-term monitoring of procurement performance.
28. The application of Indicator 9 includes an analysis of selected procurement cases (“sample cases”). One of the most important steps in planning the assessment is to carefully consider the sample of cases that will be assessed. This selected review of actual procurement proceedings provides an additional means of evaluation, while recognising that a sample always represents a selected perception of reality and never the reality in its entirety. The sample should thus provide enough information to arrive at conclusions that can be regarded as valid at an aggregate level. Sampling strategies and sampling sizes need to be carefully considered, and how representative they are and their level of certainty should be clearly defined. Depending on the circumstances and the country’s strategic objectives, sampling could, for example, focus on top-spending procuring entities or, alternatively, cut across different levels of government, to cover a number of national and sub-national procuring entities. Details of the sampling approach should be disclosed in the assessment report.
29. All quantitative indicators have been aligned with procurement data required in Public Expenditure and Financial Accountability (PEFA) assessments (PEFA Performance Indicator PI-24)⁵ for consistency in assessments and policy formulation.

5 PEFA Performance Measurement Framework (2016): PI-24 (www.pefa.org).

Assessment Process

Planning and preparing the assessment

30. Advanced planning is needed to appropriately scope and time the assessment, define management arrangements, set up the assessment team, arrange for the collection of the information required and identify stakeholders to be interviewed or surveyed. Advance planning is especially important if the assessment will be jointly sponsored by the government and interested external partners. Planning will enable co-ordination of the work and the agreement to be reached on critical aspects of the assessment. Peer reviews, where representatives from other governments, agencies or relevant international organisations take part in the assessment exercise, can complement a MAPS exercise. Whether or not an assessment should be conducted as a peer review or whether it should involve other forms of third-party quality assurance (for example, by the MAPS secretariat) should also be decided in advance.
31. To ensure a demand-driven assessment process, the country should consider preparing a concept note covering the following questions:
- What is the primary objective(s) of conducting a MAPS assessment?
 - Are there specific issues to focus on?
 - Which parts of the government need to be covered?
 - Which parts of the MAPS methodology (core tool/supplementary modules) need to be applied to deliver the desired outcomes?
 - Who is leading the assessment and what are the different roles of the members of the assessment team?
 - Was there a MAPS assessment in the past, and what were its results?
 - Are other assessments related to public procurement available (e.g. PEFA assessment reports, political economy analyses)?
 - Which information sources are available to gather the required information?
 - Which quantitative indicators will be used for performance measurement?
 - Who are the key stakeholders who should be involved in the assessment?
 - To what extent should the assessment include the review of actual procurement cases (see Indicator 9)?
 - How will the sample be designed, and which agencies will be included?
 - How will the findings be validated and recommendations be discussed? Should the assessment involve peers/ external experts to review the assessment (refer to paragraph 39)?
 - How will the assessment results be communicated/published and used?
 - How much time, external support and budget will be needed?
32. The government can demonstrate high-level political commitment by establishing strong leadership arrangements for the assessment. To ensure cross-departmental co-operation and openness, the government should consider establishing a time-bound MAPS Assessment Steering Committee.
33. Identifying a qualified team of assessors is critical to the credibility and reliability of the exercise. Assessors should preferably be seasoned public procurement practitioners with ample knowledge of the legal, institutional and operational aspects of the subject and of internationally accepted procurement practice. They should be well-informed on the recommended use of the tool, to enhance shared understanding and to encourage consistency in its application. Assessors external to the government should work with a counterpart team from the government to facilitate access to information and logistical support. Assessors should be free of conflicts of interest that could arise from their current or previous roles.
34. Successful reforms depend on actively and appropriately engaging stakeholders throughout the process. In the early stages of the assessment, stakeholders should be engaged through appropriate communication (on the objectives, scope, process, timelines, lead entity, etc.) and targeted interviews. The “Analysis of country context” will help identify the key stakeholders that are formally and informally linked to the public procurement structures in the country.

35. It is recommended that the following categories of stakeholders be engaged: the authority in charge of the assessment (typically the regulatory authority, ministry, or centre of government), the procurement normative/regulatory body, the procurement appeals body, a selected number of procuring entities, representatives of the private sector (including the banking sector involved in financing public sector investment projects) and civil society, authorities responsible for budgeting/payment/internal controls, audit authorities, anti-corruption agencies, competition bodies, international partners engaged in the country, training institutions, the professional bodies, academia, research institutions and media.

Conducting the assessment

36. The assessment should clarify its objectives, identify the current situation and engage key stakeholders.
37. The assessment should establish a clear timetable for the following steps: data collection; analysis of findings (determination of strengths and weaknesses); and, as applicable, developing recommendations for a prioritised reform strategy intended to address any weaknesses identified.

Validation of findings

38. To ensure that the assessment process is valid and credible, it is recommended that a validation exercise involving key stakeholders be conducted. This provides an opportunity to agree on the findings of the assessment, on reform priorities and on a shared strategy for addressing key weaknesses in the system.
39. A more robust quality-assurance approach involves a review of compliance with the assessment process and assessment report with the MAPS methodology and the quality review of assessment results by the MAPS Secretariat and a designated MAPS Technical Advisory Group. This more comprehensive quality-assurance mechanism has been designed to allow for the external certification of MAPS assessments.⁶

Assessment Report

40. One of the main goals of carrying out an assessment based on the methodology in this document is to provide a tool that countries can use to formulate reforms, improve their national procurement systems and align them with internationally accepted good practice. The assessment process also provides a unique opportunity to learn and increase capacity for governments and partners alike. A narrative analytical report is useful to the involved governments and their external partners interested in supporting and strengthening programs. A report of this kind gives context to the assessment, providing the assessor's evaluation of the system as a whole and of progress on the individual items assessed.
41. The suggested outline of the report is as follows:
- an executive summary of the report, with an overview of the assessment results against the four pillars mentioned in paragraph 10. The executive summary should highlight the strengths and weaknesses of the system, their relative importance, the major risks identified and their likely consequences for the efficiency of the system.
 - an introductory section that presents the background of the assessment, its scope and nature, the limitations encountered in the assessment, and any other matters essential for understanding the context and circumstances under which the assessment was carried out.
 - a section that describes the country context (see Section II, "Analysis of country context", for further details), including:
 - i) a brief review of the most relevant aspects of the country's political, economic and geostrategic situation;

⁶ For further details refer to the following website: mapsinitiative.org.

- ii) the public procurement system and its relationship with the systems of public finance management and public governance;
 - iii) national policy objectives, with a focus on issues that influence public procurement;
 - iv) public procurement reform, including government ownership, reform priorities, key stakeholders, incentives and challenges that may influence the success of reforms.
- a section that discusses the findings of the assessment in relation to each of the pillars and indicators. This should also describe any existing government programmes or initiatives or those that are at an advanced stage of consideration. As appropriate, it should also consider how suitable they are for possible support by international partners. Finally, the section should describe any progress that has been made, or, alternatively, any deterioration in the system since the last assessment was carried out.
 - a section on the assessment of outstanding weaknesses in the procurement system, classifying them into categories by the risk they may pose to the system and offering suggestions as to how to keep these risks at an acceptably low level.⁷ These suggestions may be used as the basis for a prioritised reform strategy to address any weaknesses identified.
 - the relevant sections and chapters that should be added to the report, if the report is to go beyond simply assessing the system and will propose an action plan or a reform strategy (see below, section on “Strategic planning and monitoring to prepare reforms”).
 - a section of the report providing an account of the steps taken to validate the assessment’s findings, and describing any other elements that could influence the quality of the assessment, such as references on assessors, the time frame available for the assessment, information sources, etc.
 - an annex including detailed assessment results and any evidence documenting the findings. Areas (i.e. sub-indicators) should be clearly highlighted if they exhibit less than full or less than substantial achievement of the described standard and require further action to improve the quality and performance of the system (substantive gaps).⁸

Strategic Planning and Monitoring to Prepare Reforms

42. The findings of the assessment inform the strategic planning process for future public procurement reform or system development. After the assessment, strategic thinking to clarify the vision, goals and time frame for improving the public procurement system should be developed. The subsequent strategic plan should take this into account and outline a range of possible solutions and indicate how they can be carried out.
43. The strategy should be realistic, aligned with other reform initiatives, ensure a balance of perspectives, and include a good mix of “quick wins”, as well as medium and long-term initiatives. A strategic plan should help guide implementation. The strategic plan should assign roles and responsibilities, define the processes of change, specify allocation of resources, timelines, a results framework, monitoring and evaluation agreements, and the preparation and communication of the strategic planning document.
44. The set of indicators applied in the MAPS assessment could form a useful basis for constructing the results framework for public procurement reforms. A few high-level indicators relating to the strategic goals of the public procurement reform should be identified. In addition, indicators for any of the initiatives included as part of the strategic plan for reform should be identified on two or even three levels: outputs, outcomes and impact.

7 Different dimensions of risks should be considered, e.g. fiduciary risks, development risks and reputational risks. Risks can be classified into the following categories: high, medium or low, or alternatively: high, substantial, moderate or low, depending on the risk classification system the country uses. The classification should be based on the standard dimensions of occurrence (probability) and the severity of the consequences (impact).

8 The assessor should present the detailed evidence and results for each criterion following the indicator matrix template available in www.mapsinitiative.org.

45. Each indicator needs a baseline and a target. The baseline data is used as the starting point for measuring progress. The targets may be either short-term, medium-term or long-term, with interim milestones. Monitoring progress should allow for refinement of the initiatives and potentially the design of new initiatives to address evolving needs.
46. A full update of a MAPS assessment should be performed whenever major changes in legislation occur or other substantive elements of the system change and/or affect the performance of the system (whether positively or negatively).

Further Information and Support

MAPS Secretariat

47. The MAPS Secretariat offers support to all users of the MAPS methodology upon request, including:
 - advice to country teams for planning and management of a MAPS assessment, including quality review of Concept Notes and Terms of References for MAPS assessments;
 - advice to MAPS assessment teams on the MAPS methodology;
 - quality review of MAPS assessment reports (in collaboration with the MAPS Technical Advisory Group), to provide certification of assessments that meet the quality standards specified.
48. Further information, templates and guidance on applying the MAPS methodology and transforming public procurement systems are available on the following website: mapsinitiative.org

SECTION II – ANALYSIS OF COUNTRY CONTEXT

Objectives and Scope

This section aims to ensure that the MAPS assessment is based on a better understanding of the context in which public procurement institutions and other stakeholders operate in a particular country. During the assessment and in developing responses to the findings, the political and institutional environment can be considered, to ensure that reforms reflect the country's needs.

For optimum efficiency, this macro-level analysis should be brief. It should draw on easily accessible information and existing data and focus on a limited number of potentially important factors for procurement reform. These factors are: i) the country's political, economic, and geostrategic situation; ii) links between the public procurement system and the public finance management and the public governance systems, iii) national policy objectives affecting public procurement and iv) the public procurement reform environment.

The context analysis should provide a thorough mapping of key stakeholders formally and informally linked to public procurement structures. This will help to engage stakeholders as part of the assessment and as part of future reform processes. Stakeholder engagement in general helps to illuminate how interests, incentives, values and ideas are shaped by formal and informal rules. It can support the development and prioritisation of actions that are feasible and realistic to implement.

The contextual information gathered at this stage can also be used to ensure a targeted application of the MAPS tool. For example, the identification of national policy objectives and key challenges helps scope the MAPS assessment, in particular for the potential application of supplementary modules.

Structure

The analysis of country context should be structured as follows:⁹

Analysis of country context

1. Political, economic and geostrategic situation of the country:

- i)* economic structures (e.g. population, national income level, resources at the government's disposal vs. debt, geographic location, geopolitical situation, main challenges for growth and development)
- ii)* political structures, nature of the political governance system (e.g. type of government, history/legacies in the form of government, federalism vs. centralisation/roles of the national government and sub-national governments, distinctive features in the allocation of political power, marginalised groups, levels of crime and informality, aspects of fragility or conflict, level of perception of corruption, etc.)¹⁰
- iii)* international obligations (e.g. international/regional treaties and memberships, including information on potential/pending memberships)

2. The public procurement system and its links with the public finance management and public governance systems:

- i)* nature and scope of public procurement (e.g. procurement as a proportion of GDP/government expenditures)
- ii)* key institutions (formal and informal) and their roles in operating the procurement system, including its controls
- iii)* mapping of key external stakeholders formally and informally linked to public procurement structures, their interests and avenues for engagement.

3. National policy objectives and sustainable development goals:

- i)* general reform initiatives with a focus on issues that influence public procurement
- ii)* horizontal policy objectives.

4. Public procurement reform:

- i)* public procurement reform in the past (brief history/legacies; lessons learned)
- ii)* public procurement priorities, policies, strategies and goals/targets, and their links with public sector/governance/other related reforms
- iii)* incentives that can drive reforms; challenges that can impact the success of reforms.

9 Further information on how to conduct context/political economy analyses can be found in: UNDP (2012), "Institutional and Context Analysis – Guidance Note", http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo_governance_centre/Institutional_and_Context_Analysis_Guidance_Note/; Overseas Development Institute (ODI) (2005), "Analytical Framework for Conducting Political Economy Analysis in Sectors", <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3898.pdf>.

10 Fragility can go beyond the categorisation of "fragile states". The OECD has defined the following five dimensions: i) violence (peaceful societies); ii) access to justice for all (including control of corruption); iii) effective, accountable and inclusive institutions; iv) economic foundations and v) capacity to adapt to social, economic and environmental shocks and disasters. OECD (2015), *States of Fragility 2015: Meeting Post-2015 Ambitions*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264227699-en>.

Information Sources

The list of sources to be consulted is as follows:

- national statistics (e.g. Ministry of Finance, etc.),
- national development plans,
- indices, e.g. Doing Business project (World Bank), Government at a Glance (OECD), Country Classifications (World Bank and others), GDP growth rates, Corruption Perception Index, Global Competitiveness Report (World Economic Forum), Human Development Index (UN), etc.,
- databases on international memberships and treaties (e.g. General Agreement on Trade and Tariffs (GATT)/ Agreement on Government Procurement; OECD; regional organisations and trade agreements; signatories to the United Nations Convention against Corruption, etc.),
- previous studies/assessments,
- interviews with relevant experts or sources; critics in media.

SECTION III – ASSESSMENT OF PUBLIC PROCUREMENT SYSTEMS

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 considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Pillar I refers to four elements of the legal, regulatory and policy framework:

- i)* the supreme legal instrument governing public procurement (laws, acts, decrees)
- ii)* regulations and other instruments that are of a more administrative nature
- iii)* procurement-related provisions in other national laws (e.g. laws governing public private partnerships and concessions, trade and competition, access to information, anti-corruption, alternative dispute resolution, state-owned enterprises, etc.)
- iv)* obligations deriving from international agreements to ensure consistency and policy coherence.

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 bidding documents formally in use. This indicator is divided into 12 sub-indicators (a-l), which are individually assessed.

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

The purpose of this sub-indicator is to determine: i) the structure of the regulatory framework governing public procurement; ii) the extent of its coverage; and iii) the public access to the laws and regulations.

The assessor should evaluate the adequacy of the structure of the legal framework, its clarity and the precedence of the different instruments. It is important that the legal framework is differentiated and distinguishes between laws, regulations and procedures and that precedence be firmly established, to minimise inconsistencies in application. Higher-level instruments should normally be less detailed and more stable, since their modification requires higher levels of authority. The higher a provision is placed in the hierarchy of the legal framework, the more stable it is. This means that lower-level instruments should be chosen to regulate more detailed procedures for implementation that require some flexibility (e.g. thresholds).

The assessor should evaluate the extent to which the legal framework applies to all procurement undertaken using public funds (goods, works and services, including consulting services). In addition, the assessor should assess the extent to which national legislation applies to all public bodies and sub-national governments and entities, when national budget funds are used either directly or indirectly.

One aspect to evaluate is whether the laws or regulations exclude particular agencies or areas of public expenditure from the provisions of the law (i.e. the army, defence or similar expenditures, autonomous or specialised state-owned enter-

prises, as well as utility companies with special or exclusive rights). This also includes assessing whether these exclusions are established by law or can be made administratively without public oversight. The assessor should also evaluate whether the public procurement law or other national laws support and regulate the contracting of other forms of public service delivery that are closely related to public procurement, such as public/private partnerships (PPPs), including concessions. (Specific characteristics are assessed under sub-indicator 1(l)).

Uniformity and universality of coverage contribute to predictability and savings in the operation of the procurement system. Access to the rules and regulations contribute to transparency, which results in more economic procurement.

Laws and policies can be made accessible by keeping them in places that are easily accessible to the public. Preferably, the information should be published on line on a single, freely accessible online portal (refer to sub-indicator 7(a)). If the information is primarily posted on the Internet, the assessor should verify whether the information is accessible to the public and regularly updated.

Assessment criteria

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

- (a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.
- (b) It covers goods, works and services, including consulting services for all procurement using public funds.
- (c) PPPs, including concessions, are regulated.
- (d) Current laws, regulations and policies are published and easily accessible to the public at no cost.¹¹

Sub-indicator 1(b) – Procurement methods

This sub-indicator assesses whether the legal framework includes: i) a clear definition of the permissible procurement methods; and ii) the circumstances under which each method is appropriate.

The legal framework should provide an appropriate range of procurement methods comprising competitive and less competitive procedures, when appropriate.¹²

The law and regulations should define the situations in which open tendering or alternatives procurement methods can be used and ensure that acceptable justification and approval levels are clearly specified. The application of procurement methods and processes should be proportional to the value and risks of the underlying project activities. This means that in procurement projects with low value or lower risks, lighter methods – such as restricted tendering, request for quotations, etc. – can be applied, when the benefits of some “process-heavier” methods are not evident or necessary. Although open (competitive) tendering should be the standard procurement method, the choice of the method should also depend on the time it takes to follow through on the procedure and strive to avoid delays.

The use of direct awards (single-source procurement) should be analysed and its justifications understood. It is also important to understand how the justifications to avoid more competitive procedures are being used in general. For example, urgency is often an excuse not to use open tendering. However, justifying single-source procurement on the grounds

11 PEFA PI-24.3 (1)

12 The UNCITRAL Model Law on Public Procurement (2011), for example, provides terms, model definitions and procedures for different options (Refer to Chapters II-VII). When specific procurement methods are mentioned in this document, the terms established by UNCITRAL are used.

of an emergency should be permitted only in the exceptional circumstances of a catastrophic event, where there is an extremely important need and where any other method of procurement would be impractical given the time constraints. It should not, however, be used simply because of poor planning.

Fractioning of contracts to avoid open competition should be prohibited, when it aims at circumventing competitive rules.

The legal framework should restrict individual agencies' or procurement officials' discretion. This should result in minimal use of procurement methods that limit competition.

Assessment criteria

The legal framework meets the following conditions:

- (a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.
- (b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.
- (c) Fractioning of contracts to limit competition is prohibited.
- (d) Appropriate standards for competitive procedures are specified.

Sub-indicator 1(c) – Advertising rules and time limits

This sub-indicator assesses whether: i) the legal framework includes requirements to publish procurement opportunities as a matter of public interest and to promote transparency; ii) there is wide and easily accessible publication of business opportunities; and iii) there is adequate time provided between publication of opportunities and the submission date, consistent with the method and complexity of the procurement, to prepare and submit proposals.

Time between publication of the invitation for prequalification applications (or for an open tender and the submission of proposals) depends on the complexity of the procurement and the level of competition expected. If foreign bidders are expected to compete, this is a factor to consider. The law and regulations should establish the criteria for setting the minimum time between the call for proposals and their submission. The timelines may be shortened in case of electronic transmission of procurement notices and bidding documents.

Assessment criteria

The legal framework meets the following conditions:

- (a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).
- (b) Publication of opportunities provides sufficient time (consistent with the method, nature and complexity of procurement) for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.
- (c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g. technological barriers).
- (d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Sub-indicator 1(d) – Rules on participation

This sub-indicator assesses the policies that regulate participation and selection, to ensure that they are non-discriminatory. As a general principle, firms, including qualified foreign firms, should not be excluded from participating in a procurement process for reasons other than lack of qualifications, and only in accordance with clearly specified rules on eligibility and exclusions.

There may be cases in which the legal framework will allow restrictions that require purchasing from or associating with domestic firms, or that mandate the inclusion of a minimum of locally manufactured content. Many countries also allow price preferences for domestic firms. Such local content requirements or preferences should be in line with the country's international obligations (e.g. the World Trade Organization-Agreement on Government Procurement, association agreements or free-trade agreements ratified by the country). Excessive price preferences or other concessions for certain groups of bidders can deter competition and reduce efficiency. The assessor should evaluate whether the provisions are adequate and justified, and make sure that they do not undermine the economy and efficiency of the system. The regulatory framework should not oblige foreign firms to associate with local firms or to establish subsidiaries in the country as a condition of bidding. These conditions may promote oligopolistic or monopolistic conditions, rather than promoting the development of local industry, and can become a de facto barrier to competition.

Registration should not be a barrier to participation in a procurement process.

The law should provide for exclusions for criminal or corrupt activities, debarment, subject to due process, and for the prohibition of commercial relations in cases of criminal activity. Firms or individuals that have been the subject of a conviction by final judgment for one of the following reasons should be excluded from participation: participation in a criminal organisation; corruption as defined in the national law of the contracting authority or the firm/individual; fraud; terrorist offences or offences linked to terrorist activities, or inciting or aiding or abetting or attempting to commit such an offence; money laundering or terrorist financing; child labour; and all forms of trafficking in human beings.

The process for reaching decisions on administrative debarment (e.g. failure to perform in earlier contracts, etc.) should be clearly defined, including the process related to any possible appeals. Other legitimate exclusions (e.g. prohibition of commercial relations by law or adherence to UN Security Council sanctions) should be prescribed. Additionally, there may be international agreements that limit participation to members of the agreements.

Participation of state-owned enterprises should be governed by rules that create a level playing field for all competitors

and should not be granted preferential treatment in the form of subsidies or tax exemptions, etc.

The legal framework should detail the procedures that can be used to assess a bidder's eligibility and ability to perform a specific contract. The assessment can be performed as part of the specific procurement, or it can be initiated as a separate exercise that is conducted before full offers are requested.

In highly complex procurement, use of multi-stage procedures (for example, pre-qualification or competitive dialogue) can make the procurement more efficient by ensuring that only eligible and qualified participants are included. It can also save money by limiting the number of participants that incur the expense of putting together a comprehensive bid. The circumstances under which multi-stage procedures may be used should be clearly defined, to ensure that they are not abused or used as a method for limiting competition by overstating the qualification requirements. .

Assessment criteria

The legal framework meets the following conditions:

- (a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.
- (b) It ensures that there are no barriers to participation in the public procurement market.
- (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.
- (d) It establishes rules for the participation of state-owned enterprises that promote fair competition.
- (e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.

Sub-indicator 1(e) – Procurement documentation and specifications

The sub-indicator assesses the degree to which the legal framework specifies the content of procurement documents, to enable suppliers to understand clearly what is requested from them and how the procurement process is to be carried out.

Procurement documents should contain sufficient information to enable the submission of responsive tenders/bids/proposals and to establish the basis for a transparent evaluation and award process. Details of the requirements included in the procurement documents should be neutral and refer to international standard specifications where possible or other officially recognised norms that are essentially equivalent to the ones specified. The legal framework should permit and encourage the use of output-based (functional) specifications to promote innovation, when appropriate.

It is important that the content requirements for procurement documents are relevant to making an award decision. Information that is not needed for the process should not be required as part of the submission. Excessive information and documentation requirements are considered to cost money and can reduce competition or lead to disqualification of potential bidders on grounds of unnecessary requirements.

Assessment criteria

The legal framework meets the following conditions:

- (a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.
- (b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.
- (c) It requires recognition of standards that are equivalent, when neutral specifications are not available.
- (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)

Sub-indicator 1(f) – Evaluation and award criteria

This sub-indicator assesses: i) the quality and sufficiency of the legal framework provisions in respect to the objectivity and transparency of the evaluation process; and, ii) the degree of confidentiality maintained during the process, to minimise the risk of undue influences or abuse.

Pre-disclosed and objective criteria are essential for efficiency, fairness and transparency in the evaluation of bids and proposals. Objectivity means that there is little room for subjective interpretation of the criteria by the evaluator. Vague criteria (e.g. an award to the bid/proposal most convenient for the interests of the state) are not acceptable.

Evaluating and considering the price alone does not in all cases ensure value for money. The principle of value for money requires the evaluation of relevant costs and benefits, along with an assessment of risks and non-price attributes and/or life cycle costs, as appropriate. The legal framework should therefore permit the use of price and non-price attributes and/or the consideration of life cycle costs and environmental/social characteristics, as appropriate in the relevant procurement to ensure value-for-money decisions.

The procuring entity needs to identify the bidders that meet the qualification criteria stipulated in the procurement document, in accordance with applicable rules on eligibility and exclusions. The submitted bid/proposal needs to be substantially responsive. The contract should be awarded to the bidder whose bid/proposal has been determined to offer the lowest evaluated price/cost (if price/cost is the sole criterion) or whose bid/proposal has been determined to be the best evaluated bid/proposal based on the award criteria defined in the procurement document.¹³

Technical capacity and quality are usually key criteria for selection of a large number of procurement processes, including complex procurement, infrastructures, framework agreements or consulting services. While technical qualifications can be assessed by a pass/fail review, in some cases, a scored evaluation of technical qualification against stated criteria is considered necessary to select the most advantageous proposal. The law should specify how this aspect is to be considered. The law should also lay out the conditions under which selection of consulting services may be based exclusively on technical capacity and when price and quality considerations are appropriate.

For cases in which a combination of price/cost and technical capacity or other requirements is permitted by law, the law or regulations should require that the procurement documents state: i) the relative weight to be allocated to the criteria; and ii) the manner in which these criteria are combined. When life-cycle costing is used, the method by which the contracting entity will determine the life-cycle costs (e.g. the consideration of net present value) and the data the bidders

13 Some legal frameworks use the term “most economically advantageous tender” (MEAT).

should provide to make this determination, should be specified. The regulatory framework should prohibit the use of evaluation and award criteria different from those set out in the procurement documents.

Confidentiality and regulated communications with the bidders during the pre-tendering, tendering and evaluation period are necessary to avoid abuse and undue interference in the process. The corresponding clarifications are made during the period preceding the call for tenders and that of the call for tenders and the evaluation period runs from the conclusion of the bid opening to the point at which the award of the contract is decided and announced.

Information related to the evaluation process and results should be disclosed to interested parties after the evaluation is complete. There should be rules of disclosure that protect information provided by bidders that is of proprietary nature, or commercially or financially sensitive.

Assessment criteria

The legal framework mandates that:

- (a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents,
- (b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.
- (c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.
- (d) The way evaluation criteria are combined and their relative weight determined should be clearly defined in the procurement documents.
- (e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

Sub-indicator 1(g) – Submission, receipt and opening of tenders

This sub-indicator assesses how the legal framework regulates the reception of tenders¹⁴ and tender opening. Public opening of tenders is a means of increasing the transparency of an open tendering exercise. In cases in which the law prescribes public opening of tenders, bidders or their representatives should be permitted to attend, as well as others with a legitimate interest in the outcome (e.g. representatives of civil society organisations). Opening immediately after the deadline for submission of tenders reduces the possibility of loss or alteration of proposals or submissions.

The exception to this rule may be opening of pre-qualification submissions, including expressions of interest or opening of technical proposals for consulting services (which are not priced), in which case they may be opened privately, followed by a simple notification to all participants of the list of submissions.

14 In this context, the term “tender” is used interchangeably with “bids” or “proposals”.

The law or regulations should establish the information that should be read and recorded for open tendering:

- names and addresses of the bidders
- date and condition the tender was received (to determine compliance with formal requirements)
- tender prices
- any withdrawals or modifications to tenders duly submitted
- any alternative offers requested or permitted (name of bidder, tender prices).

Records should be retained and be available for review and audit purposes.

Clarity on how bids are submitted is critical in minimising rejection of otherwise compliant proposals. The law and the regulations should set out clear provisions in this respect. For example, the number of copies, the sealing and marking of envelopes and in the case of electronic bidding, the security and confidentiality requirements should all be specified.

The bids should be kept secure and confidential prior to bid opening and until after contract award. Publication requirements notwithstanding (refer to sub-indicator 7(a)), the system should at all times take into account the legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid disclosing information that can be used by interested parties to distort competition in the procurement process. The legal framework should include definitions and provisions to unambiguously identify and protect specific sensitive information.

Assessment criteria

The legal framework provides for the following provisions:

- (a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.
- (b) Records of proceedings for bid openings are retained and available for review.
- (c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.
- (d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.
- (e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.

Sub-indicator 1(h) – Right to challenge and appeal

The purpose of this indicator is to assess whether the legal framework establishes: i) the right to challenge¹⁵ decisions or actions and to appeal; ii) the matters that are subject to review; iii) the time frame for such reviews; and iv) the different stages in the review process.

Confidence in a procurement system is a powerful incentive to competition. A fundamental part of this is the establishment of the right to challenge decisions or actions by initiating a review of procurement decisions and to appeal by an efficient and functionally independent process. Even though the first review is normally carried out by the procurement entity, there should be an administrative/judicial review body that is independent of the procuring entity. This means that this body has no direct interest in the procurement process, does not report to the procuring entity, and, ideally, is a separate agency or entity.

The legal framework should provide for the right of a participant in a procurement proceeding to challenge decisions or actions

¹⁵ The terms used in this document (“challenge/reviews” and “appeal mechanism”) are interchangeable with terms used in other international procurement instruments such as complaints or protests and review mechanisms or remedies, respectively.

by a procuring entity. This can be done by asking for a review if the participant believes he/she is entitled to claim that he/she has suffered or may suffer loss or injury because of the alleged noncompliance of a decision or action with the provisions of the law.

Applications for a review (challenge) should be submitted to the institution in charge¹⁶ within defined time periods. If the challenges relate to the terms of the solicitation, pre-qualification or pre-selection, they should be submitted prior to the deadline for presenting bids. Challenges relating to other decisions or actions should be submitted prior to the entry into force of the procurement contract, or within the standstill period following the notification of award, if applicable.

The institution in charge of the review should be required to take appropriate actions within a defined time frame (e.g. decide if the application shall be entertained or dismissed and if procurement proceedings shall be suspended; notify the applicant and other participants in the procurement proceedings; take and issue its decision).

The legal framework should provide for the right to appeal a decision following a first review to an independent body (appeals body) within specified timelines. This right should extend to cases in which the institution in charge of the review has failed to issue a decision. The appeals body should have the authority to order the suspension of procurement proceedings, dismiss an application where it decides that it is without merit or was not presented within the specified deadlines, and take and issue decisions appropriate in the circumstances. This should include the authority to confirm, overturn or revise a decision taken by the procuring entity or to prohibit the procuring entity from following a procedure that is not in compliance with the provisions of the law observing defined time frames. The legal framework should specify the range of available remedies in compliance with good international practice.¹⁷

Appeals to and decisions by the independent appeals body should be public by law and posted in easily accessible places, preferably on a central online platform within specified timelines. The publication of decisions allows interested parties to be better informed as to the consistency and fairness of the process. Publications should be in line with legislation protecting sensitive information.

This sub-indicator is closely linked to Indicator 13 (Efficiency of appeals mechanism).

Assessment criteria

The legal framework provides for the following:

- (a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.
- (b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.
- (c) Rules establish the matters that are subject to review.
- (d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.
- (e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.
- (f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).

¹⁶ In many countries, the procuring entity is in charge of responding to an application for a first review (challenge). In some countries, complaints may be sent directly to the independent appeals body.

¹⁷ For example, the UNCITRAL Model Law on Public Procurement (2011), Chapter VIII. Challenge proceedings, Article 9, describes the range of actions that should be at the disposal of an appeals body.

Sub-indicator 1(i) – Contract management

The purpose of this sub-indicator is to assess whether the legal framework establishes the following: i) functions and responsibilities for managing contracts; ii) methods to review, issue and publish contract amendments in a timely manner; iii) requirements for timely payment; and iv) dispute resolution procedures that provide for an efficient and fair process to resolve disputes during the performance of the contract.

To ensure complete and timely implementation of the contract, the following functions and responsibilities for managing contracts should be defined in the legal and regulatory framework:

- monitoring the timely delivery of goods, works and services, including consulting services (“products”)
- inspection, quality control, supervision of civil works and final acceptance of products;
- monitoring of contract performance clauses designed to ensure social or environmental standards, e.g. compliance with International Labour Organization core conventions, application of specific environmental management measures for construction works, etc.
- review, issuance and publication of contract amendments
- examination of invoices and timely processing of payments, including administration of guarantees
- handling of disputes/termination of contracts.

The legal framework should determine the conditions for contract amendments and extensions, to ensure economy and avoid the arbitrary limitation of competition. The legal framework should also define suppliers’ rights in case of late payment.

Disputes during the performance of a contract are a common occurrence. Naturally, disputes can be resolved through judicial proceedings. In some countries, however, litigation may take years to conclude, and the costs may be prohibitive. To avoid long delays in resolving disputes, it should be the policy of the country to accept alternative dispute resolution (ADR). Methods of ADR refer to any means of settling disputes outside the courtroom. Arbitration and mediation are two major forms of ADR.

A framework should be in place that provides for fair and timely resolution, including procedures to enforce the final outcome of a dispute resolution process. For example, there should be an Arbitration Law in the country and the law should be consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability. The country could accept as a matter of course international arbitration as appropriate. The following are some proposed examples providing for enforcement of the final outcome of an arbitration process: i) the country is a member of the New York Convention on enforcement of international arbitration awards; and ii) the country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.

Assessment criteria

The legal framework provides for the following:

- (a) Functions for undertaking contract management are defined and responsibilities are clearly assigned,
- (b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.
- (c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.
- (d) The final outcome of a dispute resolution process is enforceable.

Sub-indicator 1(j) – Electronic procurement (e-Procurement)

This sub-indicator assesses the extent to which the legal framework addresses, permits and/or mandates the use of

electronic methods and instruments for public procurement. The more sophisticated the use of electronic technologies, the more specific are the standards needed to ensure consistent application of the technology, provide for unrestricted and full access to the system, and ensure privacy and security of data and authentication. The use of electronic methods requires standardised formats, technical equipment and connection arrangements, and procedures to grant unrestricted and full access to the e-Procurement system.

An important part of using electronic methods in procurement is the requirement for governments to inform potential bidders which parts of the processes will be managed electronically (e.g. availability of procurement documents, communication, bid submission, contract awards, billing and payments, etc.). The legal framework also needs to clarify whether conventional paper-based procurement is still allowed, whether in parallel or as an alternative to the electronic procurement proceedings.

Assessment criteria

The legal framework meets the following conditions:

- (a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.
- (b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.
- (c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

Further analysis: MAPS Module e-Procurement

Sub-indicator 1(k) – Norms for safekeeping of records, documents and electronic data

The ability to look at implementation performance depends on the availability of information and records that track each procurement action. This information is also important for the functioning of both internal and external control systems, as it provides the basis for review.

A system for safekeeping of records and documents should cover the entire procurement process, including contract management, and, at a minimum, include either physical and/or electronic:

- public notices of procurement opportunities
- the procurement method, including justification
- a complete set of bidding/selection documents, including clarifications and any amendments
- bid/proposal opening records
- evaluation reports, including clarifications sought and provided during the evaluation process
- award decisions, including all elements on which the decision was based
- award notices (if applicable)
- formal challenges (requests for review and appeals) by bidders and outcomes
- final signed contract documents and amendments
- contract variations, modifications and changes
- certificates and reports of inspection, quality control and acceptance
- claims and dispute resolutions
- payments
- disbursement data (as required by the country's financial management system)
- any correspondence, meeting notes and minutes, including contract negotiations (if applicable).

There should be a document retention policy that is compatible with the statute of limitations in the country for investigat-

ing and prosecuting cases of fraud and corruption and with the audit cycles. There should also be established security protocols to protect records, either physical or electronic.

Assessment criteria

The legal framework provides for the following:

- (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.
- (b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.
- (c) There are established security protocols to protect records (physical and/or electronic).

Sub-indicator 1(l) – Public procurement principles in specialised legislation

Many countries have adopted specialised legislation governing procurement by entities in the utilities sector, such as water, energy, transport, postal services, etc., and/or regulating the selection and award of concession contracts and other forms of PPPs. This sub-indicator assesses whether public procurement principles (e.g. competitive procedures, transparency, fairness, value-for-money decisions) and related laws apply across the entire spectrum of public service delivery as appropriate.

It is important to understand the competition policies that apply to different sectors and what the specific conditions for conducting public procurement processes in these sectors are. Given the possibility that special or exclusive rights may exist governing the supply or operation of these entities, the market in which these entities operate may be restricted. The range of available procurement methods, the situation in which they can be used, the thresholds, advertising rules and time limits, transparency requirements, risk allocation, challenge and appeals mechanisms and so on, may be regulated in a manner specific to the sector.

Similar questions apply to the selection and contracting of concessions and/or other forms of PPPs. The assessor should describe the government's policy related to PPPs and evaluate to what extent public procurement principles and laws apply in the process of establishing partnerships with private firms. Alternative or supplementary legislation/regulation should be described. Responsibilities for developing policies and supporting the implementation of PPPs should be clearly assigned.

Assessment criteria

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

- (a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.
- (b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.
- (c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.

Further analysis: MAPS Module on Public Private Partnerships (PPP)

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. This indicator consists of four sub-indicators (a-d).

Sub-indicator 2(a) – Implementing regulations to define processes and procedures

This sub-indicator aims at verifying the existence, clarity, accessibility and comprehensiveness of regulations to the law that further detail and clarify its application. Regulations are an important aspect of a procurement system, as they provide the detail that explains and enables the application of the legal framework in a variety of applications. Regulations should be available to the public in a single accessible place.

Assessment criteria

- (a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.
- (b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.
- (c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.

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

Model documents of good quality create level playing fields, improve overall procurement standardisation, promote competition and increase confidence in the system. Potential suppliers are more willing to participate when they are familiar with the documents and their interpretation. Model documents should contain the basic required clauses that will be incorporated into contracts. This enables participants to evaluate the cost and risk of mandatory clauses when fulfilling a contract for the government. Model documents should also refer to the standstill period, if applicable, and address the right to challenge decisions or actions and to appeal. If model documents are not available, there should be, at a minimum, a set of standard and mandatory clauses and templates that will help in the formulation of the procurement documents.

Assessment criteria

- (a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.
- (b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.
- (c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.

Sub-indicator 2(c) – Standard contract conditions

This sub-indicator focuses on standard contract conditions for public sector contracts covering goods, works and services, including consulting services that set forth the basic provisions that will be included in a contract with the government. Standard contract conditions, also often referred to as general contract conditions (GCC), are based on the laws in the country and generally reflect the commercial codes that deal with contracts between parties. Contract conditions often influence pricing. It is thus important that participants in procurement proceedings know the conditions under which they will perform a contract before they submit a price. The standard contract conditions provide information that enables participants to understand the allocation of risk between parties to a contract as well as other obligations that the signatories to the contract will incur.

It is important that the government establish standard contract conditions that are fair and balanced and reflect laws that impact contracts and their performance. Standard contract conditions should also cover some practical aspects of contract implementation, e.g. general conditions on inspection, quality control and final acceptance of products, and general procedures relating to invoicing and payment. Standard contract conditions should also include provisions on dispute resolution. Alternative Dispute Resolution (ADR), specifically through arbitration, should conform to international standard wording and be used as appropriate. Contract templates can provide an additional source of predictability for participants.

Standard contract conditions need to be mandatory in their use and not subject to negotiations on terms and conditions of contract.

Assessment criteria

- (a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.
- (b) The content of the standard contract conditions is generally consistent with internationally accepted practice.
- (c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.

Sub-indicator 2(d) – User’s guide or manual for procuring entities

This sub-indicator covers the existence of a user’s guide or manual for procuring entities. This is an important implementation tool that can help provide staff with information that incorporates the law, policy and procedures and helps turn policy into practice. Such tools are more important as a system becomes more decentralised. Creating a manual or user’s guide is often a function of a normative/regulatory body and can help create a consistency of application within the government procurement system. Although not a substitute for training, a manual can contribute to building and maintaining capacity and provides an easy reference for users. Guidance should be specific and comprehensive.

Assessment criteria

- (a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.
- (b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.

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. The indicator is broken down into two sub-indicators (a-b), which are individually assessed.

Sub-indicator 3(a) – Sustainable Public Procurement (SPP)

The 2030 Agenda for Sustainable Development promotes public procurement practices that are sustainable in accordance with national policies and priorities (Sustainable Development Goal 12.7).¹⁸ Following up on more general information gathered in the analysis of the country context (Section II), this sub-indicator assesses whether:

- i) the country has adopted a policy and an implementation plan to implement Sustainable Public Procurement (SPP)¹⁹ in support of national policy objectives
- ii) the legal and regulatory framework includes provisions on the inclusion of sustainability criteria in public procurement
- iii) those provisions require a well-balanced application of sustainability criteria to ensure value for money.

To be effective, SPP should be incorporated in programmes that are part of the country's sustainable development strategy, and their objectives should be consistent with the objectives of public procurement, such as economy, efficiency and transparency, as articulated in Pillar I. An in-depth assessment determining the status quo as well as opportunities for SPP should be conducted to inform the strategic planning process for SPP. The strategic plan should include objectives, indicators and targets in support of national policy objectives. Implementation of SPP should take into account the capacity and training/development needs of the procurement workforce, the development and application of new tools and techniques, prioritisation of measures, impact assessment methodologies to measure the effectiveness of SPP, and the provision of guidance material. It is also necessary to decide which institution is best suited to manage and oversee the nationwide deployment of SPP and/or whether new institutions need to be established (e.g. certification institutions or product-testing facilities).

Assessment criteria

- (a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.
- (b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.
- (c) The legal and regulatory frameworks allow for sustainability (i.e. economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.
- (d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.

18 United Nations General Assembly: "Transforming our World: The 2030 Agenda for Sustainable Development", Resolution 70/1 adopted by the General Assembly on 25 September 2015. A/RES/70/1. Goal 12.7: "Promote public procurement practices that are sustainable, in accordance with national policies and priorities." <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

19 Sustainable Public Procurement (SPP) promotes the integration of the three pillars of sustainable development: economic development, social development and environmental protection. Goals of SPP typically focus on reducing demand for resources and minimising any negative impact of goods, works or services across their life cycle. They also aim to ensure fair terms of contracts, including ethical, human rights and employment standards, and to promote diversity and equality throughout the supply chain, for example by providing opportunities for small and medium-sized enterprises or by supporting training and skill development. SPP can also include methods that support innovation.

Further analysis: MAPS Module on Sustainable Public Procurement (SPP)

Sub-indicator 3(b) – Obligations deriving from international agreements

Membership in international and/or regional associations or binding international/regional agreements may result in legal obligations relating to public procurement and may shape a country's procurement system. Based on the general information gathered in Section II on the country context, this indicator assesses i) the existence of procurement-related provisions in binding international agreements and ii) the consistent reflection of those obligations in national procurement laws and regulations.

A recognition of the international context is necessary for understanding the presence of certain provisions in the national law and, in some cases, might explain a lack of compliance with certain parameters laid out in this methodology. As noted in Section I, "User's Guide", procurement systems are based on different models. The focus in assessing this indicator is thus to provide clarity on international obligations that impact public procurement in a country and to determine whether relevant provisions have been consistently adopted in the national legal and policy framework for procurement.

Assessment criteria

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

- (a) clearly established
- (b) consistently adopted in laws and regulations and reflected in procurement policies.

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.

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.

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. Two sub-indicators (a-b) are assessed under Indicator 4, given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

Sub-indicator 4(a) – Procurement planning and the budget cycle

Formulation of annual or multi-annual budgets is based on the outcomes or outputs that the government and its agencies expect to achieve in a given period. Overall government or sector strategies are the basis for this exercise. These determine the multi-year planning, the associated operating plans for each fiscal period and the procurement of goods, works and services necessary to implement the plans. Proper preparation of budgets needs reliable cost data and timetables for planned procurement. Multi-year budgeting and financing should be encouraged, since this offers opportunities for optimising the procurement cycle.

Procurement plans need to be periodically updated, as the budget may be updated and revised to reflect changes in the timing of contracts. Empirical data, such as the actual cost of goods, works and services, provide excellent information for predicting their costs in future budget years. Understanding the timing of major contracts can also help predict cash-flow needs within the government, help make timely payments, and reduce the extra costs associated with delaying completion of contracts and not having adequate funds to finance full performance.

A feedback mechanism should be set up to ensure that the budgetary and financial management systems are providing timely information on contracts covering major budget expenditures, to support the overall financial management system.

Assessment criteria

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

- (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.
- (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).
- (c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

Sub-indicator 4(b) – Financial procedures and the procurement cycle

This sub-indicator assesses whether budget laws and financial procedures adequately support the procurement process, i.e. the preparation and timely solicitation and award of contracts, contract execution and timely payments. The systems for procurement, budget and financial management should interact closely: once procurement decisions are made, corresponding actions should be initiated on the budget and financial side. On the other hand, there should be safeguards in the system precluding initiation of procurement actions unless funds have been allocated to the procurement in question.

Assessment criteria

The legal and regulatory framework, financial procedures and systems should ensure that:

- (a) No solicitation of tenders/proposals takes place without certification of the availability of funds.
- (b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders.*

* 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 (Public Financial Management) systems.²⁰

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 set-up chosen by a country, one institution may be in charge of all normative and regulatory functions. In other contexts, key functions may have been assigned to several agencies, e.g. one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-co-ordinated joint effort. Four sub-indicators (a-d) are to be assessed.

Sub-indicator 5(a) – Status and legal basis of the normative/regulatory function

The normative/regulatory function and its responsibilities are created by the legal and regulatory framework. This is to ensure that the institution entrusted with the functional responsibilities has an appropriate level of authority, which enables it to function effectively. Alternatively, the legal and regulatory framework may assign the key functions described in sub-indicator 5(b) to different agencies on a clearly defined basis.

Assessment criteria

- (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.

²⁰ In case comprehensive data is not available, this quantitative indicator should be applied when reviewing a sample of procurement cases. Refer to sub-indicator 9(c).

Sub-indicator 5(b) – Responsibilities of the normative/regulatory function

The normative/regulatory institution or the institutions entrusted with the normative/ regulatory tasks should have a defined set of responsibilities that include but are not limited to the following:

Assessment criteria

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

- (a) providing advice to procuring entities
- (b) drafting procurement policies
- (c) proposing changes/drafting amendments to the legal and regulatory framework
- (d) monitoring public procurement
- (e) providing procurement information
- (f) managing statistical databases
- (g) preparing reports on procurement to other parts of government
- (h) developing and supporting implementation of initiatives for improvements of the public procurement system
- (i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement
- (j) supporting the professionalisation of the procurement function (e.g. development of role descriptions, competency profiles and accreditation and certification schemes for the profession)
- (k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate.

Sub-indicator 5(c) – Organisation, funding, staffing, and level of independence and authority

The normative/regulatory function needs to have a high level and authoritative standing in government to be effective, including a degree of independence to enable it to carry out its responsibilities without interference. Adequate funding is necessary to ensure proper staffing and resources to keep the services at the level of quality required.

The head of the normative/regulatory function needs to command sufficient authority within the governance structure to enable the institution to exercise its responsibilities.

Assessment criteria

- (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.
- (b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.
- (c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

Sub-indicator 5(d) – Avoiding conflict of interest

The normative/regulatory function should be free from possible conflicts of interest. Even the appearance of a conflict of interest may undermine confidence in the system and will need to be resolved. The function's responsibilities should therefore provide for separation of duties and clarity, i.e. be structured so as to avoid conflicts of interest. Some functions are not compatible. In particular, individuals or a group of individuals should not be in a position both to perpetrate and to conceal errors or fraud in the normal course of their duties. Individuals should not be directly involved in procurement operations (e.g. as members of evaluation committees), and at the same time be in charge of monitoring/auditing procurement practices or acting on behalf of an appeals body (refer to sub-indicator 12(b)).

This sub-indicator is linked to sub-indicator 14(a).

Assessment criteria

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

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

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

Source: Survey.

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

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

Sub-indicator 6 (a) – Definition, responsibilities and formal powers of procuring entities

The legal and regulatory framework should clarify which institutions (or set of institutions) are legally defined as procuring entities. In a centralised system, this may be a centralised procurement body and/or national-level ministries, public bodies and state-owned enterprises or utilities with special or exclusive rights granted by the state. In a decentralised system, procuring entities may cut across all levels of government (e.g. provincial level ministries and public bodies, local communities, etc.). Some countries have established hybrid systems.

The legal and regulatory framework should clearly define the responsibilities of procuring entities. Responsibilities typi-

cally range from procurement planning to managing all stages of the procurement process in accordance with the law. Responsibilities should also include the requirement to establish a designated, specialised procurement function with the necessary management structure, capacity and capability to undertake its duties and responsibilities efficiently and effectively and to assess the results of procurement processes.

There should be provisions in the legal and regulatory framework for delegating decision-making authority (e.g. awarding and executing contracts; acceptance of contractual obligations and initiating payments). Delegation of authority to procuring entities and accordingly to procurement staff and other government officials is a key to a well-functioning system, especially when procurement is decentralised. Without delegation, the system tends to function inefficiently, which can lead to an excessive concentration of decision making under a few individuals without the training or knowledge to make procurement decisions. Decision-making authority should be delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. Procurement officers should be immune from political interference and should act as the lead in procurement issues.

Assessment criteria

The legal framework provides for the following:

- (a) Procuring entities are clearly defined.
- (b) Responsibilities and competencies of procuring entities are clearly defined.
- (c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*
- (d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.
- (e) Accountability for decisions is precisely defined.

*** 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.

Sub-indicator 6 (b) – Centralised procurement body

Establishing a centralised procurement body (central procuring entity) may enhance the efficiency and effectiveness of a decentralised procurement system. A centralised procurement body might be in charge of consolidating the procurement needs of several public entities; soliciting and concluding framework agreements from which all public entities could call upon according to their needs (e.g. based on electronic catalogues); managing complex procurement, or procurement requiring specialised legal or technical expertise, etc.

If a country establishes a centralised procurement body, the legal and regulatory framework should clearly define the body's responsibilities, formal powers and accountabilities. Processes should be clearly described to ensure an efficient workflow and appropriate communication with the "client" institution (public entity) responsible for service delivery.

In small countries or in countries emerging from conflict situations, procurement capacity is stretched. Here, it may be best to have a centralised procurement body that is responsible for all government procurement, capable of assuring consistency, standardisation and professionalism of the procurement function.

Assessment criteria

- (a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.
- (b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:
 - Legal status, funding, responsibilities and decision-making powers are clearly defined.
 - Accountability for decisions is precisely defined.
 - The body and the head of the body have a high-level and authoritative standing in government.
- (c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.

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.

The indicator captures the availability, accessibility, integration and reliability of public procurement information systems. Digital technologies, such as online portals and more comprehensive e-Procurement systems, have the potential to significantly increase the efficiency, effectiveness and transparency of public procurement. They support the creation of a state-of-the-art public procurement system, strengthen the accountability framework, and establish the technical foundation for performance measurement. The indicator also assesses the extent to which the system works in practice, by determining the share of public procurement information published and by measuring the uptake of e-Procurement and the availability of statistical information.

There are three sub-indicators (a-c) to be assessed.

Sub-indicator 7(a) – Publication of public procurement information supported by information technology

The objective of this sub-indicator is to determine:

- i)* the existence and capacity of the procurement information system in the country
- ii)* the accessibility of the information system
- iii)* the coverage of the information system
- iv)* whether the system provides one-stop-service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes.

Public access to procurement information is essential to transparency and creates a basis for social audit by interested stakeholders. Public information should be easy to find, comprehensive and user friendly, providing information of relevance. The assessor should be able to verify easy access and the content of information made available to the public.

In particular, the system should provide for the publication of annual or multi-annual procurement plans, information related to specific procurement such as advertisements or notices of procurement opportunities, procurement method, contract awards including amendments, payments and appeals decisions, linkages to rules and regulations and other information that is relevant to promote competition and transparency (e.g. the law on access to information). For practical purposes, the collection and dissemination of information should focus on procurement above a set value that reflects established thresholds for use of competitive procedures.

The concept of open contracting requires that the government provide an adequate and timely degree of transparency in each phase of the procurement process to stakeholders. This includes specific procurements and the performance of the entire public procurement system, including visibility of the flow of public funds. To support this vision of open contracting in the procurement system, the information system should be extended to include the full set of bidding documents, evaluation reports (or summaries thereof), full contract documents including technical specifications as well as implementation details, in accordance with the legal and regulatory framework, including legislation protecting specific sensitive information (refer to sub-indicator 1(g)).

Information should be consolidated in one place. A centralised online portal should be created for this purpose if the technology is available in the country. Commitment, backed by requirements in the legal/regulatory framework, should ensure that procuring entities duly post the information required on a timely basis. To facilitate searches, information should be published in an open and structured, machine-readable format using unique identifiers and classifications (open data format).

Assessment criteria

The country has a system that meets the following requirements:

- (a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.
- (b) There is an integrated information system (centralised online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.
- (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.
- (d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).
- (e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).*
- (f) Responsibility for the management and operation of the system is clearly defined.

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

- procurement plans published (in % of total number of required procurement plans)²¹
- key procurement information published along the procurement cycle (in % of total number of contracts)²²:
- invitation to bid (in % of total number of contracts)
- contract awards (purpose, supplier, value, variations/amendments)
- details related to contract implementation (milestones, completion and payment)
- annual procurement statistics
- appeals decisions posted within the time frames specified in the law (% of the number of decisions).

Source: Centralised online portal.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) assessment criterion (e):**

- Share of procurement information and data published in open data formats (% of information and published data).

Source: Centralised online portal.

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

This sub-indicator assesses:

- i)* the extent to which e-Procurement is currently used in the country's public sector
- ii)* the capacity of government officials to manage and use e-Procurement systems, and/or
- iii)* the existence of a country strategy to implement e-Procurement.

As a starting point, the assessor should evaluate to what extent and in which form e-Procurement has been implemented in the country. The narrative report should summarise the findings.

e-Procurement is usually implemented gradually and can take different forms. Countries typically start by establishing centralised online portals, used to publish general information related to public procurement (laws, regulations, manuals, templates, etc.). These portals often develop into more refined applications, providing for the publication of procurement plans, bidding opportunities, contract awards, decisions on procurement challenges and appeals, training courses, etc., and can enable sharing reusable open data on public procurement.

More advanced applications include supplier registries and transaction-based e-Procurement systems, which electronically support the entire procurement and contract implementation process (e.g. e-Tendering, e-Catalogues, e-Reverse Auctions, e-Contract Management). These systems deliver a wealth of data necessary for performance measurement and procurement statistics.

Applications can also provide the full procure-to-pay cycle, enabling the integration of the e-Procurement system with financial systems. Other systems as tax, information management or business intelligence systems can also be integrated with e-Procurement systems.

The sub-indicator also assesses whether government officials are adequately skilled to plan, develop and manage e-Procurement systems and reliably and efficiently use them in practice. Suppliers need to be enabled and to have incentives to participate in e-Procurement solutions. In low-technology environments, additional efforts on the part of the government may be necessary to ensure that all companies (including micro, small and medium-sized enterprises) have equal access to a public procurement market increasingly dominated by digital technology. For example, creating decentralised entrepreneurial centres could be considered. These could provide free Internet access, training and support in using the

²¹ PEFA PI-24.3 (2).

²² PEFA PI-24.3 (3, 4, 5, 6).

e-Procurement system, significantly improving companies' chances of doing business with public entities.

If e-Procurement has not yet been implemented, it should be assessed whether the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

Assessment criteria²³

- (a) e-Procurement is widely used or progressively implemented in the country at all levels of government.*
- (b) Government officials have the capacity to plan, develop and manage e-Procurement systems.
- (c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.
- (d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*
- (e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.

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

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

Source: e-Procurement system.

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

- bids submitted online (in %)
- bids submitted online by micro, small and medium-sized enterprises (in %)

Source: e-Procurement system.

Further analysis: MAPS Module on e-Procurement

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

Statistical information on procurement is essential to evaluate the policies and the operation of the system. Statistics also provide a means for monitoring performance of the system and compliance with the legal and regulatory framework. Statistical information can also be a tool for procurement planning and market analysis. To ensure comprehensiveness and efficiency, the system should be based on data available in e-Procurement or other information technology systems.

Assessment criteria

- (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.
- (b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.
- (c) The reliability of the information is high (verified by audits).
- (d) Analysis of information is routinely carried out, published and fed back into the system. *

²³ The application of a centralised online portal is assessed under indicators 1(a), 1(h), 7(a), 7(b) and 13(c).

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

- total number and value of contracts²⁴
- 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.²⁵

Source: Normative/regulatory function/e-Procurement system.

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.

There are three sub-indicators (a-c) to be assessed.

Sub-indicator 8(a) – Training, advice and assistance

The purpose of this sub-indicator is to verify existence of permanent and relevant training programmes for new and existing staff in government procurement. These programmes are essential for maintaining the supply of qualified procurement staff to procuring entities. Another objective is to assess the existence and quality of advisory services on procurement matters for public entities, potential suppliers and the general public.

The evaluator should look at the curricula of the existing programmes and judge their relevance, nature, scope and sustainability. A well-functioning system should be:

- i)* based on a “skills gap inventory” to match the needs of the system
- ii)* be sufficient in terms of content and frequency
- iii)* provide for evaluation of the training programme and monitoring of progress in addressing capacity issues.

The assessment should include verification of advisory services or help desks that offer advice to public or private sector parties on application and interpretation of policy and rules.

The training strategy should be closely linked to and integrated with other measures intended to develop the capacity of other key actors involved in public procurement. In particular, refer to the following sub-indicators: 8(b): Professionalisation of the procurement function; 10(a): Programmes to build capacity in the private sector; 11(a): Programmes to build the capacity of civil society; and 14(d): Integrity training programmes for the procurement workforce.

24 PEFA PI-24.1.

25 PEFA I-24.2.

Assessment criteria

There are systems in place that provide for:

- (a) substantive permanent training programmes of suitable quality and content for the needs of the system.
- (b) routine evaluation and periodic adjustment of training programmes based on feedback and need.
- (c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.
- (d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.

Sub-indicator 8(b) – Recognition of procurement as a profession

Public procurement is often performed by civil servants of varying educational and professional backgrounds. Ideally, procurement officers are considered specialised professionals, rather than officials with a purely administrative function. The purpose of this sub-indicator is to determine whether procurement is recognised as a profession in the country's public service. This includes designating specific functions for procurement positions at various professional and management levels. Job descriptions should be in place for these positions and the qualifications and competencies specified. Remuneration and career progression should reflect the particular professional status, and appointments and promotions should be competitive and based on qualifications and professional certification. Ongoing professional development, policies and programmes for staff development and training should be carried out. Staff performance should be evaluated on a regular and consistent basis.

Assessment criteria

The country's public service recognises procurement as a profession:

- (a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.
- (b) Appointments and promotion are competitive and based on qualifications and professional certification.
- (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

Further analysis: MAPS Module on Professionalisation

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

The evaluation of the effectiveness of the public procurement system, from individual procurements to the system as a whole, can be a major driver of performance improvements. The results of procurement processes should periodically and consistently be assessed to measure the performance, effectiveness and savings of the procurement system. While procuring entities themselves should be at the forefront of performance measurement and continuous improvement programmes at the entity level, the procurement normative/regulatory institution should support these efforts as well. This institution can harmonise, monitor and evaluate the performance of the procurement system as a whole.

Performance management frameworks should be developed that focus on both quantitative and qualitative aspects. The quantitative indicators included in MAPS provide a good starting point for a performance measurement system that addresses both levels and can evolve over time. Additional and more specific impact assessment methodologies may need

to be developed depending on the country's development objectives.

The analysis of data and the planning of improvements require specific competencies. A strategic plan (or action plan) should be developed to structure reform initiatives. A results framework should supplement it to monitor the implementation of the planned reforms. A results framework typically includes goals, actions, indicators with baselines and targets, and timelines for reform. Performance targets should be presented in a format that is clear about what is being measured and how it is being measured (method of calculation and data sources). Responsibilities and necessary resources need to be defined.

Assessment criteria

- (a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.
- (b) The information is used to support strategic policy making on procurement.
- (c) Strategic plans, including results frameworks, are in place and used to improve the system.
- (d) Responsibilities are clearly defined.

Pillar III. Public Procurement Operations and Market Practices

This Pillar looks at the operational efficiency, transparency and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (procuring entity). In addition, it looks at the market to determine 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.

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 value for money, improved service delivery, trust in government and achievement of horizontal policy objectives.

The assessment of Indicator 9 requires the selection and review of a sample of actual procurement transactions (files). Sampling methods and size determine the representativeness of the assessment results (refer to Section I – User’s Guide, paragraph 28). If the sample is small but strategically targeted, the assessment can still provide a useful snapshot or illustration of how procurement operates and performs on the ground. In any case, the assessment findings need to be analysed and interpreted with caution, to ensure credibility and fairness of the process and to achieve a better understanding of the country’s procurement system as a whole.

For a more comprehensive assessment of procurement practices targeted specifically at a procuring entity level, refer to the MAPS Module for Entity Level Assessments.

Sub-indicator 9(a) – Planning

During the planning stage of procurement, the basic conditions governing the entire procurement process are established. It is at the onset of the procurement process that the influence on achieving defined objectives is highest. This step of the procurement process is usually performed in close collaboration with the internal client.

Sub-indicator 9(a) assesses whether a thorough needs analysis has been conducted, followed by market research, to inform the development of optimal procurement strategies (in particular for major procurement). It evaluates whether the desired results have been defined and if this entailed economic and/or environmental or social impacts aligned with national policy objectives. It should be assessed whether requirements and/or desired outcomes of the individual procurement have been clearly described, either in tight product/service specifications or through an output/outcome-based definition of requirements (functional specifications).²⁶

Assessment criteria

- (a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.
- (b) The requirements and desired outcomes of contracts are clearly defined.
- (c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.

²⁶ In comparison, sub-indicator 4(a) focuses on the preparation of annual or multi-annual procurement plans to support budget planning and cash flow of procurement operations. Once the budget has been formulated, during the planning stage of an individual procurement transaction, the basic conditions governing the entire procurement process need to be established.

Sub-indicator 9(b) – Selection and contracting

This sub-indicator focuses on the objective of achieving value for money through appropriate determination of procurement methods and approaches, competition, transparency and fairness in selecting suppliers, including the quality of procurement documents and process efficiency.

The sub-indicator assesses the extent to which procurement has followed a competitive procedure (or not). It provides specific information on the use of procurement methods authorised in the law. The sub-indicator also assesses whether procedures for bid submission, receipt and opening have resulted in an appropriate level of competition.

Moreover, the sub-indicator assesses whether appropriate and fair techniques have been applied in the bid evaluation and award stage to determine best value for money, and whether the entire selection process has been carried out effectively, efficiently and in a transparent way.

Assessment criteria

- (a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.
- (b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.
- (c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.
- (d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.
- (e) Throughout the bid evaluation and award process, confidentiality is ensured.
- (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.
- (g) Contract awards are announced as prescribed.
- (h) Contract clauses include sustainability considerations, where appropriate.
- (i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.
- (j) The selection and award process is carried out effectively, efficiently and in a transparent way. *

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

- average time to procure goods, works and services
- number of days between advertisement/solicitation and contract signature (for each procurement method used)
- average number (and %) of bids that are responsive (for each procurement method used)
- share of processes that have been conducted in full compliance with publication requirements (in %)
- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

Source for all: Sample of procurement cases.

Sub-indicator 9(c) – Contract management in practice

This sub-indicator assesses the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality, cost and other conditions stated in the contract, for the efficient and effective delivery of public services. The sub-indicator assesses cost and time overruns, including for payments to be made to suppliers. The sub-indicator also reviews whether opportunities for the improvement of procurement practices are analysed based on both metrics and stakeholder feedback.

Assessment criteria

- (a) Contracts are implemented in a timely manner.*
- (b) Inspection, quality control, supervision of work and final acceptance of products is carried out.*
- (c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.*
- (d) Contract amendments are reviewed, issued and published in a timely manner.*
- (e) Procurement statistics are available and a system is in place to measure and improve procurement practices.
- (f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised.*
- (g) The records are complete and accurate, and easily accessible in a single file.*

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

- share of contracts with complete and accurate records and databases (in %)²⁷

Source: Sample of procurement cases

* Recommended quantitative indicators to substantiate assessment of sub-indicator 9(c) linked to different assessment criteria above as follows:

- For assessment criterion (a): time overruns (in %; and average delay in days)
- For assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)
- For assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).
- For assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)
- For assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation)²⁸

Source for all: Sample of procurement cases.

Further analysis: MAPS Module on Entity Level Assessments

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

27 PEFA Indicator PI-24.1

28 Preferably split into the different process phases, to cover the concept of open contracting more specifically.

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. There are three sub-indicators (a-c) to be assessed.

Sub-indicator 10(a) – Dialogue and partnerships between public and private sector

Public procurement depends on the partnership that should exist between the government and the private sector. This partnership creates the public procurement marketplace in which the government is the buyer and the private sector is the supplier of the needed goods, works or services. Dialogue between the government and the private sector is thus imperative, and the voice of the private sector needs to be heard with regard to national procurement objectives, changes to the legal and institutional framework and practices by the government that may undermine the competitive effectiveness of the private sector. This sub-indicator reviews whether there are forums for dialogue between the government and the private sector.

Information and training programmes on public procurement should be regularly offered for the private sector, either by the government or in co-operation with private institutions. These programmes should include approaches tailored to the needs of small businesses, to support supplier diversity, and should include a module on ethics and integrity in public procurement.

Sub-indicator 10(a) is closely linked to Indicator 11 (Disclosure of information and civil society engagement).

Assessment criteria

- (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.*
- (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.

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

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

Source: Survey.

Sub-indicator 10(b) – Private sector's organisation and access to the public procurement market

This sub-indicator looks at the capacity within the private sector to respond to public procurement in the country. An important aspect to assess is the organisational capacity of the small and medium-sized enterprises (SMEs)²⁹ and the access they have to information and other services (including information technology) to promote their participation. A well-organised and competitive private sector should result in keen competition, better prices and an equitable distribution of business. Competition for large contracts should not be concentrated in a relatively small number of firms.

There should be no major systemic constraints (e.g. inadequate access to financing, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market.

Participation in competition for public contracts depends on many conditions, including some that are controlled by or

29 In some countries, the scope includes micro enterprises (MSMEs).

within the control of the government. Examples for measures that can improve access by the private sector to the government marketplace are:

- i) access to financing
- ii) procurement methods and procedures that are proportionate to the risk and value in question
- iii) reasonable contracting provisions that are seen to fairly distribute risks associated with performance of contracts
- iv) fair payment provisions that help offset the cost of doing business with the government
- v) effective appeals mechanism and dispute resolution
- vi) user-friendly and easily accessible e-Procurement systems.

Alternatively, when the conditions are difficult for the private sector, the degree of competition will suffer. A survey of private sector participants should be carried out to help assess this. The narrative of the assessment should describe the main constraints.

Assessment criteria

- (a) The private sector is competitive, well-organised, willing and able to participate in the competition for public procurement contracts.*
- (b) There are no major systemic constraints inhibiting private sector access to the public procurement market.

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

- number of registered suppliers as a share of total number of suppliers in the country (in %)
- share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)
- total number and value of contracts awarded to domestic/foreign firms (and in % of total)

Source: e-Procurement system/Supplier Database.

* 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).³⁰

Source: Survey.

Sub-indicator 10(c) – Key sectors and sector strategies

The public procurement market is usually very broad, covering numerous sectors with different needs and interests. Performing a sector market analysis helps to determine sector-related risks (in terms of expenditure, competition, environmental impact, socio-economic risks, etc.) and the government's scope to influence specific market segments.

Based on the government's priority spending areas, key sectors associated with the procurement of goods, works, and services should be identified. This information can be utilised to conduct targeted assessments of relevant sector markets and to secure collaboration with sector market participants in a specific and meaningful way, e.g. to strengthen integrity, sustainability and/or innovation in public procurement.

³⁰ Survey on appropriateness of conditions should cover: access to credit, procurement methods and procedures, contracting provisions, fair payment provisions, and effective appeals mechanisms and dispute resolution as described above.

Assessment criteria

- (a) Key sectors associated with the public procurement market are identified by the government.
- (b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.

Further analysis: MAPS Module on Sector Market Analysis

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

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 are three sub-indicators to be assessed (a-c).

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

This indicator assesses the following: i) whether a transparent and consultative process is followed when changes are formulated to the public procurement system, ii) whether programmes are in place to build the capacity of civil society organisations to support participatory public procurement, and iii) whether effective feedback and redress mechanisms are in place for matters related to public procurement.

Assessment criteria

- (a) A transparent and consultative process is followed when formulating changes to the public procurement system.
- (b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.
- (c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.

Sub-indicator 11(b) – Adequate and timely access to information by the public

The right of the public to access information has been fully integrated in the MAPS indicator system. The following aspects have been highlighted in the sub-indicators referenced below:

- The laws, regulations, and policies governing public procurement are published and easily accessible to the public at no cost (sub-indicator 1(a));
- All stakeholders have adequate and timely access to information in each phase of the public procurement process related to specific procurements (in accordance with legal provisions protecting specific sensitive information) and access to other information that is relevant to promote competition and transparency (refer to sub-indicator 7(a));
- Free access to this information is preferably provided through a centralised online portal and open data standards (sub-indicator 7(a)).

The assessors should revisit the indicators referenced above to conclude whether the separately assessed, multifaceted requirements, in combination with identified actual procurement practices in the country, result in a conclusive and coherent picture in terms of adequate disclosure. The information disclosed should promote a meaningful understanding of the matter as a precondition for effective participation. This sub-indicator assesses whether overall, the amount and nature of transparency and available information supports the integrity of public procurement, including the visibility of the flow of public funds.

Assessment criteria

- (a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.

Sub-indicator 11(c) – Direct engagement of civil society

This sub-indicator assesses the extent to which i) the laws, regulations, and policies enable the participation of citizens in terms of consultation, observation, and monitoring and ii) whether the government promotes and creates opportunities for public consultation and monitoring of public contracting.

The legal and regulatory framework might establish the obligation or an opportunity for the government to consult the public in the planning process, e.g. prior to large-scale or environmentally or socially sensitive procurements. In some countries, citizens are, under clearly specified conditions and subject to signing a statement of confidentiality, permitted or encouraged to act as observers in procurement proceedings. Citizens could also be permitted to be officially involved in the monitoring of performance and contract completion, for example through the application of innovative techniques such as geotagging or in the context of social audits. The assessor should describe in detail the rights and conditions stipulated in the law.

Assessors should take into account the evidence provided through the review of procurement practices (Indicator 9) when evaluating assessment criteria (b) below.

Assessment criteria

- (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).
- (b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.

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. This indicator has four sub-indicators (a-d) to be assessed.

Sub-indicator 12(a) – Legal framework, organisation and procedures of the control system

This sub-indicator assesses i) whether the country's laws and regulations provide for a comprehensive control framework, ii) whether the institutions, policies and procedures as defined in the law are in place and operational, and iii) whether the existing control framework adequately covers public procurement operations.

National legislation establishes which agencies are responsible for oversight of the procurement function. Even though there is no universal model, it is important that the basic principles of oversight and control exist in the legal and regulatory framework of the country and that they are applied globally. This sub-indicator looks at the institutional set-up of the control framework to assess the existence of a functioning control framework for public procurement. The following are key elements of a functioning control framework:

- i)* There should be provisions to establish internal control and management procedures that focus on checks and balances for processing procurement transactions, on payment controls and on expenditure commitment controls. Expenditure commitment controls ensure that the procuring entity's payment obligations, arising from contracts, remain within the limits of budget allocations.³¹
- ii)* Regular and adequate feedback to management on the adequacy and effectiveness of the internal control systems is provided through an internal audit function (or internal audit institution). Among other things, this function scrutinises the reliability and integrity of financial and operational information, the effectiveness and efficiency of operations and programmes, and compliance with laws, regulations and contracts.³²
- iii)* A high-quality external audit is a required for ensuring accountability and creating transparency in the use of public funds. The Supreme Audit Institution (SAI) should be independent from the executive branch, and its mandate should enable the SAI to carry out a full range of audit activities, specifically financial, compliance and performance audits. Adherence to international auditing standards should ensure a focus on significant and systemic PFM issues in reports as well as, among other tasks, providing an opinion on the functioning of internal control and procurement systems.³³
- iv)* Internal audit and internal control systems assist external auditors and enable performance audit techniques to be used that look at the effectiveness and application of internal control procedures, instead of looking at individual procurement actions.
- v)* The legislature (or other body responsible for public finance governance) should review and act on the findings of the SAI.³⁴

The assessor should verify that the institutions, policies and procedures as defined in the law are in place and operational. The assessment should determine whether the existing controls framework pays sufficient attention to public procurement, e.g. by addressing specialised procurement audits.

31 PEFA covers internal controls on nonsalary expenditure in PI-25.

32 Refer to PEFA PI-26.

33 Refer to PEFA PI-8 and PI-30.

34 Refer to PEFA PI-31.

Assessment criteria

The system in the country provides for:

- (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies
- (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
- (c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation
- (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
- (e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)
- (f) clear mechanisms to ensure that there is follow-up on the respective findings.

Sub-indicator 12(b) – Co-ordination of controls and audits of public procurement

This sub-indicator assesses whether internal controls, internal audits and external audits are well defined, co-ordinated, sufficiently resourced and integrated to ensure the consistent application of procurement laws, regulations and policies and the monitoring of performance of the public procurement system, and that they are conducted with sufficient frequency.

Internal control routines, procedures and standards should be clearly defined (ideally in an internal control manual) and complied with. There should also be written standards for the internal audit unit (or function), to perform both compliance and performance audits related to procurement and to convey issues to management, depending on the urgency of the matter. A regular periodic reporting to management should take place throughout the year to provide timely information and enable management action.

Sufficient information needs to be retained to allow auditors to verify that the written internal control procedures are adhered to. Internal and external audit plans should be co-ordinated, at least annually, to ensure adequate oversight and a reduction of duplication. Written procedures and standards (e.g. a manual) for conducting procurement audits (both on compliance and on performance) should be formulated to ensure that internal and external audits are harmonised and mutually reinforcing. Audits should be carried out at least annually.

This sub-indicator also assesses the existence of clear and reliable reporting lines to relevant oversight bodies. This includes the reporting of credible suspicions of breaches of laws and regulations to the competent authorities, without fear of reprisals. Imprecise or lax controls and inadequate reporting impact the enforcement of the laws and regulations and create ample risk for fraud and corruption.

Assessment criteria

- (a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.
- (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.
- (c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*
- (d) Clear and reliable reporting lines to relevant oversight bodies exist.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) assessment criterion (c):**

- number of specialised procurement audits carried out compared to total number of audits (in %).
- share of procurement performance audits carried out (in % of total number of procurement audits).

Source: Ministry of Finance/Supreme Audit Institution.

Sub-indicator 12(c) – Enforcement and follow-up on findings and recommendations

The purpose of this indicator is to review the extent to which internal and external audit recommendations are implemented within a reasonable time. This may be expressed as the percentage of recommendations implemented within the time frames established in the law or within six months, a year, more than a year or never implemented.

Reasons should be documented in case certain recommendations were not implemented.

Assessment criteria

- (a) Recommendations are responded to and implemented within the time frames established in the law.*
- (b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) assessment criterion (a):**

- Share of internal and external audit recommendations implemented within the time frames established in the law (in %).

Source: Ministry of Finance/Supreme Audit Institution.

Sub-indicator 12 (d) – Qualification and training to conduct procurement audits

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits are adequate to the task. They should receive adequate training and they should be selected following criteria that explicitly require that they demonstrate sufficient knowledge of the subject to conduct high-quality procurement audits, including performance audits. Auditors should normally receive formal training on procurement requirements, principles, operations, laws and regulations and processes. Alternatively, they should have extensive experience in public procurement or be supported by procurement specialists or consultants. Auditors, including external resources, should be selected in a fair and transparent way and be fully independent.

Assessment criteria

- (a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*
- (b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.
- (c) Auditors are selected in a fair and transparent way and are fully independent.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) assessment criterion (a):**

- number of training courses conducted to train internal and external auditors in public procurement audits.
- Source: Ministry of Finance/Supreme Audit Institution.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) assessment criterion (a):**

- share of auditors trained in public procurement (as % of total number of auditors).
- Source: Ministry of Finance/Supreme Audit Institution.

Indicator 13. Procurement appeals mechanisms are effective and efficient.

Pillar I covers aspects of the appeals mechanism as it pertains to the legal framework, including its establishment and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system. There are three sub-indicators (a-c) to be assessed.

Sub-indicator 13(a) – Process for challenges and appeals

This sub-indicator looks at the process that is defined for dealing with challenges or appeals and sets out some specific conditions that provide for fairness and due process.

- i)* Decisions are rendered on the basis of available evidence submitted by the parties.
- ii)* The first review is carried out by the entity specified by law.
- iii)* The appeals body (or authority) has enough authority to enforce its decisions.
- iv)* The time frames specified for the submission and review of challenges/appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

Assessment criteria

- (a) Decisions are rendered on the basis of available evidence submitted by the parties.
- (b) The first review of the evidence is carried out by the entity specified in the law.
- (c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *
- (d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

*** Quantitative indicator to substantiate assessment of sub-indicator 13(a) assessment criterion (c):**

- number of appeals.

Source: Appeals body.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) assessment criterion (c):**

- number (and percentage) of enforced decisions.

Source: Appeals body.

Sub-indicator 13(b) – Independence and capacity of the appeals body

This indicator³⁵ assesses the degree of autonomy that the appeals body has from the rest of the system, to ensure that its decisions are free from interference or conflict of interest. It is crucial that the body is not involved in any capacity in procurement transactions or in the process leading to contract award decisions. The body should not charge fees that inhibit access by concerned parties.

The indicator assesses the efficiency and capacity of the appeals body and its ability to enforce the remedy imposed. The assessors should review whether the conditions and time frames for review and decisions are precise and reasonable, and whether processes for submission and resolution of challenges are clearly defined and followed by the appeals body. They should also be publicly available.

Assessors should evaluate whether the appeals body i) exercises its authority to suspend procurement proceedings, ii) applies the full range of remedies specified by law, iii) issues decisions within the time frame specified in the law/regulations, and iv) issues decisions that are binding on all parties (without precluding subsequent access to judicial process). The appeals body needs to be adequately resourced and staffed to fulfil its functions.

Assessment criteria

The appeals body:

- is not involved in any capacity in procurement transactions or in the process leading to contract award decisions
- does not charge fees that inhibit access by concerned parties
- follows procedures for receipt and resolution of complaints that are clearly defined and publicly available
- exercises its legal authority to suspend procurement proceedings and impose remedies
- issues decisions within the time frame specified in the law/regulations*
- issues decisions that are binding on all parties
- is adequately resourced and staffed to fulfil its functions.

*** 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.

35 This indicator is fully aligned with PEFA PI-24.4.

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

The appeals system needs to be seen as operating in a fair manner. The system should require that decisions be rendered only on relevant and verifiable information presented. In addition, such decisions need to be unbiased, reflecting the consideration of the evidence presented and the applicable requirements in the legal/regulatory framework.

It is also important that the remedy imposed in the decision be consistent with the findings of the case and with the available remedies provided for in the legal/regulatory framework. Decisions of the appeals body should deal specifically with process issues, and the remedies should focus on corrective actions needed to comply with the process.

Decisions should be published in a timely manner and as stipulated in the law. Preferably, decisions should be published on the centralised online portal mentioned in sub-indicator 7(b).

Assessment criteria

Procedures governing the decision making process of the appeals body provide that decisions are:

- (a) based on information relevant to the case.
- (b) balanced and unbiased in consideration of the relevant information.*
- (c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*
- (d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law.*

*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.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) assessment criterion (b):

- share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).

Source: Survey.

- share of suppliers that perceive appeals decisions as consistent (in % of responses).

Source: Survey.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) assessment criterion (c):

- outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).

Source: Appeals body.

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 integrity of the public procurement market. There are seven sub-indicators (a-g) contributing to this indicator.

Sub-indicator 14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities and penalties

This indicator assesses the existence of legal provisions that define fraudulent, corrupt and other prohibited practices (“prohibited practices”) and set out the responsibilities and sanctions for government employees, individuals or firms indulging in such practices.

The legal provisions should also address issues concerning situations involving conflicts of interest and incompatibility. Provisions should include mechanisms to identify and declare where conflict of interests exist, to mitigate risks and make this information easily accessible to decision makers. The law should prohibit the intervention of active public officials and former public officials for a reasonable period after leaving office (cooling-off period) in procurement matters in ways that benefit them, their relatives and business or political associates, financially or otherwise.

Sanctions should include the exclusion of firms or individuals that have been the subject of a conviction by final judgment for fraud, corruption or other prohibited practices, as defined in the national law of the procuring entity or the firm/individual (refer to sub-indicator 1(d)).

There may be cases where there is a separate anti-corruption law (e.g. anti-corruption legislation) that contains such provisions. This arrangement is appropriate insofar as the effects of the anti-corruption law are the same as if they were in the procurement law.³⁶

The legal, regulatory and policy framework should be consistent with obligations deriving from legally binding international anti-corruption agreements, e.g. the United Nations Convention Against Corruption (UNCAC).

Assessment criteria

The legal/regulatory framework provides for the following:

- (a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.
- (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.
- (c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.

Sub-indicator 14(b) – Provisions on prohibited practices in procurement documents

This sub-indicator assesses the extent to which the law and the regulations compel procuring agencies to include references on fraud, corruption and other prohibited practices, conflict of interest and unethical behaviour, as defined in the law in the procurement and contract documents. Instructions could include a requirement for bidders to issue a self-declaration assuring that the bidder has not engaged in any prohibited practices and has not been prosecuted or convicted of fraud, corruption or other prohibited practices. This sub-indicator is related to sub-indicator 2(b) on Content for model documents, but is not directly addressed in that sub-indicator.

³⁶ Prohibitions against bribery could be contained in a country’s penal code, specific anti-corruption legislation, or other legislation, such as competition legislation. In addition, prohibitions against bribery by companies (“legal persons”) are sometimes contained in the same legislation as the prohibitions against natural persons, or separate legislation on corporate liability for corruption offences and sometimes other economic offences as well (e.g. money laundering).

The assessment should verify the existence of the provisions in the procurement and contract documents and enforceability of such provision through the legal/regulatory framework. The procurement and contract documents should include the definitions of what is considered fraud and corruption and other prohibited practices, and the consequences of committing such acts.

Assessment criteria

- (a) The legislative / regulatory framework specifies the mandatory requirement to incorporate provisions on fraud, corruption and other prohibited practices in tender documents and contractual documents; and provides specific instructions on how to do this.
- (b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.

Sub-indicator 14(c) – Effective sanctions and enforcement systems

This indicator concerns the enforcement of the law and the ability to demonstrate this by actions taken. Evidence of enforcement is necessary to demonstrate to the citizens and other stakeholders that the country is serious about fighting corruption.

Assessors should determine whether procuring entities are required to report allegations of fraud, corruption and other prohibited practices to the law enforcement authorities, and whether there is a clear procedure in place for doing this.

Assessors should review whether the procedure is systematically applied in practice, and whether reports pursuant to such a procedure are consistently followed up by the law enforcement authorities.

The assessor should verify that systems and procedures are in place to suspend/debar firms and individuals from participating in procurement proceedings (refer to sub-indicator 1(d)). The assessor should evaluate whether the procedures ensure due process and whether they are consistently applied. For example, the system should include a register of debarred firms and individuals that is easily accessible to all procuring entities. Procuring entities should be required to consult this register and consistently exclude debarred firms and individuals from participation in a procurement process.

The assessor should also be able to obtain at least some evidence of prosecution and punishment for fraudulent, corrupt or other prohibited practices. The assessor should retrieve figures on the number of cases reported through the system, and number of cases prosecuted. If the ratio of cases prosecuted to cases reported is low, the narrative should explain the possible reasons.

Assessment criteria

- (a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.
- (b) There is evidence that this system is systematically applied and reports are consistently followed up by law enforcement authorities.
- (c) There is a system for suspension/debarment that ensures due process and is consistently applied.
- (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.*

*** 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.

Sub-indicator 14(d) – Anti-corruption framework and integrity training

This sub-indicator attempts to verify whether an anti-corruption framework is in effect, and if so, its extent and nature and any other special measures in place, such as integrity training programmes that can help prevent and/or detect fraud and corruption specifically associated with public procurement.

A comprehensive anti-corruption framework normally includes all the stakeholders in the procurement system, assigns clear responsibilities to all of them, and assigns a high-level body or organisation (e.g. and anti-corruption commission) with sufficient standing and authority to be responsible for co-ordinating and monitoring the anti-corruption programme. The functions assigned to the anti-corruption body will differ from country to country. For example, anti-corruption bodies could be in charge of providing secure channels for reporting suspected corruption, have investigative powers, and collect and disclose information on beneficial ownership, following good international practice.

The procuring entities are responsible for running and monitoring a transparent and efficient system and for providing public information to promote accountability and transparency. To strengthen awareness and to clarify responsibilities and reporting requirements and channels in case of attempted or suspected fraud or corruption in procurement, integrity training programmes should be developed and offered as a co-ordinated effort (involving procuring entities, the anti-corruption body and normative/regulatory institutions). The procurement workforce should be obliged to participate in this training on a regular basis.

The control organisations (supreme audit authority) and the legal oversight bodies (e.g. the parliament or congress) are responsible for detecting and denouncing irregularities or corruption. The civil society organisations are responsible for social audits and for monitoring of procurement to protect the public interest. These may include NGOs, academia, unions, chambers of commerce and professional associations, and the press. The judiciary also participates in the framework, often in the form of special anti-corruption courts and dedicated investigative bodies that are responsible for investigating and prosecuting cases of corruption. There are normally government public education and awareness campaigns as part of efforts to change social behaviour in respect to corrupt practices and tolerance. Anti-corruption strategies usually include the use of modern technology to promote e-Procurement and e-government services, to minimise the risk of facilitation payments, identify “red flag” situations, indicate potential corruption, and support annual reporting to enhance awareness and open dialogue.

The assessor should assess the extent to which all or some of these actions are organised as a co-ordinated effort. This also includes sufficient resources, commitment by the government and the public, the extent to which they are mostly isolated and left to the initiative of individual agencies or organisations.

Assessment criteria

- (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.*
- (b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
- (c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.
- (d) Special measures are in place for the detection and prevention of corruption associated with procurement.
- (e) Special integrity training programmes are offered and the procurement workforce regularly participates in this training.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) assessment criterion (a):**

- percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).

Source: Survey.

Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

This indicator assesses the strength of the public and the private sector in maintaining a sound procurement environment. This may be made manifest in the existence of respected and credible civil society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social control. Civil society organisations can only play a meaningful role as third-party monitors when they have government guarantees to function and when their work is generally promoted and accepted by the public. Media, where free and well-informed, can also play an active role in addressing integrity and ethical behaviour in public procurement.

Assessors should also evaluate whether business associations promote anti-corruption frameworks to be implemented by suppliers. The supply side can become an active partner in supporting integrity, by establishing internal compliance measures. Programmes could for example focus on codes of ethics, integrity training for staff and/or improved internal control measures.

The welcoming and respectful attitude of the government and the quality of the debate and the contributions of all interested stakeholders are an important part of creating an environment where integrity and ethical behaviour is expected and deviations are not tolerated.

Assessment criteria

- (a) There are strong and credible civil society organisations that exercise social audit and control.
- (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.
- (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*
- (d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g. through internal compliance measures.*

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) assessment criterion (c):**

- number of domestic civil service organisations (CSOs), including national offices of international CSOs actively providing oversight and social control in public procurement.

Source: Survey/interviews.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) assessment criterion (d):**

- number of suppliers that have internal compliance measures in place (in %).

Source: Supplier database.³⁷

Sub-indicator 14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour

This sub-indicator assesses the following: i) whether the country provides, through its legislation and institutional set-up, a system for reporting fraudulent, corrupt or other prohibited practices or unethical behaviour; and ii) whether such legislation and systems provide for confidentiality and the protection of whistle-blowers. The system should be seen to react to reports, as verified by subsequent actions taken to address the issues reported. In case a reporting intake system is established and data is generated indicating the number of investigations conducted and actions taken, this information should be taken into account.

Assessment criteria

- (a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.
- (b) There are legal provisions to protect whistle-blowers, and these are considered effective.
- (c) There is a functioning system that serves to follow up on disclosures.

Sub-indicator 14(g) – Codes of conduct/codes of ethics and financial disclosure rules

The country should have in place a code of conduct/ethics that applies to all public officials. In addition, special provisions should be in place for those involved in public procurement. Financial disclosure requirements for public officials have proven very useful in helping to prevent unethical or corrupt practices. Regular training programmes should be conducted for all public officials, to raise and sustain awareness of the requirements and ensure the effective implementation of these measures.

³⁷ Disclosure of such details is generally not a requirement. Supplier database should include filing details on compliance.

Assessment criteria

- (a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*
- (b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*
- (c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.
- (d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.
- (e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.

*** 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.

*** Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) assessment criterion (b):**

- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).

Source: Normative/regulatory function.

ANNEXES

Annex 1 – MAPS Indicator System

Pillar I – Legal, Regulatory and Policy Framework	
1	The public procurement legal framework achieves the agreed principles and complies with applicable obligations.
	<ul style="list-style-type: none"> 1(a) – Scope of application and coverage of the legal and regulatory framework 1(b) – Procurement methods 1(c) – Advertising rules and time limits 1(d) – Rules on participation 1(e) – Procurement documentation and specifications 1(f) – Evaluation and award criteria 1(g) – Submission, receipt and opening of tenders 1(h) – Right to challenge and appeal 1(i) – Contract management 1(j) – Electronic Procurement (e-Procurement) 1(k) – Norms for safekeeping of records, documents and electronic data. 1(l) – Public procurement principles in specialised legislation
2	Implementing regulations and tools support the legal framework.
	<ul style="list-style-type: none"> 2(a) – Implementing regulations to define processes and procedures 2(b) – Model procurement documents for goods, works and services 2(c) – Standard contract conditions 2(d) – User’s guide or manual for procuring entities
3	The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.
	<ul style="list-style-type: none"> 3(a) – Sustainable Public Procurement (SPP) 3(b) – Obligations deriving from international agreements

Pillar II – Institutional Framework and Management Capacity	
4	The public procurement system is mainstreamed and well integrated with the public financial management system.
	4(a) – Procurement planning and the budget cycle 4(b) – Financial procedures and the procurement cycle
5	The country has an institution in charge of the normative/regulatory function.
	5(a) – Status and legal basis of the normative/regulatory institution function 5(b) – Responsibilities of the normative/regulatory function 5(c) – Organisation, funding, staffing, and level of independence and authority 5(d) – Avoiding conflict of interest
6	Procuring entities and their mandates are clearly defined.
	6(a) – Definition, responsibilities and formal powers of procuring entities 6(b) – Centralised procurement body
7	Public procurement is embedded in an effective information system.
	7(a) – Publication of public procurement information supported by information technology 7(b) – Use of e-Procurement 7(c) – Strategies to manage procurement data
8	The public procurement system has a strong capacity to develop and improve.
	8(a) – Training, advice and assistance 8(b) – Recognition of procurement as a profession 8(c) – Monitoring performance to improve the system
Pillar III – Procurement Operations and Market Practices	
9	Public procurement practices achieve stated objectives.
	9(a) – Planning 9(b) – Selection and contracting 9(c) – Contract management in practice
10	The public procurement market is fully functional.
	10(a) – Dialogue and partnerships between public and private sector 10(b) – Private sector’s organisation and access to the public procurement market 10(c) – Key sectors and sector strategies

Pillar IV – Accountability, Integrity and Transparency of the Public Procurement System	
11	Transparency and civil society engagement strengthen integrity in public procurement.
	<p>11(a) – Enabling environment for public consultation and monitoring</p> <p>11(b) – Adequate and timely access to information by the public</p> <p>11(c) – Direct engagement of civil society</p>
12	The country has effective control and audit systems.
	<p>12(a) – Legal framework, organisation and procedures of the control system</p> <p>12(b) – Co-ordination of controls and audits of public procurement</p> <p>12(c) – Enforcement and follow-up on findings and recommendations</p> <p>12(d) – Qualification and training to conduct procurement audits</p>
13	Procurement appeals mechanisms are effective and efficient.
	<p>13(a) – Process for challenges and appeals</p> <p>13(b) – Independence and capacity of the appeals body</p> <p>13(c) – Decisions of the appeals body</p>
14	The country has ethics and anti-corruption measures in place.
	<p>14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountability and penalties</p> <p>14(b) – Provisions on prohibited practices in procurement documents</p> <p>14(c) – Effective sanctions and enforcement systems</p> <p>14(d) – Anti-corruption framework and integrity training</p> <p>14(e) – Stakeholder support to strengthen integrity in procurement</p> <p>14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour</p> <p>14(g) – Codes of conduct/codes of ethics and financial disclosure rules</p>

Annex 2 – MAPS Assessment Criteria Expressed in Quantitative Terms

Indicator		Quantitative Indicators (minimum)	Additional recommended quantitative indicators
4(b)	Financial procedures and the procurement cycle	To substantiate assessment criterion (b): Invoices paid on time (in %). <i>Source:</i> PFM systems.	
5(d)	Avoiding conflict of interest		To substantiate assessment criterion (a): Perception that the normative/regulatory institution is free of conflicts (in % of responses). <i>Source:</i> Survey.
6(a)	Definition, responsibilities and formal powers of procuring entities	To substantiate assessment criterion (c): Procuring entities with a designated, specialised procurement function (in % of total number of procuring entities). <i>Source:</i> Normative/regulatory function.	
7(a)	Publication of public procurement information supported by information technology	To substantiate assessment criterion (c): Procurement plans published (in % of total number of procurement plans required). ³⁸ Key procurement information published along the procurement cycle ³⁹ (in % of total number of contracts): invitation to bid; contract awards (purpose, supplier, value; amendments/variations); details related to contract implementation (milestones, completion and payment); annual procurement statistics. Appeals decisions posted within the time frames specified in the law (in %). <i>Source:</i> Centralised online portal.	To substantiate assessment criterion (e): Share of procurement information and data published in open data formats (in %). <i>Source:</i> Centralised online portal.

38 PEFA PI-24.3 (2).

39 PEFA PI-24.3 (3, 4, 5, 6).

7(b)	Use of e-Procurement	<p>To substantiate assessment criterion (a):</p> <p>Uptake of e-Procurement</p> <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 <p><i>Source:</i> e-Procurement system.</p>	<p>To substantiate assessment criterion (d):</p> <p>Bids submitted online (in %)</p> <p>Bids submitted on line by micro, small and medium-sized enterprises (in %).</p> <p><i>Source:</i> e-Procurement system.</p>
7(c)	Strategies to manage procurement data	<p>To substantiate assessment criterion (d):</p> <p>Total number of contracts</p> <p>Total value of contracts;</p> <p>Public procurement as a share of government expenditure and as a share of GDP.</p> <p>Total value of contracts awarded through competitive methods in most recent fiscal year.⁴⁰</p> <p><i>Source:</i> Normative/regulatory function/e-Procurement system.</p>	
9(b)	Selection and contracting		<p>To substantiate assessment criterion (j):</p> <p>Average time to procure goods, works and services: number of days between advertisement/solicitation and contract signature (for each procurement method used)</p> <p>Average number (and %) of bids that are responsive (for each procurement method used)</p> <p>Share of processes that have been conducted in full compliance with publication requirements (in %)</p> <p>Number (and %) of successful processes:</p> <ul style="list-style-type: none"> - successfully awarded; - failed; or - cancelled - awarded within time frames <p><i>Source for all:</i></p> <p>Sample of procurement cases.</p>

40 PEFA Indicator PI-24.2.

9(c)	Contract management in practice	To substantiate assessment criterion (g): Share of contracts with complete and accurate records and databases ⁴¹	To substantiate assessment criterion (a): Time overruns (in %; and average delay in days)
			To substantiate assessment criterion (b): Quality-control measures and final acceptance is carried out as stipulated in the contract (in %)
			To substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).
			To substantiate assessment criterion (d): Contract amendments (in % of total number of contracts; average increase of contract value in %)
			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 <i>Source for all:</i> Sample of procurement cases.
10(a)	Dialogue and partnerships between public and private sector		To substantiate assessment criterion (a): Perception of openness and effectiveness in engaging with the public and private sector (in % of responses). <i>Source:</i> Survey.

41 PEFA Indicator PI-24.1.

10(b)	Private sector organisations and access to the public procurement market		<p>To substantiate assessment criterion (a):</p> <p>Number of registered suppliers as a share of total number of suppliers in the country (in %)</p> <p>Share of registered suppliers that are awarded public contracts (in % of total number of registered suppliers)</p> <p>Total number and value of contracts awarded to domestic/foreign firms (and in % of total)</p> <p><i>Source:</i> e-Procurement system/supplier database.</p> <hr/> <p>To substantiate assessment criterion (b):</p> <p>Perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).</p> <p><i>Source:</i> Survey.</p>
12(b)	Co-ordination of controls and audits of public procurement		<p>To substantiate assessment criterion (c):</p> <p>Number of specialised procurement audits carried out compared to total number of audits (in %).</p> <p>Share of procurement performance audits carried out (in % of total number of procurement audits).</p> <p><i>Source:</i> Ministry of Finance/Supreme Audit Institution.</p>
12(c)	Enforcement and follow-up on findings and recommendations		<p>To substantiate assessment criterion (a):</p> <p>Share of internal and external audit recommendations implemented within the time frames established in the law (in %).</p> <p><i>Source:</i> Ministry of Finance/Supreme Audit Institution.</p>
12(d)	Qualification and training to conduct procurement audits		<p>To substantiate assessment criterion (a):</p> <p>Number of training courses conducted to train internal and external auditors in public procurement audits.</p> <p>Share of auditors trained in public procurement (in % of total number of auditors).</p> <p><i>Source:</i> Ministry of Finance/Supreme Audit Institution.</p>
13(a)	Process for challenges and appeals	<p>To substantiate assessment criterion (c):</p> <p>Number of appeals (in % of contracts awarded).</p> <p><i>Source:</i> Appeals body.</p>	<p>To substantiate assessment criterion (c):</p> <p>Number (and percentage) of enforced decisions.</p> <p><i>Source:</i> Appeals body.</p>

13(b)	Independence and capacity of the appeals body	<p>To substantiate assessment criterion (e):</p> <p>Appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (total numbers and in %).</p> <p><i>Source:</i> Appeals body.</p>	
13(c)	Decisions of the appeals body	<p>To substantiate assessment criterion (d):</p> <p>Share of appeals decisions posted on a central online platform within timelines specified in the law (in %).</p> <p><i>Source:</i> Centralised online portal.</p>	<p>To substantiate assessment criterion (b):</p> <p>Share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).</p> <p>Share of suppliers that perceive appeals decisions as consistent (in % of responses).</p> <p><i>Source:</i> Survey.</p> <hr/> <p>To substantiate assessment criterion (c):</p> <p>Outcome of appeals (dismissed; in favour of procuring entity; in favour of applicant) (in %).</p> <p><i>Source:</i> Appeals body.</p>
14(c)	Effective sanctions and enforcement systems		<p>To substantiate assessment criterion (d):</p> <p>Firms and individuals found guilty of fraud and corruption in procurement:</p> <p>Number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).</p> <p>Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.</p> <p><i>Source:</i> Normative/regulatory function.</p> <p>Gifts to secure public contracts; number of firms admitting to unethical practices, including making gifts (in %).</p> <p><i>Source:</i> Survey.</p>
14(d)	Anti-corruption framework and integrity training		<p>To substantiate assessment criterion (a):</p> <p>Percentage of favourable opinions by the public on the effectiveness of anti-corruption measures.</p> <p><i>Source:</i> Survey.</p>

14(e)	Stakeholder support to strengthen integrity in procurement		<p>To substantiate assessment criterion (c):</p> <p>Number of domestic CSOs (including national offices of international CSOs) actively providing oversight and social control in public procurement.</p> <p><i>Source:</i> Survey/Interviews.</p>
			<p>To substantiate assessment criterion (d):</p> <p>Number of suppliers that have internal compliance measures in place (in %).</p> <p><i>Source:</i> Supplier database.</p>
14(g)	Codes of conduct/ codes of ethics and financial disclosure rules		<p>To substantiate assessment criterion (a):</p> <p>Share of procurement entities that have a mandatory code of conduct or ethics with particular provisions for those involved in PFM, including procurement (in % of total number of procuring entities).</p> <p><i>Source:</i> Normative/regulatory function.</p>
			<p>To substantiate assessment criterion (b):</p> <p>Officials involved in public procurement who have filed financial disclosure forms (in % of total).</p> <p><i>Source:</i> Normative/regulatory function.</p>

GLOSSARY

Accountability (in public management)	Managers are held responsible for carrying out a defined set of duties or tasks, and for conforming with rules and standards applicable to their posts.
Appeals body	Independent body in charge of reviewing decisions of a specified first review body. The appeals body may be an administrative or judicial review body. The appeals body needs to be independent from the procuring entity and should not be involved in any capacity in procurement transactions or in the process leading to contract award decisions.
Budget	A comprehensive statement of government financial plans, which include expenditures, revenues, deficit or surplus and debt. The budget is the government's main economic policy document, demonstrating how the government plans to use public resources to meet policy goals and to some extent, indicating where its policy priorities lie.
Capability	The skills-based ability for an individual, group or organisation to meet obligations and objectives; also referred to as "know-how".
Capacity	The ability to meet obligations and objectives based on existing administrative, financial, human and infrastructure resources.
Civil servant	An employee of the state who would continue to be a state employee if the government changes. In addition, civil servants are employees covered under a specific public legal framework or other specific provisions.
Civil society organisation (CSO)	The multitude of associations around which society voluntarily organises itself and which represent a wide range of interests and ties. These can include community-based organisations, indigenous people's organisations and nongovernment organisations.
Competition	<p>A situation in a market in which firms or sellers independently strive for the patronage of buyers to achieve a particular business objective, e.g. profits, sales and/or market share.</p> <p>Competition in this context is often equated with rivalry. Competitive rivalry between firms can occur when there are two firms or many firms. This rivalry may take place in terms of price, quality, service or combinations of these and other factors that customers may value.</p> <p>Competition is viewed as an important process by which firms are forced to become efficient, offering a greater choice of products and services at lower prices. It gives rise to increased consumer welfare and allocative efficiency. It includes the concept of "dynamic efficiency", by which firms engage in innovation and encourage technological change and progress.</p>
Competition bodies	Government agencies, which formulate competition policies and/or regulate and enforce competition laws.
Corruption	Abuse of public or private office for personal gain.
Effectiveness	The extent to which the activities' stated objectives have been met
Efficiency	Achieving maximum output from a given level of resources used to carry out an activity.
e-Procurement	The integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process

Good governance	Governance characterised by participation, transparency, accountability, rule of law, effectiveness, equity, etc. Good governance refers to the management of government in a manner that is essentially free of abuse and corruption and with due regard for the rule of law.
Governance	The exercise of political, economic and administrative authority
Gross domestic product (GDP)	The standard measure of the value of the goods and services produced by a country during a given period. Specifically, it is equal to the sum of the gross value added of all resident institutional units engaged in production (plus any taxes, and minus any subsidies, on products not included in the value of their outputs). The sum of the final uses of goods and services (all uses except intermediate consumption) measured in purchasers' prices, less the value of imports of goods and services, or the sum of primary incomes distributed by resident producer units.
Horizontal policy objectives	Any of a variety of objectives of an economic, environmental and social nature (such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives), which governments increasingly pursue through use of procurement as a policy lever (sometimes referred to as "secondary" policies, in contrast with the so-called "primary" objectives of delivering goods and services in a timely, economical and efficient manner).
Indicator	A quantitative or qualitative measure derived from a series of observed facts that can reveal relative positions in a given area.
Innovation	The implementation of a new or significantly improved product, good, service or process, or a new organisational method.
Integrity	The use of funds, resources, assets and authority according to the intended official purposes, and in a manner that is well informed and aligned with the public interest and broader principles of good governance.
PEFA	Public Expenditure and Financial Accountability (PEFA) Performance Measurement Framework (www.pefa.org)
Performance	The ability of an entity to acquire resources economically and use those resources efficiently and effectively in achieving performance targets.
Performance Information	Performance information can be generated by both government and nongovernmental organisations, and can be both qualitative and quantitative. Performance information refers to metrics/indicators/general information on the inputs, processes, outputs and outcomes of government policies/programmes/organisations, and can be ultimately used to assess their effectiveness, cost effectiveness and efficiency. Performance information can be found in statistics; the financial and/or operational accounts of government organisations; performance reports generated by government organisations; evaluations of policies, programmes or organisations; or spending reviews, for instance.

Policy	A consistent course of action designed to meet a goal or objective and respond to an issue or problem identified by the state as requiring action or reform. It is implemented by a public body (ministry, agency, etc.), although elements may be delegated to other bodies. Examples include a public policy to tackle climate change, educational reform, or support for entrepreneurship. A public policy is, or should be, linked to the government programme and its strategic planning. It is often given a formal framework through legislation and/or secondary regulations, especially in countries with a system of civil law. It is given practical effect through a defined course of action, programmes and activities. It is, as necessary, funded from the state budget. A priority policy is a policy that matters more than others for the achievement of the government's strategic objectives. The responsibility for taking forward a public policy may rest with the relevant line ministry, or, in the case of policies that cut across ministerial boundaries, may be shared by relevant ministries.
Procurement document	A document issued by the procuring entity that sets out the terms and conditions of the given procurement. Invitation to participate in procurement proceedings (e.g. invitation to tender, participate in request for proposal proceedings or an electronic reverse auction). Alternative terms: solicitation document or tender document.
Procuring entity	A public entity (agency) conducting procurement in compliance with the applicable law. The terms "procuring agency" or "procurement body" are often used synonymously. Procuring entities can belong to any level of government (national, provincial or municipal level). They can represent different arms of government (branches, ministries, departments, etc.) or they could be constituted as state-owned enterprises or bodies.
Public procurement	The process of identifying what is needed; determining who the best person or organisation is to supply this need; and ensuring that what is needed is delivered to the right place, at the right time and for the best price; and that all this is done in a fair and open manner;
Public procurement cycle	The sequence of related activities, from needs assessment through competition and award to payment and contract management, as well as any subsequent monitoring or auditing.
Public servant	A term used to identify those who are employed by government-funded organisations. Some countries use both "public servant" and "civil servant" when describing government-funded employees, with "public servant" having a broader application (e.g. encompassing doctors, teachers, local government officials, etc.) than "civil servant", which would include employees working in the central government.
Public services	Services that are performed for the benefit of the public or its institutions. Public services are provided by government to its citizens, either directly (through the public sector) or by financing private provision of services. The term is associated with a social consensus that certain services should be available to all, regardless of income. Even where public services are neither publicly provided nor publicly financed, for social and political reasons, they are usually subject to regulation that extends beyond the regulation applying to most economic sectors.
Public (open) tender	Refers to the process whereby a procuring entity invites bids that should be submitted within a finite deadline. It is often used for a bidding process that is open to all qualified bidders (open tender) and where sealed bids are opened in public for scrutiny and are chosen on the basis of stated award criteria. In the context of sub-indicator 1(g), the term "tender" is used interchangeably with "bids" or "proposals".
Public-private partnership	A contract (institutional relationship) between public and private actors for the co-operative provision of a public good or service. The essential element is some degree of private participation in the delivery of goods or services traditionally in the public domain. Private actors may include both for-profit and not-for-profit organisations.

Regulation	The term regulation covers the diverse set of instruments by which governments impose requirements on enterprises and citizens. Regulations include all primary laws, formal and informal orders, subordinate regulations, administrative formalities and rules issued by nongovernmental or self-regulatory bodies to whom governments have delegated regulatory powers.
Specific sensitive information	Refers to legitimate needs for protection of trade secrets and proprietary information and other privacy concerns, as well as the need to avoid disclosing information that can be used by interested parties to distort competition in the procurement process. The country's legal framework should include definitions and provisions to unambiguously identify and prohibit the disclosure of specific sensitive information.
State-owned enterprise	Countries have different definitions of state-owned enterprises. The OECD offers the following definition for comparative purposes: "any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership" (OECD, 2015, OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264244160-en .)
Supplier	A party that supplies goods, works, or services, i.e. in this context, "supplier" implies contractors and service providers that include consulting firms or others.
Sustainability	(a) Use of the biosphere by present generations while maintaining its potential yield (benefit) for future generations; and/or (b) non-declining trends of economic growth and development that might be impaired by natural resource depletion and environmental degradation.
Sustainable development	Development "that meets the needs of the present without compromising the ability of future generations to meet their own needs", World Commission on Environment and Development (1987), Our Common Future, http://www.un-documents.net/our-common-future.pdf .
Sustainable Public Procurement (SPP)	A "process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment", Department for Environment, Food and Rural Affairs (2006), "Procuring the Future: Sustainable Action Plan: Recommendations from the Sustainable Procurement Task Force", London, in: http://collections.europarchive.org/tna/20080530153425/http://www.sustainable-development.gov.uk/publications/procurement-action-plan/documents/full-document.pdf .
Transparency	An environment in which the objectives of policy, its legal, institutional and economic framework, policy decisions and their rationale, data and information related to policies, and the terms of agencies' accountability, are provided to the public in a comprehensible, accessible and timely manner.
Trust	Trust is broadly understood as holding a positive perception about the actions of an individual or an organisation. Trust gives us confidence that others will act as we might expect in a particular circumstance. While trust may be based on actual experience, in most cases, trust is a subjective phenomenon, reflected in the eyes of the beholder.
Value for money	Value for money is a term used in different ways to convey the effective, efficient and economic use of resources. In the context of public procurement, it can be defined as the most advantageous combination of cost, quality and sustainability to meet defined requirements. Cost means consideration of the whole life cost and risks; quality means meeting a specification which is fit for purpose and sufficient to meet the requirements; and sustainability comprises economic, social and environmental benefits.

For reference

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