



**REPUBLIK INDONESIA  
KEMENTERIAN NEGARA PERENCANAAN PEMBANGUNAN NASIONAL/  
BADAN PERENCANAAN PEMBANGUNAN NASIONAL**

**WORKING GROUP**

**BASELINE BENCHMARKING ASSESSMENT**

**OF**

**INDONESIA'S PUBLIC PROCUREMENT SYSTEM**

**AS AT MAY 2007**

**USING THE OECD/DAC  
JOINT VENTURE FOR PROCUREMENT METHODOLOGY  
Version 4 2006**

# *Pillar I.*

## *Legislative and Regulatory Framework*

## **Indicator 1.**

**Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.**

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

This indicator is broken down into **eight baselines or sub-indicators (a-h)** which are individually scored.

## **Baseline or Sub-indicator 1(a) – Scope of application and coverage of the legislative and regulatory framework.**

The purpose of this sub-indicator is to determine whether the following **elements** exist: **a) the structure of the regulatory framework governing the public procurement; b) the extent of its coverage; and c) the public access to the laws and regulations.**

**Structure of the regulatory framework** - Assessors should consider 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 be differentiated between laws, regulations and procedures and that precedence is firmly established to minimize inconsistencies in application. Higher level instruments normally should be less detailed and more stable. Their modification requires higher levels of authority and for this reason the stability of different provisions and of the entire systems depends on where in hierarchy of the legal framework the different provisions are placed.

**Extent of Coverage** - The assessor should also evaluate the extent to which the legal framework applies to all procurement (goods, works and services, including consulting services) undertaken using public funds and the extent to which national legislation applies to all public bodies and sub-national governments and entities when national budget funds are used and that they apply irrespective of value. A particular aspect to evaluate is whether the laws or regulations exclude agencies or parts of the public expenditure from the provisions of the law (i.e. the army, defence or similar expenditures, autonomous or specialized state owned enterprises) and whether these exclusions are made by law or can be made administratively and not subject to public oversight. Uniformity and universality of coverage contribute to predictability and savings in the operation of the procurement system, while access to the rules and regulations contribute to transparency thereby resulting in more economic procurement.

**Public Access** - Accessibility to the laws can be through availability in public places of easy access to the public. If the information is primarily posted on the Internet, the assessor should verify accessibility of information to the public.

**Baseline or Sub-indicator 1(a) – Scope of application and coverage of the legislative and regulatory framework.**

Scoring Criteria	Score
The legislative and regulatory body of norms complies with all the following conditions:  (a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures,) and precedence is clearly established.  (b) All laws and regulations are published and easily accessible to the public at no cost.  (c) It covers goods, works, and services (including consulting services) for all procurement using national budget funds.	<b>3</b>
The legislative and regulatory body of norms complies with (a) plus one of the above conditions.	<b>2</b>
The legislative and regulatory body of norms complies with (a) of the above conditions.	<b>1</b>
The system does not substantially comply with any of the above conditions.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>0</b>

**Basis for Score and Other Comments:**

1. Since 1994, Presidential Decree is the highest ranked of the regulations established for government procurement. This Presidential Decree concerning government procurement is published, is easily accessible to the public at no cost and it covers goods, works and services.
2. However, scoring criteria shows that government procurement must be ruled by Law. Moreover, score is only given to Law as the output, and not to other outputs (such as Presidential Decree, Government Regulation, etc).
3. Hence, even though government procurement regulation accomplishes other criteria such as being clearly established, published and disseminated widely across the country, easily accessible to the public at no cost and covers goods, works and services for all procurement using national budget funds, the score for this sub indicator is 0.
4. **Recommendation :** Need to clarify whether interpretation described in point 1 is actually in accordance to OECD-DAC and can be used in all pilot countries.

## Baseline or Sub-indicator 1(b) – Procurement Methods

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

**Methods and Circumstances** -The legal framework should make open competitive tendering the default method of procurement. The law and regulations should define the situations in which other less competitive methods can be used and ensure that acceptable justification and approval levels are clearly specified. Fractioning of contracts to avoid open competition should be prohibited. The hierarchy of the legal instruments where acceptable procurement methods are established should be such that the discretion of individual agencies or procurement officials is reasonably controlled to minimize the use of methods that limit competition.

Scoring criteria	Score
The legal framework meets all the following conditions:  (a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.  (b) Competitive procurement is the default method of public procurement.  (c) Fractioning of contracts to limit competition is prohibited.  (d) Appropriate standards for international competitive tendering are specified and are consistent with international standards	<b>3</b>
The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework meets the conditions of (a) and (b).	<b>1</b>
The legal framework fails to substantially comply with any three of the conditions a) through d).	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

### Basis for Score and Other Comments:

1. Presidential Decree Number 80 Year 2003 regulates that procurement methods should be clearly stated without any chance of ambiguity. Competitive procurement is the default method of public procurement and fractioning of contracts to limit competition is prohibited;
2. Presidential Decree Number 80 Year 2003 is still focusing on NCB. Appropriate standards for ICB tendering, which are consistent with international standards, have not been established in Presidential Decree.

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

This sub indicator assesses the following *elements*: **a)** *whether the legal framework includes requirements to publish contract awards as a matter of public interest and to promote transparency;* **b)** *there is wide and easily accessible publication of business opportunities;* and, **c)** *there is adequate time provided between publication of opportunities and 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 relates to 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 advertisement and submission of proposals.

Scoring Criteria	Score
The legal framework meets the following conditions :  (a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised.  (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. Such timeframes are extended when international competition is sought.  (c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, where all public procurement opportunities are posted, that is easily accessible.  (d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding.	<b>3</b>
The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework meets the conditions of (a) plus one of the remaining conditions.	<b>1</b>
The legal framework only meets the conditions of (a) above.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

### Basis for Score and Other Comments:

1. In order to assure accuracy and easy access to obtain information related to government procurement, Presidential Decree Number 80 Year 2003 and Presidential Decree Number 8 Year 2006 mandate all government institutions to declare procurement planning and tender invitations in appropriate time, in national and provincial newspaper and/or in national website.
2. Presidential Decree Number 8 Year 2006 clearly states procedure for publication, which includes sufficient time and content of advertisement. The publication of open tenders is mandated in one national newspaper and one provincial newspaper, which must have extensive national circulation.

## **Baseline or Sub-indicator 1(d) – Rules on participation**

This sub indicator assesses the following *elements* **(a)** *participation and selection policies to ensure that they are non discriminatory*; **(b)** *limited and controlled use of preferences*; **(c)** *administrative debarment process*; **(d)** *treatment of government owned enterprises*

**Participation** - As a general principle, firms, including qualified foreign firms, should not be excluded from participating in a tendering process for reasons other than lack of qualifications. Exclusions from tendering that are not based on the qualifications of the firm may arbitrarily limit competition and may result in inefficient procurement and higher prices. There may be cases in which the legal framework will allow restrictions that require purchasing from or associating with domestic firms, or mandate inclusion of a minimum locally manufactured content. Registration as a condition to participate in a bid may become an entry barrier unless registration is open all the time and can be completed in a simple way any time prior to contract award.

**Preferences** - Many countries also allow price preferences for domestic firms. Excessive price preferences or other concessions for certain groups of bidders can deter effective competition and reduce gains in efficiency. The assessor should review carefully the justification and adequacy of these provisions to ensure that they do not unduly affect the economy and efficiency of the system. The regulatory framework should not include the obligation for foreign firms to associate with local firms or to establish subsidiaries in the country as a condition of bidding. These conditions may promote the maintenance of oligopolistic or monopolistic conditions as opposed to promoting local industry development and can be a de facto barrier to competition.

**Administrative debarment** - (e.g. failure to perform in earlier contracts, etc.) is acceptable provided that there is due process to reach the decision and that the process, including any possible appeals, has been exhausted. Other legitimate exclusions (e.g. prohibition of commercial relations by law or adherence to UN Security Council sanctions) or for judicial finding of corruption (after the due process has been exhausted) are acceptable. There also may be international agreements that limit participation to members of the agreements.

**SOE's** - Participation of state owned enterprises should be governed by rules that create a level playing field for all competitors and should not be subject to preferential treatment on account of subsidies or tax exemptions, etc.

## Baseline or Sub-indicator 1(d) – Rules on participation

Scoring Criteria	Score
<p>The legal framework meets the following conditions:</p> <p>(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to extent possible; limits domestic price preferential, if allowed, to a reasonable amount (e.g. 15% or less); and requires justification for set asides that limit competition.</p> <p>(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.</p> <p>(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.</p> <p>(d) Establishes rules for the participation of government owned enterprises that promote fair competition.</p>	<b>3</b>
The law and regulations meet the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The law and regulations meet the conditions of (a) plus one of the remaining conditions.	<b>1</b>
The law and regulations do not meet the conditions of a) through d) above.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>0</b>

### Basis for Score and Other Comments:

1. Compared to previous Government Procurement regulations, the current regulation, being Presidential Decree Number 80 Year 2003 emphasizes and focuses on more market-oriented competition and fair dealing by providing equal opportunity for all potential tender participants, particularly among national entrepreneurs (national business environment), in order to participate in every tender occasion, which is held in central, provincial and districts/municipality in Indonesia.
2. International/foreign firms are also welcome to participate in government tenders for certain thresholds such as Rp. 50 billion or eq. to USD. 5 million for construction, and/or Rp. 10 billion or eq. to USD. 1 million for goods/other services, and/or Rp. 5 billion or eq. to USD. 500 thousand for consultancy;
3. Presidential Decree Number 80 Year 2003 ensures that registration for domestic and foreign firms in order to participate in tenders shall not become an entry barrier;
4. Presidential Decree Number 80 Year 2003 clearly states that tender committee and/or tender participants, who are deceitful, fraudulent and committed corruption in a procurement process are subject to administrative and criminal sanctions. Moreover, each of government institutions are able to create a debarment system should the providers' fail to perform;

5. **Recommendation :** The criteria and score need to consider more fairly conditions where the aspect of fair dealing and competition has been promoted even for national enterpreneurs, which is only a beginning of non-discriminatory government procurement's policy.

## Baseline or Sub-indicator 1(e) – Tender documentation and technical specifications

The sub indicator assesses the following **elements (a) *minimum content***; and **(b) *neutrality*** of specifications.

***Minimum content*** - degree to which the legal framework specifies the content of tendering or solicitation documents to enable suppliers to understand clearly what is requested from them and how the tendering process is to be carried out. Tendering documents should contain sufficient information to enable the submission of responsive tenders/proposals and to establish the basis for a transparent evaluation and award process. It is important that the content requirements for tender and solicitation documents are relevant to making an award decision. Information 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 the basis of unnecessary requirements.

***Neutrality*** - Specifications included in the tender documents must be neutral and refer to international standards where possible or other officially recognized standards that are essentially equivalent to the ones specified.

Scoring Criteria	Score
The legal framework meets the following conditions:  (a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenderers to be able to respond to the requirement. (b) Requires the use of neutral specifications citing international standards when possible. (c) Requires recognition of standards which are equivalent when neutral specifications are not available.	<b>3</b>
The legal framework substantially meets the conditions of (a) plus one of the remaining conditions.	<b>2</b>
The legal framework meets the conditions of (a).	<b>1</b>
The content of the bidding documents is totally or largely left at the discretion of the procuring entity.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

### Basis for Score and Other Comments:

1. Presidential Decree Number 80 Year 2003 clearly mentions that government procurement must be conducted by process of biddings/tenders. It is also stated that each stage of bidding/tender's process should uphold good governance principles such as efficiency, effectiveness, fair competition, transparency, fairness and non discriminatory and accountability.
2. In order to uphold those principles, Presidential Decree Number 80 Year 2003 requires that bidding document should be neutral, well understood by all participants. The formulation of requirements and tenderers' participation should not be a limitation and discrimination for other participants. It should not mention or even aim at one single brand name and/or should not head at one certain condition, which only one participant is able to fulfill. Moreover, the bidding document must provide accurate information and adequate time for tenderers' participants in order to prepare proposals.

3. Presidential Decree Number 80 Year 2003 mandates to all government agencies to declare government projects' plans and announce the tender invitations. Widespread procurement public notices are expected to increase the number of procurement participants, to enhance the quality of procurement process and to achieve more accountability and reliability of the process.

## **Baseline or Sub-indicator 1(f) – Tender evaluation and award criteria**

This sub indicator assesses the following **elements**: the quality and sufficiency of the legal framework provisions in respect to **(a) objectivity, fairness, and transparency (pre-disclosure)** of the evaluation process; **(b) clear methodology** and, **(c) the degree of confidentiality** kept during the process to minimize the risk of undue influences or abuse.

***Objectivity, fairness, and transparency (pre-disclosure)*** – Pre-disclosed and objective criteria are essential for efficiency, fairness and transparency in the evaluation of tenders. Objectivity means that there is little room for subjective interpretation of the criteria by the evaluator. For this reason it is desirable that evaluation criteria be quantifiable as far as possible, or stated in pass/fail terms. Exceptions include consulting services or other requirements where scoring of the technical aspects of a proposal is needed. Information related to the evaluation process and results can be disclosed to interested parties after the evaluation is complete. There should be rules of disclosure that protects information provided by bidders that is of proprietary nature, commercially or financially sensitive.

***Clear methodology*** -The decision criteria for award should be based on awarding to the lowest price evaluated tender. Vague criteria (e.g. award to the tender most convenient to the interest of the state) are not acceptable. The regulatory framework should prohibit the use of evaluation criteria different from those set out in the tendering documents. A step-by-step clear methodology on how to conduct evaluations should be defined and disclosed.

***Degree of confidentiality*** - Confidentiality and regulated communications with the bidders during the evaluation period are necessary to avoid abuse and undue interference in the process. The evaluation period comprises from the conclusion of the bid opening to the point at which the award of the contract is decided and announced.

## Baseline or Sub-indicator 1(f) – Tender evaluation and award criteria

Scoring criteria	Score
<p>The legal framework mandates that:</p> <p>(a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.</p> <p>(b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.</p> <p>(c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered.</p> <p>(d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process;</p>	<b>3</b>
The legal framework covers the conditions of (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal frame work covers (a) but does not fully cover the other conditions.	<b>1</b>
The legal framework does not adequately address any of the conditions (a) through (d) above	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

### Basis for Score and Other Comments:

1. Presidential Decree Number 80 year 2003 requires that the evaluation criteria are relevant to the evaluation process, quantifiable as far as possible or stated in pass/fail terms, are well understood and mentioned clearly in the bidding documents.
2. During the evaluation period, information related to the examination and evaluation process cannot be disclosed except the result of evaluation.

## **Baseline or Sub-indicator 1(g) – Submission, receipt and opening of tenders**

This sub indicator assesses how the legal framework regulates the process of reception of tenders and tender opening considering the following **elements: (a) Public Opening; (b) Maintenance of Records; (c) Security and Confidentiality; (d) Submission and Receipt Modalities.**

**Public Opening** - of tenders is a means of increasing transparency to an open tendering exercise. Bidders or their representatives must be permitted to attend, as well as others legitimately interested (e.g. representatives of civil society bodies duly recognized as having a stake on the tendering process). Opening immediately after the deadline for submission of tenders diminishes the possibility of loss or alteration of proposals or submissions. The exception to this rule may be opening of prequalification submissions or opening of technical proposals for consulting services (that are not priced) in which cases they may be opened privately followed by a simple notification to all participants of the list of submissions.

**Maintenance of Records** - The law or regulations should establish that for open tendering, the names and addresses of the bidders and the tender prices (and any withdrawals or modifications to tenders duly submitted), and those of any alternative offers requested or permitted are read aloud and recorded. Records should be retained and available for review and audit purposes.

**Security and Confidentiality** - For appropriate security, tenders should be submitted in sealed envelopes and maintained in a safe place with access controlled. In the case of electronic tendering, online submissions must be received into an electronic bid box and maintained to high standards of security for long term record-keeping and audit. At no time shall bids/proposals be in unencrypted format. Copies decrypted for bid evaluation purposes shall not affect the integrity of the original record.

**Submission and Receipt Modalities** - Clarity on how bids are submitted is critical in minimizing rejection of otherwise compliant proposals. The law and the regulations must give 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 requirements should all be specified.

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

<b>Scoring Criteria</b>	<b>Score</b>
The legal framework provides for the following conditions:  (a) Public 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 disclosure of specific sensitive information during debriefing is prohibited.  (d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.	<b>3</b>
The legal framework provides for (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework provides for (a) plus one of the remaining conditions.	<b>1</b>
There is no requirement in the legal framework for public opening of tenders.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

1. Presidential Decree Number 80 Year 2003 mandates that bid's must be opened immediately after the deadline for submission of tenders. For security reasons, tenders should be submitted in sealed envelopes and maintained in a safe place with access controlled. Tenderer's participants or their representatives must be permitted to attend the opening of bids.
2. All documents will be used for evaluation and retained, maintained confidentially and available for review and audit process.
3. In public opening tenders, all bidding document are received except for those where submission is late.

## Sub-indicator 1(h) – Complaints

The purpose of this indicator is to assess whether the legal framework establishes; a) the right to review, b) the matters that are subject to review; c) the timeframe for such reviews; and, d) the different steps 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 review procurement decisions 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 from the procuring agency. That is, has no direct interest in the procurement process and does not report to the procurement agency and ideally is a separate agency.

Scoring Criteria	Score
The legal framework provides for the following:  (a) The right to review for participants in a procurement process  (b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review.  (c) Establishes the matters that are subject to review  (d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.	<b>3</b>
The legal framework provides for (a) and (b) plus one of the remaining conditions.	<b>2</b>
The legal framework provides for (a) plus one of the remaining conditions.	<b>1</b>
The right for review of the proper application of the procurement process is not provided in the legal framework.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

### Basis for Score and Other Comments:

1. Article 27 Presidential Decree Number 80 Year 2003 governs the right to review and lodge a complaint associated with the procurement process:
  - 1). Complaint mechanism and Appeal of Complaint  
Complaint and complaint appeal should be submitted to procuring entity. The complaint must be responded by the procuring entity (tender committee) within 5 working days of the complaint being received. For appeal, the highest rank officers in procuring entity must respond within 15 working days.
  - 2). Complaint by the society.
2. Government is confident that the procuring entity up to now is still independent, reliable and that there is no conflict of interest in considering the complaint and its appeal.

## **Indicator 2.**

### **Existence of Implementing Regulations and Documentation.**

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model tender 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 **six baselines or sub-indicators (a-f)** which are individually scored.

## **Baseline or Sub-indicator 2(a) – Implementing regulation that provides defined processes and procedures not included in higher-level legislation**

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.

<b>Scoring Criteria</b>	<b>Score</b>
There are regulations that supplement and detail the provisions of the procurement law that meet the following requirements:  (a) They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place  (b) They are updated regularly;  (c) The responsibility for maintenance is defined..	<b>3</b>
The regulations meet the conditions of (a) plus one of the remaining conditions.	<b>2</b>
The regulations exist but there is no regular updating, the responsibility for updating is not clearly defined or there are many important omissions in the regulations or inconsistencies with the law.	<b>1</b>
There are no regulations or the existing ones do not meet substantially any of the requirements listed above.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

### **Basis for Score and Other Comments:**

1. The government procurement regulations are clear, comprehensive, and consolidated as one set of regulations that are available in an accessible place.
2. However, the regulation is not updated regularly and the responsibility to update is still ad hoc based. The government believes the establishment of National Public Procurement Office will force the regular updating.

**Baseline or Sub-indicator 2(b) – Model tender documents for goods, works, and services**

Model documents of good quality promote competition and increases confidence in the system. Potential contractors or 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 in order to enable the participants to value the cost and risk of mandatory clauses when performing a contract for the government. If model documents are not available, there should be, as a minimum, a set of standard and mandatory clauses and templates that will help in the formulation of the tender documents.

Scoring Criteria	Score
(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies; (b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering. (c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.	<b>3</b>
Model documents and a minimum set of clauses or templates are available, but the use of such documents is not mandatory or regulated. The documents are not updated regularly.	<b>2</b>
Model documents are not available, but a set of mandatory clauses is established for inclusion in tender documents.	<b>1</b>
There are no model documents and the procuring entities develop their own documents for with little or no guidance.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

Models of invitation and standard bidding documents, which comply with international standards, are under development and will be officially promulgated very soon. The un-official model invitation and standard bidding document are now posted and able to be accessed via the internet.

## Baseline or Sub-indicator 2(c) – Procedures for pre-qualification

This sub-indicator covers the existence of procedures for pre-qualification of participants in a particular procurement. Pre-qualification is normally limited to requirements of a high level of complexity where it is possible to determine, primarily using pass/fail criteria, if the interested companies possess the capacity to perform the requirement. Assessment of qualifications can be combined with the tender documents 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 pre-qualification as a separate process can make the procurement more efficient by ensuring only qualified participants are included and it can save money by limiting the number of participants incurring the expense of putting together a comprehensive bid.

Pre-qualification should be defined by procedures in order to ensure that it is not abused and used as a method for limiting competition by overstating the qualification requirements.

Scoring Criteria	Score
Procedures exist that define pre-qualification which:  (a) Provide for limitations on the content of pre-qualification criteria that are based on the needs of the specific procurement  (b) Specify the use of pass/fail for application of qualification criteria.  (c) Provide guidance on when to apply a pre-qualification procedure.	<b>3</b>
Procedures exist that cover (a) plus one of the remaining conditions.	<b>2</b>
Procedures exist that cover (a).	<b>1</b>
Procedures for the application of pre-qualification procedures do not exist.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

### Basis for Score and Other Comments:

Article 14 Presidential Decree (PD) Number 80 Year 2003 provides limitation on the content of pre-qualification criteria that are based on the needs of the specific procurement. The PD 80/2003, also elaborates the content of pre-qualification, the formula and criteria for evaluating pre-qualification proposals. All regulations and mechanisms relating to the prequalification process have been stated clearly in PD 80/2003. The tendering committee should follow the regulation. All stakeholders will monitor the implementation of the regulation.

Pre-qualification is normally for consultancy, limited tendering, and large or complex projects. For simple and small contracts, PD No. 80/2003 instructs the use of post-qualification.

**Baseline or Sub-indicator 2(d) – Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion.**

If technical capacity and/quality is a key criteria for selection of consulting services or other requirements, the law should specify clearly how this aspect is to be considered. While technical qualifications can be assessed by a pass/fail review, in most cases a scored evaluation of technical qualification against stated criteria is considered necessary in order to select the highest qualified proposal, price and other factors considered. In the case of consultants and other professional services, selection based on technical qualifications alone should also be authorized.

If a combination of price and technical capacity is permitted by law, it should establish the obligation to include in the solicitation documents the manner in which they are combined and the relative weights to be allocated to technical capacity and price.

<b>Scoring Criteria</b>	<b>Score</b>
The legal framework and its implementing regulations provide for the following:  (a) Conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate.  (b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.	<b>3</b>
Implementing regulations meet a) above but leave b) to the discretion of the procuring entity.	<b>2</b>
Implementing regulations leave the possibility of use of technical capacity in selection but neither the law nor the regulations elaborate on the procedure.	<b>1</b>
Neither the law nor implementing regulations cover this procedure	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

Presidential Decree Number 80 Year 2003 regulates clearly conditions under which selection based exclusively on technical capacity is appropriate and when price and quality considerations are appropriate. The Presidential Decree also states the procedures and methodologies for assessment of both methods.

## Sub-indicator 2(e) – User’s guide or manual for contracting entities

This sub-indicator covers the existence of a user’s guide or manual for contracting 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 decentralized. Creating a manual or user’s guide is often a function of a central management unit 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.

Scoring Criteria	Score
(a) There is a unique procurement manual detailing all procedures for the correct administration of procurement regulations and laws.  (b) The manual is updated regularly;  (c) The responsibility for maintenance of the manual is clearly established.	<b>3</b>
There is no unique manual but there is an obligation for the procuring agencies to have one that meets conditions (b) and (c.)	<b>2</b>
There is no manual and no obligation to have one but many procurement agencies have an internal manual for administration of procurement.	<b>1</b>
There is no manual or requirement to have one.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

### Basis for Score and Other Comments:

Presidential Decree Number 80 Year 2003 mandates neither a unique procurement manual to detail all procurement procedures nor an obligation to create one. However, in order to ensure correct implementation and administration of the procurement process, procuring entities are encouraged to create an internal manual so long as the manual does not conflict with Presidential Decree Number 80 Year 2003.

Currently, Center for Public Procurement Policy (BAPPENAS) introduces standard bidding documents as a manual for public procurement process and implementation.

**Sub-indicator 2(f) – General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements**

This sub-indicator deals with General Conditions of Contracts that set forth the basic provisions which will be included in a contract with the government. The GCC are based on the laws in the country and generally reflect the commercial codes that deal with contracts between parties. It is important to participants in a procurement that they know the specific conditions under which they will perform a contract before they submit a price for performing the contract since conditions of contract will often have an impact on pricing. The GCC 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 GCC that are consistent, applicable to the requirement, and are reflective of laws that impact on contracts and their performance. GCC need to be mandatory in their use and not subject to negotiations on terms and conditions of contract.

Scoring Criteria	Score
Both of the following apply: a) There are GCC for the most common types of contracts and their use is mandatory. b) The content of the GCC is generally consistent with internationally accepted practice.	3
There are GCC for the most common types of contracts, consistent with international practice, but their use is not mandatory.	2
There are GCC for the most common types of contracts but they do not conform to internationally accepted practice and their use is not mandatory.	1
There are no GCC and individual agencies use the form of contract of their choice.	0
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

1. The attachment of Presidential Decree Number 80 Year 2003 clearly regulates the general conditions of contract even though standard GCC have not been officially produced yet. However, the adoption of general conditions of contract based on the Presidential Decree is mandatory for all types of contracts.
2. The content of general conditions of contract is generally consistent with international practices.

## *Pillar II.*

# *Institutional Framework and Management Capacity*

## **Indicator 3.**

### **The public procurement system is mainstreamed and well integrated into the public sector governance system.**

This indicator looks at the procurement system to: a) determine its suitability to discharge the obligations prescribed in the law without gaps or overlaps; b) whether the necessary links with other sectors of government affecting procurement exist; c) whether procurement operations are constrained by other external institutional factors; and d) whether the managerial and technical capacity of the system is adequate to do procurement without unnecessary cost or delay.

This indicator also deals with the degree of integration of the procurement system with other parts of government and particularly with the financial management system given the direct interaction between the two, from budget preparation and planning to treasury operations for payments.

There are **four baselines or sub-indicators (a-d)** to be scored under Indicator 3.

### **Baseline or Sub-indicator 3(a) – Procurement planning and associated expenditures are part of the budget formulation process and contribute to multiyear planning**

Formulation of annual or multi annual budgets are based on the outcomes or outputs that the government as a whole and its agencies expect to achieve in a particular period. Overall government or sector strategies are the basis for the exercise. These determine the multi year corporate plans, 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.

Procurement plans need to be periodically updated as the budget may be updated and revised to reflect changes that take place in timing of contracts. Experience based on the actual cost of goods, works and services provide excellent information to predict the cost of similar goods, works or services in future budget years. Understanding the timing of major contracts can also help to predict cash flow needs within government to make timely payments and reduce the extra costs associated with delaying contract completion and not having adequate funds to finance full performance.

<b>Scoring Criteria</b>	<b>Score</b>
<p>There is a regular planning exercise instituted by law or regulation that:</p> <ul style="list-style-type: none"> <li>• starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived</li> <li>• followed by annual procurement plans and estimation of the associated expenditures</li> <li>• And culminates in the annual budget formulation.</li> </ul> <p>Procurement plans are prepared in support of the budget planning and formulation process.</p>	<b>3</b>
The majority of procurement plans are prepared based on the annual and multiyear operating plans independently from budget allocation but they are revised to meet the forward budget estimates for the sector or agency allocations before expenses are committed.	<b>2</b>
Procurement plans are normally prepared based on the annual and multiyear operating plans. Links with budget planning are weak and plans are not required to match the budgetary allocation available before expenses are committed.	<b>1</b>
There is no integrated procurement and budget planning of the nature described. Procurement plans are drawn without obvious and direct connection with the budget planning exercise and there is no requirement to match procurement plans with availability of funds before expenses are committed.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

#### **Basis for Score and Other Comments:**

1. Procurement planning has not been a part of the planning and budgeting process;
2. Currently, procurement planning will be one of the important issues in the planning and budgeting process to be established by the new NPPO, which will possess the responsibility and function together with Ministry of Finance and Bappenas;
3. In the future, allocation will be considered by past performance indicators and priority projects;
4. Allocation will take account of single and multi years contracts.

**Baseline or Sub-indicator 3(b) – Budget law and financial procedures support timely procurement, contract execution, and payment.**

This sub-indicator assesses the degree to which budget law and financial management procedures are adequate to meet procurement needs. The processes in place should not constrain the timely processing of procurement or the implementation of contracts. The procurement, budget and financial management systems should interact in a way that once procurement decisions are made they trigger the corresponding actions on the budget and financial side.

- (a) Budget funds are committed or appropriated within a week from the award of the contract to cover the full amount of the contract (or amount to cover the portion of the contract to be performed within the budget period).
- (b) There are published business standards for processing of invoices by the government agencies that meet obligations for timely payment stated in the contract.
- (c) Payments are authorized within four weeks following approval of invoices or monthly certifications for progress payments.

<b>Scoring Criteria</b>	<b>Score</b>
Budget and financial procedures in place meet the requirements of a) to c) above	<b>3</b>
Budget and financial procedures in place meet the requirements of a) but there are no published business standards. Authorization of payments is generally timely.	<b>2</b>
Procedures in place take longer than stated in a) and conditions b) and c) are not generally met.	<b>1</b>
The procedures in place do not meet the requirements in a material way.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

1. Anchored by Law Number 1 Year 2004 concerning Treasury, Law Number 17 Year 2003 concerning National Financial, Presidential Decree Number 80 Year 2003 concerning government procurement, all of the government contracts are not eligible to be signed before the allocation is definite and approved. The availability of budget allocation is ensured.
2. The existing treasury and financial regulations commit that payment process will not take more than 3 working days after award of the contract. By those regulations, all standards and procedures for processing of invoices by the government agencies are well published by Circular Letter from Directorate General of Treasury, Ministry of Finance.

### **Baseline or Sub-indicator 3 (c) – No initiation of procurement actions without existing budget appropriations.**

This indicator assesses whether there are safeguards in the system precluding initiation of procurement actions unless funds have been allocated to the procurement in question. For this the following requirements should be in place:

- (a) The law requires certification of availability of funds before solicitation of tenders takes place.
- (b) There is a system in place (e.g. paper or electronic interface between the financial management and the procurement systems) that ensures enforcement of the law.

<b>Scoring Criteria</b>	<b>Score</b>
The system meets requirements (a) and (b) above.	<b>3</b>
The system meets requirement (a) but requirement (b) is not fully enforced due to weaknesses in the system.	<b>2</b>
The system meets requirement (a) only.	<b>1</b>
There system does not meet requirements (a) and (b).	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

#### **Basis for Score and Other Comments:**

1. Regulations concerning treasury and financial do not allow initiation of procurement process without existing budget appropriation and budget allocation must be stated in the budget document (DIPA/DPA SKPD). As a result, Officer who has responsibility to make a commitment must not sign any contracts unless budget is clearly stated in National or Local budget (APBN/APBD).
2. There is an enforcement law to ensure the system when the project leader (PPK) are not able to show budget document, which indicate the budget allocation, therefore the Local of Treasury Office (KPPN) will not provide payment for the project.

**Baseline or Sub-indicator 3(d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.**

This sub-indicator is a measurement of the feedback mechanism needed to ensure that information on contracts covering major budget expenditures is provided to the budgetary and financial management systems in a timely manner to support the overall public financial management system.

<b>Scoring Criteria</b>	<b>Score</b>
The procurement system is sufficiently integrated with the financial management and budgetary systems to provide information on the completion of all major contracts.	<b>3</b>
Information on completion of the majority of large contracts is submitted as described above.	<b>2</b>
Information on the completion of contracts is erratic or is normally submitted with considerable delay after the fiscal budgetary period. .	<b>1</b>
The procurement system does not generally provide this information.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>0</b>

**Basis for Score and Other Comments:**

1. There is systematic reporting of the implementation of the project, however the procurement system is not sufficiently integrated with the financial management and budgetary system to provide information on the completion of all major contracts.
2. Aside from financial management system, which precludes initiation of procurement actions unless funds have been allocated to the procurement, link between procurement system and financial system is still ineffective.

## **Indicator 4.**

### **The country has a functional normative/regulatory body.**

Although this indicator refers to a normative/regulatory body, what matters most is not the existence of a body but the existence of the functions within the public sector and the proper discharge and coordination of them (i.e. one agency may be responsible for policy while another can be doing the staff training and another might be taking care of the statistics). When the assessment criteria below refers to the “regulatory body” this may be read as referring to the “regulatory function”, if applicable to the particular assessment. The assessment of the indicator will focus on the existence of the functions, the independence of the regulatory function, the effectiveness of performance and the degree of coordination between responsible organizations.

There are **four baselines or sub-indicators (a-d)** to be scored.

**Baseline or Sub-indicator 4(a) – The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.**

The body and its responsibilities are created by the legal and regulatory framework to ensure that the body assigned functional responsibilities has an appropriate level of authority to enable it to function effectively. Alternatively the legal and regulatory framework may assign the key functions described in sub indicator b) to different agencies in a clearly defined basis.

Scoring Criteria	Score
There is a normative or regulatory body or the functions are clearly assigned to various units within the government which is specified in the legal and regulatory framework in unambiguous way without gaps or overlaps.	3
There is a regulatory body or functional designation to various units within government, but it is not established as part of the legal and regulatory framework and there are gaps or overlaps of regulatory responsibilities.	2
Only part of the functional responsibilities of a regulatory body are assigned throughout the government leaving significant parts of the work unassigned.	1
Separate functional responsibilities to regulate the procurement system are not recognized as part of the legal and regulatory framework and are not effectively performed.	0
<b>Score Assigned by Working Group:</b>	2

**Basis for Score and Other Comments:**

1. Since year 2001, when the Government Procurement Reform was initiated, one of the agenda was to establish the National Public Procurement Office (NPPO). Since then, the Government has actively conducted research in order to prepare a basic concept of NPPO and simultaneously set up a Presidential Decree concerning establishment of NPPO.
2. The NPPO will be an independent government body and responsible directly to the President. Its responsibilities will include creating and up dating government procurement regulations.
3. Before the NPPO is established, the government currently, assigns Center for Public Procurement Policy under organization of Ministry of National Development Planning/National Development Planning Agency (BAPPENAS) to maintain most of issues in government procurement on a temporary basis. Some government procurement issues related to constructions are also maintained by Ministry of Public Works.

**Baseline or Sub-indicator 4(b) – The body has a defined set of responsibilities that include but are not limited to the following:**

- providing advice to contracting entities;
- drafting amendments to the legislative and regulatory framework and implementing regulations;
- monitoring public procurement;
- providing procurement information;
- managing statistical databases;
- reporting on procurement to other parts of government;
- developing and supporting implementation of initiatives for improvements of the public procurement system; and
- providing implementation tools and documents to support training and capacity development of implementing staff.

Scoring Criteria	Score
All the eight functions listed in the sub indicator are clearly assigned to one or several agencies with out creating gaps or overlaps in responsibility.	<b>3</b>
At least five functions are assigned to an appropriate agency or agencies and there is no overlap or conflict in responsibilities.	<b>2</b>
Four or less functions are assigned to appropriate entities and there are overlaps and conflicts in responsibilities.	<b>1</b>
Functions are not clearly assigned and/or assignments are often in conflict with other agency responsibilities.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

Even though the NPPO has not been established yet, the Centre for Public Procurement Policy is carrying out at least : 1) providing advice to contracting entities and providing advice to other government institutions and judicial institutions for solving corruption cases caused by mis-procurement, 2). drafting amendments to the legislative and regulatory framework and implementing regulations, 3). monitoring public procurement, 4). providing procurement information, 5). developing and supporting implementation of initiatives for improving the public procurement system, and 6). providing implementation tools and documents to support training and capacity development of implementing staff.

**Baseline or Sub-indicator 4 (c) – The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities.**

The regulatory body 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 regulatory body needs to be of sufficient level within the governance structure to enable the body to exercise its authority and responsibilities.

<b>Scoring Criteria</b>	<b>Score</b>
The regulatory body (or the assignment of responsibilities for the regulatory function if there is not a body) is at an adequate level in Government and financing is secured by the legal/regulatory framework.	<b>3</b>
The body is at an adequate level but financing is subject to administrative decisions and can be changed easily.	<b>2</b>
The level of the body is too low or financing is inadequate for proper discharge of its responsibilities.	<b>1</b>
The level of the body is low, financing is inadequate and the body has no or little independence to perform its obligations.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

Due to the fact that the NPPO is not established yet and the Centre for Public Procurement Policy, nowadays, is the highest regulatory structure within the government, therefore the level of this Centre is too low, mainly, to shoulder responsibilities. The financing is inadequate to ensure proper staffing and resources to keep the services at the level of quality required.

**Baseline or Sub-indicator 4(d) – The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.**

The body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being member of evaluation committees, etc.).

Due to the nature of this sub-indicator, **scoring is either a 3 or a 0.**

<b>Scoring Criteria</b>	<b>Score</b>
The body meets the requirement stated above.	<b>3</b>
NA	
NA	
The body does not meet the requirement as stated above.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

The future NPPO and Centre for Public Procurement Policy, which is currently carrying out responsibilities for developing government procurement policies and regulations, are not responsible for direct procurement operations and are free from other possible conflicts such as being member of evaluation committees.

## **Indicator 5.**

### **Existence of institutional development capacity.**

The objective of this indicator is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements. It is very important that responsibilities are clearly assigned and are being performed.

This indicator has **four baselines or sub-indicators (a-d)** to be scored.

**Baseline or Sub indicator 5(a) – The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.**

The objective of this indicator is to determine a) the existence and capacity of the procurement information system in the country; b) the accessibility of the information system; c) the coverage of the information system; and, d) whether the system provides one stop service (to the extent feasible) where those interested can find information on procurement opportunities and outcomes. The system should include annual or multi annual procurement plans, specific advertisements or notices of procurement opportunities, publication of contract awards, linkages to rules and regulations and other information that is relevant to promote competition and transparency. For purposes of practical application, the collection and dissemination of information should focus on procurement above a set value that reflects established thresholds for use of competitive procedures. Depending on the country, information systems may only focus on procurement financed by the national budget.

<b>Scoring Criteria</b>	<b>Score</b>
There is an integrated information system that provides as a minimum, up-to-date information as described above and is easily accessible to all interested parties at no or minimum cost. Responsibility for its management and operation is clearly defined.	<b>3</b>
There is an integrated system of the characteristics described that provides up-to-date information for the majority of contracts at the central government level but access is limited.	<b>2</b>
There is a system but it only provides information on some of the contracts and the system accessibility is limited	<b>1</b>
There is no procurement information system except for some individual agency systems. Entities keep information on contract awards and some statistics.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

As clearly stated in Presidential Decree Number 80 Year 2003 and Presidential Decree Number 8 Year 2006, procurement planning, invitation and other related procurement information must be declared in the national website.

The system is an integrated system, which shows link between budget and/or allocation of budget for each of programs received by all government institutions and procurement planning, invitations as well. However, the access is currently very limited.

**Baseline or Sub-indicator 5(b) – The country has systems and procedures for collecting and monitoring national procurement statistics.**

Statistical information on procurement is essential to evaluate the policies and the operation of the system. Statistics also provide a means for monitoring performance and determining if the statistic demonstrates compliance with other aspects of the system that are defined in the legal and regulatory framework. Statistical information can also be a tool for procurement planning and market analysis. For purposes of this sub-indicator, the focus is on data available on procurement undertaken using central budget funds.

- (a) There is a system in operation to collect data.
- (b) The system collects data on procurement by method, duration of different stages of the procurement cycle, awards of contracts, unit prices for most common types of goods and services and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements.
- (c) Reliability of the information is high (verified by audits)
- (d) Analysis of information is routinely carried out, published and fed back into the system.

Scoring Criteria	Score
The country has a system that meets the four requirements (a) through (d) listed above.	<b>3</b>
The country has a system that meets (a) plus two of the remaining conditions.	<b>2</b>
The system is in place to meet (a) plus one of the remaining conditions.	<b>1</b>
There is no statistical data collection system in place.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

Currently, the system of collecting data is available through electronic announcement. However, the data collection is very limited which is only included budget ceiling, procurement method, owner estimate, number of participant, and bidding result.

**Baseline or Sub-indicator 5 (c) – A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.**

The purpose of this sub indicator is to verify existence of permanent and relevant training programs for new and existing staff in government procurement. These programs are essential to maintain the supply of qualified procurement staff to public and private sectors. Another objective is to assess the existence and quality of advisory services on procurement matters for government agencies and the public at large.

The evaluator should look at the curricula of the existing programs and judge their relevance, nature, scope and sustainability. A well functioning system should provide for evaluation of the training program and monitoring of progress in addressing capacity issues. The assessment should include verification of advisory services or help desks for public or private sector parties where they can get advice on application and interpretation of policy and rules.

<b>Scoring Criteria</b>	<b>Score</b>
There is a training and capacity building strategy that provides for:  (a) Substantive permanent training programs of suitable quality and content for the needs of the system.  (b) Evaluation and periodic adjustment based on feedback and need.  (c) Advisory service or help desk to absolve questions by procuring entities, suppliers, contractors and the public.	<b>3</b>
There is a training and capacity building strategy that provides for a) above.	<b>2</b>
The existing program is of poor quality and insufficient to meet the needs of the system and there is no procurement help desk or advisory service.	<b>1</b>
No formal training or help desk programs exist.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

1. As one of the most important agenda of Government Procurement Reform, the Government is maintained strategy to improve capacity building for procurement professionals by training and providing government procurement certification (only for government procurement professionals such as tender committees, project managers).
2. The government has developed/ is developing substantial permanent training programs especially targeted at qualified procurement professionals in all government institutions. Evaluation and periodic adjustment is based on feedback and needs.

**Baseline or Sub-indicator 5(d) – Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.**

The purpose of this sub-indicator is to verify existence, relevance and comprehensiveness of the quality assurance and standards for processing procurement actions and to ensure their systematic application to provide for monitoring of performance. Examples of such standards might include response times to reply to inquiries, or length of time to prepare tender documents after receipt of a requirement.

Although these types of standards will vary widely between countries and levels of government, they should as a minimum:

- (a) Provide quality assurance standards and a monitoring system for procurement processes and products
- (b) Provide for a staff performance evaluation process based on outcomes and professional behaviors.
- (c) Ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards.

<b>Scoring Criteria</b>	<b>Score</b>
The procurement system complies with (a) through (c) above.	<b>3</b>
The procurement system complies with (a) and (b) above but there is no regular auditing to monitor compliance.	<b>2</b>
The procurement system has quality standards but does not monitor nor use the standards for staff performance evaluation.	<b>1</b>
The system does not have quality assurance or staff performance evaluation systems	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>0</b>

**Basis for Score and Other Comments:**

The procurement system currently does not have the following:

- The quality assurance standards and a monitoring system for procurement processes and products;
- Staff performance evaluation process based on outcomes and professional behaviors;

## *Pillar III.*

# *Procurement Operations and Market Practices*

## **Indicator 6.**

### **The country's procurement operations and practices are efficient.**

This indicator looks at the efficiency of the operations and operational practices as implemented by the procuring agencies. Efficiency is considered to mean that the operational practices result in timely award of contracts at competitive market prices as determined by effective and fair implementation of procurement procedures.

There are **four baselines or sub-indicators (a-d)** to be rated under this indicator.

**Baseline or Sub-indicator 6(a) – The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.**

The purpose of this indicator is to assess the degree of professionalism and knowledge of those responsible for implementation of procurement activities.

- (a) There are defined skill and knowledge profiles for specialized procurement jobs.
- (b) There is systematic matching of skills against requirements for competitive recruitment.
- (c) Staff required to undertake procurement activities on an ad hoc basis have the knowledge they need to undertake the activity or have access to professional staff that can provide this knowledge.

Scoring Criteria	Score
The system meets the requirements (a) through (d) listed above.	3
The system meets (a) plus one of the remaining conditions.	2
The system only meets (a) above.	1
The system does not meet any of the requirements.	0
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

1. Currently, the official in charge for a particular Government Procurement should have a “Government Procurement Certificate”. Certificates will be issued by the Center of Public Procurement Policy after the respective individual has passed the National Examination.
2. In very near future, there will be a defined skill and knowledge for specialized procurement job. The GOI is considering the introduction of three levels of expertise: *Basic Level* (knowledge of national regulations and practical experience in undertaking procurement); *Intermediate Level*, (in addition to Basic Level, knowledge of international procurement procedures, managing contract, etc); *High Level* (in addition to intermediate level, broad overview of more complex bidding documents, contract, supply chained, e-procurement, trends in “green procurement” etc. The high Level Certification would be internationally recognized.
3. At present, training modules are already distributed to Civil Service Training Center and universities. However, an accreditation system for training providers is still absent as well as competency standards for professionals conducting procurement jobs. In order to encourage understanding and knowledge of National Regulations in Government Procurement, a National-Examination has been implemented since 2005. Meanwhile, up to June 2007, from 235.000 persons who have enrolled in these national certification examinations, only 26.000 persons have passed the examination.

**Baseline or Sub-indicator 6(b) – The procurement training and information programs for government officials and for private sector participants are consistent with demand.**

- (a) This sub indicator assesses the sufficiency of the procurement training and information programs in terms of content and supply.
- (b) Training programs’ design is based on a skills gap inventory to match the needs of the system.
- (c) Information and training programs on public procurement for private sector are offered regularly either by the government or by private institutions.
- (d) The waiting time to get into a course (for public or private sector participants) is reasonable, say one or two terms.

<b>Scoring criteria</b>	<b>Score</b>
The training and information programs available meet all the requirements listed in (a)-(c) above.	<b>3</b>
The training programs are sufficient in terms of content and frequency (waiting time) for government participants but there are few information programs for private sector.	<b>2</b>
There are training programs but they are deficient in terms of content and supply.	<b>1</b>
There is no systematic training or information program for public or private sector participants.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

1. There are still wide gaps between the current training system and the basic knowledge needed for conducting procurement. However, information relating to government-procurement training is widely open to all stakeholders across the country. Procurement training providers are already operating in all regions. For the time being, there are many Procurement Training Providers, such as: public and private universities, civil service training centers either operated by line ministries or provincial/districts government, and private institution training.
2. The government will put more attention into the establishment of an Independent Procurement Training and Certification Body (LSP), which will operate under Law No. 13 year 2003 concerning Man Power. This body will have a significant role as: establish competency standard, produce procurement training module, and accredited training providers

**Baseline or Sub-indicator 6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management**

The ability to look at implementation performance is dependant upon the availability of information and records that track each procurement action. This information is also important to the functioning of control systems both internal and external as it provides the basis for review. A system for safekeeping of records and documents should include the following:

- (a) The legal/regulatory framework establishes a list of the procurement records that must be kept at the operational level and what is available for public inspection, including conditions for access.
- (b) The records should include:
  - Public notices of bidding opportunities
  - Bidding documents and addenda
  - Bid opening records
  - Bid evaluation reports
  - Formal appeals by bidders and outcomes
  - Final signed contract documents and addenda and amendments
  - Claims and dispute resolutions
  - Final payments
  - Disbursement data (as required by the country’s financial management system).
- (c) There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles.
- (d) There are established security protocols to protect records either physical or electronic.

Scoring Criteria	Score
The procurement system complies with the requirements (a) through(d) listed above	3
The procurement system complies with requirements (a), plus two of the remaining conditions.	2
The procurement system complies with (a) but not with the rest.	1
There is no mandatory list of documents or retention policy leaving it to the discretion of the procuring entity.	0
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

It is stipulated in Presidential Decree No.80 Year 2003 article no. 48 point (3), that procurement official should archive all documents relating to procurement process and contract implementation. The archives can be differentiated as active and passive archives. By implementing State Archive Law, the active archive should be secured for five years, and the passive ones should be maintained for 30 years. In addition, all archives will be accessible to the public.

**Baseline or Sub-indicator 6(d) – There are provisions for delegating authority to others who have the capacity to exercise responsibilities.**

Delegation of authority and responsibility is key to having a well functioning system especially when procurement is decentralized. When delegation is not provided, the system tends to function inefficiently and it can lead to excessive concentration of decision making under a few individuals who have neither the training nor knowledge to make procurement decisions. Delegation should be undertaken in accordance with the following:

- (a) Delegation of decision making authority is decentralized to the lowest competent levels consistent with the risks associated and the monetary sums involved.
- (b) Delegation is regulated by law.
- (c) Accountability for decisions is precisely defined.

Scoring criteria	Score
The system meets all requirements listed in a) – c) above.	3
The law establishes delegation and accountabilities but the system concentrates decisions at a high level creating congestions and delays.	2
Delegation is regulated in very general terms creating a need to clarify accountability for decision making.	1
Delegation is not regulated by law and left at the discretion of the procuring entity. There is lack of clarity on accountability.	0
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

Delegation of decisions has been stated clearly in PD No.80/2003. For threshold above Rp 50 billion, a contract needs approval from the minister/governor/ bupati/walikota before a contract can be signed between the project leader and bidding-winner. Meanwhile, under the threshold of Rp 50 billion, responsibility of bidding process and implementing the contract are solely in the hand of the Project Leader (PPK).

The regulation also elaborates the number of members of the tendering committee who will assist the project leader in procurement process, and the number of project staff in implementing the contract. For a small procurement and contract, only a very small number of persons will be assigned to do the job.

## **Indicator 7.**

### **Functionality of the public procurement market.**

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, the private sector development environment and policies, the existence of 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 baseline or sub indicators (a-c)** to be scored.

**Baseline or Sub-indicator 7(a) – There are effective mechanisms for partnerships between the public and private sector.**

Public procurement depends on the partnership that must exist between the government and the private sector. This partnership creates the public procurement marketplace wherein the government is the buyer and the private sector is the supplier of the needed goods, works or services. Accordingly, dialogue between the government and the private sector needs to exist and the voice of the private sector needs to be heard with regard to practices by the government that may undermine the competitive effectiveness of the private sector. This sub indicator must look to see if there are forums for dialog between the government and the private sector. The assessor should also consider the ability for reliance upon private capacity through public/private partnership arrangements such as concession contracts or private public joint ventures for the provision of goods or services.

Scoring Criteria	Score
(a) Government encourages open dialogue with the private sector and has several established and formal mechanisms for open dialogue through associations or other means.  (b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace  (c) The government encourages public/private partnerships and the mechanisms are well established in the legal framework to make possible such arrangements	<b>3</b>
The system meets (a) plus one other condition above.	<b>2</b>
The system only provides for (a) above.	<b>1</b>
There are no obvious mechanisms for dialogue or partnership between the public and private sector.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

1. Before introducing policy and regulations, the government always invites and discusses with all stakeholders, such as representative from: all government institutions, chamber of commerce, private companies association, universities, expert, NGO, etc. Of course, not all the inputs will be accommodated in future regulation, but, at least, all stakeholders are fully aware of the future government’s policy and regulation.
2. In addition, the training system should serve not only government officials, but also the private sector. The government will also put more attention into developing small business enterprises and new entries.

**Baseline or Sub-indicator 7(b) – Private sector institutions are well organized and able to facilitate access to the 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 organizational capacity of the Small and Medium Enterprises (SMEs) and the access they have to information and other services to promote their participation. A well organized and competitive private sector should result in keen competition, better prices and an equitable distribution of business.

<b>Scoring Criteria</b>	<b>Score</b>
The private sector is competitive, well organized and able to participate in the competition for public procurement contracts.	<b>3</b>
There is a reasonably well functioning private sector but competition for large contracts is concentrated in a relatively small number of firms.	<b>2</b>
The private sector is relatively weak and/or competition is limited owing to monopolistic or oligopolistic features in important segments of the market	<b>1</b>
The private sector is not well organized and lacks capacity and access to information for participation in the public procurement market.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

Presidential Decree No.80/2003 article 14, point 10, stated that a project leader is not allowed to forbid, to hamper, or to restrict participation of future vendors from other provinces or cities or regions from participating in the procurement process. In addition, article 9 point 3 stated that a project manager must provide as much as possible packages suitable for small enterprises. Contradictive with this rule, in practicality, in some provinces several manipulations of this have taken place. For example, (a) there is additional qualification to have membership of regional chamber of commerce (KADINDA) in the province where the procurement process has carry out, (b) combining some packages become one big package in order to hamper the small enterprises from participating.

**Baseline or Sub-indicator 7 (c) – There are no major systemic constraints (e.g. inadequate access to credit, 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 or within the control of the government. Access to credit, reasonable contracting provisions that are seen to fairly distribute risks associated with performance of contracts, fair payment provisions that help offset the cost of doing business with the government are examples which can improve access by the private sector to the government marketplace. 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 item. The narrative of the assessment should describe the main constraints.

<b>Scoring Criteria</b>	<b>Score</b>
There are no major constraints inhibiting private sector access to the public procurement market.	<b>3</b>
There are some constraints inhibiting private sector access to the public procurement market, but competition is sufficient.	<b>2</b>
There are multiple constraints inhibiting private sector access to the public procurement market which often affect competition levels.	<b>1</b>
There are major constraints that discourage competition and the private sector firms are generally reluctant to participate in public procurement.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

Some difficulties are experienced when accessing in the procurement market such as:

- a. The lessening support from the banking sector in accessibility by the entrepreneur to credit for participating in the procurement market;
- b. Delays in paying the supplier;

## **Indicator 8.**

### **Existence of contract administration and dispute resolution provisions.**

This indicator's objective is to assess the quality of contract administration practices which begin after contract award and continue to acceptance and final payments. This is an area that many procurement systems fail to consider. It is also a period where many issues arise that can affect the performance of the contract and impact on service delivery.

This indicator covers **three baseline or sub- indicators (a-c)** to be scored.

**Baseline or Sub-indicator 8(a) – Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.**

All of the following procedures are important aspects of contract administration. These procedures will help ensure quality performance of the contract requirements and will facilitate prompt payment of invoices including final acceptance and final payments.

- (a) Procedures for acceptance of final products and for issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.
- (b) Clauses are generally consistent with internationally accepted practices (see IFI standard contracts or good practice examples).
- (c) Quality control (QC) procedures for goods are well defined in the model contracts/documents or in the regulations. QC is carried out by competent officers, inspection firms or specialized testing facilities.
- (d) Supervision of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors.
- (e) Final payments are processed promptly as stipulated in the contract.

Scoring Criteria	Score
Contract administration procedures provide for (a) to (e) above.	3
Contract administration procedures provide for (a) plus three of the remaining requirements.	2
Contract administration procedures provide for (a) plus two of the remaining requirements.	1
Contract administration procedures do not meet the requirements of (a) to (e) above.	0
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

PD No.80 Year 2003 Attachment I Chapter II point C and D regarding Contract Formulation and Implementation includes guidelines for :

- a. Contract amendment procedure; and
- b. Procedures for acceptance of final products;

Furthermore, at clarification clause 5 point e PD No.80 year 2003 stated that supervision of civil works is carried out by independent engineering firms and should be different with the engineering firm that is the executor of construction/civil works.

In order to make sure that final payments are processed promptly as stipulated in the contract has stated in PD No.80 year 2003 article 37 point (2), in addition if there is delay of payment by government then government should pay compensation to contractor.

**Baseline or Sub-indicator 8(b) – Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.**

Disputes during the performance of a contract are a common occurrence. In order to avoid long delays while resolving disputes, a good resolution process should be defined in the contract that provides for fair and timely resolution. The following describes current good practice with regard to dispute resolution.

- (a) There is an Arbitration law in the country.
- (b) The law is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency and enforceability.
- (c) The country accepts as a matter of course international arbitration for international competitive bidding.
- (d) Provisions for Alternative Dispute Resolution (ADR) are standard in contracts.
- (e) ADR provisions conform to the international standard wording (may refer to IFI standard bidding documents for sample of good international practice).

Scoring Criteria	Score
The system meets all the good practice standards (a) to (e) above	3
The system meets (a) plus three of the remaining good practice standards.	2
The system meets (a) plus two of the remaining good practice standards.	1
The system does not use ADR as a normal dispute resolution mechanism in public contracts.	0
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

1. PD No.80 year 2003 states that there are 2 options for Alternative Dispute Resolution. First, dispute resolution solved by court and second, outside the court through mediation, reconciliation, or arbitration.
2. Furthermore, there is Law No. 30 Year 1999 regarding Arbitration and Alternative Dispute Resolution. Parties, who signed the contract, free and should be stipulated in the contract, select an independent arbitrator.

### **Baseline or Sub-indicator 8(c) – Procedures exist to enforce the outcome of the dispute resolution process.**

In order to be effective, the contract not only must provide for fair and efficient dispute resolution procedures, it must also provide for enforcement of the outcome of the dispute resolution process. The following are some basic conditions.

- (a) The country is a member of the New York Convention on enforcement of international arbitration awards.
- (b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.
- (c) The country has a process to monitor this area of contract administration and to address performance issues.

<b>Scoring Criteria</b>	<b>Score</b>
The procurement system in the country meets the requirements of a-c above	<b>3</b>
The country meets two of the three conditions above.	<b>2</b>
The country meets condition a).	<b>1</b>
The country does not meet any of the requirements.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

#### **Basis for Score and Other Comments:**

Indonesia is ratified as a member of the New York Convention on Enforcement Arbitration Award. Furthermore, according Law No.30 year 1999 the arbitrator's decision is the final decision and can be executed by the court. And it's inline with international arbitration law. However, there is no mechanism to monitor a contract administration and to address performance issues.

## *Pillar IV.*

# *Integrity and Transparency of the Public Procurement System.*

## **Indicator 9.**

### **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 preferably based on risk assessment and mitigation. Equally, the effectiveness of controls needs to be reviewed in terms of expediency and thoroughness of the implementation of auditors' recommendations. The assessor should rely, in addition to their own findings, on the most current Country Financial Accountability Assessment (CFAA) or other analysis including PEFA/PFM assessment that may be available.

This indicator has **five baseline or sub indicators (a-e)** to be rated.

**Baseline or Sub-indicator 9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.**

National legislation normally establishes which agencies are responsible for oversight of the procurement function. Control and oversight normally start with the legislative bodies that must review and act on the findings of the national auditing agency and legal watch dog agencies (e.g. the comptroller general reports, attorney general reports, etc.).

There should also be provisions for the establishment of internal controls such as internal audit organizations that periodically produce recommendations to the authorities of the individual agencies based on their findings. Internal audit should be complemented by internal control and management procedures that provide for checks and balances within an agency for processing of procurement actions. Internal audit and internal control procedures can 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.

Even though no single model exists, 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 of universal application.

Scoring Criteria	Score
The system in the country provides for:  (a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function. (b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures. (c) Proper balance between timely and efficient decision making and adequate risk mitigation. (d) Specific periodic risk assessment and controls tailored to risk management.	<b>3</b>
The system in the country meets a) plus two of the above.	<b>2</b>
The system meets a) but controls are unduly burdensome and time-consuming hindering efficient decision making.	<b>1</b>
Controls are imprecise or lax and inadequate to the point that there is weak enforcement of the laws and regulations and ample risk for fraud and corruption.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

1. Currently, control and audit mechanisms are stipulated in some regulations:
  - a. external audit mechanism in Law no. 15 year 2006 regarding Financial Auditing Board;
  - b. internal audit mechanism in PD no. 103 regarding Government Institution Non-Department.
  
2. In practice, audits, which are carried out by Inspectorate/Bawasda/Bawasprop/BPKP, are often also being performed by BPK. Therefore, the complex audit system with no clear jurisdiction boundaries is hampering the procurement process.

3. Beside, PD No.80 year 2003 article 48 point (7) states that society has an opportunity to monitor and to control the implementation of government procurement. In addition, society as well as supplier can give information to auditor and/or policeman and/or attorney and/or Anti-corruption Commission (KPK) if there are manipulations in the procurement process.
4. Furthermore, there is law No.5 year 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition.
5. Since Indonesia embarked on its reforms, the many auditing and monitoring processes of one procurement activity can often cause a negative impact because it tends to hamper procurement implementation and decision making.

**Baseline or Sub-indicator 9(b) – Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.**

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 percentage of recommendations implemented within six months, a year, over a year or never implemented.

<b>Scoring Criteria</b>	<b>Score</b>
Internal or external audits are carried at least annually and recommendations are responded to or implemented within six months of the submission of the auditors' report.	<b>3</b>
Audits are carried out annually but response to or implementation of the auditors' recommendations takes up to a year.	<b>2</b>
Audits are performed annually but recommendations are rarely responded to or implemented.	<b>1</b>
Audits are performed erratically and recommendations are not normally implemented.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

The Auditing process is being performed every year either by internal or external auditors. Furthermore, such auditing process can be followed by investigation auditing in cases where there is a complaint. The results of the auditing processes are reported to the head of government institution, and in case of criminal or corrupt behavior will be prosecuted according to the criminal law or corruption law.

**Baseline or Sub-indicator 9(c) – The internal control system provides timely information on compliance to enable management action.**

The following key provisions should be provided:

- (a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.
- (b) There is established regular periodic reporting to management throughout the year.
- (c) The established periodicity and written standards are complied with.

<b>Scoring Criteria</b>	<b>Score</b>
All requirements (a) through (c) listed above are met.	<b>3</b>
Requirement (a) plus one of the above are met.	<b>2</b>
Only requirement (a) is met.	<b>1</b>
There is no functioning internal control system	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

Government regulation concerning internal control and periodic reporting is already available. Standard for government internal auditing (internal control) is done by BPKP. Law no. 15 year 2006 stated that every government institution should establish an annual financial report as a basis for the auditing process.

**Baseline or Sub-indicator 9(d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.**

There are written internal control routines and procedures. Ideally there would an internal audit and control manual. Finally, there is sufficient information retained to enable auditors to verify that the written internal control procedures are adhered to.

<b>Scoring criteria</b>	<b>Score</b>
There are internal control procedures including a manual that states the requirements for this activity which is widely available to all staff.	<b>3</b>
There are internal control procedures but there are omissions or practices that need some improvement.	<b>2</b>
There are procedures but adherence to them is uneven.	<b>1</b>
The internal control system is poorly defined or non-existent.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

Standard of conduct of auditing is improving but needs to be more developed, especially for standard of conduct in procurement implementation.

**Baseline or Sub-indicator 9(e) – Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.**

The objective of this indicator is to confirm that there is a system in place to ensure that auditors working on procurement audits receive adequate training or are selected following criteria that explicitly requires that they demonstrate sufficient knowledge of the subject. 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.

<b>Scoring Criteria</b>	<b>Score</b>
There is an established program to train internal and external auditors to ensure that they are well versed in procurement principles, operations, laws, and regulations and the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits.	<b>3</b>
If auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	<b>2</b>
There is a requirement that the auditors have general knowledge of procurement principles, operations, laws, and regulations but they are not supported generally by specialists in procurement.	<b>1</b>
There is no requirement for the auditors to have knowledge of procurement and there is no formal training program and no technical support is provided to the auditors.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

**Basis for Score and Other Comments:**

Auditors have been well informed regarding government procurement regulations but they do not understand the procurement process well enough. There is only small number of auditors who hold the certificate of government procurement expertise.

## **Indicator 10.**

### **Efficiency of appeals mechanism.**

The appeals mechanism was covered under Pillar I with regard to its creation and coverage by the legal regulatory framework. It is further assessed under this indicator 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 **five baseline or sub indicators (a-e)** to be scored.

**Baseline or Sub-indicator 10(a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.**

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

- (a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body.
- (b) An appeals body exists which has the authority to review decisions of the specified complaints body and issue final enforceable decisions.
- (c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.

<b>Scoring Criteria</b>	<b>Score</b>
The country has a system that meets the requirements of (a) through (c) above	<b>3</b>
The country has a system that meets (a) and (b) above, but the process is not controlled with regard to (c).	<b>2</b>
The system only provides for (a) above with any appeals having to go through the judicial system requiring a lengthy process.	<b>1</b>
The system does not meet the conditions of (a) –(c) above, leaving only the courts.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>0</b>

**Basis for Score and Other Comments:**

1. An independent appeal body does not yet exist. The current Complaint mechanism consists of two stages. First, complaint directly to project leader, and second, the appeal complaint is aimed directly to the Minister/ Institution Leader of the procuring entity.
2. PD No.80 year 2003 article 20 and 25 and appendix I currently states that when the complaint is not resolved to the satisfaction of the parties, then the final decision is left to the judicial system and the courts.

**Baseline or Sub-indicator 10(b) – The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.**

This indicator deals specifically with the question of the efficiency and capacity of a complaints review system and its ability to enforce the remedy imposed. It is closely related to sub indicator 10(a) which also refers to enforcement. This indicator will focus primarily on the capacity and efficiency issues.

<b>Scoring Criteria</b>	<b>Score</b>
The complaint review system has precise and reasonable conditions and timeframes for decision by the complaint review system and clear enforcement authority and mechanisms.	<b>3</b>
There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome.	<b>2</b>
Terms and timeframes for resolution of complaints or enforcement mechanisms and responsibilities are vague.	<b>1</b>
There are no stipulated terms and timeframes for resolution of complaints and responsibility for enforcement is not clear.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

As stated in PD No.80 year 2003 article 20 and 25 appendix I, the current complaint mechanism in procurement process is as follows:

1. First complaint by bidder must be within 5 (five) working days after winner announcement;
2. A project manager should respond to this complaint within 5 (five) working days after receiving the complaint;
3. Second complaint by bidder must proceed to the project manager within 5 (five) working days after receipt of the response to the first complaint;
4. Chief/ head of institution should respond to the second complaint within 5 (five) working days after receiving the second complaint.

**Baseline or Sub-indicator 10 (c) – The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information.**

The system needs to be seen as operating in a fair manner. The complaint review system must require that decisions be rendered only on relevant and verifiable information presented and that such decisions 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 a complaints body should deal specifically with process issues and the remedies should focus on corrective actions needed to comply with the process.

<b>Scoring Criteria</b>	<b>Score</b>
Procedures governing the decision making process of the review body provide that decisions are: a) based on information relevant to the case. b) balanced and unbiased in consideration of the relevant information c) can be subject to higher level review d) result in remedies that are relevant to correcting the implementation of the process or procedures	<b>3</b>
Procedures comply with (a) plus two of the remaining conditions above.	<b>2</b>
Procedures comply with (a) above.	<b>1</b>
The system does not comply with any of the above	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

When responding to complaints, a project manager, as well as chief of institution, should base response on:

1. Procurement process analysis and real facts, which is: chronology, bidding document and proposal document, minutes of clarification and evaluation;
2. Existing law and regulation, especially PD No.80 year 2003 and related procurement regulation, such as Law No.18 year 1999 regarding Civil Work, Law No.5 year 1999, etc.

## **Baseline or Sub-indicator 10(d) – Decisions are published and made available to all interested parties and to the public**

Decisions are public by law and posted in easily accessible places (preferably posted at a dedicated government procurement website in the Internet). Publication of decisions enables interested parties to be better informed as to the consistency and fairness of the process.

<b>Scoring Criteria</b>	<b>Score</b>
All decisions are publicly posted in a government web site or another easily accessible place	<b>3</b>
All decisions are posted in a somewhat restricted access media (e.g. the official gazette of limited circulation).	<b>2</b>
Publication is not mandatory and publication is left to the discretion of the review bodies making access difficult.	<b>1</b>
Decisions are not published and access is restricted.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>1</b>

### **Basis for Score and Other Comments:**

Publication of the dispute settlement process is not mandatory, as stated in PD No.80 year 2003 article 48 point (7). However, society has a right to receive an explanation from a project manager regarding any procurement process after a contract has been signed. Furthermore, the project manager should provide all of information regarding procurement process including dispute settlement process when required.

**Baseline or Sub-indicator 10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints.**

This indicator assesses the degree of autonomy that the complaint decision body has from the rest of the system to ensure that its decisions are free from interference or conflict of interest.

Due to the nature of this sub indicator it is scored as either a 3 or a 0.

<b>Scoring Criteria</b>	<b>Score</b>
The complaint review body is independent and autonomous with regard to resolving complaints.	<b>3</b>
NA	
NA	
The complaint review body is not independent and autonomous with regard to resolving complaints.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>0</b>

**Basis for Score and Other Comments:**

Currently, there is no special government institution has a function in dispute settlement. Every complaint procedure has been tackled by a project manager and Chief in every institution.

## **Indicator 11.**

### **Degree of access to information.**

This indicator deals with the quality, relevance, ease of access and comprehensiveness of information on the public procurement system.

**Baseline or Sub-indicator 11(a) – Information is published and distributed through available media with support from information technology when feasible.**

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.

The system should also include provisions to protect the disclosure of proprietary, commercial, personal or financial information of a confidential or sensitive nature.

Information should be consolidated into a single place and when the technology is available in the country, a dedicated website should be created for this purpose. Commitment, backed by requirements in the legal/regulatory framework should ensure that agencies duly post the information required on a timely basis.

Scoring Criteria	Score
Information on procurement is easily accessible in media of wide circulation and availability. The information provided is centralized at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	3
Information is posted in media not readily and widely accessible or not user friendly for the public at large OR is difficult to understand to the average user OR essential information is lacking.	2
Information is difficult to get and very limited in content and availability.	1
There is no public information system as such and it is generally up the procuring entity to publish information.	0
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

As stated in PD No.8 year 2006 regarding The Fourth addendum of PD No.80 year 2003, information regarding procurement process can be found in:

1. Acceptable National newspaper as declared by State Ministry of National Development and Planning/ Head of Bappenas, and Provincial newspaper as declared by Governor;
2. Official announcement board in every government entity;
3. National procurement website : [www.pengadaannasional-bappenas.go.id](http://www.pengadaannasional-bappenas.go.id)

## **Indicator 12.**

### **The country has ethics and anticorruption measures in place.**

This indicator assesses the nature and scope of the anticorruption provisions in the procurement system.

There are **seven baseline or sub indicators (a-g)** contributing to this indicator.

**Baseline or Sub-indicator 12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.**

This sub indicator assesses the extent to which the law and the regulations compel procuring agencies to include fraud and corruption, conflict of interest and unethical behavior references in the tendering documentation. This sub indicator is related to sub indicator 2 b) on content for model documents but is not directly addressed in that sub indicator.

The assessment should verify the existence of the provisions and enforceability of such provision through the legal/regulatory framework. The provisions should include the definitions of what is considered fraud and corruption and the consequences of committing such acts.

Scoring Criteria	Score
The procurement law or the regulations specify this mandatory requirement and give precise instructions on how to incorporate the matter in tendering documents. Tender documents include adequate provisions on fraud and corruption.	3
The procurement law or the regulations specify this mandatory requirement but leaves no precise instruction on how to incorporate the matter in tendering documents leaving this up to the procuring agencies. Tender documents generally cover this but without consistency.	2
The legal/regulatory framework does not establish a clear requirement to include language in documents but makes fraud and corruption punishable acts under the law. Few tendering documents include appropriate language dealing with fraud and corruption.	1
The legal framework does not directly address fraud, corruption or unethical behavior and its consequences. Tender documents generally do not cover the matter.	0
<b>Score Assigned by Working Group:</b>	2

**Basis for Score and Other Comments:**

Every stakeholder is required to sign an integrity pact in any government procurement implementation. This statement can be found in PD No.80 year 2003 and its addendum. This is to prevent corruption from happening in procurement process.

**Baseline or Sub-indicator 12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.**

This indicator assesses the existence of legal provisions that define fraudulent and corrupt practices and set out the responsibilities and sanctions for individuals or firms indulging in such practices. These provisions should address issues concerning conflict of interest and incompatibility situations. The law should prohibit the intervention of active public officials and former public officials for a reasonable period of time after leaving office in procurement matters in ways that benefit them, their relatives, and business or political associates financially or otherwise. There may be cases where there is a separate anticorruption law (e.g. anticorruption legislation) that contains the provisions. This arrangement is appropriate as far as the effects of the anticorruption law are the same as if they were in the procurement law.

<b>Scoring Criteria</b>	<b>Score</b>
The legal/regulatory framework explicitly deals with the matter. It defines fraud and corruption in procurement and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.	<b>3</b>
The legal/regulatory framework includes reference to other laws that specifically deal with the matter (e.g. anti corruption legislation in general). The same treatment is given to the consequences.	<b>2</b>
The legal/regulatory framework has general anti corruption and fraud provisions but does not detail the individual responsibilities and consequences which are left to the general relevant legislation of the country.	<b>1</b>
The legal/regulatory framework does not deal with the matter.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

PD No.80 year 2003 article 49 defines fraudulent and corrupt practices and sets out the responsibilities and sanctions for individuals or firms indulging in such practices. Some sanctions are:

1. Administration sanction, cancellation of winner and their bidding insurance will be withdrawn with the bidder will be put on a black list;
2. The bidder will be fined;
3. Other sanctions will be set out as stated in Anticorruption Law and Criminal Law.

## **Baseline or Sub-indicator 12 (c) – Evidence of enforcement of rulings and penalties exists.**

This indicator is about 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. This is not an easy indicator to score, but assessor should be able to obtain at least some evidence of prosecution and punishment for corrupt practices. The assessor should get figures on the number of cases of corruption 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.

<b>Scoring criteria</b>	<b>Score</b>
There is ample evidence that the laws on corrupt practices are being enforced in the country by application of stated penalties.	<b>3</b>
There is evidence available on a few cases where laws on corrupt practices have been enforced.	<b>2</b>
Laws exist, but evidence of enforcement is weak.	<b>1</b>
There is no evidence of enforcement.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

### **Basis for Score and Other Comments:**

There are various cases, where laws on corruption practices have been enforced by Corruption Court and punish for fine and imprison, as follows:

1. Corruption case for General Election Logistic (year 2004);
2. Corruption case for Laboratories Equipment in Ministry of Fishery (year 2004);
3. Corruption case for Busway in DKI Jakarta Province (year 2004);
4. Corruption case for Investment Year 2003 – 2004 in Investment Coordination Body (year 2004);
5. Corruption case for Feasibility Study of Kutai Kartanegara Airport (year 2005, still in court process);
6. Corruption case for Automatic Finger Print System in Ministry of Law and Human Rights (year 2005, and still in court process);
7. Corruption case for procurement of fire automobiles in Makasar City (year 2005);

Cases related to unfair business competition and monopolistic practices prosecuted by Commission for the Supervision of Business Competition (KPPU):

- 1 Corruption case for unfair business competition in procuring Health Equipment in Bogor's Hospital (year 2005);
- 2 Corruption case for unfair business competition in procuring ferry passenger vessel in BRR Aceh and Nias (year 2006)

Cases associated to corruption, collusion and unfair business competition, which are already punish and/or still in the court process, are able to be observed in website of Commission of the Supervision Unfair Business Competition ([www.kppu.go.id](http://www.kppu.go.id)).

## **Baseline or Sub-indicator 12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.**

This sub indicator looks to verify the existence of an anticorruption program and its extent and nature or other special measures which can help prevent and/or detect fraud and corruption specifically associated with public procurement.

A comprehensive anticorruption program normally includes all the stakeholders in the procurement system, assigns clear responsibilities to all of them, and assigns a high- level body or organization with sufficient standing and authority to be responsible for coordinating and monitoring the program. The procurement authorities are responsible for running and monitoring a transparent and efficient system and for providing public information to promote accountability and transparency. The control organizations (supreme audit authority) and the legislative oversight bodies (e.g. the parliament or congress), are responsible for detecting and denouncing irregularities or corruption. The civil society organizations are responsible for social audits and for monitoring of procurement to protect the public interest. These may include NGOs, the academia, the unions, the chambers of commerce and professional associations and the press. The judiciary also participates, often in the form of special anticorruption 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 behavior in respect to corrupt practices and tolerance. Anticorruption strategies usually include as well the use of modern technology to promote e-procurement and e-government services to minimize the risk of facilitation payments.

The assessor should assess the extent to which all or some of this actions are organized as a coordinated effort with sufficient resources and commitment by the government and the public or the extent to which they are mostly isolated and left to the initiative of individual agencies or organizations.

**Baseline or Sub-indicator 12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.**

<b>Scoring Criteria</b>	<b>Score</b>
The government has in place a comprehensive anticorruption program to prevent, detect and penalize 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. Special measures are in place for detection and prevention of corruption associated with procurement,	<b>3</b>
The government has in place an anticorruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.	<b>2</b>
The government has isolated anticorruption activities not properly coordinated to be an effective integrated program.	<b>1</b>
The government does not have an anticorruption program	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

Indonesia has a national anticorruption program namely Eradication Corruption Movement Plan. In the sub-component relating to procurement several activities are required including:

1. Every government entity must announce their procurement plan as well as procurement invitation in one national/province newspaper and in national procurement website so as to increase transparency in the procurement process;
2. Disseminate the importance of eradicating corruption in procurement to all stakeholders;
3. Educate society and NGOs on government procurement processes and implementation;
4. Enforce the Law and penalize corruption in all government entities involved.

**Baseline or Sub-indicator 12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.**

This indicator assesses the strength of the public in maintaining a sound procurement environment. This may manifest in the existence of respected and credible civil society groups that provide oversight and can exercise social control. 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 behavior is expected and deviations are not tolerated.

Scoring Criteria	Score
(a) There are strong and credible civil society organizations that exercise social audit and control. (b) Organizations have government guarantees to function and cooperation for their operation and are generally promoted and respected by the public. (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.	<b>3</b>
There are several civil society organizations working on the matter and the dialogue with the government is frequent but it has limited impact on improving the system.	<b>2</b>
There are only a few organizations involved in the matter, the dialogue with the government is difficult and the contributions from the public to promote improvements are taken in an insignificant way.	<b>1</b>
There is no evidence of public involvement in the system OR the government does not want to engage the public organizations in the matter.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

Several NGOs and other private sector organizations/ professional institutions such as IPW, INKINDO, KADIN, LPJK need to better educate and train their members to monitor procurement implementation. However, NGOs and organizations related to procurement are very limited both in quantity and quality. Therefore, the current achievement and impact of monitoring procurement implementation is insignificant. Usually, monitoring procurement implementation has been performed in several big cities such as Jakarta and any other provinces.

**Baseline or Sub-criteria 12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.**

The country provides a system for reporting fraudulent, corrupt or unethical behavior that provides for confidentiality. The system must be seen to react to reports as verified by subsequent actions taken to address the issues reported.

<b>Scoring Criteria</b>	<b>Score</b>
There is a secure, accessible and confidential system for the public reporting of cases of fraud, unethical behavior and corruption.	<b>3</b>
There is a mechanism in place but accessibility and reliability of the system undermine and limit its use by the public.	<b>2</b>
There is a mechanism in place but security or confidentiality cannot be guaranteed	<b>1</b>
There is no secure mechanism for reporting fraud, unethical behavior and corruption cases	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>2</b>

**Basis for Score and Other Comments:**

Systems are in place for reporting fraudulent, corrupt or unethical behavior has stated in PD No.80 year 2003 and its addendum. The mechanism is through the sending information either directly or indirectly to the auditors, police, attorney, and Anti-corruption Commission (KPK). However, this mechanism is not effective yet due to lack of awareness from society and NGOs regarding the required procurement processes. Furthermore, there is also lack of information about Law No.13 year 2006 regarding Witness and Victim Protection since this is still quite new.

**Baseline or Sub-criteria 12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.**

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. In particular, financial disclosure requirements have proven to be very useful in helping to prevent unethical or corrupt practices.

Scoring Criteria	Score
(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 accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.  (c) The code is of obligatory compliance and consequences are administrative or criminal	<b>3</b>
The system meets requirements (a) and (b) but is only a recommended good practice code with no consequences for violations unless covered by criminal codes.	<b>2</b>
There is a code of conduct but determination of accountabilities is unclear.	<b>1</b>
There is no code of conduct.	<b>0</b>
<b>Score Assigned by Working Group:</b>	<b>3</b>

**Basis for Score and Other Comments:**

The Codes of Ethics for government officials with particular provisions for those involved in public financial management, including procurement, are basically stipulated in several regulations as follows:

1. PD No.80 year 2003 article 5 regarding procurement ethics;
2. Anti corruption Law, states that every minimal echelon I, project manager, and project financial officer should report their wealth before their assignment and after their assignment to the KPK;
3. PD No. 80 year 2003 article 49 stated that if government officials do not obey the PD No.80 year 2003, especially with respect to procurement ethics, they can be punished by administration sanction, fine, or criminal sanction.