

PRACTICAL EXERCISES FOR SCORING



OECD-DAC JOINT VENTURE FOR PROCUREMENT

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Please see the following excerpts from a recent CPAR that included an application of the benchmarking tool. The narrative from the CPAR should be used in determining the appropriate score for each of the indicators.

You are asked to address the following:

- 1. Score the indicator based on the scoring criteria provided and the information available.**
- 2. Identify the key basis for the score assigned.**
- 3. Provide any comments your team wishes to make with regard to additional information you feel is needed to justify the score. Provide any comments with regard to difficulties you had in scoring.**

PILLAR I - Indicator 1 - Sub-indicator 1(b) – Procurement Methods

The law prescribes the criteria for the use of procurement methods (Article 17-22). The procurement law defines open tender as the preferred method of procurement (Article 17). The other methods are used based on the criteria specified in the law and based on the financial thresholds specified in the implementing regulations. In the case of direct procurement, Article 19 “urgent need” needs to be defined more clearly to prevent potential misuse. The law contains weak definitions of "force majeure" and of emergency situations which creates a lack of clarity with regard to justifying the use of direct procurement methods.

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) Open public tendering 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	3
The legal framework meets the conditions of (a), (b) and (c) but fails to meet (d) above.	2
The legal framework meets the condition of (a) and (b) above but fails to meet (c) and (d).	1
The legal framework fails to substantially comply with any three of the conditions a) through d) above.	0

Score Assigned by Team:

Basis for Score:

Comments:

PILLAR I - Indicator 1 - Sub-indicator 1(h) – Complaints

The normative body is the Public Procurement Agency (PPA) but in addition to providing policy leadership, the PPA also reviews contract above a stated threshold and handles complaints. While the law provides for a complaints procedure, it also creates some conflicts which have a tendency to undermine the confidence of the private sector. Specifically, Chapter VIII (Article 43-45) of PPL provides for administrative review of complaints by appealing to heads of procuring entities and PPA within a timeframe (Implementing regulation Decision No. 335, of June 2000) and establishes the issues that are subject to review. But the complaint review body is not separate from PPA, which is involved in policy and also reviews large-value contracts.

Scoring Criteria	Score
The legal framework provides for the following: (a) The right to review by 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.	3
The legal framework provides for (a), (b) and (c) above but does not provide for (d)	2
The legal framework provides for (a) and (b) above but does not address (c) and (d)	1
The right for review of the proper application of the procurement process is not provided in the legal framework	0

Score Assigned by Team:

Basis for Score:

Comments:

PILLAR I - Indicator 1 - Sub-indicator 2(a) – Implementing regulation that provides defined processes and procedures not included in higher-level legislation

Higher level legislation is supported by implementing regulations in the nature of instructions, decisions, bidding document and user’s manual. There are certain anomalies when implementing regulation mandates disclosure of limit fund (estimated cost) though not required by the law. There is a practice of disclosing “limit funds” (estimated cost) in bid notices. This clearly prevents efficient competitive bidding. All the bidders tend to quote close to the disclosed limit amount. At the same time, these estimates themselves are not realistic, as they are not based on market-prevalent conditions. This practice adversely affects import of electricity (which, incidentally, is defined as “goods” in the Public Procurement Law, under Article 2, “Definitions”). It led to bidders not submitting bids in the round of bidding held in November 2005 as they found that the limit funds were unrealistic. The government later amended the law by a normative act (dated December 18, 2005) by making an exception for electricity purchase. In addition, one of the implementing regulations (Directive No. 1, dated January 1, 1996, Chapter II, Point 2) explicitly stated “there should not be upper and lower limits, below or over which the bids will be rejected.” The current Public Procurement Law contains no provision on disclosure of estimated cost. The practice of disclosing limit fund was obviously and consistently in violation of the Directive No. 1 until January 2006, when it was amended and this provision was removed. Further, unrealistic cost estimates for major programs leads to an excessive number of budget transfers/reallocations (virements) during implementation.

