

## Pillar II. Institutional Framework and Management Capacity

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

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

### 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 systems.<sup>20</sup>

## 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.

<sup>20</sup> 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 function 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)<sup>21</sup>
- key procurement information published along the procurement cycle (in % of total number of contracts)<sup>22</sup>:
- invitation to bid (in % of total number of contracts)
- contract awards (purpose, supplier, value, variations/amendments)
- details related to contract implementation (milestones, completion and payment)
- annual procurement statistics
- appeals decisions posted within the time frames specified in the law (in %).

Source: Centralised online portal.

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

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

Source: Centralised online portal.

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

21 PEFA PI-24.3 (2).

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



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 criteria<sup>23</sup>

- (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. \*

<sup>23</sup> 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 contracts<sup>24</sup>
- 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.<sup>25</sup>

**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.