

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 as one means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This Pillar focuses on how the procurement system in a country operates and performs in practice.

Indicator 9. Public procurement practices achieve stated objectives.

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

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