Scoring Criteria	Score
There are regulations that supplement and detail the provisions of the procurement law that meet the following requirements: (a) They are 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; (d) They are clear and comprehensive.	3
The regulations meet criteria (a) (b) and (c) but there are a few but important omissions that need to be addressed.	2
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.	1
There are no regulations or the existing ones do not meet substantially any of the requirements listed	0

Score Assigned by Team:

Basis for Score:

Comments:

PILLAR II - Indicator 3 - Sub-indicator 3(a) – Procurement planning and data on costing are part of the budget formulation process and contribute to multiyear planning

Procurement planning reflects budget availability rather than prioritization of institutional needs. The procurement planning starts too late to ensure that the actual procurement process can start as soon as budget is available. There is a pattern of low spending at the beginning of fiscal year and a last-minute surge for all types of public expenditure at the end of fiscal year. The effective operation of the public procurement system is being severely hampered by the Government’s budget planning and management system, particularly by the release to procuring entities of budgetary allocations late in the fiscal year, sometimes as late as November. The effects of these practices on procurement include procuring entities avoiding the use of Open Tendering, as the timing of their receipt of budget allocation comes too late in the year to allow them to complete this procedure by the end of the financial year. The urge to spend the budgeted allocation, by whatever means, effectively hampers consideration of economy and efficiency in the procurement process. Decision No. 675 required procuring entities to complete procurement as well as signing of contracts by July 31 of each year. Given the fact that January and February are spent discussing and negotiating the list of projects to be funded between the Ministry of Finance and line ministries, there was an inadequate window of four months for the procurement process, which encourages overuse of direct procurement. This in practice leaves only 6 months to execute the budget. Links between multiyear estimates and subsequent setting of annual budget ceilings are not clear.

Scoring Criteria	Score
<p>There is a regular planning exercise instituted by law or regulation that:</p> <ul style="list-style-type: none"> • starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived • followed by annual procurement plans and estimation of the associated costs • And culminates in the annual budget formulation. <p>Procurement plans are prepared in support of the budget planning and formulation process.</p>	3
<p>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.</p>	2
<p>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.</p>	1
<p>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.</p>	0

Score Assigned by Team:

Basis for Score:

Comments:

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

There are training programs, but these are deficient in terms of content and supply. There is a need for a sustainable strategy and training capacity in all areas of PFM, including procurement. The targeted recruitment and professional development of accountants, financial controllers, inspectors, procurement specialists, and auditors should be enhanced in accordance with the objectives of the Government’s Policy Paper for PIFC (March 2005). There is a need to train auditors on procurement law and regulations to ensure that these rules are applied correctly. Until last year, the Training Institute of Public Administration (TIPA) offered basic procurement training for central government procurement staff. The course three-day course was offered three times a year. According to the training plan of 2006–08, they will be offering a one-day awareness-raising training on public finance to newcomers in the civil service, and a two-day program on budgeting procedures. These trainings are inadequate. In the area of procurement, the consultant offered 14 modules of training of trainers as part of its capacity building. The training curricula consists of introduction to public procurement policy objectives, a review of conflict management; public procurement methods and strategies; the public procurement tendering process; notices of invitation, tender documents and evaluation; and public procurement ethics. This is not sustainable as the contract with the consultant is expected to end by October 2006, and a recently established training unit in PPA has only limited staff available.

Scoring criteria	Score
The training and information programs available meet all the requirements listed in (a)-(c) above.	3
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.	2
There are training programs but they are deficient in terms of content and supply.	1
There is no systematic training or information program for public or private sector participants.	0

Score Assigned by Team:

Basis:

Comments:

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

Information is published in *Public Procurement Bulletin*. Only open tender notices are published on the website, standard bidding documents, the Public Procurement Law, and user’s manual. Public access to procurement information is essential for transparency and creates a basis for “social audits” by interested stakeholders. Information needs to be consolidated into a single place easily accessible by the public. The PPA website is very weak in content. Most procurement information is only available in hard copy through the weekly *Public Procurement Bulletin*, including information on tenders, contract awards, debarred companies, and changes in procurement legislation. The PPA website contains only open tender notices, standard bidding documents, public procurement legislation, and a user’s manual. This is grossly inadequate. There is no update of the information on procurement legislation. No information is available on the website related to the number and value of contract awards under various methods of procurement, or incidences and rationale of direct procurement. No information is available on timeliness on the resolution of complaints.

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

Score assigned by Team:

Basis:

Comments: